should be reached that reflects the actual facts.

■ 6. Amend § 552.109 by revising paragraphs (a) and (c) to read as follows:

§ 552.109 Third party employment.

(a) Employees who are engaged in providing companionship services, as defined in § 552.6, and who are employed by an employer or agency other than the family or household using their services, are exempt from the Act's minimum wage and overtime pay requirements by virtue of section 13(a)(15). Assigning such an employee to more than one household or family in the same workweek would not defeat the exemption for that workweek, provided that the services rendered during each assignment come within the definition of companionship services

* * * * *

(c) Live-in domestic service employees who are employed by an employer or agency other than the family or household using their services are exempt from the Act's overtime requirements by virtue of section 13(b)(21). This exemption, however, will not apply where the employee works only temporarily for any one family or household, since that employee would not be ''residing'' on the premises of such family or household.

■ 8. Amend § 552.110 by revising paragraphs (b), (c), and (d) and removing paragraph (e) to read as follows:

§ 552.110 Recordkeeping requirements.

(b) In the case of an employee who resides on the premises, records of the actual hours worked are not required. Instead, the employer may maintain a copy of the agreement referred to in § 552.102. The more limited recordkeeping requirement provided by this subsection does not apply to third party employers. No records are required for casual babysitters.

(c) Where a domestic service employee works on a fixed schedule, the employer may use a schedule of daily and weekly hours that the employee normally works, and either the employer or the employee may (1) indicate by check marks, statement or other method that such hours were actually worked, and (2) when more or less than' the scheduled hours are worked, show the exact number of hours worked.

(d) The employer may require the domestic service employee to record the hours worked and submit such record to the employer.

Dated: June 27, 2025.

Donald Harrison,

Acting Administrator, Wage and Hour Division.

[FR Doc. 2025–12316 Filed 6–30–25; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Parts 775, 776, 779, 782, 783, 784, 789, 793, and 794

RIN 1235–AA52

Statements of General Policy or Interpretation Not Directly Related to Regulations

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Notice of proposed rule; request for comments.

SUMMARY: The Department of Labor (Department) proposes to remove parts located in Title 29, Chapter V, Subchapter B of the Code of Federal Regulations (CFR) that were not originally issued, or subsequently amended, through notice-and-comment rulemaking. Because these parts consist of interpretive rules and policy statements regarding the Fair Labor Standards Act (FLSA) which do not carry the force and effect of law, the Department believes that these parts, to the extent that they have not benefitted from public comment, should be repurposed as sub-regulatory guidance. The Department seeks comment on what provisions in Subchapter B should be retained in the CFR, as well as what kind of sub-regulatory guidance the Department should use to preserve interpretive rules and policy statements that are removed from the CFR. This summary can be found at *https://www.regulations.gov* by searching by the RIN: 1235–AA52.

DATES: Comments must be received on or before August 1, 2025.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1235–AA52, by either of the following methods:

- *Electronic Comments:* Submit comments through the Federal eRulemaking Portal at *https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Address written submissions to: Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210.

Instructions: Response to this notice of proposed rulemaking (NPRM) is voluntary. The Department requests that no business proprietary information, copyrighted information, or personally identifiable information be submitted in response to this NPRM. Commenters submitting file attachments on *https://www.regulations.gov* are advised that uploading text-recognized documents—*i.e.,* documents in a native file format or documents which have undergone optical character recognition (OCR)—enable staff at the Department to more easily search and retrieve specific content included in your comment for consideration.

Anyone who submits a comment (including duplicate comments) should understand and expect that the comment, including any personal information provided, will become a matter of public record and will be posted without change to *https://www.regulations.gov.* The Department posts comments gathered and submitted by a third-party organization as a group under a single document ID number on *https://www.regulations.gov.* All comments must be received by 11:59 p.m. ET on August 1, 2025, for consideration in this rulemaking; comments received after the comment period closes will not be considered.

The Department strongly recommends that commenters submit their comments electronically via *https://www.regulations.gov* to ensure timely receipt prior to the close of the comment period. Please submit only one copy of your comments by only one method.

Docket: Go to the Federal eRulemaking Portal at *https://www.regulations.gov* for access to the rulemaking docket, including any background documents and the plain-language summary of the rule of not more than 100 words in length required by the Providing Accountability Through Transparency Act of 2023.

FOR FURTHER INFORMATION CONTACT: Daniel Navarrete, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue NW, Washington, DC 20210; telephone: (202) 693–0406 (this is not a toll-free number). Alternative formats are available upon request by calling 1–866–487–9243. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

Questions of interpretation or enforcement of the agency's existing regulations may be directed to the nearest WHD district office. Locate the

nearest office by calling the WHD's toll-free help line at (866) 4US–WAGE ((866) 487–9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto WHD's website at *https://www.dol.gov/agencies/whd/contact/local-offices* for a nationwide listing of WHD district and area offices.

SUPPLEMENTARY INFORMATION:

I. Background

The Administrative Procedure Act (APA) broadly defines the term ''rule'' as ''[t]he whole or a part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency[.]'' 5 U.S.C. 551(4). Within this category are ''legislative rules'' which have ''the force and effect of law,'' *Perez* v. *Mortgage Bankers Assoc.,* 575 U.S. 92, 96 (2015),[1] and ''interpretive rules,'' which ''advise the public of the agency's construction of the statutes and rules which it administers'' but ''do not have the force and effect of law and are not accorded that weight in the adjudicatory process.'' *Id.* at 97 (internal quotation marks omitted). The APA also recognizes a third kind of rule: ''general statements of policy,'' 5 U.S.C. 553, which are understood to be ''agency statements of general applicability, not binding on members of the public, 'issued . . . to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power.' '' [2]

Since the Code of Federal Regulations (CFR) was created in 1937, Federal law has described the CFR as ''a complete codification of the documents of each agency of the Government having general applicability *and legal effect,*'' which are ''relied upon by the agency as authority for, or are invoked or used by it in the discharge of, its activities or functions.'' 44 U.S.C. 1510(a) (emphasis added); *see also* 1 CFR 8.1 (describing the CFR as ''a compact and practical code . . . contain[ing] each Federal regulation of general applicability and legal effect''). Similarly, Executive Order 12866—which sets forth Presidential oversight of the Federal regulatory process—defines the term ''regulation'' in relevant part as ''an agency statement of general applicability and future effect, which the agency intends to have the force and effect of law[.]'' 58 FR 51735, 51737 (Sept. 30, 1993). These authorities imply, and can lead the general public to infer, that all ''regulations'' codified in the CFR are legislative rules with the force and effect of law.

Legislative rules set forth by the Department's Wage and Hour Division (WHD) regarding the Fair Labor Standards Act (FLSA) primarily appear in Subchapter A of its assigned chapter in the CFR. *See* 29 CFR parts 500–697. Examples of legislative rules issued by WHD include employer recordkeeping requirements established pursuant to section 11(c) of the FLSA (located at 29 CFR part 516),[3] criteria which ''define and delimit'' the FLSA's section 13(a)(1) exemption for executive, administrative, and professional employees (located at 29 CFR part 541),[4] and child labor regulations issued under section 3(l) of the FLSA (located at 29 CFR part 570).[5] Regulations on topics addressed in certain FLSA amendments, such as the FLSA's application to tipped employees (located at 29 CFR part 531 subpart D) or the employees of state or local governments (located at 29 CFR part 553), are also legally binding legislative rules.[6]

However, since the 1940s, WHD has provided ''Statements of General Policy or Interpretations Not Directly Related to Regulations'' in Subchapter B of its assigned CFR chapter,[7] which presently spans parts 775 to 795 of Title 29. Most of the parts in Subchapter B provide interpretive guidance on topics that Congress has not specifically delegated rulemaking authority to the Department to address, such as: the principles of coverage under the FLSA (29 CFR part 776); the determination of an employee's ''regular rate of pay'' used to calculate overtime premiums under the FLSA (29 CFR part 778); the definition of ''hours worked'' under the FLSA (29 CFR part 785); or independent contractor status under the FLSA (29 CFR part 795). While some of the parts or provisions located in Subchapter B were originally issued or subsequently amended through notice-and-comment rulemaking, many were not, as the APA exempts ''interpretative rules'' and ''general statements of policy'' from the notice-and-comment requirement that generally applies to legislatives rules. *See* 5 U.S.C. 553(b)(A).

Like other forms of guidance, the interpretive rules and policy statements in Subchapter B provide ''enormous value'' by ''channel[ing] the discretion of agency employees, increas[ing] efficiency, and enhanc[ing] fairness by providing the public clear notice of the line between permissible and impermissible conduct while ensuring equal treatment of similarly situated parties.'' [8] ''[W]hile not controlling upon the courts,'' interpretive rules and policy statements ''constitute a body of experience and informed judgment to which courts and litigants may properly resort for guidance[,]'' with the weight afforded to such guidance ''depend[ing] upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control.'' *Skidmore* v. *Swift & Co.,* 323 U.S. 134, 140 (1944). As with legislative rules, employers can rely upon interpretive rules and policy statements issued by the WHD Administrator under section 10 of the Portal-to-Portal Act of 1947, which provides a defense against liability for violations of the FLSA, the Walsh-Healey Public Contracts Act, or the Davis-Bacon Act for any acts or omissions that an employer makes in good faith reliance on such guidance. *See* 29 U.S.C. 259; *see also* 29 CFR 790.13–.19 (elaborating on the requirements for a ''good faith reliance'' defense under the Portal-to-Portal Act).

However, when interpretive rules and policy statements are codified in the CFR alongside legislative rules, there is

[1] The Supreme Court has advised that legislative rules which ''carry the force and effect of law'' are those which: (1) ''affect[ ] individual rights and obligations''; (2) are ''rooted in a grant of [legislative] power by the Congress;'' and (3) are ''promulgat[ed] . . . [in] conform[ity] with any procedural requirements imposed by Congress.'' *Chrysler Corp.* v. *Brown,* 441 U.S. 281, 302–03 (1979) (internal quotation marks omitted).

[2] Admin. Conf. of the U.S., Recommendation 2017–5, *Agency Guidance Through Policy Statements* 1 (Dec. 14, 2017) (quoting Attorney General's Manual on the Administrative Procedure Act 30 n.3 (1947)), *https://www.acus.gov/sites/default/files/documents/Recommendation%202017-5%20%28Agency%20Guidance%20Through%20Policy%20Statements%29_2.pdf.*

[3] *See* 29 U.S.C. 211(c) (requiring employers to ''make, keep, and preserve such records as [WHD] shall prescribe by regulation or order as necessary or appropriate for the enforcement of the [FLSA]'').

[4] *See* 29 U.S.C. 213(a)(1) (exempting ''any employee employed in a bona fide executive, administrative, or professional capacity . . . as such terms are defined and delimited from time to time by regulations'').

[5] *See* 29 U.S.C. 203(l) (requiring the Department to ''provide by regulation or by order'' conditions of employment that would or would not constitute ''oppressive child labor'').

[6] *See* Public Law 89–601, sec. 602, 80 Stat. 830, 844 (1966) (authorizing the Department to issue regulations implementing the 1966 FLSA Amendments, including statutory provisions affecting tipped employees); *see also* Public Law 99–150, sec. 6, 99 Stat. 787, 790 (1985) (authorizing the Department to issue regulations implementing the 1985 FLSA Amendments, which addressed the FLSA's application to the employees of state and local governments).

[7] *See* 11 FR 14099 (Dec. 5, 1946) (adding Subchapter B).

[8] Final Bulletin for Agency Good Guidance Practices, OMB Bull. No. 07–02, 2 (Jan. 18, 2007), *https://www.whitehouse.gov/wp-content/uploads/legacy_drupal_files/omb/memoranda/2007/m07-07.pdf.*

a risk that regulated entities and members of the public may misunderstand the nature of these materials. For example, employers may mistakenly assume that all ''regulations'' set forth in the CFR carry the force of law. In fact, Federal courts have sometimes stated that heightened standards of judicial deference intended for legislative rules apply to the interpretive rules set forth in Subchapter B.[9] For example, in ruling against a plaintiff employee in *Kavanagh* v. *Grand Union Co., Inc.,* 192 F.3d 269 (2d Cir. 1999), the Second Circuit said that it was ''not free to disregard'' an interpretive rule on compensable time set forth in part 785, ''when that regulation represents a permissible construction of the statute'' at the time under the then-applicable *Chevron* deference. Despite remarking that ''[the employee's] situation strikes us as inequitable,'' the court emphasized that ''constraints on the judicial function'' determined the outcome of the case. *Id.* at 272–73. Whether by courts or employers, undue deference to the guidance set forth in Subchapter B is a foreseeable outcome of authorities implying that all content in the CFR has binding ''legal effect,'' as noted earlier. *See* 44 U.S.C. 1510(a); *see also* 1 CFR 8.1.

Even if employers understand that the interpretive rules and policy statements set forth in Subchapter B are non-binding—*i.e.,* that the ''correctness an interpretation . . . can be determined finally and authoritatively only by the courts'' and that WHD ''will receive and consider statements suggesting change of any interpretation,'' 29 CFR 790.1(c)—employers may feel compelled to comply with such guidance as a practical matter. As the Administrative Conference of the United States (ACUS) has noted, ''modern regulatory schemes often have structural features that tend to lead regulated parties to follow [an interpretive rule or policy statement] even if in theory they might be legally free to choose a different course, because the costs and risks associated with doing so are simply too high,'' particularly where ''statutes or regulations . . . subject the regulated party to the possibility of enforcement proceedings that entail prohibitively high costs regardless of outcome, or can lead to sanctions so severe that the party will not risk forcing an adjudication of the accusation.'' [10]

This rulemaking seeks to address such risks by proposing to remove all parts from Subchapter B which have not undergone notice-and-comment rulemaking. Ensuring that all of the parts in Subchapter B have undergone notice-and-comment rulemaking will confirm that the guidance provided therein has benefited from the input of interested outside stakeholders, particularly ''parties [who] lack the opportunity and resources to participate in the individual adjudicatory or enforcement proceedings to which [an interpretive rule or] policy may apply.'' [11] The Department also intends for this action to reinforce the distinction between such rules and other sub-regulatory guidance, thereby promoting consistency in its regulatory program

The Department acknowledges that there may once have been reason to publish interpretive guidance in the CFR at a time when few would have access to view such guidance otherwise. Indeed, when the Department began moving interpretive guidance from earlier ''Interpretive Bulletins'' into the CFR in the late 1940s, the Department explained that the purpose of codification was ''to make available in one place interpretations of the Administrator which will provide 'a practical guide to employers and employees as to how the office representing the public interest in enforcement of the law will seek to apply it.' '' 13 FR 419, 420 (Jan. 30, 1948) (citing *Skidmore,* 323 U.S. at 138).

However, technology has widened the availability of resources available to the public, which are no longer limited to the U.S. Code and the CFR. Indeed, it is commonplace today for interested parties to view the Department's website and, in particular, WHD's Field Operations Handbook (FOH), which summarizes many of the agency's positions and cross-references to various other resources.[12] And while one of the original reasons for the CFR was to have a comprehensive publication of every agency's rules and legal interpretations, many agencies, including WHD, issue sub-regulatory guidance outside of the CFR which is entitled to the same weight as interpretive rules and policy statements that are in the CFR. Accordingly, the Department intends to temporarily retain all content which is removed from the CFR as sub-regulatory guidance, apart from the provisions in part 779 which are obviously obsolete.[13]

In sum, to better serve the public and increase transparency, the Department proposes to remove all interpretive rules and policy statements located in Title 29, Chapter V, Subchapter B of the CFR that have not, at least in part, been issued or revised through notice-and-comment rulemaking, while seeking comment on whether any portions should be retained in the CFR. The Department intends to relocate the removed Subchapter B provisions (other than obsolete content in Part 779) into an appendix to the FOH (with similar citations) until such time that WHD can determine which are appropriate to: (1) propose as legislative or interpretative regulations; (2) retain as sub-regulatory interpretive guidance; or (3) amend or eliminate for one or more substantive reasons. Any substantive changes made as described in category (3) would not require public notice and, as such, it would be up to the Department's discretion regarding how to proceed with respect to any changes once the material is located in the FOH.

The Department emphasizes that this rulemaking is not a commentary on the underlying merits of any provisions

[9] *See, e.g., Josendis* v. *Wall to Wall Residence Repairs, Inc.,* 662 F.3d 1292, 1299 (11th Cir. 2011) (advising that *Chevron* deference generally applies to ''interpretive regulations'' addressing individual and enterprise coverage under the FLSA in part 776); *see also Scott* v. *City of New York,* 592 F.Supp.2d 386, 398 (S.D.N.Y. 2008) (''Regardless of whether [CFR provisions addressing overtime pay] are labeled as 'regulations' or 'interpretations,' they are entitled to *Chevron* deference.''). Although *Chevron* deference was abolished last year in *Loper Bright Enterprises* v. *Raimondo,* 603 U.S. 369 (1984), decisions applying *Chevron* to Subchapter B provisions were in tension with earlier Supreme Court precedent emphasizing that courts are ''not required to give effect to an interpretative regulation.'' *Batterton* v. *Francis,* 432 US 416, 425 n.9 (1977) (citing *Skidmore,* 323 U.S. at 140); *see also Christensen* v. *Harris Co.,* 529 U.S. 576, 587 (2000) (holding that ''interpretations . . . which lack the force of law . . . do not warrant *Chevron*-style deference'').

[10] Recommendation 2017–5, *supra* n. 2, at 4; *see also* Admin. Conf. of the U.S., Recommendation 2019–1, *Agency Guidance Through Interpretive Rules* 5 (June 13, 2019) (asserting that ''factors [which] deter affected persons from contesting guidance documents with which they disagree . . . operate in approximately the same manner regardless of whether a policy statement or interpretive rule is involved''), *https://www.acus.gov/sites/default/files/documents/Agency%20Guidance%20Through%20Interpretive%20Rules%20CLEAN%20FINAL%20POSTED.pdf.*

[11] Recommendation 2017–5, *supra* n. 2, at 6.

[12] The FOH does not establish a binding legal standard on the public and is not a device for establishing interpretive policy. Rather, the FOH is an ''operations manual'' that makes available to WHD investigators and staff policies already ''established through changes in legislations, regulations, significant court decisions, and the decisions and opinions of the WHD Administrator.'' Field Operations Handbook, U.S. Dept. of Labor (last accessed June 9, 2025), *https://www.dol.gov/agencies/whd/field-operations-handbook; see also* WHD Opinion Letter FLSA2020–12, at 4 (Aug. 31, 2020); *Probert* v. *Family Centered Servs. of Alaska, Inc.,* 651 F.3d 1007, 1012 (9th Cir. 2011).

[13] Most of the provisions in Part 779 were last updated in 1970, *see* 35 FR 5856 (Apr. 9, 1970), and much of this content is either obsolete or erroneous. For example, Part 779 includes numerous references to statutory language which has since been amended or repealed, as well as erroneous dollar thresholds.

which are presently located in Subchapter B. Relocating interpretive guidance from Subchapter B of the CFR to the FOH would not have any substantive import for the guidance itself, nor would the relocation invalidate or call into question any (1) WHD opinion letters, fact sheets, or other compliance assistance materials that interpret and rely on the CFR provisions, (2) any court decisions that have relied on such provisions, or (3) any of the Department's enforcement efforts that may involve these provisions.

Although it is not necessary to issue an NPRM for the relocation or elimination of individual interpretative rules or policy statements which themselves were not promulgated or revised through notice and comment rulemaking, given the scope of the proposed changes to Subchapter B, and as a matter of public courtesy, the Department is seeking comment on the current proposed rule. The Department, however, reserves its right to decline additional notice-and-comment for any future changes to content removed from the CFR as a consequence of this rulemaking.[14]

II. Discussion

WHD's assigned portion of the CFR (located in Chapter V of Subtitle B of Title 29) is divided into the following four subchapters: Subchapter A (''Regulations''); Subchapter B (''Statements of General Policy or Interpretation Not Directly Related to Regulations''); Subchapter C (''Other Laws''); and Subchapter D (''Garnishment of Earnings''). The potential effects of this rulemaking for each of these sections is addressed below.

A. The Status of Subchapters A, C, and D

Subchapter A (''Regulations'') contains Part 500 through Part 697. To the extent that these parts contain provisions that should be removed or relocated, such provisions may be addressed in a separate rulemaking. To provide one illustration, Part 531(''Wage Payments Under the Fair Labor Standards Act of 1938'') contains a subpart (Subpart C) entitled ''Interpretations,'' consisting of what appear to be non-binding interpretive rules. For example, an introductory section to Subpart C of part 531 explains that the ''the interpretations [provided in this subpart] indicate . . . the construction of the law which the Secretary of Labor and the [WHD] Administrator *believe* to be correct and which will guide them in the performance of their administrative duties under the [FLSA] unless and until they are otherwise directed by *authoritative decisions of the courts.*'' 29 CFR 531.25(b) (emphases added). Nearly identical language appears in an introductory section for 29 CFR part 790, which provides interpretive guidance about the Portal-to-Portal Act of 1947. *See* 29 CFR 790.1(c).

If Subpart C of part 531 consists of non-binding ''Interpretations,'' it arguably should not appear alongside legislative rules in a part located within Subchapter A (''Regulations''). By contrast, if the provisions in Subpart C of part 531 should be regarded as legislative rules with the force and effect of law, then the title of Subpart C and the Introductory Statement published at 29 CFR 531.25 should be revised accordingly.

Subchapters C and D of WHD's CFR chapter may also contain non-binding interpretive rules and policy statements. *See, e.g.,* 29 CFR part 870, subpart B (''Determinations and Interpretations''). However, as with provisions located in Subchapter A, content which is located within Subchapters C and D is outside the scope of this rulemaking.

B. The Status of Subchapter B

Part 775 through Part 795 are contained in Subchapter B, ''Statements of General Policy or Interpretation Not Directly Related to Regulations.'' On its face, Subchapter B features non-binding interpretive rules and policy statements. For all of the reasons described earlier, the Department is proposing to remove all parts in Subchapter B that were not, at least in part, promulgated through notice-and-comment rulemaking from the CFR. Except for content which is obviously outdated or erroneous,[15] the Department proposes to relocate these provisions to WHD's FOH as appended ''Interpretive Bulletins'' which use the same section numbers as currently used in the CFR. Importantly, the provisions being relocated for purposes of clarity rather than removed for purposes of obsolescence would continue to constitute the Department's sub-regulatory position. The Department seeks comment on this proposal, including whether appending Interpretive Bulletins to the FOH would be an appropriate means of preserving interpretive rules and policy statements that are removed from the CFR or whether the Department should consider alternative sub-regulatory guidance vehicles, such as Field Assistance Bulletins (FABs) or Administrator Interpretations (AIs).

As noted earlier, some parts in Subchapter B were initially issued or subsequently amended through notice-and-comment rulemaking. Specifically, the Department has engaged in notice-and-comment rulemaking to issue or amend provisions in parts 778,[16] 780,[17] 785,[18] 786,[19] 788,[20] 790,[21] and 795.[22] The Department proposes to retain these parts in their entirety for legibility reasons and because the public has had the opportunity to request changes in these parts in at least one prior rulemaking. Relatedly, the Department proposes to rename Subchapter B as ''Other Regulations.'' The Department seeks comment on this approach, including whether the Department should instead retain in the CFR only those parts which have been revised in a comprehensive rulemaking (*e.g.,* retaining part 778 while removing part 785), or only those provisions which have been addressed in a notice-and-comment rulemaking.

Given the number of provisions within Subchapter B that may be impacted under this proposal, as a matter of public courtesy, the Department seeks comment on the proposed rule. The Department, however, recognizes that interpretative rules are not subject to the APA's notice and comment requirements which typically apply to legislative rules. As such, the Department reserves the right to decline additional notice-and-comment for any future changes to content removed from the CFR as a consequence of this rulemaking.

III. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866

Under Executive Order 12866, the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) determines whether a regulatory action is significant and, therefore, subject to the

[14] *See Perez* v. *Mortgage Bankers Assoc.,* 575 U.S. at 100 (''[The APA's] exemption of interpretive rules from the notice-and-comment process is categorical[.]'').

[15] *See, e.g., supra* n. 13 (discussing outdated and erroneous content in 29 CFR part 779).

[16] *See* 84 FR 68736 (2019 rule revising numerous provisions); 85 FR 34970 (2020 rule revising 778.114).

[17] *See* 76 FR 18832 (2011 rule revising 780.400, 780.401, 780.406, and 780.408); 89 FR 1638 (2024 rule revising 780.330).

[18] *See id.* (revising 785.7, 785.9, 785.34, and 785.50).

[19] *See id.* (revising 786.300 and 786.350).

[20] *See* 89 FR 1638 (revising 788.16).

[21] *See* 76 FR 18832 (revising 790.3).

[22] *See* 89 FR 1638 (revising the entirety of part 795).

requirements of the Executive Order and OMB review.[23] Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as a regulatory action that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more, or adversely affect in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (also referred to as economically significant); (2) create serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. OIRA has determined that this proposed rule is significant under section 3(f) of Executive Order 12866.

Executive Orders 12866 and 13563 direct agencies to, among other things, propose or adopt a significant rule only upon a reasoned determination that its benefits justify its costs; that it is tailored to impose the least burden on society, consistent with obtaining the regulatory objectives; and that, in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. Executive Order 13563 recognizes that some costs and benefits are difficult to quantify and provides that, when appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

The analysis provided below outlines the impacts that the Department anticipates may result if this proposed rule is finalized as proposed and was prepared pursuant to the above-mentioned executive orders. This proposed rule is expected to be an Executive Order 14192 deregulatory action.

1. Introduction

Subchapter B of WHD's assigned CFR chapter contains non-binding interpretive rules and general policy statements issued under the Fair Labor Standards Act (FLSA), Portal-to-Portal Act, and related statutes. Many of these provisions were codified between the 1940s and 1970s without notice-and-comment procedures.

Although they are not legally binding legislative rules, the codification of these interpretive materials in the CFR may give rise to regulatory confusion. Regulated entities may mistake these statements as being legally binding legislative rules or fail to distinguish them from legally binding legislative rules in Subchapter A.

The Department therefore proposes to remove the 9 identified parts from Subchapter B. These parts were never subject to public comment. The Department intends that interpretive content other than provisions in Part 779 which are outdated or erroneous would be retained in WHD's Field Operations Handbook (FOH) as appended Interpretive Bulletins, but welcomes comment on what kind of sub-regulatory guidance the Department should use to preserve interpretive rules and policy statements that are removed from the CFR.

Under this proposed rule, the following Subchapter B parts would remain in Title 29 of the CFR: Part 778 (''Overtime Compensation''); Part 780 (''Exemptions Applicable to Agriculture, Processing of Agricultural Commodities, and Related Subjects Under the Fair Labor Standards Act''); Part 785 (''Hours Worked''); Part 786 (''Miscellaneous Exemptions and Exclusions from Coverage''); Part 788 (''Forestry or Logging Operations in Which Not More than Eight Employees Are Employed''); Part 790 (''General Statement as to the Effect of the Portal-to-Portal Act of 1947 on the Fair Labor Standards Act of 1938''); Part 795 (''Employee or Independent Contractor Classification Under the Fair Labor Standards Act''). These parts have benefited from prior public input and retain standalone value as complete, legible documents.

2. Need for Rulemaking

As explained in greater detail in section I of this notice, the need for this rulemaking arises from the Department's interest in: (1) reducing potential confusion between binding and non-binding rules; (2) promoting greater stakeholder engagement with WHD's interpretive guidance; and (3) ensuring procedural integrity and transparency in regulatory design.

This NPRM is also consistent with the Department's obligations under Executive Order 13563 to ''promote predictability,'' ''reduce uncertainty,'' and ''use the best, most innovative, and least burdensome tools for achieving regulatory ends.'' [24]

3. Affected Entities

This rule does not impose compliance obligations or require behavioral changes from any regulated parties. However, it may affect regulated entities' perception of WHD guidance and their interaction with agency materials. Stakeholders who rely on the interpretive rules proposed for removal (*e.g.,* industry groups, compliance professionals, legal counsel) may need to adjust their internal citations and training materials to refer to the FOH rather than the CFR.

The Department does not anticipate any material disruption to regulated entities. WHD intends to provide clear cross-references in the FOH and to preserve the interpretive content in a familiar, searchable format. In many cases, stakeholders already rely on the FOH and other sub-regulatory guidance in practice.

4. Anticipated Benefits, Costs, and Transfers

i. Benefits

The proposed rule may yield several qualitative benefits. First, removing non-binding interpretive rules and policy statements from the CFR will reduce the risk that employers or courts perceive such guidance to be binding law. This could empower employers to dispute the application of such guidance in appropriate circumstances and reduce the likelihood of such guidance receiving unwarranted judicial deference in legal proceedings.

Second, the proposal would significantly reduce the size of the CFR administered by WHD, helping employers focus on provisions more likely to include binding legislative rules that they are required to follow. Specifically, removing parts 775, 776, 779, 782, 783, 784, 789, 793, and 794 from Subchapter B would remove approximately 229 pages from the 905 pages located in WHD's assigned CFR Chapter [25]—a 25 percent reduction. Reducing the volume of federal wage and hour regulations could improve employer compliance with wage and hour law and would be consistent with the deregulatory goals of Executive Order 14192.

Third, provisions in the parts proposed for removal have not been amended in decades and may be outdated or erroneous. For example, most of the provisions in part 779 have not been amended since 1970 and many include erroneous dollar thresholds

[23] *See* 58 FR 51735, 51741 (Oct. 4, 1993).

[24] 76 FR 3821.

[25] *See* 29 CFR chapter V (2024), *https://www.govinfo.gov/content/pkg/CFR-2024-title29-vol3/pdf/CFR-2024-title29-vol3-subtitleB-chapV.pdf.*

(such as multiple references to a $1.60 per hour minimum wage) or address statutory provisions from the FLSA which have since been amended or repealed. Removing outdated guidance from the CFR will ensure that such errors do not confuse employers and employees about their rights and responsibilities. Relatedly, repurposing the content in these parts as sub-regulatory guidance will allow the Department to more expediently update such content than if it remains in the CFR.[26]

If the Department determines that parts removed in this rulemaking should be reintroduced into the CFR, it would do so in future rulemakings inviting input from employers, employees, and other interested members of the public. This could improve the quality of such guidance by ensuring that the perspectives of outside parties have been taken into consideration in its development.

ii. Costs

This rule is deregulatory in nature and does not impose new requirements. Therefore, the Department does not anticipate any compliance costs. Potentially affected entities might experience negligible administrative costs in updating references to the removed CFR parts, but the Department expects these impacts to be de minimis.

iii. Transfers

The Department does not anticipate any transfer effects as a consequence of this rulemaking. This rulemaking does not affect any of the rights or responsibilities of employers, employees, and other interested parties.

5. Discussion of Regulatory Alternatives

The Department considered three alternatives to this proposal. First, the Department considered removing the entirety of Subchapter B so CFR provisions administered by WHD would consist entirely of legislative rules with the ''force and effect of law.'' [27] The Department rejected this approach because stakeholders in recent rulemakings have emphasized the utility of codifying interpretive guidance in the CFR, even if such guidance is non-binding. Therefore, the Department decided to propose removing only those parts from Subchapter B which were not initially issued or subsequently amended in a notice-and-comment rulemaking.

Second, the Department considered removing all interpretive rules and policy statements within Subchapter B that were not issued or amended through notice-and-comment rulemaking. Under this approach, the Department would remove all of the parts it has proposed for removal in this NPRM as well as most of the provisions within part 778 (''Overtime Compensation''), part 780 (''Exemptions Applicable to Agriculture, Processing of Agricultural Commodities, and Related Subjects Under the Fair Labor Standards Act''), part 785 (''Hours Worked''), part 786 (''Miscellaneous Exemptions and Exclusions from Coverage''), and part 790 (''General Statement as to the Effect of the Portal-to-Portal Act of 1947 on the Fair Labor Standards Act of 1938''). The Department declined to take this approach in the NPRM because removing CFR sections from parts 778, 780, 785, 786, 788, and 790 could make those documents harder to understand (and therefore less useful) as standalone guidance documents. Additionally, the Department notes that, although specific sections in parts 778, 780, 785, 786, 788, and 790 may not have been addressed in notice-and-comment rulemakings, the public has had the opportunity to request changes to these sections in rulemakings which addressed other provisions in those parts.

Finally, the Department considered amending each part through separate notice-and-comment rulemakings, beginning with a rulemaking to address part 779 (the part in Subchapter B with the most outdated and erroneous content). This approach would be slower and more resource-intensive than the proposed approach, which could perpetuate many of the risks that are motivating this rulemaking as Subchapter B would continue to include entire parts which have not had the benefit of public comment.

6. Conclusion

The Department concludes that this rule, if finalized as proposed, will impose no regulatory burdens and may generate meaningful qualitative benefits. It supports WHD's goals of transparency, procedural fairness, and public engagement, consistent with Executive Orders 12866, 13563, and 14192.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Because the changes proposed in this rulemaking are procedural in nature and would not affect the current rights and responsibilities of any small entity under the FLSA or any other federal wage and hour law, the Department certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The Department will transmit this certification and supporting statement of factual basis to the Chief Counsel for Advocacy of the Small Business Administration for review under 5 U.S.C. 605(b).

C. Review Under the Paperwork Reduction Act

The purpose of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.,* includes minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing for public comment a summary of the collection of information and a brief description of the need for and proposed use of the information.

This proposed rule does not contain a proposed collection of information or affect any existing information collection requests because the Department is merely proposing to relocate interpretive rules and policy statements from the CFR to sub-regulatory guidance, apart from obsolete provisions which have no practical impact. The Department welcomes comment on this determination.

D. Review Under Executive Order 13132

E.O. 13132, ''Federalism,'' 64 FR 43255 (August 10, 1999), imposes certain requirements on Federal agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of

[26] At this time, the only content the Department proposes to omit from relocation into WHD's FOH are provisions in Part 779 which are obviously obsolete or erroneous. However, the Department will continue reviewing the entirety of Subchapter B for outdated and erroneous content, including the other parts proposed for removal in this rulemaking.

[27] *See* Executive Order 12866 § 3(d), 58 FR 51737 (defining the term ''regulation'').

regulatory policies that have federalism implications.

The Department has examined this proposed rule and has determined that it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

E. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of E.O. 12988, ''Civil Justice Reform,'' imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity, (2) write regulations to minimize litigation, (3) provide a clear legal standard for affected conduct rather than a general standard, and (4) promote simplification and burden reduction.[28] Regarding the review required by section 3(a), section 3(b) of E.O. 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any, (2) clearly specifies any effect on existing Federal law or regulation, (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction, (4) specifies the retroactive effect, if any, (5) adequately defines key terms, and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General.

Section 3(c) of E.O. 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. The Department has completed the required review and determined that, to the extent permitted by law, this proposed rule meets the relevant standards of E.O. 12988.

F. Review Under the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of the UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. 2 U.S.C. 1532(a), (b)). The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them.

The Department examined this proposed rule according to the UMRA and its statement of policy and determined that the proposed rule does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. As a result, the analytical requirements of the UMRA do not apply.

G. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This proposed rule would not have any impact on the autonomy or integrity of the family as an institution. Accordingly, the Department has concluded that it is not necessary to prepare a Family Policymaking Assessment.

H. Review Under Executive Order 12630

Pursuant to E.O. 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights,'' 53 FR 8859 (March 18, 1988), the Department has determined that this proposed rule would not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

I. Review Under the Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516, note) provides for Federal agencies to review most disseminations of information to the public under information quality guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002). The Department has reviewed this proposed rule under the OMB guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Additional Executive Orders and Presidential Memoranda

The Department has examined this proposed rule and has determined that it is consistent with the policies and directives outlined in E.O. 14154, ''Unleashing American Energy,'' E.O. 14192, ''Unleashing Prosperity Through Deregulation,'' and Presidential Memorandum, ''Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis.'' This proposed rule is expected to be an Executive Order 14192 deregulatory action.

List of Subjects

29 CFR Part 775

Administrative practice and procedure, law enforcement, wages.

29 CFR Part 776

Construction industry, wages.

29 CFR Part 779

Reporting and recordkeeping requirements, wages.

29 CFR Part 782

Motor carriers, wages.

29 CFR Part 783

Seamen, wages.

29 CFR Part 784

Fisheries, seafood, wages.

29 CFR Part 789

Child labor, law enforcement, transportation, wages.

29 CFR Part 793

Radio, television, wages.

29 CFR Part 794

Petroleum, reporting and recordkeeping requirements, wages.

For the reasons set forth in the preamble, under the authority of 29 U.S.C. 201 *et seq.* the Department is proposing to amend chapter V, subchapter B of title 29 of the Code of Federal Regulations, as set forth below:

SUBCHAPTER B—OTHER REGULATIONS

■ 1. Retitle subchapter B.

[28] 61 FR 4729 (Feb. 7, 1996).

PART 775—[REMOVED AND RESERVED]

■ 2. Remove and reserve part 775, consisting of §§ 775.0 through 775.1.

PART 776—[REMOVED AND RESERVED]

■ 3. Remove and reserve part 776, consisting of §§ 776.0 through 776.30.

PART 779—[REMOVED AND RESERVED]

■ 4. Remove and reserve part 779, consisting of §§ 779.0 through 779.515.

PART 782—[REMOVED AND RESERVED]

■ 5. Remove and reserve part 782, consisting of §§ 782.0 through 782.8.

PART 783—[REMOVED AND RESERVED]

■ 6. Remove and reserve part 783, consisting of §§ 783.0 through 783.51.

PART 784—[REMOVED AND RESERVED]

■ 7. Remove and reserve part 784, consisting of §§ 784.0 through 784.156.

PART 789—[REMOVED AND RESERVED]

■ 8. Remove and reserve part 789, consisting of §§ 789.0 through 789.5.

PART 793—[REMOVED AND RESERVED]

■ 9. Remove and reserve part 793, consisting of §§ 793.0 through 793.21.

PART 794—[REMOVED AND RESERVED]

■ 10. Remove and reserve part 794, consisting of §§ 794.1 through 794.144.

Signed this 27th day of June, 2025.

Donald Harrison,

Acting Administrator, Wage and Hour Division.

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