

simply requires contractors to follow the practice which is currently followed in most cases in any event as a good business practice, and will improve Government efficiency and economy in those few cases where the practice would not otherwise have been followed by decreasing or eliminating the loss of productivity that may occur when experienced employees are terminated.

Furthermore, the total value of Federal contracts covered by Executive Order 12933 is less than \$100 million, and only a small fraction of that total may involve terminations of predecessor employees. General Services Administration data for Fiscal Year 1994 indicate that no more than 88 new building service contract actions were taken, with a value of \$39.2 million. Since only a very small percentage of that dollar value involves terminations, the economic impact of the Executive Order is minimal.

### Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) requires agencies to prepare regulatory flexibility analyses, and to develop alternatives, whenever possible, in drafting regulations that will have a "significant economic impact on a substantial number of small entities." The Department has determined that such an analysis is not required for this rulemaking. This conclusion is based on the fact that the Executive Order mandates a practice which is already followed in almost all cases. Accordingly, this regulation will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Therefore, no regulatory flexibility analysis is required.

### Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

### List of Subjects in 29 CFR Part 9

Employment, Federal buildings and facilities, Government contracts, Law enforcement, Labor.

Signed at Washington, D.C. on this 12th day of July, 1995.

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For the reasons set out in the preamble, 29 CFR Part 9 is proposed to be added to read as follows:

## PART 9—NONDISPLACEMENT OF QUALIFIED WORKERS UNDER CERTAIN CONTRACTS

### Subpart A—How is Executive Order 12933 Applied?

#### Covered Contracts Generally

Sec.

- 9.1 What is the purpose of Executive Order 12933?
- 9.2 Which contracts are covered by Executive Order 12933?
- 9.3 What is a "building service contract?"
- 9.4 What is "public building?"
- 9.5 Which contracts are not covered by Executive Order 12933?

#### Contract Clauses

- 9.6 What contract clauses must be included in covered contracts?

#### Contractor Obligations

- 9.7 May a contractor employ persons other than the predecessor contractor's employees?
- 9.8 Must the successor contractor offer a right of first refusal to all employees of the predecessor contractor?
- 9.9 In what manner must the successor contractor offer employment?
- 9.10 What constitutes a bona fide offer of employment?
- 9.11 What are the obligations of the predecessor contractor?

#### Notice to Employees

- 9.12 How ill employees learn of their rights?

### Subpart B—What Enforcement Mechanisms Does Executive Order 12933 Provide?

#### Complaint Procedures

- 9.100 What may employees do if they believe that their rights under the Executive Order have been violated?
- 9.101 What action will the Wage and Hour Division take to try to resolve the complaint?
- 9.102 How are complaints resolved if conciliation is unsuccessful?
- 9.103 How are decisions of the Administrator appealed?

#### Administrative Law Judge Procedures

- 9.104 How may cases be settled without formal hearing?
- 9.105 What procedures are followed if a complaint cannot be resolved through conciliation or settlement agreement?
- 9.106 What rules apply to the decision of the administrative law judge?

#### Appeal Procedures

- 9.107 How may an administrative law judge's decision be appealed?

### Enforcement Remedies

- 9.108 What are the consequences to a contractor of not complying with the Executive Order?
- 9.109 Under what circumstances will ineligibility sanctions be imposed?

### Subpart C—Definitions

- 9.200 Definitions

## Appendix A to Part 9—Notice to Building Service Contract Employees

**Authority:** Secs. 4–6, Executive Order 12933; 5 U.S.C. 301.

### Subpart A—How is Executive Order 12933 Applied?

#### Covered Contracts Generally

#### § 9.1 What is the purpose of Executive Order 12933?

The Government's procurement interests in both economy and efficiency are furthered when a successor contractor carries over an existing work force. A carryover work force minimizes disruption in the delivery of services during a period of transition and provides the Government the benefit of an experienced and trained work force. Executive Order 12933 therefore generally requires that successor contractors performing building service contracts for public buildings offer a right of first refusal to employment under the contract to those employees under the predecessor contract whose employment will be terminated as a result of the award of the successor contract.

#### § 9.2 Which contracts are covered by Executive Order 12933?

(a) The Executive Order and these rules apply to "building service contracts" for "public buildings" where the contract is entered into by the United States in an amount equal to or greater than the simplified acquisition threshold of \$100,000, as set forth in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)).

(b)(1) Except as provided in paragraph (b)(2) of this section, contracts which include a requirement for recurring building services are subject to the Executive Order and these regulations even if the contract also contains non-service requirements, such as construction or supplies, or requirements for other types of services, and even if the contract is not subject to the McNamara-O'Hara Service Contract Act, 41 U.S.C. 351 *et seq.* However, the requirements of the Executive Order apply only to the building services portion of the contract.

(2) The requirements of the Executive Order do not apply to building services