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This is in response to your letter requesting an opinion on the application of Section 13(a)(1) of the Fair Labor Standards Act (FLSA) to the position of program specialist.

You state that the responsibilities of the program specialist are coordinating, scheduling, and attending test planning and other meetings; preparing various reports (e.g. trip, weekly status, meeting summary, and review summary status) and briefing material; participating in the review and comment of program documents in support of product life cycle management; participating in the review and development of test plans, test procedures, problem trouble reports, and test reports; and establishing review cycle and tracking mechanism for all documents produced and reviewed by ACT-320.

Section 13(a)(1) of the FLSA provides a minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative, professional or outside sales capacity, as those terms are defined in the enclosed Regulations, 29 CFR Part 541.

An employee may qualify for exemption as a bona fide administrative employee if all of the pertinent tests relating to duties, responsibilities and salary, as discussed in section 541.2, are met. Under the "short" test of section 541.2(e)(2), an employee who is paid on a salary or fee basis of at least \$250 per week may qualify for exemption if the employee has as his or her primary duty office or nonmanual work directly related to management policies or general business operations of the employer or the employer's customers, which includes work requiring the exercise of discretion and independent judgment.

It appears that the performance of the duties that you have outlined depends primarily upon the use of skills and experience in applying techniques and procedures, rather than the exercising of discretion and independent judgment, within the meaning of section 541.207 of Regulations, Part 541. In addition, these activities are in the nature of "production" work, as distinguished from duties directly related to management policies or general business operations, within the meaning of section 541.206 of the Regulations. It is our opinion that the program specialist, as described, does not qualify for the administrative exemption. The employee(s) must, therefore, be paid in accordance with the minimum wage and overtime requirements of the FLSA.

We trust that the above information is responsive to your request.

Sincerely,

Daniel F. Sweeney
Office of Enforcement Policy
Fair Labor Standards Team

Enclosure