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The document may also be viewed at the DOT's intelligent transportation systems (ITS) home page at http://www.its.dot.gov.

Background

On May 25, 2000 (65 FR 33994), the FHWA published an NPRM proposing the establishment of regulations to implement a portion of section 5206(e) of the Transportation Equity Act for the 21st Century (TEA–21) (Public Law 105–178, 112 Stat. 107) which requires ITS projects funded from the highway trust fund to conform to the National ITS Architecture, applicable or provisional standards, and protocols.

The DOT has received requests from the American Association of State Highway and Transportation Officials, the American Public Transportation Association, the Association of Metropolitan Planning Organizations, and several State departments of transportation to extend the comment period. These groups voiced concerns that the proposed rule was extremely complex and that 90 days was insufficient time to assess the impact of the proposed rules and provide meaningful comments. We agree that more time for an in-depth analysis of the NPRM would be beneficial to the FHWA in this rulemaking. For these reasons the FHWA finds good cause to extend this NPRM comment period closing date by 30 days.

Authority: 23 U.S.C. 101, 109, 315, and 508; sec. 5206(e), Pub. L. 105–178; 112 Stat. 457 (23 U.S.C. 502 note); and 49 CFR 1.48.

Issued on: July 17, 2000.

Kenneth R. Wykle,

Federal Highway Administrator.

[FR Doc. 00–18916 Filed 7–25–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 4

RIN 1215–AB26

Service Contract Act; Labor Standards for Federal Service Contracts

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule.

SUMMARY: Pursuant to Section 4(b) of the McNamara-O'Hara Service Contract Act (SCA), the Department of Labor (DOL or the Department) is proposing exemptions from coverage for certain contracts for commercial services. The proposed exemptions were requested by the Administrator for Federal Procurement Policy, Office of Federal Procurement Policy (OFPP), in a May 12, 1999, letter to the Secretary of Labor representing that the requested exemptions were both necessary and proper in the public interest, and in accord with the remedial purpose of the SCA to protect prevailing labor standards.

DATES: Comments are due on or before August 25, 2000.

ADDRESSES: Submit written comments to John R. Fraser, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, N.W., Washington, DC 20210. Commenters who wish to receive notification of receipt of comments are requested to include a self-addressed, stamped postcard, or to submit them by certified mail, return receipt requested. As a convenience to commenters, comments may be transmitted by facsimile (''FAX'') machine to (202) 693–1432 (this is not a toll-free number). If transmitted by facsimile and a hard copy is also submitted by mail, please indicate on the hard copy that it is a duplicate copy of the facsimile transmission.

FOR FURTHER INFORMATION CONTACT: William W. Gross, Director, Office of Wage Determinations, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3028, 200 Constitution Avenue, N.W., Washington, D.C. 20210; telephone (202) 693–0062. This is not a toll-free number.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

This rule contains no reporting or recordkeeping requirements subject to the Paperwork Reduction Act of 1980 (Pub. L. 96–511). The existing information collection requirements contained in Regulations, 29 CFR Part 4 were previously approved by the Office of Management and Budget under OMB control number 1215–0150.

II. Background

On October 1, 1995, the Federal Acquisition Regulations were amended to implement provisions of the Federal Acquisition Streamlining Act (FASA). One provision of the final regulation, 48 CFR 12.504(a)(10), provided that the requirements of the McNamara-O'Hara Service Contract Act (SCA) are not applicable to subcontracts at any tier for the acquisition of commercial items or services.

After a subsequent review of the issue by the FAR Council the Administrator for Federal Procurement Policy wrote to the Secretary of Labor and requested that the Department propose an exemption for a more limited group of commercial service contracts (both prime contracts and subcontracts). The Administrator stated that the FAR Council had concluded that a blanket exemption of all subcontracts for commercial items may not adequately serve the Administration's policy of supporting exemptions of the SCA only where they do not undermine the purposes for which the SCA was enacted. Therefore the FAR Council agreed that any exemption from the coverage of SCA for subcontracts for the acquisition of commercial items or components should be accomplished under the Secretary of Labor's authority in the SCA, and stated that it would withdraw the FAR provision.

The FAR Council indicated that the adoption of their recommendations will further the commitment of the Administration to be more commercial-like, encourage broader participation in government procurement by companies doing business in the commercial sector, and reinforce their commitment to reduce government-unique terms and conditions from their contracts. Furthermore, the FAR Council represented that the limited exemptions that it proposed could be accomplished without compromising the remedial purpose of the SCA to protect prevailing labor standards.

The Department of Labor has reviewed the requested exemptions and the representations of the FAR Council and has concluded that a sufficient showing has been made to propose to

implement the exemptions requested by the FAR Council. Based on the representations, the Department has preliminarily determined that the exemption would meet the requirements of Section 4(b) of the Act that exemptions be necessary and proper in the public interest or to avoid serious impairment of Government business, and in accord with the remedial purpose of the SCA to protect prevailing labor standards. Comments are requested on this determination.

Contemporaneously with publication of this NPRM in the **Federal Register**, the FAR Council is publishing a final rule removing the SCA from the list of laws inapplicable to subcontracts for commercial items, currently in the FAR at 48 CFR 12.504(a)(10). As a result, a small group of commercial subcontracts that were previously exempted under the FAR rule and that also meet the requirements of DOL's proposed rule could change from exempt to nonexempt and back to exempt if the DOL proposal becomes final as it is currently proposed. To prevent the disruption that could be caused by such changes, including the possible disruption of services if the current subcontractor does not agree to continue the subcontract services under the requirements of SCA, the Department has published a final rule in today's **Federal Register**, temporarily exempting from the SCA those commercial subcontracts which meet the criteria of this NPRM. This final rule will remain in effect for one year from today's date or until the Department completes its rulemaking on this NPRM, whichever occurs first. The Department notes that it intends to proceed expeditiously with this rulemaking and anticipates that a final rule, after review of all of the comments, will be issued within six months.

III. Summary of the Proposed Exemptions

This proposal, as requested by the FAR Council, addresses two separate but somewhat related issues. First, the current exemption for the maintenance and repair of Automated Data Processing (ADP) equipment, 29 CFR 4.123(e)(1), is proposed to be modified to reflect terminology changes in law that have occurred since the exemption was originally established; broaden the exemption to cover information technology as currently defined; apply the exemption to installation services; and apply the exemption to subcontracts as well as prime contracts. Second, a new exemption is proposed, similar to the current ADP exemption, to exempt both prime contractors and subcontractors for a specified subset of commercial services that meet certain criteria.

Proposed Revision of the Current ADP Exemption

The Clinger-Cohen Act of 1996, Divisions D and E of Pub. L. 104–106, repealed the Brooks Automatic Data Processing Act, 40 U.S.C. 759, and set forth a new framework for the management and acquisition of information technology, replaced the ''ADP'' terminology originally in the Brooks ADP Act with ''information technology'' to reflect the convergence of ADP and telecommunications equipment and technology. See 40 U.S.C. 1401 *et seq.* This proposal would reflect this change in the regulations.

Further, as recommended by the FAR Council, the exemption would be updated to reflect the current statutory definition of ''information technology'' and be consistent with other regulations. As defined at 40 U.S.C. 1401(3) and incorporated in the FAR, 48 CFR 2.101, the term ''information technology,'' with respect to an executive agency, means ''any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information.'' Under this definition, equipment is considered to be used by an executive agency if the agency uses the equipment directly or if the equipment is used by a contractor under a contract which requires the use of such equipment, or requires the use of such equipment to a significant extent in the performance of a service or the furnishing of a product. The term ''information technology'' does not include any equipment that is acquired by a contractor incidental to a contract; or any equipment that contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices and medical equipment where information technology is integral to its operation, is not information technology.

This proposal would also add installation services to the current regulatory exemption where those services are not subject to the Davis-Bacon Act, 40 U.S.C. 276a *et seq.* See 29 CFR 4.116(c)(2). Service contracts often involve installation of information technology (IT) equipment, for example installing and maintaining a local area network, or installing and maintaining new telephones or a telephone system. The same employees are performing installation as are performing maintenance and repair services. Thus, the same conditions that support the exemption for the maintenance services also support an exemption for installation services, and the addition of installation services will simply reflect what is happening in the market place.

Finally, the current exemption would indicate that the exemption applies to subcontracts meeting the regulatory criteria as well as prime contracts. The Department requests comments on whether there is any reason that the exemption at the prime contract level should not apply equally to subcontracts which meet the criteria, as well as on the other proposed modifications to § 4.123(e)(1). Because the prime contractor is responsible for compliance with all of the contract requirements, including the SCA, if the Department determines that the exemption has been incorrectly applied to a subcontract, the proposed regulation provides that it may require that SCA stipulations be included in the subcontract effective as of the date of contract award.

New Exemption for Certain Commercial Service Contracts

In certain situations, an employee's work on a government contract represents a small portion of his or her time and the balance of the time is spent on commercial work. In such cases, the FAR Council represents that the Government loses the full benefits of competition for its service contracts because some contractors decline to compete for Government work due to specific government requirements. To remedy this situation, the FAR Council has recommended an exemption framework that it believes will protect prevailing labor standards and avoid the undercutting of such standards by contractors. The factual basis for the FAR Council's view that the proposed exemption is necessary and proper in the public interest or to avoid the serious impairment of Government business is set forth below. In addition, in order that the exemption comport with the statutory requirement that it be in accord with the remedial purposes of the Act to protect prevailing labor standards, the proposed regulation provides a number of criteria which must be satisfied. The rationale for these

criteria is also explained below. Comments are requested for each listed service as to whether the proposed exemption, given its criteria and limitations, is necessary and proper in the public interest or to avoid the serious impairment of Government business, and in accord with the remedial purpose of the SCA to protect prevailing labor standards.

As recommended by the FAR Council, this proposal would exempt from SCA a short list of services, when the procurement for those services meets the criteria below. The recommended criteria are intended to limit the exemption to those procurements where the services being procured are such that it would be more efficient and practical for an offeror to perform the services with a workforce that is not primarily assigned to the performance of government work. Thus, contracts for base support services where the work is performed by an on-site dedicated workforce would not meet the exemption criteria, and contracts where the services have been performed by a dedicated group of federal employees (A–76 procurements) would be unlikely to meet the exemption criteria since the nature of the services would not meet the requirement that the workers perform only a small part of their time on the contract; however, it is possible that some subcontracts for a portion of those services might meet the criteria for exemption.

The criteria are designed to ensure that the remedial purpose of the Act to protect prevailing labor standards is preserved. This would be accomplished in two ways. First, the proposed exemption would apply only when the contract award is not determined primarily upon the factor of cost. Therefore, the contractor providing the best service at a somewhat higher or lower cost would not be at a competitive disadvantage. Second, the criteria would limit the application of the exemption to circumstances where the nature of the procurement dictates that the most efficient and practical performance of the workload can be accomplished with a workforce that is not dedicated to working primarily on the Government contract. Thus, the competitive pressures upon employee wages that might exist if the services were performed by a workforce dedicated to the Government contract would not come into play on the contracts within the scope of the recommended exemption. Furthermore, even if a contractor might be inclined to reduce wages to secure the Government contract, the criteria would forbid that practice.

Under this proposal, the following criteria for the new exemption would be applied to a short list of services. The exemption would apply only if the services under the contract or subcontract meet all of the criteria. The Department seeks comments regarding whether these criteria are appropriate to protect prevailing labor standards.

(1) The services under the contract are commercial—*i.e.,* they are offered and sold regularly to non-Governmental customers, and are provided by the contractor (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations.

The basic underlying purpose of the proposed exemption is to permit a prospective contractor to utilize its commercial compensation practices for both Government and private commercial work. If the prospective contractor does not currently perform the solicited services, then conforming to the SCA requirements would not cause the contractor to alter its commercial compensation practices.

(2) The prime contract or subcontract will be awarded on a sole source basis or the contractor will be selected for award on the basis of other factors in addition to price. In such cases, price must be equal to or less important than the combination of other non-price or cost factors in selecting the contractor.

One of the basic purposes of the Service Contract Act is to counteract the negative impact that competition based on price alone may have upon wages. If a contract is awarded on a sole source basis, there is no competition and price is clearly not the basis for awarding the contract.

For the majority of other contracts that are competitively awarded, this criterion would attempt to largely remove wages from consideration by making quality of service and other non-cost factors equal to or more important than the bottom line price. If one assumes that the best employees (contractors) are paid (pay) higher wages, then this criterion would allow these employees (contractors) to compete on the basis of the employees' increased productivity and higher quality service. These employees/contractors should not be disadvantaged even though the employee wages and possibly the resulting contract price are somewhat higher than the lowest offer.

(3) The prime contract or subcontract services are furnished at prices which are, or are based on, established catalog or market prices. An established price is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the contractor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public. An established market price is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or contractor. Normally, market price information is taken from independent market reports, but market price could be established by surveying the firms in a particular industry or market.

This criterion ensures that the contractor will provide the services to the Government on the same basis that the contractor services commercial accounts. Combined with the other criteria, this requirement should ensure that contractors do not decrease employee compensation as a part of the competitive contracting process.

(4) All of the service employees who will perform the services under the Government contract or subcontract spend only a small portion of their time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the Government contract.

If the employees spend only a small portion of their available work hours on the Government contract, the contractor would not likely be willing to alter its compensation practices simply to obtain the Government contract. (Note: Criterion 5 would also specifically preclude any such change in compensation practices.) Furthermore, the criteria for exemption will not be satisfied by rotating the workforce and having different employees work on the contract each day of the week. In the Department's experience it would be extraordinary for a contractor to staff a contract in this manner. Therefore in such a case, although each individual employee would spend less than 20% of his/her work hours on the Government contract, a contracting officer or prime contractor (in the case of a subcontract) could not certify—as required by Criterion 6—that all or nearly all offerors would staff the contract with service employees who spend only a small portion of their time on the project.

(5) The contractor utilizes the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract or subcontract as the contractor uses for these employees and for equivalent

employees servicing commercial customers.

This criterion ensures that the employees servicing the government contract will be compensated exactly as they would be if they were servicing a commercial account. Thus, the prevailing labor standards for private work would not be impacted in any way by the award of the Government contract. Furthermore, because contract award is not determined primarily on the basis of cost (Criterion 2), the contractor paying the lowest wages will not have a competitive advantage over other employers who pay average or above average wages. These contractors will compete for the Government work on the same basis that they compete for private work: quality of service and overall value.

(6) The contracting officer (or prime contractor with respect to a subcontract) determines in advance, based on the nature of the contract requirements and knowledge of the practices of likely offerors, that all or nearly all offerors will meet the above requirements. If the services are currently being performed under contract, the contracting officer or prime contractor shall consider the practices of the existing contractor in making a determination regarding the above requirements.

This requirement is designed to ensure that all contractors compete on an equal basis, and eliminate the possibility that a contractor subject to SCA would be forced to compete against a contractor that would be exempt from SCA. Furthermore, as noted in the discussion of Criterion 4, this requirement, which takes into consideration not only the practices of likely offerors but also the nature of the contract requirements, is a necessary safeguard to prevent individual offerors from juggling staffing patterns simply in an effort to avoid SCA coverage. This criterion also serves to protect those employees (either contractor or Federal employees) who might currently be engaged in performing the solicited services on a full-time basis.

(7) The exempted contractor or subcontractor certifies in the contract to the provisions in paragraphs (1), and (3) through (5). The contracting officer or prime contractor, as appropriate, shall review available information concerning the contractor or subcontractor and the manner in which the contract will be performed. If the contracting officer or prime contractor has reason to doubt the validity of the certification, SCA stipulations shall be included in the contract or subcontract.

This criterion provides a mechanism for addressing and correcting situations where the exemption may have been misapplied. (It is not anticipated that the contracting officer or prime contractor will do a complete investigation into the application of the exemption to the contractor, but rather will do a review based on known information regarding the contractor or subcontractor, including information submitted in the solicitation process.) Furthermore, if the Department of Labor, in its enforcement, determines that the contract is not in fact exempt, it shall require that SCA stipulations be included in the contract. In the case of a subcontract, the prime contractor, who in almost all cases will have SCA stipulations included in its contract, will be ultimately responsible for compliance with the requirements of the Act. The Department may therefore require that the SCA requirements be effective as of the date of contract award. The Department notes that an exempt contractor or subcontractor is not required to keep any particular records to meet its burden of showing that the criteria are satisfied.

The FAR Council has recommended that these criteria be applied only to a small group of commercial services which it believes would constitute the overwhelming majority of cases meeting the above criteria for the proposed exemption. The FAR Council and the Department of Labor agree that it is appropriate to consider comments not only regarding the services for which the exemption is being proposed, but also for any additional services that commenters believe should be added to the list. If sufficient justification is received for adding any additional services to the list, the Department of Labor will issue a proposal to add the new service. If the proposed rule is adopted in whole or in part, the final rule will not apply to any service for which the opportunity for public comment was not provided.

As recommended by the FAR Council, the proposed exemption would not be applied to any contract entered into under the Javits-Wagner-O'Day Act, or to any contract subject to the provisions of Section 4(c) of SCA. Furthermore, contracts for operation of a Government facility or a portion thereof would not meet the required criteria, and are also excluded from the proposed exemption; however, it is possible that some subcontracts under such procurements would be for the listed services, and would fall within the scope of the proposed exemption, provided all the criteria are met.

In selecting the services to which it believed the new exemption should apply, the FAR Council focused on services which the Government is having difficulty acquiring or for which the Government is getting limited competition, or where the Government is unable to acquire the quality of services needed because commercial sources are reluctant to do business with the Government, thereby causing impairment to Government business. The FAR Council stated that it avoided selecting services where the Government may be in a position to motivate the payment of less than prevailing wages by contractors striving to win Government contracts. The Department agrees that it is appropriate to propose to exempt such a limited group of services.

For each of the services included on the list of services to which the new exception would apply, the type of services covered is explained and the difficulties which the FAR Council stated have been encountered in procuring the services are cited.

Automatic data processing and telecommunications services.

For several years the Department of Labor regulations implementing the Service Contract Act have contained an exemption for contracts principally for the maintenance, calibration and/or repair of (1) automated data processing and office information/word processing systems; (2) scientific equipment and medical apparatus or equipment of microelectronic circuitry or other technology of at least similar sophistication; and (3) office/business machines not otherwise exempt where services are performed by the manufacturer or supplier of the equipment. In short, the current exemption applies exclusively to hardware maintenance when certain criteria are met. In addition to the recommendation that the current ADP exemption be expanded to include installation services as well as hardware maintenance, the FAR Council has recommended that an exemption for software and other ADP support services be considered in conjunction with the criteria listed above.

Provided the specified criteria are met, the proposed new exemption would cover a broader range of automatic data processing and telecommunications services including: ADP facility operation and maintenance services provided at the contractor's facility, ADP telecommunications and transmission services, ADP teleprocessing and timesharing services, ADP systems analysis services, information and data broadcasting or data distribution services, ADP backup and security services, ADP data conversion services, computer aided

design/computer aided manufacturing (CAD/CAM) services, digitizing services (including cartographic and geographic information), telecommunications network management services, automated news services, data services or other information services (*e.g.,* buying data, the electronic equivalent of books, periodicals, newspapers, etc.) and data storage on tapes, compact disks, etc. As recommended by the FAR Council, however, the new exemption would not apply to ADP data entry services or ADP optical scanning services.

The FAR Council explains that in this information age, the Federal Government is contracting for more and more information technology (IT) services. This is driven by the need to maximize the use of technology to improve the efficiency and effectiveness of agency performance. However, increasingly the Government is less of a player in the IT marketplace in terms of market share (less than 3%). IT providers have an abundance of work in an industry with a tight labor market. IT providers are often reluctant or unwilling to deal with Government unique requirements such as the Service Contract Act when they have an abundance of work available and are experiencing difficulty keeping pace with their commercial work.

The FAR Council states that unless the Federal Government can more closely align the Government's contracting practices and requirements with commercial practice, it will not be able to generate enough interest to permit the Federal Government to take full advantage of the opportunities to use information technology and to obtain the requisite quality of services needed to satisfy critical agency mission needs.

Automobile or other vehicle (*e.g.,* aircraft) maintenance services (other than contracts to operate a Government motor pool or similar facility).

Federal agencies that maintain a fleet of automobiles have a need for services such as normal maintenance (*e.g.,* changing oil and filters, rotating tires, etc.), mechanical repairs, paint and body work, glass replacement, and other repairs needed to maintain the automobile or other vehicle. Unless the agency has a dedicated Government facility for such work, it is contracted out to commercial firms.

The FAR Council states that the General Services Administration (GSA), which is responsible for providing Interagency Fleet Management Services, has been unsuccessful in contracting for these services because of the unwillingness of commercial sources to deal with Government unique requirements such as the Service Contract Act for the small amount of Government work involved. As a result, GSA and other agencies often acquire these services on an as needed basis using micro-purchase procedures and the Government Purchase Card.

The FAR Council states that unless GSA and other agencies can more closely align the Government's contracting practices and requirements with commercial practice, it will not be able to generate enough interest or business to permit the Federal Government to take advantage of the quality improvements and lower prices that will likely result from establishing contractual relationships with commercial service centers. While the individual transactions are small (typically under $2,500), the aggregate volume and dollar value of transactions across the nation is substantial. The real benefit for the Federal Government of a contractual relationship is the lower prices it can negotiate for parts and supplies used to service vehicles if it is able to contract for services rather than treat each transaction individually. Additionally, the Federal Government can expect to receive better service because it will be viewed as a ''corporate'' customer who gives its business to a particular contractor(s) in a certain location. The FAR Council states that an exemption is necessary to permit the Government to enhance the quality of service while reducing its cost through leveraging the Federal Government's collective buying power.

For example, the Department of Interior's Office of Aircraft Services in Boise, ID, contracts for maintenance of about 100 of its own aircraft and also provides contract support for other agencies such as the U.S. Forest Service. The Office of Aircraft Services reports that it has about a dozen contracts at various locations around the country. These are commercial services procured from commercial sources where the maintenance of Government aircraft is performed alongside regular non-government aircraft. Contractors' work is predominantly non-government. Some commercial contractors have refused to do work for the Government because of concerns with the SCA requirements. The result has been limited competition for such contracts.

Financial services involving the issuance and servicing of cards (including credit cards, debit cards, purchase cards, smart cards, and similar card services).

Increasingly, the Government is contracting for and using the services of financial institutions that provide credit, debit, or purchase cards. These cards are used by Federal employees while traveling or to make small purchases for commercial items to meet the day-to-day needs of their organizations. The providers of these services use the financial networks of firms like VISA, MASTERCARD, and American Express to provide the services. While the Federal Government's use of these services is significant, it represents a small fraction of the transactions that flow through the financial infrastructure. Transactions flowing through the networks are processed in the same fashion and by the same workforce regardless of the ultimate user of the cards. As a result, the FAR Council states that it is very difficult to get competition for these services when the Federal Government imposes unique requirements on the contractors. They state that contractors will not change their way of doing business to accommodate a customer that represents a small portion of their business; it is impossible for them to segregate what is done for the Federal Government from commercial activity.

Lodging at hotels/motels and contracts with hotels/motels for conferences, including lodging and/or meals, which are part of the contract for the conference.

Agencies of the Federal Government often contract with hotels/motels for meeting rooms for conferences of limited duration (*e.g.,* one to five days). These contracts may be for conferences where attendance is limited to Government employees or may involve attendance by other organizations and/or the public. These contracts may also involve furnishing lodging and meals to those participating in the conference.

In other cases, agencies establish contractual arrangements with hotels/motels to obtain special rates for lodging when the agency has a large number of employees that frequently travel to a particular location. The hotel/motel agrees to special reduced rates in exchange for being designated a preferred provider for the agency travelers to that city/location.

In both of these cases, the FAR Council states that hotels/motels are unwilling to agree to contract with the Government when it would mean they would have to pay different rates to employees as a result of a Service Contract Act wage determination or would have to keep special/different payroll or other records. Typically these contracts are for relatively small dollar amounts (less than $25,000). The FAR Council states that this severely limits the Governments ability to contract for these services when needed.

Maintenance services for all types of specialized building or facility equipment such as elevators, escalators, temperature control systems, security systems, smoke and/or heat detection equipment, etc.

Agencies that operate and maintain Government owned and/or operated buildings often contract for operation and maintenance of the building or facility and the prime contractor will then typically subcontract for services related to specialized equipment. In other cases, the Government will contract directly for the maintenance and servicing of such equipment. In either case, the FAR Council reports that it is very difficult to acquire the quality of service needed from contractors who are not authorized representatives of the manufacturer and therefore do not have access to parts needed for repairs and training that is essentially only available from the original equipment manufacturer. While there may be other contractors who indicate they have the capability to provide the service, experience often shows that the quality of service obtained from such sources is not satisfactory.

The FAR Council states that the Government, as a result of the reluctance of some of the best contractors to accept Government unique requirements such as those related to the Service Contract Act, is deprived of the opportunity to improve the quality of service for the maintenance and servicing of critical building equipment and systems.

Installation, maintenance, calibration or repair services for all types of equipment where services are obtained from the equipment manufacturer or supplier of the equipment.

Agencies acquire a wide range of equipment and often have a need to acquire services to install, maintain, calibrate, service or repair the equipment from the manufacturer or original supplier in order to avoid compromising a warranty or because proprietary information needed to perform the work is only available from the manufacturer, an authorized representative of the manufacturer or the supplier of the equipment. Typically, these contracts involve sophisticated equipment that requires access to proprietary information or requires employees involved in performing the work to have extensive training that is often only available through the manufacturer or equipment supplier. In such cases, the Government's need to contract with a particular source or a limited number of sources must be properly justified and approved, if applicable, under the statutory competition requirements outlined in 48 CFR Part 6 of the Federal Acquisition Regulation. Examples of the type of equipment include automated building control systems, HVAC equipment, building security systems, and elevators or escalators.

The FAR Council reports that in many of these cases, the Government has limited leverage to negotiate with the contractor to accept Government unique requirements such as those related to the Service Contract Act and has had great difficulty obtaining services from commercial sources who are unwilling to accommodate such requirements.

Transportation of persons by air, motor vehicle, rail, or marine on regularly scheduled routes or via standard commercial services (not including charter services).

The General Services Administration (GSA) enters into contracts with airlines called ''City Pairs'' so that Federal employees traveling on Government business can get discount air fares. Under these contracts, Federal employees typically obtain tickets through travel management contracts awarded by GSA or other agencies and the Federal employee travels on regularly scheduled routes of commercial airlines but receive tickets at a substantial discount. While the Federal Government's use of these services is significant, it represents a small fraction of the transactions that flow through the airlines. Tickets that are issued to Federal travelers flow through the same networks and are processed in the same fashion as other travelers. As a result, the FAR Council reports that it is very difficult to get competition for these services if the Federal Government imposes unique requirements like those in the Service Contract Act on the contractors. The airlines will not change their way of doing business to accommodate a customer that represents a small portion of their business. It is impossible for them to segregate what is done for the Federal Government from commercial activity. The Federal Government also enters into similar contracts for the carriage of passengers by other modes of transportation.

Real estate services, including real property appraisal services, related to housing federal agencies or disposing of real property owned by the Federal Government.

Federal agencies involved in acquiring and disposing of real property often contract for real estate services, including lease acquisition, real property appraisal, broker, space planning, lease re-negotiation, tax abatement, and real property disposal services. The primary classes of workers that are involved in performing the work are appraisers, leasing specialists, brokers, space planners, interior designers, fire safety engineers, and project managers. In many cases, the employees are required by contracts with the Government to be licensed. In many cases, the Department of Labor has not established wage determinations that apply to these classes of workers.

The individual requirements are typically relatively low dollar value (under $25,000) and require that services be performed in a variety of different geographic locations. Knowledge of the local real estate market is required to effectively perform the services. Therefore, individual employees, particularly in rural areas, spend only a small fraction of their time working on Government contracts.

While the Federal Government's use of these services is significant, it represents a small fraction of the transactions that flow through the industry/commercial sources. As a result, the FAR Council reports that it is very difficult to get competition for these services where the Federal Government imposes unique requirements like those in the Service Contract Act on the contractors. The contractors will not change their way of doing business to accommodate a customer that represents a small portion of their business. The FAR Council states that as the Government continues to downsize, it must rely more and more on commercial sources for these services and it is critical that the Federal Government has access to well-qualified sources of supply for these types of services.

Relocation services, including services of real estate brokers and appraisers, to assist federal employees or military personnel in buying and selling homes.

Employee relocation services are available for Federal employees or military personnel and their families being transferred to new duty stations anywhere within the continental United States and Puerto Rico. These contracts offer a multitude of flexible services to customize a solution that best meets the employee's needs. The contracts save time and money and reduce stress by offering Federal employees and military these services: home marketing assistance, home sales services, destination area services, management reporting services, mortgage counseling, property management services, and other related services.

The individual requirements are typically relatively low dollar value (under $25,000) and require that

services be performed in a variety of different geographic locations. Knowledge of the local real estate market is required to effectively perform the services. Therefore, individual employees, particularly in rural areas, spend a fraction of their time working on Government contracts.

While the Federal Government's use of these services is significant, the FAR Council states that it represents a small fraction of the transactions that flow through the industry/commercial sources. As a result, it is very difficult to get competition for these services if the Federal Government imposes unique requirements like those in the Service Contract Act on the contractors. The contractors will not change their way of doing business to accommodate a customer that represents a small portion of their business. The FAR Council states that it is in the Government's interest to maximize the availability of these services to its personnel; accordingly it is detrimental to the Government's interests when it is unable to attract commercial sources as providers of these services

IV. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, Public Law 96–354 (94 Stat. 1164; 5 U.S.C. 601 et. seq.), Federal Agencies are required to prepare and make available for public comment and initial regulatory flexibility analysis that describes the anticipated impact of proposed rules on small entities. The Department has prepared the following Regulatory Flexibility Analysis regarding this rule.

(1) Reasons Why Action Is Being Considered

The current proposal is made at the request of the Administrator for Federal Procurement Policy, OFPP, in her letter of May 12, 1999. The Administrator, on behalf of the FAR Council, stated that the proposed exemption ''will further the commitment of the Administration to be more commercial-like, encourage broader participation in government procurement by companies doing business in the commercial sector, and reinforce our commitment to reduce government-unique terms and conditions from our contracts. We believe that all of this can be accomplished without compromising the purpose of the SCA to protect prevailing labor standards.'' The FAR Council has developed a short list of services to which it believes an exemption should apply in the best interest of the Government and to avoid impairment to Government business. Based on the representations of the FAR Council, the Department has made a preliminary determination that such an exemption is appropriate, and therefore is issuing this proposed rule.

(2) Objectives of and Legal Basis for Rule

Pursuant to Section (4)(b) of SCA, the Secretary of Labor may grant reasonable exemptions to the provisions of the Act, but only in special circumstances where the ''exemption is necessary and proper in the public interest or to avoid the serious impairment of government business, and is in accord with the remedial purpose of this Act to protect prevailing labor standards.''

After a review of the representations of the FAR Council, the Department of Labor has made a preliminary determination that the exemption would be ''necessary and proper in the public interest'' and would also be ''in accord with the remedial purpose of th[e] Act to protect prevailing labor standards.'' Therefore the Department has determined that it is appropriate to seek comment on the proposed criteria and services which are proposed to be exempted from the Act.

(3) Number of Small Entities Covered Under the Rule

The definition of ''small business'' varies considerably depending upon the policy issues and circumstances under review, the industry being studied, and the measures used. The Small Business Administration's Office of Advocacy generally uses employment data as a basis for size comparisons, with firms having fewer than 100 employees or fewer than 500 employees defined as small. The types of services covered by the proposed exemptions span a variety of industries. Based upon analyses done by the U.S. Small Business Administration, Office of Advocacy, some of the industries affected by the proposed exemptions are characterized as ''large-business-dominated industries'' (*e.g.,* air transportation and business credit institutions) and others are characterized as ''small-business-dominated industries'' (*e.g.,* automotive repair and real estate).[1] Thus, at least some of the services covered by the proposed exemption would be performed primarily by small businesses. In fact, with the exception of those contracts for financial services involving the issuance and servicing of cards, the contracts for the transportation of persons, and contracts with equipment manufacturers, it would appear that a majority of the contracts affected by the proposed exemption likely would be performed by small businesses.

It is also difficult to determine with precision the value of Federal contracts that would be affected by the proposed exemption. Federal Procurement Data System (FPDS) compiles and reports information on approximately 500,000 annual transactions exceeding $25,000; however, as discussed above, many of the contracts covered by the proposed exemption (*e.g.,* food and lodging contracts for conferences) are currently or would likely be less that $25,000. Also, the criteria that must be met for the specified services to be within the scope of the proposed exemption will limit the application of the proposed exemptions to a relatively small subset of contracts within a specific SIC code. Thus, FPDS data does not provide an accurate estimate of the contracts potentially covered by the proposed exemption. Nevertheless, in view of the limiting criteria that have been proposed for the listed services, the total value of the exempt contracts should be relatively small, and it is believed that the SCA would no longer apply to only a relatively small number of contracts that currently contain SCA wage determination provisions.

(4) Reporting, Recordkeeping and Other Compliance Requirements of the Rule

The proposed exemption does not contain any new reporting, recordkeeping, or other compliance requirements applicable to small business. Rather, the proposed exemption would relieve small businesses and other contractors from the requirements of the SCA on certain contracts where the contractor certifies that the requirements of the exemption have been met. Furthermore, any contractor performing on a contract within the scope of the proposed exemption may elect to perform the contract under the requirements of SCA rather than make the necessary certifications. Because application of the exemption will have been determined in advance by the contracting officer, the Department anticipates that questions regarding proper application of the exemption will be rare. Contractors will not be required to maintain any records to support the exemption, although they may be required to furnish payroll and other existing records to the Department in the event of an investigation.

(5) Relevant Federal Rules Duplicating, Overlapping or Conflicting With the Rule

The Federal Acquisition Regulation provision regarding the application of

[1] The State of Small Business: A Report of the President, 1996 (1997).

SCA to subcontracts for commercial services has been withdrawn, and there are no Federal rules duplicating, overlapping or conflicting with the proposed exemption.

(6) Differing Compliance or Reporting Requirements for Small Entities

The proposed exemptions do not contain any differing compliance or reporting requirements for small entities.

(7) Clarification, Consolidation and Simplification of Compliance and Reporting Requirements

The proposed exemption does not impose any new reporting or recordkeeping requirements. Although offerors are required to certify that the criteria for exemption are met, offerors are not required to maintain records to support the certification. The certification, which can be submitted as part of the bid package, is an important element to satisfy the statutory requirement that exemptions be ''in accordance with the remedial purpose of the Act to protect prevailing labor standards.'' Contractors and subcontractors to whom the exemption applies will not be required to comply with the wage and reporting requirements of the SCA.

(8) Use of Other Standards

The Service Contract Act requires that any exemption be in accordance with the remedial purpose of the act to protect prevailing labor standards. The proposed exemptions are structured to satisfy this requirement; however, the exemption is not mandatory and any contractor may choose to perform the services in accordance with the SCA requirements.

(9) Exemption From Coverage for Small Entities

The proposed rule is an exemption from coverage under the Service Contract Act. The proposed exemption would apply equally to both small and large entities. In addition to protecting prevailing labor standards, a key element of SCA is to ensure that all bidders are on an equal footing, and the proposed exemption is consistent with that purpose.

V. Executive Order 12866 and 13132; § 202 of the Unfunded Mandates Reform Act of 1995; Small Business Regulatory Enforcement Fairness Act

This proposed rule is being treated as a ''significant regulatory action'' within the meaning of Executive Order 12866 because of the significant impact of this rule on other agencies. Therefore, the Office of Management and Budget has reviewed the proposed rule. However, the Department has determined that this proposed rule is not ''economically significant'' as defined in section 3(f)(1) of E.O. 12866, and therefore it does not require a full economic impact analysis under section 6(a)(3)(C) of the Order. Under the new exemption proposed by this rule, contracts would not be exempt unless price is equal to or less important than the combination of other non-price or cost factors in selecting the contractor. Therefore it is not anticipated that the changes proposed by this rule will 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, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

The Department has similarly concluded that this proposed rule is not a ''major rule'' requiring approval by the Congress under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). It will not likely result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For purposes of the Unfunded Mandates Reform Act of 1995, this rule does not include any federal mandate that may result in excess of $100 million in expenditures by state, local and tribal governments in the aggregate, or by the private sector. Furthermore, the requirements of the Unfunded Mandates Reform Act, 2 U.S.C. 1532, do not apply here because the proposed rule does not include a ''Federal mandate.'' The term ''Federal mandate'' is defined to include either a ''Federal intergovernmental mandate'' or a ''Federal private sector mandate.'' 2 U.S.C. 658(6). Except in limited circumstances not applicable here, those terms do not include an enforceable duty which is ''a duty arising from participation in a voluntary program.'' 2 U.S.C. 658(7)(A). A decision by a contractor to bid on Federal service contracts is purely voluntary in nature, and the contractor's duty to meet Service Contract Act requirements arises ''from participation in a voluntary Federal program.''

The Department has also 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.''

VI. Document Preparation

This document was prepared under the direction and control of John R. Fraser, Deputy Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 29 CFR Part 4

Administrative practice and procedures, Employee benefit plans, Government contracts, Investigations, Labor, Law enforcement, Minimum wages, Penalties, Recordkeeping requirements, Reporting requirements, wages.

Accordingly, for the reasons set out in the preamble, 29 CFR part 4 is proposed to be amended as set forth below:

PART 4—LABOR STANDARDS FOR FEDERAL SERVICE CONTRACTS

1. The authority citation for Part 4 continues to read as follows:

Authority: 41 U.S.C. 351, *et seq.*, 79 Stat. 1034, as amended in 86 Stat. 789, 90 Stat. 2358: 41 U.S.C. 38 and 39; 5 U.S.C. 301; and 108 Stat. 4101(c).

2. Section 4.123(e) is proposed to be amended by revising paragraph (e)(1)(i) introductory text and paragraphs (e)(1)(i)(A), (e)(1)(ii), (e)(1)(iii), (e)(1)(iv), and (e)(2) to read as follows:

§ 4.123 Administrative limitations, variances, tolerances, and exemptions.

* * * * *

(e) * * *

(1)(i) Prime contracts or subcontracts principally for the maintenance, calibration, repair, and/or installation (where the installation is not subject to the Davis-Bacon Act, as provided in § 4.116(c)(2) of this part) of:

(A) Information technology—The term ''information technology'' means any equipment or interconnected system or subsystem of equipment that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. The term information technology does not include equipment that contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management,

movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices and medical equipment where information technology is integral to its operation, are not information technology.

* * * * *

(ii) The exemptions set forth in this paragraph (e)(1) shall apply only under the following circumstances:

(A) The items of equipment are commercial items which are used regularly for other than Government purposes, and are sold or traded by the contractor (or subcontractor in the case of an exempt subcontract) in substantial quantities to the general public in the course of normal business operations;

(B) The prime contract or subcontract services are furnished at prices which are, or are based on, established catalog or market prices for the maintenance, calibration, repair, and/or installation of such commercial items. An ''established catalog price'' is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the manufacturer or the contractor, is either published or otherwise available for inspection by customers, and states prices at which sales currently, or were last, made to a significant number of buyers constituting the general public. An ''established market price'' is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or contractor; and

(C) The contractor utilizes the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract as the contractor uses for these employees and equivalent employees servicing the same equipment of commercial customers;

(D) The contractor certifies in the contract or subcontract, as applicable, to the provisions in this paragraph (e)(1)(ii).

(iii)(A) Determinations of the applicability of this exemption to prime contracts shall be made in the first instance by the contracting officer prior to contract award. In making a judgment that the exemption applies, the contracting officer shall consider all factors and make an affirmative determination that all of the above conditions have been met.

(B) Determinations of the applicability of this exemption to subcontracts shall be made by the prime contractor prior to subcontract award. In making a judgment that the exemption applies, the prime contractor shall consider all factors and make an affirmative determination that all of the above conditions have been met.

(iv)(A) If the Department of Labor determines after award of the prime contract that any of the above requirements for exemption has not been met, the exemption will be deemed inapplicable, and the contract shall become subject to the Service Contract Act, effective as of the date of the Department of Labor determination. In such case, the corrective procedures in section 4.5(c)(2) of this part shall be followed.

(B) The prime contractor is responsible for compliance with the requirements of the Service Contract Act by its subcontractors, including compliance with all of the requirements of this exemption (see § 4.114(b) of this part). If the Department of Labor determines that any of the above requirements for exemption has not been met with respect to a subcontract, the exemption will be deemed inapplicable, and the prime contractor may be responsible for compliance with the Act, effective as of the date of contract award.

(2)(i) Prime contracts or subcontracts for the following services where the services under the contract or subcontract meet all of the criteria set forth in paragraph (e)(2)(ii) and are not excluded by paragraph (e)(2)(iii):

(A) Automated data processing and telecommunications services, including ADP facility operation and maintenance services provided at the contractor's facility, ADP telecommunications and transmission services, ADP teleprocessing and timesharing services, ADP systems analysis services, information and data broadcasting or data distribution services, ADP backup and security services, ADP data conversion services, computer aided design/computer aided manufacturing (CAD/CAM) services, digitizing services (including cartographic and geographic information), telecommunications network management services, automated news services, data services or other information services (e.g., buying data, the electronic equivalent of books, periodicals, newspapers, etc.) and data storage on tapes, compact disks, etc. This category does not include ADP data entry services or ADP optical scanning services;

(B) Automobile or other vehicle (e.g., aircraft) maintenance services (other than contracts to operate a Government motor pool or similar facility);

(C) Financial services involving the issuance and servicing of cards (including credit cards, debit cards, purchase cards, smart cards, and similar card services);

(D) Lodging at hotels/motels and contracts with hotels/motels for conferences, including lodging and/or meals, which are part of the contract for the conference;

(E) Maintenance services for all types of specialized building or facility equipment such as elevators, escalators, temperature control systems, security systems, smoke and/or heat detection equipment, etc;

(F) Maintenance, calibration, repair or installation (where the installation is not subject to the Davis-Bacon Act, as provided in § 4.116(c)(2) of this part) services for all types of equipment where the services are obtained from the manufacturer or supplier of the equipment;

(G) Transportation of persons by air, motor vehicle, rail, or marine vessel on regularly scheduled routes or via standard commercial services (not including charter services);

(H) Real estate services, including real property appraisal services, related to housing federal agencies or disposing of real property owned by the Federal Government; and

(I) Relocation services, including services of real estate brokers and appraisers to assist federal employees or military personnel in buying and selling homes.

(ii) The exemption set forth in this paragraph (e)(2) shall apply to the services listed in paragraph (e)(2)(i) of this section only when all of the following criteria are met:

(A) The services under the prime contract or subcontract are commercial—*i.e.,* they are offered and sold regularly to non-Governmental customers, and are provided by the contractor (or subcontractor in the case of an exempt subcontract) to the general public in substantial quantities in the course of normal business operations;

(B) The prime contract or subcontract will be awarded on a sole source basis or the contractor or subcontractor will be selected for award on the basis of other factors in addition to price. In such cases, price must be equal to or less important than the combination of other non-price or cost factors in selecting the contractor.

(C) The prime contract or subcontract services are furnished at prices which are, or are based on, established catalog or market prices. An established price is a price included in a catalog, price list, schedule, or other form that is regularly maintained by the contractor or

subcontractor, is either published or otherwise available for inspection by customers, and states prices at which sales are currently, or were last, made to a significant number of buyers constituting the general public. An established market price is a current price, established in the usual course of trade between buyers and sellers free to bargain, which can be substantiated from sources independent of the manufacturer or contractor. Normally, market price information is taken from independent market reports, but market price could be established by surveying the firms in a particular industry or market;

(D) All of the service employees who will perform the services under the Government contract or subcontract spend only a small portion of their time (a monthly average of less than 20 percent of the available hours on an annualized basis, or less than 20 percent of available hours during the contract period if the contract period is less than a month) servicing the government contract or subcontract;

(E) The contractor utilizes the same compensation (wage and fringe benefits) plan for all service employees performing work under the contract or subcontract as the contractor uses for these employees and for equivalent employees servicing commercial customers;

(F) The contracting officer (or prime contractor with respect to a subcontract) determines in advance, based on the nature of the contract requirements and knowledge of the practices of likely offerors, that all or nearly all offerors will meet the above requirements. If the services are currently being performed under contract, the contracting officer or prime contractor shall consider the practices of the existing contractor in making a determination regarding the above requirements; and

(G) The exempted contractor certifies in the prime contract or subcontract to the provisions in paragraphs (e)(2)(ii)(A) and (C) through (E) of this section. The contracting officer or prime contractor, as appropriate, shall review available information concerning the contractor or subcontractor and the manner in which the contract will be performed. If the contracting officer or prime contractor has reason to doubt the validity of the certification, SCA stipulations shall be included in the contract or subcontract.

(iii)(A) If the Department of Labor determines after award of the prime contract that any of the above requirements for exemption has not been met, the exemption will be deemed inapplicable, and the contract shall become subject to the Service Contract Act, effective as of the date of the Department of Labor determination. In such case, the corrective procedures in § 4.5(c)(2) of this part shall be followed.

(B) The prime contractor is responsible for compliance with the requirements of the Service Contract Act by its subcontractors, including compliance with all of the requirements of this exemption (see § 4.114(b) of this part). If the Department of Labor determines that any of the above requirements for exemption has not been met with respect to a subcontract, the exemption will be deemed inapplicable, and the prime contractor may be responsible for compliance with the Act, effective as of the date of contract award.

(iv) The exemption set forth in this paragraph (e)(2) does not apply to solicitations and contracts:

(A) Entered into under the Javits-Wagner-O'Day Act, 41 U.S.C. 47;

(B) For the operation of a Government facility or portion thereof (but may be applicable to subcontracts for services set forth in paragraph (3)(2)(ii) that meet all of he criteria of paragraph (e)(2)(ii)); or

(C) Subject to Section 4(c) of the Service Contract Act.

Signed at Washington, D.C., on this 19th day of July, 2000.

T. Michael Kerr,

Administrator, Wage and Hour Division.

[FR Doc. 00–18636 Filed 7–25–00; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AK07

Signature by Mark

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the Department of Veterans Affairs (VA) regulation that explains how a claimant can use a mark or a thumbprint in place of a signature. The intended effect of this amendment is to present the existing regulation in ''plain language'' and to remove an obsolete manual provision from VA's Adjudication Procedure Manual, M21–1.

DATES: Comments must be received on or before September 25, 2000.

ADDRESSES: Mail or hand deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW., Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to *OGCRegulations@mail.va.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AK07.'' All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Candice Weaver, Consultant, Advisory and Court of Appeals for Veterans Claims Staff, Compensation and Pension Service, or Bob White, Team Leader, Plain Language Regulations Project, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, telephone 202/273–7235 and 202/273–7228 respectively.

SUPPLEMENTARY INFORMATION: VA proposes to rewrite 38 CFR 3.113 in plain language. This regulation explains VA's requirements for the use of a mark or thumbprint in place of a signature. It is currently located under subpart A of part 3. We propose to create new § 3.2130 to restate the current regulation, incorporating its provisions with no substantive changes. The proposed section would be located in new Subpart D, Universal Adjudication Rules. We are also proposing new § 3.2100, which will specify the scope of applicability of the provisions in subpart D.

The Adjudication Procedure Manual, at M21–1, part IV, ch. 29, paragraph b(2), instructs that Eligibility Verification Reports (EVR) signed by mark or thumbprint must be accompanied by a separate sheet of paper that includes a certification that the information contained on the form is true and correct. In the past, income questionnaire forms included a statement certifying the accuracy of the information provided. When the forms were changed to small cards, a separate sheet of paper was needed for the signatures and addresses of the witnesses to the claimants' marks or thumbprints, and the certification statement. Current EVR forms are larger and they do not include certification statements. Rather, they include a caution regarding the willful submission of false information. VA believes the requirement for a separate sheet of paper containing a certification statement is now obsolete and proposes to formally withdraw paragraph b(2) from the Adjudication Procedure Manual.