

August 1, 2025

Submitted Via Federal eRulemaking Portal: <https://www.regulations.gov>

Mr. 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

Re: RIN 1235-AA52; Comments of the Center for Workplace Compliance on the Notice of Proposed Rule; Statements of General Policy or Interpretation Not Directly Related to Regulations

Dear Mr. Navarrete:

The Center for Workplace Compliance (CWC) welcomes the opportunity to submit written comments in response to the Department of Labor's (DOL) proposal to remove some statements of general policy or interpretation from the Code of Federal Regulations, as published in the *Federal Register* on July 2, 2025.¹

CWC is pleased to support the proposal. We agree with the Department that eight currently codified parts of the Code of Federal Regulations (CFR) identified in the proposal should be relocated to the Field Operations Handbook or equivalent guidance vehicle for both policy and legal reasons, as summarized below. We also support the Department's plan to remove Part 779, which is obsolete. In addition, we express our appreciation for DOL's use of a notice-and-comment process in this case, although not required by the Administrative Procedure Act, and urge DOL to continue to use notice-and-comment procedures in appropriate cases.

Statement of Interest

Founded in 1976, the Center for Workplace Compliance (CWC) is the nation's leading nonprofit association of employers dedicated exclusively to helping its members develop practical and effective programs for ensuring compliance with fair employment and other workplace requirements. CWC's membership includes approximately 200 major U.S. employers, collectively providing employment to millions of workers.

CWC's directors and officers include many of industry's leading experts in the fields of fair employment, workplace compliance, and risk management. Their combined experience gives CWC a unique depth of understanding of the practical, as well as legal, considerations relevant to the proper interpretation and application of workplace rules and regulations.

All of CWC's members are employers covered by the Fair Labor Standards Act (FLSA).

¹ 90 Fed. Reg. 28,985 (July 2, 2025).

The Department's Proposal

DOL is proposing to remove several interpretations and statements of policy from Title 29 of the Code of Federal Regulations (CFR), none of which have been subject to notice-and-comment processes. They are:

- Part 775 – General
- Part 776 – Interpretive Bulletin on the General Coverage of the Wage and Hours Provisions of the Fair Labor Standards Act of 1938
- Part 779 – The Fair Labor Standards Act as Applied to Retailers of Goods or Services
- Part 782 – Exemption from Maximum Hours Provisions for Certain Employees of Motor Carriers
- Part 783 – Application of the Fair Labor Standards Act to Employees Employed as Seamen
- Part 784 – Provisions of the Fair Labor Standards Act Applicable to Fishing and Operations on Aquatic Products
- Part 789 – General Statement on the Provisions of Section 12(a) and Section 15(a)(1) of the Fair Labor Standards Act of 1938, Relating to Written Assurances
- Part 793 – Exemption of Certain Radio and Television Station Employees from Overtime Pay Requirements Under Section 13(b)(9) of the Fair Labor Standards Act
- Part 794 – Partial Overtime Exemption for Employees of Wholesale or Bulk Petroleum Distributors Under Section 7(b)(3) of the Fair Labor Standards Act

All provisions proposed to be removed from the CFR (except Part 779) would be relocated to the Field Operations Handbook as “Interpretive Bulletins.” No substantive changes would be made to the relocated parts. The proposal invites comment on whether a sub-regulatory vehicle other than the Field Operations Handbook should be used.

The proposal does not seek to remove any other parts from the CFR. However, it invites comments on whether some sections of other parts should be removed. For example, sections of Part 778, related to overtime, that have not been subject to notice-and-comment could be removed, while sections that were subject to notice-and-comment are retained.

The proposal indicates that DOL is not required to use notice and comment processes to take these actions. Similarly, it notes that it may take action in the future related to general policies or interpretations that have not been subject to notice-and-comment procedures without going through additional notice and comment.

It Is Appropriate to Relocate the Identified Parts from the CFR to the Field Operations Handbook

CWC supports the proposal to remove the identified nine parts from the CFR and relocate them (except Part 779) to the Field Operations Handbook or another appropriate sub-regulatory vehicle that is equally accessible to stakeholders. Both policy and legal reasons support this move.

DOL began codifying these parts in the CFR in the 1940s. At the time, the *Federal Register* and the CFR were in their infancy. Policy concerns led to the creation of the *Federal Register* and the CFR because the government and regulated entities had significant difficulty determining precisely which Executive Branch policies and rules were in effect,² so public policy concerns weighed in favor of compiling agency interpretations in a central, accessible location.

Today, there are alternative ways to easily access agency policy, interpretations, guidance, and other sub-regulatory statements. These include the Field Operations Handbook, Field Assistance Bulletins, Opinion Letters, and Administrator's Interpretations. Policy concerns no longer warrant codifying sub-regulatory guidance in the same manner as regulations.

Legal concerns also suggest that sub-regulatory guidance should be relocated. As the Department notes in the preamble to its proposal, some courts have given undue deference to non-binding guidance such as policy statements and interpretations because they were housed in the CFR.³

Similarly, we agree with the Department that regulated entities may feel compelled to comply with an interpretive rule or policy statement if it is included alongside legislative rules, even if they remain free to choose another course of action.⁴ Relocation of these policies would reduce this compulsion.

For these policy and legal reasons, we support the Department's proposal to relocate the proposed parts as appendices to the Field Operations Handbook. We also would be open to relocating the material to another sub-regulatory vehicle that is equally as accessible to stakeholders.

Part 779, Related to Retailers of Goods and Services, Is Obsolete

We agree with the Department that Part 779 is obsolete and should be removed from the CFR and not relocated in the Field Operations Handbook or a similar sub-regulatory vehicle. The treatment of retail and service employees has changed dramatically since the FLSA's enactment and since Part 779 was adopted. For example, the currently codified interpretations detail DOL's position with no less than four FLSA exemptions that have since been repealed, including:

- the 13(a)(2) exemption for retail or service establishments;
- the 13(a)(4) exemption for employees of certain retail establishments that make or process the goods that they sell and where most goods are sold in-state;
- the 13(a)(11) exemption for proprietors of retail or service establishments engaged in handling certain telegraphic messages; and

² See, for example, The Office of the Federal Register, *A Brief History Commemorating the 70th Anniversary of the Publication of the First Issue of the Federal Register March 14, 1936* (2006) at 3, available at <https://www.archives.gov/files/federal-register/the-federal-register/history.pdf> (last accessed July 30, 2025).

³ 90 Fed. Reg. at 28,986-87 & n.9 (citing cases).

⁴ 90 Fed. Reg. at 28,987.

- the 13(b)(18) exemption for certain employees of retail and service establishments that prepare food or beverages for human consumption.⁵

Because the Part 779 interpretations reference so many obsolete FLSA provisions, it is difficult for stakeholders to determine whether any remaining portions are relevant to the FLSA as it stands today. We thus support DOL's proposal to remove Part 779 without relocating it to the Field Operations Handbook or a similar vehicle.

Any provisions of Part 779 that remain relevant today should be published anew using an appropriate sub-regulatory vehicle.

The Scope of the Proposed Changes Are Appropriate

DOL has asked whether it should also relocate some sections of other codified policies and interpretive statements that have not been subject to notice and comment. These would include sections of Part 778, related to overtime, and Part 785, related to hours worked.

We believe that DOL has appropriately limited the scope of its proposal. While it is true that some of the same policy and legal concerns that weigh in favor of de-codification apply to these sections, there is reason to be cautious. Decodifying some sections of these parts while leaving others raises different concerns that need not complicate the present proposal. We thus support the scope of the proposal and recommend that any changes to the status of Parts 778, 785, and other similar parts be left for another day.

Use of Notice-and-Comment Processes in This Proposal and Future Actions

The proposal states DOL's position that it is not required to use notice-and-comment procedures to relocate or eliminate individual interpretive rules or policy statements that were not promulgated or revised through notice and comment rulemaking.⁶ However, DOL says it is doing so in this case as a matter of public courtesy because of the scope of the proposed changes.

The proposal further notes that DOL reserves the right to decline additional notice-and-comment for future changes to content removed from the CFR as a consequence of this rulemaking.⁷ In other words, while the proposal would not make any substantive changes to the parts in question (other than Part 779), it states that DOL may do so in the future without going through notice-and-comment procedures.

The Administrative Procedure Act (APA) expressly says that its notice and comment provisions do not apply to "interpretive rules, general statements of policy, or rules of agency organization, procedure, or practice" except when required by statute.⁸ However, inviting public

⁵ See 29 C.F.R. § 779.301(a).

⁶ 90 Fed. Reg. at 28,988.

⁷ *Id.*

⁸ 5 U.S.C. § 553(b)(4)(A).

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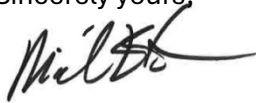
comment on important policy matters is often a best practice.⁹ Providing for stakeholder input helps ensure that important interpretations and guidance are legally sound and that they account for concerns that an agency might not have anticipated.

We appreciate the Department's use of notice-and-comment procedures in this case and urge the Department to continue to use such procedures for important interpretive or guidance documents where appropriate.

Conclusion

For these reasons, CWC is pleased to support the Department's proposal. Please contact me if CWC can provide any assistance as the Department considers this important issue.

Sincerely yours,



Michael J. Eastman
Senior Vice President, Policy and Assistant General Counsel

⁹ See, for example, Office of Management and Budget, Bulletin for Agency Good Guidance Practices, 72 Fed. Reg. 3,432, 3,439 (January 25, 2007). The first Trump Administration also recognized the importance of public input for certain agency guidance documents. See Executive Order 13891 of October 9, 2019, 84 Fed. Reg. 55,235 (October 15, 2019); Department of Labor, Promoting Regulatory Openness Through Good Guidance (PRO Good Guidance), Final Rule, 85 Fed. Reg. 53,163 (August 28, 2020). Former President Biden rescinded E.O. 13891 on his first day in office, E.O. 13992, 86 Fed. Reg. 7,049 (January 25, 2021), and DOL rescinded its PRO Good Guidance rule days later, 86 Fed. Reg. 7,237 (January 27, 2021). Nevertheless, strong policy considerations support a notice-and-comment process for many types of significant agency guidance.