August 12, 2021

VIA ELECTRONIC SUBMISSION
The Honorable Marty Walsh
Secretary
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

RE: Executive Order 14026 - Increasing the Minimum Wage for Federal Contractors,

Dear Mr. Walsh:

I am writing to provide comments on the most recent Executive Order for Minimum Wage for Federal Contractors

I am the Executive Director of the Colorado River Outfitters Association. Our association is a collection of Colorado rafting and float fishing companies. Not all outfitting companies in Colorado belong to our association but I think my comments below represent the thinking of most all of them. Currently, there are approximately 180 licensed river outfitters in Colorado. Since the beginning days of outfitting in Colorado our companies have traditionally paid trip salaries in lieu of hourly wages. There is an agreement between the employee and employer regarding the salary per length of trip. Most companies have a predictable pay structure so guides can anticipant their future pay as their skills and credentials increase. Our industry typically runs half-day, full-day, and overnight outings. If running a half-day trip and the water is running high, the trip may conclude earlier than it might conclude at lower water. The salary is typically the same. If as a guide, you run a 6-day trip, you know and have agreed to the salary for the trip. Overtime pay has not been part of the pay structure. We as an industry object to not only the higher minimum wage proposal but to the overtime rules for our industry. As I will point out below, these rules will be highly disruptive.

I personally was an outfitter for 18 years. I would like to give one example from my experience to demonstrate the disruptive nature of this EO on our industry. As an outfitter, my company ran half-day to 6-day rafting trips. I would hire 16- and 17-year-olds for odd jobs. They would help clean wetsuits, tidy the assembly spaces,

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wash dishes, etc. As a perk, I would send them on one of the multi-day trips. On the trip they were of minimal use, but we did teach them skills on the outings for conducting a multi-day trip. Over time they would become more skilled at many off river tasks like food handling, fire safety, etc. Despite their minimal skills and usefulness, we would pay them their usual wage when on the trip. If one of these individuals were to accompany a 6-day trip under the newly proposed rule, we would be obligated to pay them $15 per hour. After 8 hours (or 40 hours on the trip) we would be obligated to pay overtime. A 6-day trip will comprise 144 hours. If we paid overtime for all hours over 40, the 16- or 17-year-old will receive $2940.00 for the outing. If we were to pretend that the individual was to work 50 weeks (giving 2-weeks' vacation), the individual would make $117,000.00 on an annualized basis. If the 16- or 17-year-old is making $117,000.00, what do you think the 22-year-old guide wants to make? What do you think an owner might like to make? Most do not earn $117,000.00. Let's say we are allowed to subtract for sleeping time of 8 hours per night. The annualized pay is still $93,000.00 for the 16- or 17-year-old.

Based on the above example, the only way the industry can afford such pay is to raise trip prices and raise them a lot. The net result of this will be that only the wealthy will afford what to date has been a reasonably priced offering. Federal contractors don't typically object to pay increases like the one proposed because they can simply bill the Federal Government (i.e., taxpayers) for the increase. The amount is spread across all taxpayers. Including permittees in the contractor designation stands in contrast to the above sentence. Permittees cannot bill the Federal Government for increases. They can only bill their customers which is a much smaller subset. Permittees pay fees to the Federal Government for outfitting on public property. As the trip prices increase so do the fees. I did not see this increase in fees as one of the economic harms created by the new rule. Do we, as a society, really want to price average or poorer customers off public lands? This will be the consequence of the proposed rule.

Outfitters don't always just compete with other outfitters for business. They compete with golf courses, putt-putts, zip-lines, and hot-springs, etc. for business. Raising prices to accommodate the new rule allow the alternative activities to become very attractive to a customer.

Outfitters also compete internationally. Once the price of a multi-day outing reaches the proposed rates of pay, trips to Belize, Panama, and Costa Rica become more likely options. This helps move the travel industry out of the United States and onto other countries. Their economy benefits while ours shrinks. Instead of helping workers we will be putting them at a disadvantage.

COLORADO RIVER OUTFITTERS ASSOCIATION

The proposed rule assumes a wage of $15.00 per hour in Fruita or Yuma, Colorado has the same buying power as in Washington DC or New York City. The rule does not consider regional differences in costs and wages.

If you are an outfitter conducting operations on non-federal land, you are not affected by the proposed rule. You can conduct operations similar to past operations. Thus, you should gain a significant advantage over competitors on federal property. The employees will drift to where the work is. Customers will drift to where trips are affordable. Can outfitters pay guides their trip salary when they run on non-federal property and pay guides as proposed in the EO only when the guide is on federal property? Does the rule apply to company reservationists who don't visit federal property? It remains unclear.

Guides historically have tried to work as much as they can during an outfitting season. They work, save their money, and take time off in the fall. The proposed rule will force outfitters to look for ways to avoid overtime to keep trip prices in line. This is almost impossible for multi-day trips. They will have to pay the overtime. For half- and full-day outings, this means providing guides with fewer trips to avoid overtime. Guides will eventually move to other opportunities and away from the industry.

The points outlined above do not just apply to the rafting and fishing industry. They apply to church camps, youth camps, and dude ranches, etc. Politically, I can see a backlash coming if permittees are included in these rules. The White House will have difficulty if a recreation industry in a state begins reeling from the cost increases. Both businesses, employees and customers will know why trips are unaffordable.

In conclusion, I propose the rule exempt permittees. They are not federal contractors except by using sleight of hand reasoning.

Sincerely,

David Costlow
Executive Director
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