

*Subpart H, Definitions and Miscellaneous Provisions, §§ 541.700–.708*

To eliminate unnecessary repetition, the proposed regulations would move definitions and other provisions applicable to several or all of the exemption categories to a new subpart H, Definitions and Miscellaneous Provisions. The proposed subpart H would define “primary duty” in proposed § 541.700; “directly and closely related” in proposed Section 541.702; “exempt and nonexempt work” in proposed § 541.701; and “office or non-manual work” in proposed § 541.703. Subpart H would also contain provisions regarding trainees, emergencies and occasional tasks, combination exemptions, the motion picture producing industry, and employees of public agencies. Most of these provisions have been moved from the existing regulations without substantial change, although some changes have been made to simplify and update the current regulations. Current § 541.602, containing guidance on the percentage limitations on performing nonexempt work for executive and administrative employees in multi-store retailing operations, is proposed to be deleted for the same reasons noted above for eliminating those former long duties test requirements from the executive and administrative exemptions.

**IV. Executive Order 12866 and the Small Business Regulatory Enforcement Fairness Act**

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section 1(b), Principles of Regulation. The Department has determined that the proposed rule is an economically significant regulatory action under section 3(f)(1) of Executive Order 12866. Based on a preliminary analysis of the data the rule could have an annual effect on the economy of \$100 million or more. However, the proposed rule is not likely to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; or materially alter the budgetary impact of entitlements, grants, user fees, or loan

programs or the rights and obligations of recipients thereof.

For similar reasons, the Department has concluded that this proposed rule also is a major rule under the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*). Although it could result in an annual effect on the economy of \$100 million or more, it is not likely to result in a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

As a result, the Department has prepared a Preliminary Regulatory Impact Analysis (PRIA) in connection with this proposed rule as required under section 6(a)(3) of the Order and the Office of Management and Budget has reviewed the rule. Copies of the complete PRIA may be obtained from the Department by contacting the Wage and Hour Division at the address and telephone number provided above. The results of the PRIA are summarized below.

*Preliminary Regulatory Impact Analysis Overview*

The proposed changes in the rules for determining whether an employee is exempt as an executive, administrative, or professional (EAP) worker under the Fair Labor Standards Act (FLSA) will affect virtually all employers covered by the FLSA that employ workers within the scope of the exemptions in 29 CFR part 541. Employers will be affected unless all of their employees are expressly excluded from FLSA coverage by the statute. Excluded from these regulations are the self-employed, agricultural workers, railroad workers, selected occupations in the transportation industries and in automobile dealerships, and most Federal employees subject to separate rules administered by the U.S. Office of Personnel Management. However, 29 CFR part 541 regulations apply to the following Federal agencies: Library of Congress, U.S. Postal Service, Postal Rate Commission, and Tennessee Valley Authority (see 29 U.S.C. 204(f)).

Therefore, employers in all industrial sectors except agriculture, railroads, and private households are subject to the existing and proposed regulations. The

regulations also apply to State and local governmental employees.

The PRIA indicates that there are 6.5 million establishments with 109.5 million employees, annual payrolls totaling \$2.8 trillion, annual sales revenues of \$17.9 trillion, and annual pre-tax profits of \$769.5 billion in the industry sectors affected by the proposed rule. Corresponding data based on SBA's size standards for small business entities indicates that over 5.2 million of these establishments are considered to be small businesses. These small firms employ approximately 38.7 million workers with an annual payroll of \$940.0 billion. Their total annual sales are estimated to be \$5.7 trillion and their annual pre-tax profits are estimated to be \$233.9 billion. Approximately 79.8 percent of the affected establishments are considered to be small businesses and they account for 38.8 percent of the employment, 33.7 percent of the payroll, 31.8 percent of the annual sales, and 30.4 percent of the annual pre-tax profits.

Over 87,400 state and local governmental entities will be affected by the proposed rule (3,043 county governments, 19,372 municipal governments, 16,629 township governments, 34,683 special district governments, and 13,726 school district governments). Nationwide, these entities receive more than \$1.4 trillion in general revenues, including revenues from taxes, some categories of fees and charges, and intergovernmental transfers. Their direct expenditures exceed \$1.6 trillion in the aggregate. State and local governments employ more than 4 million workers and their payrolls exceed \$12.6 billion per month.

The following tables summarize the provisions of the current 29 CFR part 541 and the proposed rule that were analyzed in the PRIA.

**TABLE 1.—WEEKLY SALARY LEVELS IN THE CURRENT AND PROPOSED RULES**

	Dollars
<b>Current Rule</b>	
Long Test:	
Executives .....	155
Administrative .....	155
Professionals .....	170
Short Test .....	250
<b>Proposed Rule</b>	
Standard Test .....	425
Highly Compensated .....	1,250