

FLSA-1036

July 8, 1988

This is in further reply to your letter concerning whether "auditors" employed by your client would qualify as exempt administrative or professional employees under section 13(a)(1) of the Fair Labor Standards Act (FLSA). We regret the delay in responding to your inquiry.

You state that your client advises business firms with regard to transportation matters such as carrier rates, routings, regulations, and related matters. Your client's services include pre and post-auditing of a customer's freight bills to discover overcharges, as well as filing claims on behalf of the customer to recover such overcharges. The auditors examine the customer's freight bills to insure that maximum savings have been achieved and to insure that the customer has not been overcharged. If a carrier has overcharged the customer, the auditor will issue a correction form and file a claim on behalf of the customer to recover the overcharge. An auditor must be thoroughly familiar with and be able to apply rules regarding tariffs and other transportation regulations such as commodity classifications, shipment routings, and so forth. Auditors are trained in "rating" and "auditing" and apply this knowledge in determining what tariffs have been or should be charged. They are sometimes required to give "freight estimates" in advance of shipping. The auditors also help the customer develop efficient bills of lading and train customer's staff in proper shipping and receiving practices. You state that the auditors are not certified public accountants and, in a telephone conversation with a member of my staff, you stated that most of the auditors did not have a baccalaureate degree. You further indicate that the auditors are paid a salary of \$350 per week.

✎ The FLSA is the Federal law of most general application concerning wages and hours of work. This law requires that all covered and nonexempt employees be paid not less than the minimum wage of \$3.35 an hour and not less than one and one-half times their regular rates of pay for all hours worked over 40 in a workweek.

Section 13(a)(1) of FLSA provides a minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, professional or outside sales capacity, as those terms are defined in Regulations, 29 CFR Part 541. An employee may qualify for exemption as a bona fide administrative employee if all of the pertinent tests relating to duties, responsibilities, and salary, as discussed in section 541.2 are met. Under the "short" test of section 541.2(e)(2), an employee who is paid on a salary or fee basis of at least \$250 per week may qualify for exemption if the employee has as his or her primary duty office or nonmanual work directly related to management policies or general business operations of the employer or the employer's customers, which includes work requiring the exercise of discretion and independent judgment.

Based upon the information you have furnished, it is clear that the major duties of the auditors are to determine the correct transportation charges for the type of commodities being shipped by correctly classifying the commodities and identifying the appropriate tariffs. The performance of these duties depends primarily upon the skill and experience of the auditors and the procedures followed rather than the exercise of discretion and independent judgment within the meaning of section 541.207 of Part 541. In addition, the work performed by the auditors is in the nature of "production" work as distinguished from duties directly related to management policies or general business operations within the meaning of section 541.205. Therefore, the auditors would not qualify for exemption as administrative employees under section 13(a)(1).


We also conclude that the auditors are not professional employees within the meaning of section 13(a)(1) and section 541.3 of the regulations. The work performed by the auditors does not require knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized

intellectual instruction and study as distinguished from a general academic education and from apprenticeship and from training in the performance of routine mental, manual, or physical processes. It is clear from the information you have furnished that the auditors need not have a baccalaureate degree (most do not have any degree) to perform the job duties. Subprofessional training and experience will provide the skills necessary to perform the job.

We trust that the above discussion is responsive to your inquiry. Please let us know if you have any further questions.

Sincerely,

Paula V. Smith
Administrator

 Minimum wage has been increased by later amendments to the Act.