

DEPARTMENT OF LABOR**Wage and Hour Division****29 CFR Part 541**

RIN 1215-AA14

Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Proposed rule and request for comments.

SUMMARY: The Department of Labor proposes to update and revise the regulations issued under the Fair Labor Standards Act (FLSA) implementing the exemption from minimum wage and overtime pay for executive, administrative, professional, outside sales and computer employees. These exemptions are often referred to as the FLSA's "white collar" exemptions. To be considered exempt, employees must meet certain minimum tests related to their primary job duties and be paid on a salary basis at not less than specified minimum amounts. The basic "duties" tests were originally established in 1938 and revised in 1940. The duties tests were last modified in 1949 and have remained essentially unchanged since that time. The "salary basis" test has remained essentially unchanged since 1954. The salary levels required for exemption were last updated in 1975, and the amounts adopted at that time were intended as an interim adjustment. Suggested changes to the part 541 regulations have been the subject of public commentary for years, including a review of the regulations by the U.S. General Accounting Office (GAO) in 1999. GAO recommended that the Secretary of Labor comprehensively review and make necessary changes to the part 541 regulations to better meet the needs of both employers and employees in the modern work place, and to anticipate future work place trends. During 2002, the Department of Labor convened a series of stakeholder meetings, and heard suggestions for changes from over 40 interest groups representing employees and employers. The Department of Labor has carefully examined issues of concern raised by various interested parties in developing this proposed rule. The Department now invites public comment on all aspects of the proposed rule.

DATES: Submit written comments on or before June 30, 2003.

ADDRESSES: Address written comments to Tammy D. McCutchen, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW., Washington, DC 20210. Commenters who would like to be notified that their comments were received should include with their comments a self-addressed, stamped postcard or submit them certified mail, return receipt requested. As a convenience, comments of 20 pages or less may be submitted by facsimile ("FAX") machine to (202) 693-1432, which is not a toll-free number, or by e-mail to: whd-reg@fenix2.dol-esa.gov. Because we continue to experience delays in receiving mail in our area, commenters are encouraged to submit any comments by mail early, or to transmit them electronically by FAX or e-mail.

FOR FURTHER INFORMATION CONTACT: Richard M. Brennan, Deputy Director, Office of Enforcement Policy, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3506, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 693-0745 (this is not a toll-free number). Copies of this proposed rule may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693-0023 (not a toll-free number). TTY/TDD callers may dial toll-free 1-877-889-5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of regulations issued by this agency or referenced in this notice may be directed to the nearest Wage and Hour Division District Office. Locate the nearest office by calling our toll-free help line at 1-866-4USWAGE (1-866-487-9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto the Wage and Hour Division's Web site for a nationwide listing of Wage and Hour District and Area Offices at: <http://www.dol.gov/esa/contacts/whd/america2.htm>.

SUPPLEMENTARY INFORMATION:**I. Paperwork Reduction Act**

This proposed rule contains no new information collection requirements subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501, *et seq.*). The information collection requirements for employers who claim exemption under 29 CFR part 541 are contained in the general FLSA recordkeeping requirements codified at 29 CFR part

516, which were approved by the Office of Management and Budget under OMB Control number 1215-0017. See 29 CFR 516.0 and 516.3.

II. Background

The FLSA generally requires covered employers to pay their employees at least the federal minimum wage (which is currently \$5.15 an hour), and overtime premium pay of time-and-one-half the regular rate of pay for all hours worked over 40 in a work week. However, the FLSA includes a number of exemptions from the minimum wage and overtime requirements. Section 13(a)(1) of the FLSA, codified at 29 U.S.C. 213(a)(1), exempts from both minimum wage and overtime pay "any employee employed in a bona fide executive, administrative, or professional capacity * * * or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act * * *)."

The FLSA does not define the terms "executive," "administrative," "professional," or "outside salesman." However, pursuant to Congress' grant of rulemaking authority, implementing regulations have been issued, at 29 CFR part 541, defining the scope of the section 13(a)(1) exemptions. Because the FLSA delegates to the Secretary of Labor the power to define and delimit the specific terms of the exemptions through notice-and-comment rulemaking, the regulations so issued have the binding effect of law.¹

These exemptions have engendered considerable confusion over the years regarding who is, and who is not, exempt. The implementing regulations generally require each of three tests to be met for the exemption to apply: (1) The employee must be paid a predetermined and fixed salary, not an hourly wage that is subject to reductions because of variations in the quality or quantity of work performed (the "salary basis test"); (2) the amount of salary paid must meet minimum specified amounts (the "salary level test"); and (3) the employee's job duties must primarily involve managerial, administrative or professional skills as defined by the regulations (the "duties tests").

Legislative History

Section 13(a)(1) was included in the original FLSA of 1938, and was based on provisions contained in the earlier

¹ See *Batterton v. Francis*, 432 U.S. 416, 425 n. 9 (1977).