a recognized SAA as provided in §§ 29.8(b) and 29.10 of this chapter; and

(e) *Derecognition.* A recognized SAA that fails to comply with the requirements of this section will be subject to derecognition proceedings, as provided in § 29.14 of this chapter.

§ 30.8 Exemptions.

Requests for exemption from these regulations, or any part thereof, must be made in writing to the Registration Agency and must contain a statement of reasons supporting the request. Exemptions may be granted for good cause by the Registration Agency. SAAs must receive approval to grant an exemption from the Administrator, prior to granting an exemption from these regulations.

Susan Frazier,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2025–12317 Filed 6–30–25; 8:45 am]

BILLING CODE 4510–FR–P

DEPARTMENT OF LABOR

Wage and Hour Division

29 CFR Part 552

RIN 1235–AA51

Application of the Fair Labor Standards Act to Domestic Service

AGENCY: Wage and Hour Division, Department of Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: In 1974, Congress applied the Fair Labor Standards Act (FLSA) to ''domestic service'' employees, but exempted employees who provide ''companionship services'' from the minimum wage and overtime requirements and also exempted live-in domestic service employees from overtime. In 1975, the Department promulgated regulations defining companionship services and permitting third party employers to claim these exemptions. These regulations remained substantially unchanged for nearly 40 years. In 2013, the Department revised the regulations to narrow the definition of companionship services and prevent third party employers from claiming either of the exemptions. Because the Department is concerned that the 2013 regulations might not reflect the best interpretation of the FLSA and might discourage essential companionship services by making these services more expensive, the Department is proposing to return to the 1975 regulations. This summary can be found at *https://www.regulations.gov* by searching by the RIN: 1235–AA51.

DATES: Comments must be received by September 2, 2025.

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1235–AA51, 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 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 September 2, 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 proposed 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 FLSA requires that most employees in the United States must be paid at least the federal minimum wage (currently $7.25 per hour) for all hours worked and overtime pay at not less than time and one-half the employee's regular rate of pay for all hours worked over 40 hours in a workweek.[1] The FLSA also requires covered employers to ''make, keep, and preserve'' certain records regarding employees,[2] though recordkeeping requirements are relaxed for employees who are exempt from the Act's wage and hour provisions.[3]

Prior to 1974, the FLSA's minimum wage and overtime compensation provisions did not apply to domestic service workers unless those workers were employed by covered enterprises (generally those that had at least a certain annual dollar threshold in business). In 1974, Congress amended the FLSA to extend coverage to all domestic service workers, including those employed by private households or small companies previously not covered by the Act.[4] At the same time, Congress created FLSA exemptions for two categories of domestic service employees. First, in section 13(a)(15), Congress added an exemption from the Act's minimum wage and overtime compensation requirements for ''any employee employed on a casual basis in

[1] *See* 29 U.S.C. 206(a), 207(a).

[2] *See* 29 U.S.C. 211(c).

[3] *See* 29 CFR part 516 Subpart B.

[4] *See* Fair Labor Standards Amendments of 1974, Public Law 93–259 § 7, 88 Stat. 55, 62 (1974).

domestic service employment to provide babysitting services or any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary).'' [5] Second, in section 13(b)(21), Congress added an exemption from the overtime requirement (but not the minimum wage requirement) for ''any employee who is employed in domestic service in a household and who resides in such household.'' [6] Finally, Congress authorized the Department ''to prescribe necessary rules, regulations, and orders with regard to the [1974 FLSA Amendments],'' [7] and specifically instructed the Department to ''define and delimit'' the terms ''domestic service employment'' and ''companionship services.'' [8]

In 1975, the Department promulgated regulations applying the FLSA to domestic service employment at 29 CFR part 552, including provisions addressing the companionship and live-in domestic service employee exemptions.[9] These regulations defined companionship services as ''fellowship, care, and protection for a person who . . . cannot care for his or her own needs,'' which included ''household work related to the person's care such as meal preparation, bed making, washing of clothes, and other similar services'' and could include other general household work not exceeding ''20 percent of the total weekly hours worked.'' [10] Additionally, the 1975 regulations permitted third party employers, or employers of home care workers other than the individuals receiving care or their families or households, to claim both the companionship services and live-in domestic service employee exemptions.[11]

These regulations remained substantially unchanged for almost 40 years. In 2007, the Supreme Court issued a unanimous decision affirming the validity of the third-party employer provision at 29 CFR 522.109 (1975), holding in relevant part that neither the statute nor the legislative history provides a definitive answer as to whether third-party employers may avail themselves of these exemptions and that the third-party employer regulation fell within the Department's broad scope of delegated rulemaking authority.[12]

In 2013, the Department published a final rule that revised its companionship services and live-in employee regulations.[13] Among other changes, the 2013 rule significantly narrowed the scope of the exemptions in two ways.

First, the 2013 rule altered the definition of exempt ''companionship services'' to include the provision of ''fellowship'' (such as social, physical, and mental activities), ''protection'' (meaning to be present with the person to monitor their well-being), and ''care'' (meaning assisting with activities of daily living, such as dressing, grooming, feeding, bathing, toileting, and transferring, and instrumental activities of daily living, such as meal preparation, light housework, managing finances, assistance with daily taking of medications, and arranging medical care), but only if such ''care'' does not exceed 20 percent of the total hours worked per person and per workweek.[14] These changes significantly reduced the scope of permissible job duties for exempt companion workers; whereas under the 1975 rule an exempt companion could engage in limitless care activities and the 20 percent limitation applied only to ''general household work,'' under the 2013 rule a worker subject to the exemption could only engage in ''the provision of care'' for a maximum of 20 percent of their weekly worktime. To justify these changes, the Department reasoned that ''companionship'' should be primarily focused on the provision of fellowship and protection, with a limited allowance for care, because dictionary definitions of the term ''companionship'' generally do not contemplate care, and because the legislative history included descriptions of exempt companions to ''someone to be there and watch an older person,'' or ''elder sitter.'' [15] The preamble to the 2013 rule further asserted that allowing for a 20 percent limitation on care achieved Congressional intent that an exempt companion's primary purpose should be watching over the individuals receiving services, while also recognizing a limited allowance for selected tasks as a matter of practicality.[16]

Second, the 2013 rule precluded any third party employers (like home care agencies) from claiming the exemption for companionship services or live-in domestic service employees.[17] Here, the Department reasoned that its interpretation under the 1975 rule improperly ignored the Congressional intent of the 1974 Amendments, which was to extend minimum wage and overtime protections to direct care workers engaged in this work as a vocation, as opposed to on a casual basis, and that workers employed by a third-party agency were not employed on a casual basis.[18]

Following the promulgation of the 2013 rule, associations representing third-party home care agencies sued the Department, asserting that the rule misinterpreted the FLSA and violated the Administrative Procedure Act. The United States District Court for the District of Columbia initially enjoined and subsequently vacated the 2013 rule's revisions to 29 CFR 552.6 (defining companionship) and 29 CFR 552.109 (prohibiting third-party employers from claiming the exemptions).[19] In its orders, the court asserted that these provisions contravened statutory intent, characterizing the 2013 rule as an attempt to ''redefin[e] a 40–year–old exemption out of existence.'' [20] The Department appealed to the United States Court of Appeals, District of Columbia Circuit, which reversed the District Court's vacaturs on August 21, 2015, concluding that the 2013 Rule was a valid exercise of the Department's delegated rulemaking authority to interpret the section 13(a)(15) and 13(b)(21) exemptions under *Chevron* deference.[21]

The 2013 rule became effective on October 13, 2015, when the D.C. Circuit issued the mandate for its decision upholding the rule. The Department began enforcing the rule on November 12, 2015.

II. Discussion

The Department proposes to rescind the 2013 rule in its entirety and return to the 1975 regulations which were promulgated soon after the amendments

[5] 29 U.S.C. 213(a)(15).

[6] 29 U.S.C. 213(b)(21).

[7] Public Law 93–259 § 29(b), 88 Stat. 76.

[8] 29 U.S.C. 213(a)(15).

[9] *See* 40 FR 7404 (Feb. 20, 1975).

[10] 40 FR 7405 (codified at 29 CFR 552.6).

[11] 40 FR 7407 (codified at 29 CFR 552.109).

[12] *See Long Island Care at Home, LTD.,* v. *Coke,* 551 U.S. 158 (2007).

[13] *See* 78 FR 60454 (Oct. 1, 2013).

[14] *See* 29 CFR 552.6; *see also* 78 FR 60463–73 (explaining the changes).

[15] *See* 78 FR 60464 (citing 119 Cong. Reg. S24773, S24801 (daily ed. July 19, 1973) and Webster's New World Dictionary, p. 288 (2d College Ed. 1972)).

[16] *See* 78 FR 60457.

[17] *See* 29 CFR 552.109.

[18] *See* 78 FR 60482.

[19] *See Home Care Association of America* v. *Weil,* 76 F.Supp.3d 138 (D.D.C 2014); *see also Home Care Association of America* v. *Weil,* 78 F.Supp.3d 123 (D.D.C. 2015).

[20] 78 F.Supp.3d at 130.

[21] *See Home Care Association of America* v. *Weil,* 799 F.3d 1084, 1090–96 (D.C. Cir. 2015).

to the FLSA and were in place for nearly 40 years. The Department has reviewed the 2013 regulations and now questions whether the 1975 regulations better comport with the statute and Congress's intent to exempt home care employees from FLSA coverage. Returning to the 1975 regulations would also significantly reduce regulatory burden for the consumers and providers of home care services, which in turn could help to expand access to home care services. The Department welcomes comment on these preliminary assessments. While the discussion below focuses on the two major proposed changes to 29 CFR 552.6 and 29 CFR 552.109, returning to the 1975 regulations would result in other changes to 29 CFR part 552, such as 29 CFR 552.109 concerning live-in domestic service employees. The Department invites comment on the proposal to return to the 1975 regulations in their entirety.

A. Restoring the Ability of Third-Party Employers To Claim the Section 13(a)(15) ''Companionship Services'' Exemption and Section 13(b)(21) Exemption for ''Live-In'' Domestic Service Workers

The Department is proposing to return to 1975 regulations' application of the companionship services and live-in domestic service employee exemptions to third party employers. As noted earlier, section 13(a)(15) exempts from minimum wage and overtime requirements ''any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves (as such terms are defined and delimited by regulations of the Secretary),'' while section 13(b) exempts from the overtime compensation requirements ''any employee who is employed in domestic service in a household and who resides in such household.'' [22] These statutory provisions do not explicitly or implicitly exclude third party employers of employees engaged in companionship services or live-in domestic service from the exemptions. While other FLSA exemptions specify employer-related exemption criteria,[23] nothing in the statutory language exempting companion workers and live-in domestic service employees suggests that third party employers are treated differently from other employers. The Department is considering whether the best interpretation of this language is that if Congress intended to narrow the exemption, it would have said so explicitly, as it has done for many other categories in the FLSA. For example, babysitters are exempt from minimum wage and overtime, but only if they are ''employed on a casual basis.'' [24]

Permitting third party employers to claim the companionship services exemption would be consistent with the Department's contemporaneous understanding of the 1974 FLSA Amendments.[25] In 1975, the Department concluded after notice-and-comment rulemaking that the new exemptions for companions and live-in domestic service workers should be available to third party employers ''since these exemptions . . . apply to 'any employee' engaged 'in' the enumerated services,'' remarking that this interpretation would be ''consistent with the statutory language and prior practices concerning other similarly worded exemptions.'' [26] In 2007, when the U.S. Supreme Court unanimously upheld the legality of the 1975 Rule's third party employer provision, the Court concluded that ''more than 30 years later [this reasoning] remains a reasonable, albeit brief, explanation.'' [27]

The Department acknowledges that it adopted a narrower interpretation of the section 13(a)(15) exemption in the 2013 rule, which was subsequently upheld by the U.S. Court of Appeals for the D.C. Circuit in *Home Care Association of America* v. *Weil,* 799 F.3d 1084 (D.C. Cir. 2015), *cert. denied,* 579 U.S. 927 (2016). However, the Department is considering the effect of a recent Supreme Court decision, *Loper Bright Enterprises* v. *Raimondo,* 603 U.S. 369 (2024), on the legal foundation that underpinned the Department's 2013 rule and the D.C. Circuit's subsequent approval of that rule.

In the *Loper Bright* decision issued last year, the Supreme Court eliminated ''Chevron deference,'' a doctrine of administrative law which previously required courts to defer to agency interpretations of ambiguous statutes so long as such interpretations were ''permissible.'' [28] Going forward under *Loper Bright,* the only ''permissible'' interpretation of a statute is the one that courts—and not federal agencies—determine is the ''best reading'' of the statute.[29] Some employers have argued that because of *Loper Bright,* the 2013 rule's third party employer provision is no longer valid. The Department has thus far taken the position in litigation that the 2013 rule is still valid despite the 2024 *Loper Bright* decision, but is now taking a fresh look at arguments to the contrary.

In sum, the Department seeks to determine whether, with respect to third party employers, its original interpretation of the section 13(a)(15) and 13(b)(21) exemptions is the better reading of the FLSA's statutory text. The Department welcomes comment on this issue.

B. Limits on the Provision of Care by Exempt Companion Workers

As with third party employment, the Department is considering whether to restore the definition of ''companionship services'' reflected in the Department's pre-2013 regulations. Among other changes, the 2013 rule changed the definition from ''fellowship, care, and protection'' to ''fellowship and protection.'' [30] The 2013 regulations permit some ''care,'' but only up to 20 percent of the total hours worked.[31] While the 1975 regulations wholly included ''household work related to the person's care . . . such as meal preparation, bed making, washing of clothes,'' the 2013 regulations limited the time that could be spent on such services.

The statutory exemption applies to work done for those people who ''are unable to care for themselves.'' [32] By definition, these people need ''care,'' not just fellowship and protection. Thus, basic meal preparation, bed making, and washing of clothes is an important part of companionship services. The Department has tentatively determined that the 1975 regulations more sensibly restricted the companionship services exemption to ''those services which provide fellowship, *care,* and protection.'' [33] ''Indeed, what services could possibly

[22] *See* 29 U.S.C. 213(a)(15), 213(b)(21).

[23] *See, e.g.,* 29 U.S.C. 13(a)(6) (exempting ''any employee employed in agriculture'' if, among other criteria, ''such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agricultural labor''); *id.* at 13(b)(9) (exempting ''any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located [in a low-population area]''); *see also* 29 U.S.C. 213(a)(1) (providing a special tolerance for the performance of nonexempt work by exempt executive and administrative employees ''of a retail or service establishment'').

[24] *See* 29 U.S.C. 213(a)(15).

[25] *See Loper Bright Enterprises* v. *Raimondo,* 603 U.S. 369, 386 (2024) (''[T]he contemporaneous construction of those who were called upon to act under the law, and were appointed to carry its provisions into effect, is entitled to very great respect.'') (citations omitted).

[26] 40 FR 7405.

[27] *Long Island Care at Home,* 551 U.S. at 175.

[28] *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.,* 467 U.S. 837, 843 (1984).

[29] *Loper Bright,* 603 U.S. at 400.

[30] 29 CFR 552.6(a).

[31] 29 CFR 552.6(b).

[32] 29 U.S.C. 213(a)(15).

[33] 40 FR 7405 (codified at 29 CFR 552.6).

be required more by those 'unable to care for themselves' than care itself?'' [34] While the 1975 companionship services exemption did not include care provided by ''trained personnel such as nurses,'' the Department is considering whether the exemption should once again apply to ''household work related to the care of the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services.'' [35]

In the 2013 rule, the Department justified its limitation of care-related duties by analogizing exempt companions to babysitters, citing to remarks in the legislative history of the 1974 FLSA Amendments which described the role of an exempt companion to include passive activities such as ''sit[ting]'' and ''watch[ing].'' [36] The Department is reevaluating these arguments, cognizant that the Department's regulations have always recognized that fellowship and protection are elements of exempt companionship services. More fundamentally, ''[b]abysitters provide care—assistance with activities of daily living and instrumental activities of daily living—to the extent the children they are watching are unable to care for themselves.'' [37] For example, babysitters are often responsible for feeding, bathing, and changing the diapers of young children, and often prepare food and drive children to places they cannot reach on their own.[38] While the Department has long advised that ''[t]he term 'babysitting services' does not include services relating to the care . . . of infants or children which are performed by trained personnel, such as registered, vocational, or practical nurses,'' [39] the regulation for casual babysitters who are exempt under section 13(a)(15) do not otherwise place any limitation on a babysitter's provision of care. The Department now believes the regulation for exempt companions should not be any more restrictive.

Thus, the Department is proposing to restore ''care'' alongside ''fellowship'' and ''protection'' as an example of exempt ''companionship services,'' consistent with its contemporaneous interpretation of the FLSA as reflected in the 1975 Rule. The Department welcomes comment on this proposal and the reasoning behind it.

C. Policy Considerations Germane to the Purpose of the FLSA's Exemption for Companions and Live-In Domestic Service Employees

As discussed more fully in the regulatory impact analysis in section III(A) of this notice, the Department has tentatively determined that the 2013 rule has had negative effects on the ground which are hindering consumer access to home- and community-based services. These consequences are contrary to the policy goals that motivated Congress' decision to include the section 13(a)(15) and 13(b)(15) exemptions in the 1974 FLSA Amendments.[40]

For example, one study by the U.S. Government Accountability Office (GAO) found that home care providers and states administering Medicaid-financed home care programs responded to the 2013 rule by imposing hours restrictions for home care employees to avoid overtime costs.[41] GAO elaborated that these policies ''exacerbated'' the challenge for consumers to obtain home care, with ''a few stakeholders, including worker and consumer advocacy groups, [reporting] that some consumers have had to hire additional workers . . . making it particularly difficult to find enough workers to cover their needs.'' [42] While incentivizing employers to spread employment is one of the major policy goals of the FLSA's overtime requirement,[43] Congress has enacted exemptions to the overtime requirement in occupations and industries where spreading employment is difficult, unnecessary, or otherwise undesirable, such as the FLSA's section 13(a)(1) exemption for bona fide professional employees, which includes doctors, lawyers, and teachers.[44] As with such professional employees (particularly teachers), the shortage of qualified workers in the home care industry [45] and the paramount importance of trust and continuity between home care workers and the individuals who they help caution against an unduly narrow reading of the FLSA's section 13(a)(15) and 13(b)(21) exemptions.

As expected, the 2013 rule has resulted in increased costs for home care providers, such as increased recruiting, hiring, and training costs.[46] Additionally, the complicated definitions and reporting regime introduced by the 2013 rule has been burdensome to implement.[47] However, some of the expected benefits of the 2013 rule have failed to fully materialize. For example, GAO's 2020 report concluded that hourly wages and weekly earnings for home care workers ''did not significantly increase'' following implementation of the 2013 rule when compared to those in occupations with similar entry requirements.[48] The turnover rate for home care workers remains stubbornly high—nearly 80 percent in 2024,[49] comparable to the range of estimates provided in the 2013 rule (spanning 44 to 100 percent).[50] And although the Department predicted in 2013 that ''guarantee[ing] minimum wage and overtime compensation for home care jobs . . . will attract more workers to the home care industry,'' [51] growth in the home care workforce ''slowed'' in the years following the 2013 rule, with ''the number of home care workers per 100 [individuals receiving home and community-based services] declin[ing] by 11.6 percent between 2013 and 2019.'' [52] These findings call into question whether the benefits of the 2013 rule truly exceeded its costs.

For all of the reasons discussed above, the Department proposes to amend 29 CFR part 552 by rescinding the 2013

[34] *Home Care Association of America,* 78 F.Supp.3d at 128, *rev'd on other grounds,* 799 F.3d 1084.

[35] *Id.*

[36] 78 FR 60464.

[37] *See Home Care Association of America,* 78 F.Supp.3d at 129.

[38] *Id.*

[39] 29 CFR 552.4; *see also* 40 FR 7405 (same).

[40] The section 13(a)(15) companionship services exemption originated from the concerns of a Louisiana constituent who wrote that extending the minimum wage to her elderly mother's paid companion would make the companion prohibitively expensive and force the constituent to quit her job and care for her mother herself. *See* 19 Cong. Rec. 24,797 (1973) (statement of Sen. Dominick); *see also* Molly Bilken, *Healthcare in the Home: Reexamining the Companionship Services Exemption to the Fair Labor Standards Act,* 35 Colum. Hum. Rts. L. Rev. 113, 125–26 (2003) (discussing Senate floor debate over the constituent's letter).

[41] *See* U.S. Gov't. Accountability Off., GAO–21–72, *Observations on the Effects of the Home Care Rule* 8 (October 2020), *https://www.gao.gov/assets/gao-21-72.pdf.*

[42] *Id.* at 23.

[43] *See, e.g., Overnight Motor Transportation Co.* v. *Missel,* 316 U.S. 572, 577–78 (1942).

[44] *See* 29 U.S.C. 213(a)(1).

[45] *See* section III(A)(3), *infra.*

[46] *See* GAO 21–72, *supra* n. 41, at 17.

[47] *Id.; see also* Heather Madden, *Policy Focus: Free Caregivers and Repeal the Home Care Rule,* Independent Women's Forum 2 (May 1, 2025) (asserting that ''burdensome recordkeeping requirements discourage many individuals from engaging in [in-home] caregiving''), *https://www.iwf.org/wp-content/uploads/2025/04/0525PF_The-Home-Care-Rule.pdf.*

[48] GAO 21–72, *supra* n. 41, at 18–20.

[49] Joyce Famakinwa, *Home Care's Industry-Wide Turnover Rate Reaches Nearly 80%,* Home Healthcare News (July 3, 2024), *https://homehealthcarenews.com/2024/07/home-cares-industry-wide-turnover-rate-reaches-nearly-80/.*

[50] *See* 78 FR 60543.

[51] 78 FR 60548.

[52] Amanda R. Kreider & Rachel M. Warner, *The Home Care Workforce Has Not Kept Pace With Growth In Home and Community-Based Services,* Health Affairs, vol. 42, no. 5, p. 650 (May 2023), *https://www.healthaffairs.org/doi/epdf/10.1377/hlthaff.2022.01351.*

rule in its entirety and returning to the 1975 regulations. The Department invites public comment on this proposal and the preliminary assessments behind it. The Department specifically invites comment on whether these changes are likely to increase the supply of qualified home health workers, and whether the proposal is likely to decrease regulatory burden on home care consumers and providers.

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 requirements of the Executive Order and OMB review.[53] 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 economically significant under section 3(f) of Executive Order 12866.

Executive Order 13563 directs agencies to, among other things, propose or adopt a regulation 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 from this proposed rule 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

The Fair Labor Standards Act (FLSA or Act) requires that covered, nonexempt employees be paid not less than the Federal minimum wage for all hours worked and overtime pay at one and one-half times the regular rate of pay for hours worked over 40 in a workweek. However, section 13(a)(15) of the FLSA provides an exemption from the Act's minimum wage and overtime pay requirements for ''any employee employed in domestic service employment to provide companionship services for individuals who (because of age or infirmity) are unable to care for themselves.'' [54] Similarly, section 13(b)(21) of the FLSA provides an exemption from the Act's overtime pay requirement—but not its minimum wage requirement—for live-in domestic service workers, who are defined as ''any employee who is employed in domestic service in a household and who resides in such household.'' [55]

In this rulemaking, the Department proposes to reverse regulatory changes introduced by the 2013 final rule entitled, ''Application of the Fair Labor Standards Act to Domestic Service.'' [56] Specifically, the Department proposes to restore the ability of third-party employers (including home care staffing agencies) to claim the FLSA's section 13(a)(15) companionship services exemption and the section 13(b)(21) exemption for live-in domestic service workers, and to eliminate limitations on ''the provision of care'' by employees who are exempt under the companionship services exemption.

2. Need for Rulemaking

The Department has carefully reviewed the 2013 final rule and is considering whether its pre-2013 regulations better comport with the FLSA's statutory language and Congress's intent to exempt home care employees from FLSA coverage. Returning to the Department's pre-2013 regulations could also significantly reduce regulatory burden and help to expand access to home care services, consistent with policy goals that inform the FLSA's exemptions for companion employees and live-in domestic service employees.

3. Baseline Conditions and Affected Populations

According to available data from the Bureau of Labor Statistics (BLS), in 2023, there were approximately 3.7 million ''Home Health and Personal Care Aides'' employees in the United States.[57] Consistent with the methodology used to estimate the number of affected workers in the 2013 rule, the Department believes that this figure represents an upper bound estimate of the total number of home care workers ''employed by agencies'' who could be affected by this proposed rule.[58] The Department notes, for example, that some of these 3.7 million workers would ''[remain] covered by minimum wage and overtime protections at the state level,'' [59] while others might be ''employed in facilities, such as nursing homes and hospitals,'' [60] and therefore are not domestic service employees eligible to be classified as exempt companions or live-in domestic service employees under sections 13(a)(15) or 13(b)(21) of the FLSA. However, this estimate might not account for workers in other occupations who might be affected by this proposed rule, such as live-in nannies.[61] The Department welcome feedback from the public on ways to refine this upper-bound estimate of workers employed by agencies who might be affected by this rule.

Data limitations continue to make it difficult to estimate the number of ''independent providers'' who might be affected by this rulemaking, *i.e.,* home care workers employed directly by a consumer or a member of the consumer's family or household.[62] Last year, the Paraprofessional Healthcare Institute (PHI) estimated that there were ''at least 1.5 million home care workers, including family members . . .

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

[54] 29 U.S.C. 213(a)(15).

[55] *See* 29 U.S.C. 213(b)(21).

[56] 78 FR 60454.

[57] *See* Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment and Wages, May 2023, 31–1120 Home Health and Personal Care Aides (visited June 17, 2025), *https://www.bls.gov/oes/2023/may/oes311120.htm?utm.* This figure does not include self-employed home care workers.

[58] *See* 78 FR 60519–20 (adding the number of employees in BLS' then-separate occupation codes for ''Home Health Aides'' and ''Personal Care Aides'' to estimate that there were ''approximately 1.75 million direct care workers employed by agencies in 2011'').

[59] 78 FR 60520.

[60] *Id.*

[61] *See* Madden, *supra* n. 47, at 4.

[62] *See* 78 FR 60512 (discussing data limitations in estimating the number of independent providers potentially affected by the 2013 rule).

employed as 'independent providers' through Medicaid-funded consumer-direction programs, based on 2022–2023 survey data on consumer enrollment in these programs.'' [63] The Department will use this 1.5 million figure as its upper bound estimate for the number of independent providers potentially affected by this proposed rule, keeping in mind that it includes workers who might remain covered by minimum wage and overtime requirements under state law. The Department welcomes feedback on this choice.

According to the Bureau of Labor Statistics (BLS), ''home health and personal care aides'' monitor the condition of people with disabilities or chronic illnesses and help them with daily living activities.[64] In addition to these general duties, ''home health aides'' perform basic health-related services—such as checking a client's pulse, temperature, and respiration rate—depending on the state in which they work.[65] ''Personal care aides,'' sometimes called caregivers or personal attendants, are generally limited to providing nonmedical services, including companionship, cleaning, cooking, and driving.[66] The median pay for home health and personal care aides is $16.78 per hour, with median annual earnings of $34,900 per year.[67] According to PHI, 84 percent of home care workers are women, 67 percent are non-white, and 32 percent are immigrants.[68]

The home care workforce is projected to experience rapid growth in future years to meet the demands of an aging U.S. population.[69] For example, the Bureau of Labor Statistics (BLS) has projected that the demand for ''home health and personal care aide'' workers will grow 21 percent from 2023 to 2033, much faster than the 4 percent average for all occupations.[70] Indeed, the home care workforce has already doubled in size over the past ten years, growing from 1.4 million home care workers in 2014 to more than 2.9 million in 2023.[71]

Despite this growth, the supply of home care workers is failing to keep pace with the growing demand for home care services.[72] According to a 2023 industry report, ''the workforce shortage in home-based care has reached crisis proportions,'' with ''home health care providers [reporting that they turn] away over 25% of referred patients due to staff shortages.'' [73] Although the Department predicted in the regulatory impact analysis for its 2013 rule that ''guarantee[ing] minimum wage and overtime compensation for home care jobs . . . will attract more workers to the home care industry,'' [74] growth in the home care workforce ''slowed'' in the years following the 2013 rule, resulting in ''the number of home care workers per 100 [individuals receiving home and community-based services] declin[ing] by 11.6 percent between 2013 and 2019.'' [75]

In the absence of this rulemaking, home care workers and other live-in domestic service employees would continue to be entitled to minimum wage and overtime pay if they are employed by a ''third party'' employer, such as a home care agency that supplies workers in an ''agency-directed model'' of home care.[76] Additionally, independent providers who are currently exempt companions would likely continue spending no more than 20 percent of their weekly worktime providing ''care'' to the individuals they serve, which is a requirement to remain exempt under the current regulations.[77] The Department assumes that many nonexempt companion workers employed by third party employers presently spend more than 20 percent of their weekly worktime providing ''care'' to individuals, as the 20 percent limit on care introduced in the 2013 rule only applies to companion workers who are exempt. The Department welcomes comment on these assumptions, which inform the baseline scenario used to measure the potential effects of this rulemaking.

4. Anticipated Benefits, Costs, and Transfers

As noted earlier, the Department assumes that there are 3.7 million home care workers employed by third-party agencies, and an additional 1.5 million home care workers employed directly by a consumer (or their family or household) who are commonly described as ''independent providers.'' [78] Under this proposal, some or all of the 3.7 million home care workers employed by third-party agencies could become newly exempt under the FLSA as a consequence of the proposed changes third party employment in section 552.109, but some of these workers may not be affected as a practical matter if they remain subject to minimum wage and overtime pay requirements under state law. While the estimated 1.5 million independent providers would not be affected by the proposed changes to third party employment in section 552.109, some of these workers could have greater care-giving responsibilities as a consequence of the proposed changes to the definition of ''companionship services'' in section 552.6—at least to the extent that these independent providers presently are (and would remain) FLSA-exempt companions.

i. Benefits

The Department expects that its proposal to revert to the pre-2013 regulations would reduce the cost of home care services by providing home care staffing agencies with greater scheduling flexibility and reduced labor costs for home care workers who become newly exempt. Relatedly, this rulemaking could obviate compliance costs related to recordkeeping and other costs for home care providers, such as increased hiring, recruiting, and training costs, that stakeholders have asserted

[63] PHI, *Direct Care Workers in the United States: Key Facts 2024,* 8 (2024), *https://www.phinational.org/wp-content/uploads/2024/09/PHI_Key_Facts_Report_2024.pdf.*

[64] *See* Bureau of Labor Statistics, U.S. Department of Labor, Occupational Outlook Handbook: Home Health and Personal Care Aides (April 18, 2025), *https://www.bls.gov/ooh/healthcare/home-health-aides-and-personal-care-aides.htm.*

[65] *Id.* (described in the ''What They Do'' tab)

[66] *Id.*

[67] *Id.*

[68] *See* PHI, *supra* n. 63, at 6–7.

[69] The U.S. Census Bureau projects that in 2050, the U.S. population for individuals ages 65 and over will be 83.9 million, which is almost double what it was (43.1 million) in 2012. *See* U.S. Census Bureau, *An Aging Nation: The Older Population in the United States* (2014), *https://www.census.gov/library/publications/2014/demo/p25-1140.html.*

[70] U.S. Bureau of Labor Statistics, *Occupational Outlook Handbook: Home Health and Personal Care Aides* (visited June 23, 2025), *https://www.bls.gov/ooh/healthcare/home-health-aides-and-personal-care-aides.htm#tab-6.*

[71] PHI, *supra* n. 63, at 8.

[72] *Id.* at 5 (''[H]ome care employers continue to struggle to recruit and retain enough workers to meet escalating demand.'').

[73] Home Care Association of America & National Association for Home Care & Hospice, *The Home Care Workforce Crisis: An Industry Report and Call to Action* 1 (March 2023), *https://www.hcaoa.org/uploads/1/3/3/0/133041104/workforce_report_and_call_to_action_final_03272023.pdf.*

[74] 78 FR 60548.

[75] Amanda R. Kreider & Rachel M. Warner, *The Home Care Workforce Has Not Kept Pace With Growth In Home and Community-Based Services,* Health Affairs, vol. 42, no. 5, p. 650 (May 2023), *https://www.healthaffairs.org/doi/epdf/10.1377/hlthaff.2022.01351.*

[76] *See* GAO 21–72, *supra* n. 41, at 8.

[77] *See* 29 CFR 552.6(b).

[78] These home care workers are ''independent'' in the sense that their employment is unaffiliated with a third-party provider, not that they are self-employed independent contractors. Independent providers are typically employees of the consumers they serve, or the families or households of those consumers. However, it is possible that an independent provider could be an independent contractor rather than an employee for the purposes of the FLSA. *See* 78 FR 60484. The Department welcomes comment on the extent to which some of the estimated 1.5 million independent providers might be independent contractors.

are attributable to the 2013 rule.[79] This would result in direct costs savings for employer home care agencies and potential indirect cost savings for the consumers of home care services and for Federal and State governments, which reimburse home care services through Medicaid.[80]

The Department additionally expects that this NPRM, if adopted, would expand access to home care services. By lowering labor costs, the proposed rule may encourage more providers to enter or expand operations in the home care market, increasing the availability of home care services for aging and disabled populations. Relatedly, easier access to home-based care may delay or prevent placement in more expensive institutional settings, aligning with federal and state policies favoring HCBS. Consumers who would prefer one home care worker, rather than having multiple people assist them with sensitive activities such as bathing and toilet use, would benefit from the proposed rule to the extent that it lessens incentives to spread jobs across multiple workers.

Finally, workers who are, in the baseline, employed by multiple home care agencies (working more than 40 hours per week in total) may be able to consolidate their employment with one agency, thus yielding a convenience-related benefit.

The Department welcomes comment on the likelihood of these potential benefits and the extent to which they offset or outweigh the potential costs of this rulemaking, discussed below.

ii. Costs

Under the NPRM, many home care workers presently employed by third party agencies would become newly exempt and lose the right to receive minimum wage and overtime pay under the FLSA. Losing the right to receive the federal minimum wage would not affect most workers, as the median hourly wage for home health and personal care aides was $16.12 per hour in 2023—well above the $7.25 per hour federal minimum wage.[81] However, losing the right to receive overtime pay could result in home care workers working additional overtime hours at straight-time pay and/or receiving less pay for the overtime work they would perform in the absence of this proposed rule. These potential effects—longer work hours and/or less pay—could negatively impact the morale of affected home care workers and lead to increased employee turnover and difficulty attracting skilled workers to the industry.[82]

Additionally, the Department anticipates that a final rule similar to this proposal would result in modest regulatory familiarization costs. Although the proposed rule would not impose any new regulatory requirements on home care agencies or consumers that these stakeholders would need to learn about, the Department expects that home care agencies, consumers, and home care workers would choose to spend time learning about this rulemaking if it is finalized. Such familiarization costs would be modest because the effects of the proposed rule are fairly straightforward.

iii. Transfers

The proposed rule would likely result in a transfer of income from domestic workers to employers, state Medicaid programs, and private consumers. The majority of this income transfer would come from home care workers currently employed by third party employers, who could become newly exempt from minimum wage and overtime pay as a consequence of this rulemaking. This transfer is not a net cost to society but represents a redistribution of income and purchasing power.

As noted earlier, the majority of this income transfer would be attributable to avoided overtime premiums, as most of home care workers affected by this rulemaking are paid well above the FLSA's $7.25 per hour minimum wage. The Department notes that, while it had previously anticipated significant transfers from employers to home care workers in the form of overtime earnings, GAO's 2020 report concluded that earnings ''did not significantly increase'' following implementation of the 2013 final rule.[83] This may be because the Department did not anticipate the extent to which affected employers would respond to the 2013 final rule by reducing the hours of their home care employees, thereby avoiding overtime pay and reducing regular earnings.[84] The transfer resulting from rescission of the 2013 final rule is thus likely to be more muted than the Department's 2013 analysis suggested. This transfer effect could also be mitigated to the extent that third party home care providers respond to this rulemaking by allowing exempt home care workers to work longer hours than if such workers were nonexempt.[85] The Department welcomes comments on what transfer effects may occur in light of how employers may respond to the rescission of the 2013 final rule.

5. Discussion of Regulatory Alternatives

The Department considered two alternatives to this proposal. First, the Department considered the alternative of preserving the status quo under the current regulations. This alternative was rejected for the reasons discussed earlier in sections II and III(A)(2) of this notice. Second, the Department considered the alternative of retaining some changes from the 2013 rule in lieu of a wholesale return to the pre-2013 regulations—specifically, retaining all changes to the regulatory text in part 552 introduced by the 2013 rule *except* for the third party provision codified at 29 CFR 552.109 and limits on ''the provision of care'' codified in 29 CFR 552.6(b). This approach would, for example, keep the 2013 rule's updated definition of the job duties which constitute ''care'' and its removal of outdated domestic service worker examples like ''governesses,'' ''footmen,'' and ''grooms.'' The Department invites comments on these two regulatory alternatives, as well as other regulatory alternatives that commenters may propose.

6. Conclusion

The proposed rule is anticipated to result in numerous benefits, including potentially significant reductions in the cost of obtaining and providing home care services. These benefits must be weighed against likely reductions in employee earnings and worker protections. Given these tradeoffs, the Department seeks public comment and empirical data to better quantify the proposed rule's effects (perhaps by updating quantitative inputs used in the analysis accompanying the 2013 final rule) and ensure that any final rule appropriately balances the interests of consumers, workers, and providers.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA),

[79] *See* GAO 21–72, *supra* n. 41, at 17.

[80] *See* Alice Burns, Maiss Mohamed, & Molly O'Malley Watts, *What is Medicaid Home Care (HCBS)?*, KFF (Feb. 18, 2025), *https://www.kff.org/medicaid/issue-brief/what-is-medicaid-home-care-hcbs/.*

[81] *See* 29 U.S.C. 206(a)(1).

[82] *See* Home Care Association of America, *supra* n. 76, at 5 (stating that direct care workers have a 64 percent turnover rate within their first year of hire, attributable in part to ''low pay'' and ''burnout'').

[83] GAO 21–72, *supra* n. 44, at 18–20.

[84] *Id.* (finding that ''home care workers were less likely to work overtime following implementation of the [2013 final rule]'').

[85] *See* GAO–21–72, *supra* n. 44, at 13 (noting that ''some states restricted home care workers hours to limit overtime costs in their Medicaid programs in response to the [2013 final rule]'').

hereafter jointly referred to as the RFA, requires that an agency prepare an initial regulatory flexibility analysis (IRFA) when proposing, and a final regulatory flexibility analysis (FRFA) when issuing, regulations that will have a significant economic impact on a substantial number of small entities. Because this proposed rule would have a significant (beneficial) impact on a significant number of small entities in the home care industry, the Department has prepared this IRFA.

1. Reasons Why Action by the Agency Is Being Considered and Statement of Objectives and Legal Basis for the Proposed Rule

The FLSA generally requires that employees be paid at least the Federal minimum wage, currently $7.25 per hour, for every hour worked and at least one and one-half times their regular rate of pay for each hour worked over 40 in a single workweek. 29 U.S.C. 206(a), 207(a). Prior to 1974, the FLSA's minimum wage and overtime compensation provisions did not apply to domestic service workers. In 1974, Congress revised the FLSA to extend coverage to all domestic service workers, however, Congress included an exemption from the minimum wage and overtime compensation requirements for domestic service workers who provide ''companionship services'' and an exemption from the overtime compensation requirement for live-in domestic service workers. In 1975, the Department promulgated regulations implementing the companionship and live-in domestic service employee exemptions. These regulations defined companionship services as ''fellowship, care, and protection,'' which included ''household work . . . such as meal preparation, bed making, washing of clothes, and other similar services'' and could include other general household work not exceeding ''20 percent of the total weekly hours worked.'' Additionally, the 1975 regulations permitted third party employers, or employers of home care workers other than the individuals receiving care or their families or households, to claim both the companionship services and live-in domestic service employee exemptions.

In 2013, the Department revised its companionship services and live-in employee regulations. The 2013 regulations defined ''companionship services'' narrowly to encompass only workers providing limited, non-professional services. And the regulations precluded third party employers (like home care agencies) from claiming the exemption for companionship services or live-in domestic service employees.

The Department proposes to rescind the 2013 regulations and restore the 1975 standards that applied following the amendments to the FLSA. 29 CFR part 552. The Department is also requesting comment on reasons to keep or rescind the 2013 home care regulations, the best definition of companionship services, and whether third party employers should be covered by the exemption under the best reading of the FLSA. The Department also seeks comment on the 2013 regulations' consistency with statutory authority, and costs and benefits.

2. Description of the Number of Small Entities to Which the Recission Will Apply

The 2013 regulation defines a ''small entity'' as a (1) small not-for-profit organization, (2) small governmental jurisdiction, or (3) small business. The Department used standards defined by SBA to classify entities as small for the purpose of this analysis. For the two industries that are the focus of this analysis, the SBA defines a small business as one that has average annual receipts of less than $19 million for Home Health Care Services (HHCS, NAICS 621610) and $15 million for Seniors and Elderly Persons with Disabilities (SEPD, NAICS 624120). Based on the 2022 Statistics of U.S. Businesses (SUSB) data, there are 27,140 small businesses in the HHCS industry (96 percent of all business), and 32,899 small business in the SEPD industry (96 percent of all business). Thus, this rulemaking could impact 60,039 small businesses.

3. Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule

There are no reporting or recordkeeping requirements associated with this rescission. Thus, the only direct costs to affected entities would be rule familiarization costs.

4. Relevant Federal Rules Duplicating, Overlapping, or Conflicting With the Proposed Rule

The Department is unaware of any Federal rules which duplicate, overlap, or conflict with the proposed rule.

5. Discussion of Regulatory Alternatives

The Department considered two alternatives to this proposal. First, the Department considered the alternative of preserving the status quo under the current regulations. This alternative was rejected for the reasons discussed earlier in sections II and III(A)(2) of this notice. Second, the Department considered the alternative of retaining some changes from the 2013 rule in lieu of a wholesale return to the pre-2013 regulations—specifically, retaining all changes to the regulatory text in part 552 introduced by the 2013 rule except for the third party provision codified at 29 CFR 552.109 and limits on ''the provision of care'' codified in 29 CFR 552.6(b). This approach would, for example, keep the 2013 rule's updated definition of the job duties which constitute ''care'' and its removal of outdated domestic service worker examples like ''governesses,'' ''footmen,'' and ''grooms.'' The Department welcomes comment on these regulatory alternatives, particularly regarding whether the Department should retain any changes from the 2013 rule which are not implicated by the legal and policy considerations motivating this rulemaking.

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.

As part of its continuing effort to reduce paperwork and respondent burden, the Department conducts a preclearance consultation program to provide the public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. *See* 44 U.S.C. 3506(c)(2)(A). This activity helps to ensure that the public understands the Department's collection instructions, respondents can provide the requested data in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the Department can properly assess the impact of collection requirements on respondents.

A Federal agency may not conduct or sponsor a collection of information unless it is approved by the Office of Management and Budget (OMB) under the PRA and it displays a currently valid OMB control number. The public is also not required to respond to a collection of information unless it displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person

will be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

This rulemaking potentially affects the existing information collection designated as OMB Control Number 1235–0018, *Records to be kept by Employers—Fair Labor Standards Act.* Any changes to this collection will be communicated through an upcoming 60-day **Federal Register** Notice.

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 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.

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 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 UMRA and its statement of policy and determined that the rule does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of $100 million or more (adjusted for inflation) 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 UMRA do not apply.

J. Review Under Additional Executive Orders and Presidential Memoranda

This proposed rule is expected to be an Executive Order 14192 deregulatory action. It also implements Presidential Memorandum *Directing the Repeal of Unlawful Regulations,* dated April 9, 2025.

List of Subjects in 29 CFR Part 552

Minimum wages; Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department is proposing to amend part 552 of chapter V, subchapter A of title 29 of the Code of Federal Regulations, as set forth below:

PART 552—APPLICATION OF THE FAIR LABOR STANDARDS ACT TO DOMESTIC SERVICE

■ 1. The authority citation for part 552 continues to read as follows:

Authority: 29 U.S.C. 213(a)(15), (b)(21), 88 stat. 62; Sec. 29(b) of the Fair Labor Standards Act Amendments of 1974 (Pub. L. 93–259, 88 Stat. 76).

■ 2. Revise § 552.3 to read as follows:

§ 552.3 Domestic service employment.

As used in section 13(a) (15) of the Act, the term ''domestic service employment'' refers to services of a household nature performed by an employee in or about a private home (permanent or temporary) of the person by whom he or she is employed. The term includes employees such as cooks, waiters, butlers, valets, maids, housekeepers, governesses, nurses, janitors, laundresses, caretakers, handymen, gardeners, footmen, grooms, and chauffeurs of automobiles for family use. It also includes babysitters employed on other than a casual basis. This listing is illustrative and not exhaustive.

■ 3. Revise § 552.6 to read as follows:

§ 552.6 Companionship services.

As used in section 13(a)(15) of the Act, the term ''companionship services'' shall mean those services which provide fellowship, care, and protection for a person who, because of advanced age or physical or mental infirmity, cannot care for his or her own needs. Such services may include household work related to the care of- the aged or infirm person such as meal preparation, bed making, washing of clothes, and other similar services. They may also include the performance of general household work; Provided however, That such work is incidental, *i.e.,* does not exceed 20 percent of the total weekly hours worked. The term ''companionship services'' does not include services relating to the care and protection of the aged or infirm which require and are performed by trained personnel, such as a registered or practical nurse. While such trained personnel do not qualify as companions, this fact does not remove them from the category of covered domestic service employees when employed in or about a private household.

■ 4. Amend § 552.101 by revising the first three sentences of paragraph (a) to read as follows:

§ 552.101 Domestic service employment.

(a) The definition of ''domestic service employment'' contained in § 552.3 is derived from the regulations issued under the Social Security Act (20 CFR 404.1027(j)) and from ''the generally accepted meaning'' of the term. Accordingly, the term includes persons who are frequently referred to as ''private household workers.'' See S. Rep. 93–690, p. 20. The domestic service must be performed in or about the private home of the employer whether that home is a fixed place of abode or a temporary dwelling as in the case of an individual or family traveling on vacation.

■ 5. Amend § 552.102 by revising paragraph (b) to read as follows:

§ 552.102 Live-in domestic service employees.

(b) Where there is a reasonable agreement, as indicated in (a) above, it may be used to establish the employee's hours of work in lieu of maintaining precise records of the hours actually worked. The employer shall keep a copy of the agreement and indicate that the employee's work time generally coincides with the agreement. If it is found by the parties that there is a significant deviation from the initial agreement, a separate record should be kept for that period or a new agreement

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