

FLSA-396

March 18, 1983

This is in reply to your letter of February 22, 1983, concerning the application of section 13(a)(1) of the Fair Labor Standards Act (FLSA) to a quality assurance field representative (QFR) of *** Nuclear *** Company, Inc. *** . You wish to know whether such employee may be considered exempt under Regulations, 29 CFR Part 541.

According to the information you have furnished, the quality assurance field representative's purpose is to assure that your firm's suppliers fulfill their contractual requirements to furnish products that adhere to codes, standards, specifications, and compliance with Federal regulations of the Department of Energy. The QFR does this by verifying, validating, witnessing, inspecting, testing, and otherwise assuring that the articles or equipment being manufactured or fabricated by the supplier meet all the necessary requirements of your firm's operations. Working at the supplier's facility the QFR carries out necessary inspections, validation, verification, and other quality assurance activities.

The QFR works independently and has no subordinate employees under his/her supervision. It is required that the QFR have a thorough knowledge of industry codes and standards and a variety of fabricating and manufacturing techniques. The QFR is required to be a high school graduate with six years of experience in quality assurance, or have two years of college or technical school, plus three years experience. The QFR must be qualified in four disciplines of nondestructive examination: radiography liquid penetrant, magnetic particle, and ultrasonic examination. In performing his/her job, the QFR uses inspection equipment such as micrometers, dial indicators, x-ray and magnetic particle machines, and voltmeters and meggering devices. Also, the QFR must be able to read and interpret drawings, specifications, and codes and procedures.

Based upon the information you have presented, we conclude that the QFR cannot qualify as a professional employee within the meaning of section 541.3 of the regulations. The work performed by the QFR 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 an apprenticeship and from training in the performance of routine mental, manual, or physical processes. It is clear that the QFR need not have a degree in engineering to perform the job function. Subprofessional technical training and hands-on experience in nondestructive examination and inspection techniques, and knowledge of industry codes and standards, which may be acquired through on-the-job training and experience will qualify the QFR for the job. The facts suggest that the QFR is best characterized as a highly-skilled nonexempt technician.

We have also considered the exempt status of the QFR under the administrative exemption in section 541.2 of the regulations. One test in section 541.2(e)(2) requires that such an employee exercise discretion and independent judgment. An employee who merely applies his/her knowledge in following prescribed procedures or determining which procedure to follow, or who determines whether specified standards are met or whether an object falls into one or another of a number of definite grades, class, or other categories, with or without the use of testing or measuring devices, is not exercising discretion and independent judgment within the meaning of section 541.2. This is true even if there is some leeway in reaching a conclusion, as when acceptable standards include a range

or tolerance above or below a specific standard. See section 541.207(a). We note from the supervisor's comments that the QFR is not required to make management policy decisions. Thus, we conclude that the QFR cannot qualify as an exempt administrative employee within the meaning of the regulations.

Please let us know if you have further questions.

Sincerely,

William M. Otter
Administrator

Enclosure