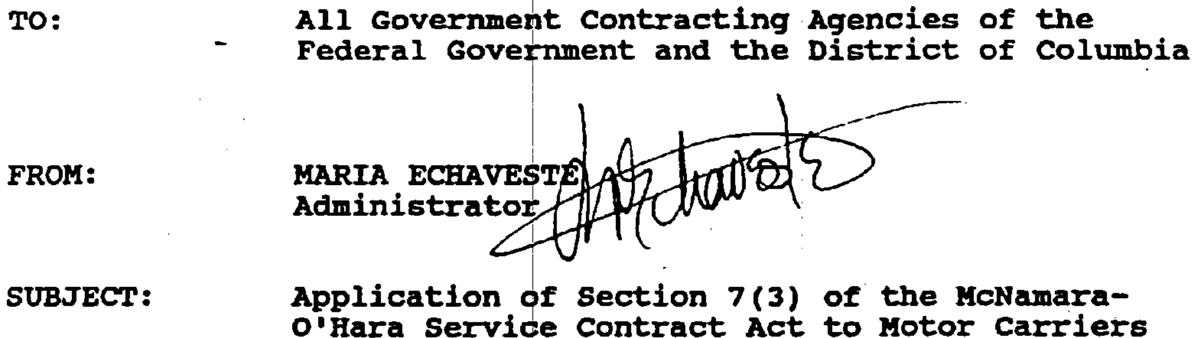
U.S. Department of Labor

Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

SEP 28 1995

MEMORANDUM NO. 185

TO: All Government Contracting Agencies of the Federal Government and the District of Columbia



FROM: MARIA ECHAVESTE
Administrator

SUBJECT: Application of Section 7(3) of the McNamara-O'Hara Service Contract Act to Motor Carriers

The McNamara-O'Hara Service Contract Act (SCA), 41 U.S.C. 351 et seq., applies to all service contracts entered into by the Federal government and District of Columbia "the principal purpose of which is to furnish services in the United States through the use of service employees." The SCA requires that contractors and subcontractors with contracts (and any bid specification) in excess of $2,500 pay their service workers no less than the wages and fringe benefits specified by the Secretary of Labor. However, section 7 of the Act (41 U.S.C. 356) provides for several exemptions from the Act's coverage.

Section 7(3) of the SCA provides that "any contract for the carriage of freight or personnel by vessel, airplane, bus, truck, express, railway line or oil or gas pipeline where published tariff rates are in effect" will not be subject to the Act's coverage. The regulations at 29 C.F.R. 4.118 further elaborate that:

> a contract for transportation service does not come within this exemption unless the service contracted for is actually governed by published tariff rates in effect pursuant to State or Federal law for such carriage. The contracts excluded from the reach of the Act by this exemption are typically those where there is on file with the Interstate Commerce Commission or an appropriate State or local regulatory body a tariff rate applicable to the transportation involved, and the transportation contract between the Government and the carrier is evidenced by a Government bill of lading citing the published tariff rate.

In 1994, Congress enacted two pieces of legislation -- the Trucking Industry Regulatory Reform Act of 1994 (TIRRA), Pub. L. 103-311 (effective August 26, 1994), and the Federal Aviation Administration Authorization Act of 1994 (FAA Authorization Act), Pub. L. No. 103-305, (effective January 1, 1995) -- which amend certain provisions of the Interstate Commerce Act (ICA). As a consequence, interstate and intrastate motor common carriers providing transportation of property, other than household goods,[1] are no longer required to file tariff rates with the ICC or any State. See 49 U.S.C. 10761 and 10762. On an administrative basis, the ICC had earlier exempted motor contract carriers from such filing requirements, and TIRRA codified this regulatory action. See 49 U.S.C. 10762(a)(1). This exemption from filing rates includes motor carriers providing express service in transporting property. Therefore, motor carriers, with very limited exceptions,[2] clearly can no longer qualify for the statutory exemption.

These changes in the transportation law are the result of the increasingly competitive nature of the transportation of property or freight in the industry. Consequently, the basis for the SCA's section 7(3) exemption with regard to such motor carriers, is no longer compatible with the SCA's mission to protect service employees from the payment of substandard wages. The exemption was provided to "regulated industries" subject to published tariff rates because there did not exist the competitive situation faced in service contract cases generally. See Congressional Record, Vol. 111, 89th Cong., 1st Sess., 24387 (September 20, 1965) (statement by Rep. O'Hara). Under published tariff rates, contractors were required to offer services to the general public at a uniform rate. Because of the nature of the published tariff, contractors were not motivated to reduce their employees' wages in order to undercut bidders and obtain business. Conversely, however, the further deregulation of motor carriers providing transportation of property may induce some contractors to engage in substandard labor practices.

---

[1] Generally, household goods are "personal effects and property used or to be used in a dwelling," but they may also include "furniture, fixtures, equipment, and the property of stores, offices, museums, institutions, hospitals or other establishments when a part of the stock, equipment, or supply of such stores, offices, ..." 49 U.S.C. 10102(11)(A) and (B).

[2] Motor common carriers that engage in the transportation of household goods or passengers are presently still required to publish and file their tariff rates with the ICC. Also, motor common carriers who are members of rate bureaus, which are now relatively few in number, may still be subject to tariff rates filed with the ICC by the bureau. See 49 U.S.C. 10706(b)(2).

Therefore, contracts performed by a motor carrier, including those providing express service, for the interstate carriage of freight other than household goods awarded, or entered into beginning August 26, 1994, and such contracts for the intrastate carriage of freight other than household goods awarded, or entered into beginning January 1, 1995, fail to qualify for the section 7(3) exemption of the Service Contract Act. It is important to remember in applying this guidance that an option period or contract extension is normally a new contract for SCA purposes. See 29 C.F.R. 4.143 - 4.145.

Concerning whether another type of contract, such as a contract by a motor carrier for the carriage of personnel, personnel and freight, household goods, or a contract involving carriage by both a motor carrier and some other form of transportation, qualifies for the section 7(3) exemption will depend on the facts of each case. The Wage and Hour Division of the Department of Labor should be contacted concerning any question in that regard or with respect to the guidance provided in this memorandum.