

## FLSA-334

July 10, 1980

Your letter of June 6, 1980, concerning the application of 29 CFR Part 541 to employees who are exempt under section 13 (a)(1) of the Fair Labor Standards Act, has been referred to this office for reply. You are specifically concerned that where an employer of an otherwise exempt employee makes deductions from the salary of such an employee, which are not allowed under section 541.118 of the regulations, the employer loses the exemption for only the workweek in which the deduction is made.

The section 13(a)(1) exemption generally applies on the basis that each workweek constitutes a separate period of exemption. However, as stated in our letter of March 19, 1980, in order to prevent any possible abuses by employers, certain of the tests for exemption contained in the regulations are so worded that a determination for exemption must be made by considering the conditions of employment over an extended period of time.

One example given stated that if frequent deductions not permitted by the regulations are being made from the salary, the employee is not being compensated "on a salary basis" as required by section 541.118 of the regulations. In such cases the exemption would not be applicable in any week, and the employer would be liable for any unpaid minimum wage and overtime compensation that might be due such an employee. In the situation you had in mind, deductions were made from the salary of an exempt employee in one workweek. The exemption, therefore, was lost in that workweek only.

It is our opinion that this position is the correct one. With regard to your question concerning possible revision of the regulations, you may wish to submit in writing to the Administrator of the Wage and Hour Division a petition setting forth the changes desired and the reasons for proposing them, in accordance with section 541.6 of the regulations.

Sincerely,

Henry T. White, Jr.  
Deputy Administrator

Enclosure