

**FLSA-395**

( September 1, 1970

This is in further reply to your letter of July 9, 1970, asking whether the exemption in section 13(a)(1) of the Fair Labor Standards Act would apply to certain employees of an employer who designs, manufactures, and services equipment used for testing the propensity of oil and gas wells to produce.

The employee in question is his employer's only representative at the drilling site. He performs no physical work there, but merely supervises and directs the customer's driller in the assembly, use, and dismantling of his employer's equipment. He provides the customer with a preliminary report before leaving the drilling site, and later at his office prepares a more detailed analysis and report for the customer. You state that no more than 10 to 15 percent of the employee's time is spent in physical work or routine clerical duties. The employee has a training period of approximately 18 months, and is paid more than \$200 per week.

The information you have provided indicates that such an employee performs primarily nonmanual work which is directly related to business operations of his employer's customers (see sections 541.203 and 541.205 of our Regulations, Part 541). Therefore, we have concluded that where such an employee continues to perform the duties and have the responsibilities described, and provided the payment of \$200 per week or more is on a salary or fee basis (this was not made clear in your letter), the employee will qualify for exemption from the Act's minimum wage and overtime pay requirements under section 13(a)(1).

( Where such an employee does not have the duties and responsibilities described, or if payment is made on other than a salary or fee basis, it will be necessary to examine the employee's exemption status in the light of the facts and circumstances in his individual case. It should also be pointed out that in no case will the exemption apply to such an employee while in a training status, even though the salary or fee requirement may be met.

Sincerely,

Ben P. Robertson  
Deputy Administrator

Robert D. Moran  
Administrator

Enclosures