

**FLSA-1003**

March 26, 1978

This is in further reference to your letter of February 23, 1978, concerning your request for an opinion as to the exempt status of graphic artists under the Fair Labor Standard Act.

Section 13(a)(1) of the Act provides an exemption from its monetary provisions for any employee employed in, among others, a professional capacity as this term is defined and delimited in Regulations, Part 541 (copy enclosed). The basic requirements for the professional exemption are contained in section 541.3 of the regulations and subsequent section 541.300 through 541.315 which provide the explanatory material and interpretations relating to the basic requirements of the exemption. It should be noted that exemptions under section 13(a)(1) are not determined on the basis of job classification or occupational titles; they are determined on the basis of the specific duties, responsibilities, and salary of the individual employee. A determination as to exemption must be made on an individual basis and is dependent upon a detailed description of the work actually performed by each individual employee. The exemption would then be determined on whether the individual met all of the pertinent tests.

A graphic designer or graphic artist performing work that is original and creative the results of which are dependent primarily upon the invention, imagination or talent of the employee could qualify for the professional exemption, while a graphic arts technician who engages in the drawing or reproduction from flat illustration, operating an offset duplicating machine to reproduce copies and who performs otherwise technical duties would not meet the conditions for exemption notwithstanding the fact that this technician may well possess the training for original artistic productions.

With respect to the salary requirement, the basic salary test has been in the Regulations, Part 541 since their issuance in October 1938 and has been found to be a reasonable and valid exercise of delegated authority in defining the exemption. However, payment may be made on a fee basis as well as a salary basis, where appropriate, as discussed in section 541.313 of the Regulations.

It is our opinion that the monetary provisions of the Fair Labor Standards Act and those of the Armed Services Procurement Regulations are not in conflict. The latter provisions are simply the Department of Defense's means to control operating costs. That Department is fully aware of the requirements of the Fair Labor Standards Act.

We trust that the above is of assistance to you in this matter.

Sincerely,

Xavier M. Vela  
Administrator

Enclosures