



U.S. Department of Labor
Employment Standards Administration
Wage and Hour Division
Washington, D.C. 20210

FLSA2008-3

April 21, 2008

Dear **Name***:

This is in response to your request for an opinion regarding whether the Product Technology Application and Marketing Analyst (PTA) employed by your client (company) qualifies for exemption under section 13(a)(1) of the Fair Labor Standards Act (FLSA).^{*} Based on the information provided, it is our opinion that the PTA is an exempt administrative employee.

Your client provides products and services to prevent soil erosion and strengthen retaining walls and foundations of parking lots, bridges, levees, and buildings. The company markets its products to dealers, licensees, developers, construction companies, and state and federal agencies. The company also markets services related to its products, including consulting, design, engineering, installation, permitting and testing services.

The PTA's primary responsibility is to work independently with the company's Engineering and Design Group (EDG) to develop tests that measure the performance of new products and assess the feasibility of novel uses of current products. For example, if an existing product has the potential to stabilize and reinforce the lining of coal mine tunnels in a remote region, the PTA will review all relevant information regarding the environmental conditions and the features of the mine. The PTA then works with the EDG to develop a test to measure the product's performance under varying conditions. The PTA evaluates numerous factors, including the type of equipment needed to create the precise environmental conditions and accurately capture the test results. The PTA spends approximately 40 percent of her time working with the EDG on tests for new and existing products.

Additionally, the PTA spends approximately 30 percent of her time as a liaison to the company's sales professionals, who visit potential and current customers. During these visits, the sales professionals are confronted with questions from customers regarding specific features/uses of the company's products and how they compare to competing products. The sales professionals rely on the PTA to provide them guidance on the appropriate responses to these customer inquiries. The PTA independently reaches conclusions regarding testing methodology, testing results, and product performance that allow the company to secure product sales by demonstrating that the company's products meet customer specifications or are superior to competing products.

^{*} Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at www.wagehour.dol.gov.

The PTA spends the remainder of her time performing standardized tests on the company's products and preparing reports reflecting the test results and how they compare to competitors. The PTA reports directly to the company's Vice President of Process and Product Development. The PTA receives at least \$455 per week on a salary basis.

Section 13(a)(1) of the FLSA provides a minimum wage and overtime pay exemption for any employee employed in a bona fide administrative capacity as defined in 29 C.F.R. Part 541. An employee may qualify for an exemption if all of the duties and salary tests are met.

Under [29 C.F.R. § 541.200\(a\)](#), "employee employed in a bona fide administrative capacity" means "any employee":

- (1) Compensated on a salary or fee basis at a rate of not less than \$455 per week . . . ;
- (2) Whose primary duty is the performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers; and
- (3) Whose primary duty includes the exercise of discretion and independent judgment with respect to matters of significance.

"Work directly related to the management or general business operations" of the employer refers to work in such functional areas as quality control, research, and marketing. [29 C.F.R. § 541.201\(b\)](#). An employee's primary duty is "the principal, main, major or most important duty that the employee performs." [29 C.F.R. § 541.700\(a\)](#).

We conclude that the PTA's duty of working with the EDG to develop tests that measure the performance of new products and assess the feasibility of novel uses of current products directly relates to the functional areas of quality control and research. The PTA's duty of performing standardized tests on company products and preparing reports on how those products compare to competitors' products also directly relates to the functional area of research. Other duties, including assisting sales representatives in responding to customer questions regarding specific features/uses of the company's products, and evaluating product features for potential customers, directly relate to the functional area of marketing. Therefore, the PTA's primary duties involve the "performance of office or non-manual work directly related to the management or general business operations of the employer or the employer's customers." 29 C.F.R. § 541.200(a)(2).

[Section 541.202\(b\)](#) sets out several factors "to consider when determining whether an employee exercises discretion and independent judgment with respect to matters of significance." *See also* 69 Fed. Reg. 22,122, 22,144 (preamble to Part 541 regulation). Examples of duties indicating the PTA "carries out major assignments in conducting the operations of the business" include working independently with the EDG to develop tests that measure performance of the company's new products and assess the feasibility of novel uses of the company's current products. 29 C.F.R.

§ 541.202(b). Also, in determining how specific features/uses of the company's products compare to competing products, evaluating features within the context of scenarios posed by sales professionals working in the field with customers, and making important conclusions that allow the company to secure product sales, the PTA "performs work that affects business operations to a substantial degree." *Id.* Accordingly, we also conclude that the PTA's primary duties "include[] the exercise of discretion and independent judgment with respect to matters of significance." 29 C.F.R. § 541.200(a)(3).

Based on the information provided, the PTA meets the requirements of § 541.200(a)(1)-(3). Therefore, it is our opinion that the PTA is an exempt administrative employee.

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issues addressed herein. You have also represented that this opinion is not sought in connection with an investigation or litigation between a client or firm and the Wage and Hour Division or the Department of Labor.

We trust that this letter is responsive to your inquiry.

Sincerely,

Alexander J. Passantino
Acting Administrator

*** Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7).**