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Office of the General Counsel

B-275873

January 16, 1997

The Honorable James M. Jeffords  
Chairman  
The Honorable Edward M. Kennedy  
Ranking Minority Member  
Committee on Labor and Human Resources  
United States Senate

The Honorable William F. Goodling  
Chairman  
The Honorable William L. Clay  
Ranking Minority Member  
Committee on Education and the Workforce  
House of Representatives

Subject: Department of Labor, Wage and Hour Division, Employment Standards  
Administration: Service Contract Act; Labor Standards for Federal  
Service Contracts

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Department of Labor, Wage and Hour Division, Employment Standards Administration (DOL), entitled "Service Contract Act; Labor Standards for Federal Service Contracts" (RIN: 1215-AA78). We received the rule on January 2, 1997. It was published in the Federal Register as a final rule on December 30, 1996. 61 Fed. Reg. 68647.

The final rule adopts a new methodology for establishing minimum health and welfare benefits requirements under the McNamara-O'Hara Service Contract Act. The fringe benefit rate will be based on nationwide Bureau of Labor Statistics' Employment Cost Index data for all employees in private industry and will include all benefits. The rule also contains a variance, pursuant to Section 4(b) of the Act, to reflect the Department of Labor's practice of issuing prevailing fringe benefit determinations on a nationwide basis, rather than separately for classes of employees and localities.

Enclosed is our assessment of the DOL's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review indicates that the DOL complied with the applicable requirements.

If you have any questions about this report, please contact James Vickers, Senior Attorney, at (202) 512-8210. The official responsible for GAO evaluation work relating to the Department of Labor, Wage and Hour Division, Employment Standards Administration is Carlotta Joyner, Director, Education and Employment Issues. Ms. Joyner can be reached at (202) 512-7014.

Robert P. Murphy  
General Counsel

Enclosure

cc: Bernard E. Anderson  
Assistant Secretary of Labor for Employment Standards  
Department of Labor

ANALYSIS UNDER 5 U.S.C. § 801(a)(1)(B)(i)-(iv) OF A MAJOR RULE  
ISSUED BY  
THE DEPARTMENT OF LABOR, WAGE AND HOUR DIVISION, EMPLOYMENT  
STANDARDS ADMINISTRATION  
ENTITLED  
"SERVICE CONTRACT ACT; LABOR STANDARDS FOR FEDERAL SERVICE  
CONTRACTS"  
(RIN: 1215-AA78)

(i) Cost-benefit analysis

The Department of Labor (DOL) conducted a cost analysis in its Regulatory Impact Analysis of the eight methodologies under consideration. Alternative I, which was selected, provides for a single benefit level, i.e. "total benefits," and would raise the benefit level of those workers currently receiving the "insurance" fringe benefit level of \$.90 per hour over a 4-year period until the employees' benefit level reaches that of workers currently receiving \$2.56 per hour for "total benefits." The costs associated with this alternative are estimated to be \$48,904,960 for the first year and rise to \$197,576,038 in the fourth year.

The benefits which DOL find will result from the rule are the application of the same benefit level for all service employees regardless of the type of contract or employee involved, thereby being simpler for industry to understand and apply and for the DOL to administer and enforce. In addition, it would allow all service contractors to offer health benefits for their employees, whereas at present, some employers cannot purchase health benefits at the current "insurance" benefit level.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607 and 609

Section 603: Initial Regulatory Flexibility Analysis

In its Notice of Proposed Rulemaking (61 Fed. Reg. 19779), DOL included its Initial Regulatory Flexibility Analysis, which, in accordance with section 603(b)(1) and (2), describes the reasons for the proposed agency actions and its objectives and legal basis. With regard to sections 603(b)(3) and (4), DOL states that it employed the size standards of the Small Business Administration and discusses the percentage and dollar volume of federal service contracts held by small entities and the reporting and recordkeeping requirements of the rule as they relate to small entities.

DOL also finds that there are currently no federal rules that duplicate, overlap or conflict with the rule and that because of the mandate of the Service Contract Act

that all contractors furnish prevailing fringe benefits to service employees performing on federal service contract, small entities should not be exempted from the rule.

Finally, DOL concludes that the proposed rule will have a significant economic impact on a substantial number of small entities but that the impact will be mitigated by the small business contractors ability to discharge their obligations under the Service Contract Act by furnishing any equivalent combinations of fringe benefits or by making equivalent or differential payments in cash.

#### Section 604: Final Regulatory Impact Analysis

DOL published its Final Regulatory Flexibility Analysis in the preamble to the final rule (61 Fed. Reg. 68662, December 30, 1996), and in addition to stating the need and objective of the rule, provides a discussion of the comments received regarding its economic impact analysis. It notes that no comments were received concerning the Initial Regulatory Impact Analysis. Included in the preamble is a discussion of the eight alternatives considered and the reasons why the rule adopts Alternative I.

DOL describes the compliance requirements of the rule and notes that the alternative selected does not impose any new or additional recordkeeping requirements on small entities.

Both quantitative and descriptive statements are used to describe the effect of the rule as suggested by section 607 of the Act.

#### (iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

While the final rule will have an annual effect on the economy of more than \$100 million, it is not subject the provisions of the Act because it does not impose an intergovernmental mandate on state, local or tribal governments or the private sector. Rather, the costs for the increases in the fringe benefits will be borne by the federal government.

#### (iv) Other relevant information or requirements under Acts and Executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The rule was promulgated under the notice and comment procedures of 5 U.S.C. § 553. On May 2, 1996, DOL published a Notice of Proposed Rulemaking in the Federal Register (61 Fed. Reg. 19770) proposing various methodologies based on data from the Employment Cost Index. On October 25, 1996, DOL published the Regulatory Impact Analysis of the proposed rule and requested comments.

DOL received 80 comments on the proposed rule from various federal agencies, unions and major government contractors among others. In the preamble to the final rule (61 Fed. Reg. 68648), DOL discusses the comments received and the reasons why it chose the alternative it selected.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The final rule does not contain any new or additional information collections subject to the Paperwork Reduction Act.

Statutory authorization for the rule

The rule was promulgated pursuant to the McNamara-O'Hara Service Contract Act (41 U.S.C. § 351 et seq.) and in particular sections 2(a)(1) and (2) (41 U.S.C. §§ 351(a)(1) and (2)) and section 4(b) (41 U.S.C. § 353(b)) of the Act.

Executive Order No. 12866

The rule was reviewed by the Office of Management and Budget under the Executive Order and determined to be "economically significant." The Office of Information and Regulatory Affairs of OMB approved the rule as complying with the requirements of the Order based on the information supplied by DOL, including a planned regulatory action document describing the reason for the rule and an assessment of the costs and budgetary impact of the rule.

In its submission, DOL did not identify any other statute or executive order imposing procedural requirements relevant to the rule.