

July 13, 2018

ALL AGENCY MEMORANDUM NUMBER 228

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



FROM: Bryan Jarrett, Acting Administrator

SUBJECT: Executive Order 13838

This All Agency Memorandum (AAM) addresses Executive Order (EO) 13838 (Exemption from Executive Order 13658 for Recreational Services on Federal Lands). EO 13838 generally exempts contracts with the Federal Government in connection with seasonal recreational services or seasonal recreational equipment rental on federal lands from the requirements of EO 13658 (Establishing a Minimum Wage for Contractors).

EO 13658 was issued on February 12, 2014 and established a minimum wage for covered employees of certain employers that contract with the Federal Government, including employers that provide recreational services on federal lands.¹ On May 25, 2018, EO 13838 amended EO 13658 to state as follows:

[EO 13658] shall not apply to contracts or contract-like instruments entered into with the Federal Government in connection with seasonal recreational services or seasonal recreational equipment rental for the general public on [F]ederal lands, but this exemption shall not apply to lodging and food services associated with seasonal recreational services. Seasonal recreational services include river running, hunting, fishing, horseback riding, camping, mountaineering activities, recreational ski services, and youth camps.²

EO 13838 specified that “[e]xecutive departments and agencies (agencies) shall promptly take appropriate action to implement this exemption and to ensure that all applicable regulations and

¹ For additional information concerning EO 13658, see the Wage and Hour Division (WHD) EO 13658 webpage: www.dol.gov/whd/flsa/eo13658.

² EO 13838 states that “[t]he implementation of [EO] 13658 threatens to raise significantly the cost of guided hikes and tours on Federal lands, preventing many visitors from enjoying the great beauty of America’s outdoors. Seasonal recreational workers have irregular work schedules, a high incidence of overtime pay, and an unusually high turnover rate, among other distinguishing characteristics. As a consequence, a minimum wage increase would generally entail large negative effects on hours worked by recreational service workers. Thus, applying [EO] 13658 to these service contracts does not promote economy and efficiency in making these services available to those who seek to enjoy our Federal lands.”

agency guidance are consistent with this order.” WHD is undertaking rulemaking to amend its regulations, as necessary, to reflect EO 13838.

In the meantime, WHD is issuing this AAM to confirm that the requirements of EO 13658 do not apply to contracts or contract-like instruments with the Federal Government for seasonal recreational equipment rental and seasonal recreational services on federal lands, including river running, hunting, fishing, horseback riding, camping, mountaineering activities, recreational ski services, and youth camps. WHD will continue to administer and enforce EO 13658, however, as it applies to contracts that remain covered in whole or in part by EO 13658, including those that offer lodging and food services associated with seasonal recreational services.

Questions regarding this AAM and EO 13838’s implementation may be directed to the Branch of Government Contracts Enforcement; Office of Government Contracts; Wage and Hour Division, U.S. Department of Labor; 200 Constitution Avenue, NW; Washington, DC 20210. You may contact the Branch at (202) 693-0064.