DEC -5 1997

Dear

This is in reply to your letter of April 3, 1997, concerning the salary basis of payment contained in the Regulations, 29 C.F.R. Part 541. You ask whether a mining company's requirement that employees wear a seat belt while driving on mine property in extra-hazardous conditions constitues a safety rule of major significance as that term is defined in section 541.118(a)(5), 29 C.F.R. Part 541.

You state that your client is a mining company which conducts mining operations year-round 24 hours a day, often under hazardous weather conditions. The company's Accident Prevention Manual contains a policy requiring that seat belts be worn by all occupants while operating company equipment.

Section 13(a)(1) of the FLSA provides a complete minimum wage and overtime pay exemption for any employee employed in a bona fide executive, administrative or professional capacity, as those terms are defined in the Regulations 29 C.F.R. Part 541. An employee may qualify for exemption if all the pertinent tests relating to duties, responsibilities and salary, as described in the appropriate section of the Regulations, are met. One such test contained in section 541.118 of the Regulations requires that an otherwise exempt employee be paid on a salary basis.

Deductions which may be made from an employee's compensation without affecting his or her exempt "salary" status are found in sections 541.118(a)(2),(3), and (5) of the regulations. The only disciplinary type of deduction permissible is one imposed as a penalty "in good faith for infractions of safety rules of major significance." Safety rules of major significance include only those relating to the prevention of serious danger to the plant, or other employees, such as rules prohibiting smoking in explosive plants, oil refineries, and coal mines. From the information you provide, it appears that the disciplinary deduction you have in mind is not the kind of deduction

permitted by the Regulations and would defeat the exemption for an otherwise exempt employee. It would be permissible, however to suspend such an employee for an entire week without pay and not defeat the exemption, since section 541.118(a) states, in part, that an employee need not be paid for any workweek in which he or she performs no work.

This opinion is based exclusively on the facts and circumstances described in your request and is given on the basis of your representation, explicit 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 request might require a different conclusion than the one expressed herein.

We trust that this satisfactorily responds in your inquiry.

Sincerely,

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