§ 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 404.1057) 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. A separate and distinct dwelling maintained by an individual or a family in an apartment house, condominium or hotel may constitute a private home.

(b) Employees employed in dwelling places which are primarily rooming or boarding houses are not considered domestic service employees. The places where they work are not private homes but commercial or business establishments. Likewise, employees employed in connection with a business or professional service which is conducted in a home (such as a real estate, doctor's, dentist's or lawyer's office) are not domestic service employees.

(c) In determining the total hours worked, the employer must include all time the employee is required to be on the premises or on duty and all time the employee is suffered or permitted to work. Special rules for live-in domestic service employees are set forth in § 552.102.

[40 FR 7405, Feb. 20, 1975, as amended at 60 FR 46768, Sept. 8, 1995]

§ 552.102 Live-in domestic service employees.

(a) Domestic service employees who reside in the household where they are employed are entitled to the same minimum wage as domestic service employees who work by the day. However, section 13(b)(21) provides an exemption from the Act's overtime requirements for domestic service employees who reside in the household where employed. But this exemption does not excuse the employer from paying the live-in worker at the applicable minimum wage rate for all hours worked. In determining the number of hours worked by a live-in worker, the employee and the employer may exclude, by agreement between themselves, the amount of sleeping time, meal time and other periods of complete freedom from all duties when the employee may either leave the premises or stay on the premises for purely personal pursuits. For periods of free time (other than those relating to meals and sleeping) to be excluded from hours worked, the periods must be of sufficient duration to enable the employee to make effective use of the time. If the sleeping time, meal periods or other periods of free time are interrupted by a call to duty, the interruption must be counted as hours worked. See regulations part 785, § 785.23.

(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.

§ 552.103 Babysitting services in general.

The term ''babysitting services'' is defined in § 552.4. Babysitting is a form of domestic service, and babysitters other than those working on a casual basis are entitled to the same benefits under the Act as other domestic service employees.

§ 552.104 Babysitting services performed on a casual basis.

(a) Employees performing babysitting services on a casual basis, as defined in § 552.5 are excluded from the minimum wage and overtime provisions of the Act. The rationale for this exclusion is that such persons are usually not dependent upon the income from rendering such services for their livelihood. Such services are often provided by (1) Teenagers during non-school hours or for a short period after