agenda and the 2003 tax cuts which were embraced by this Congress, 2005 is looking like a much better year than 2001. After 4 years of the Bush economy, unemployment is low. Stocks are rising as the Dow marches towards that 11,000 mark. Inflation is in check while interest rates have remained low, and family wealth is at an all-time high.

Mr. Speaker, does it even need to be said that this is not a Herbert Hoover economy? Does one of the strongest economies in the developed world really have to defend itself against Great Depression Era comparisons? I believe that the facts speak for themselves. The George W. Bush economy has proven to be strong, vital and resilient. I am looking forward to 4 more years of prosperity and new opportunity for all Americans.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 7 o'clock and 45 minutes p.m.), the House stood in recess subject to the call of the Chair.

□ 2128

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. COLE of Oklahoma) at 9 o'clock and 28 minutes p.m.

REPORT ON RESOLUTION PROVIDING FOR FURTHER CONSIDERATION OF H.R. 3, TRANSPORTATION EQUITY ACT: A LEGACY FOR USERS

Mrs. CAPITO, from the Committee on Rules, submitted a privileged report (Rept. No. 109–15) on the resolution (H. Res. 144) providing for further consideration of the bill (H.R. 3) to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes, which was referred to the House Calendar and ordered to be printed.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Ms. JACKSON-LEE of Texas (at the request of Ms. PELOSI) for today on account of official business.

Mr. HOBSON (at the request of Mr. DELAY) for today on account of official business.

Mr. RAMSTAD (at the request of Mr. DELAY) for today and the balance of the week on account of complications from eye surgery.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. DEFAZIO) to revise and extend their remarks and include extraneous material:)

Mr. DEFAZIO, for 5 minutes, today.

Ms. WOOLSEY, for 5 minutes, today.

Mr. EMANUEL, for 5 minutes, today.

Mr. PALLONE, for 5 minutes, today.

Mr. BROWN of Ohio, for 5 minutes, today.

Mr. RUSH, for 5 minutes, today.

Mr. MATHESON, for 5 minutes, today.

Ms. MILLENDER-MCDONALD, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

(The following Members (at the request of Mr. NUNES) to revise and extend their remarks and include extraneous material:)

Mr. SMITH of New Jersey, for 5 minutes, March 10.

Mr. FLAKE, for 5 minutes, today.

Mr. JONES of North Carolina, for 5 minutes, March 10.

ADJOURNMENT

Mrs. CAPITO. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 9 o'clock and 29 minutes p.m.), the House adjourned until tomorrow, Thursday, March 10, 2005, at 10 a.m.

NOTICE OF PROPOSED RULEMAKING

U.S. CONGRESS,
OFFICE OF COMPLIANCE,
Washington, DC, March 8, 2005.

Hon. J. DENNIS HASTERT,
Speaker, House of Representatives,
The Capitol, Washington, DC.

DEAR MR. SPEAKER: Section 304(b)(3) of the Congressional Accountability Act of 1995 (CAA), 2 U.S.C. 1384(b)(3), requires that, with regard to substantive regulations under the CAA, after the Board has published a general notice of proposed rulemaking as required by subsection (b)(1), and received comments as required by subsection (b)(2), ''the Board shall adopt regulations and shall transmit notice of such action together with a copy of such regulations to the Speaker of the House of Representatives and the President pro tempore of the Senate for publication in the Congressional Record on the first day on which both Houses are in session following such transmittal.''

The Board of Directors of the Office of Compliance has adopted the proposed regulations in the Notice of Adoption of Substantive Regulations and Transmittal for Congressional Approval which accompany this transmittal letter. The Board requests that the accompanying Notice be published in both the House and Senate versions of the Congressional Record on the first day on which both Houses are in session following receipt of this transmittal. The Board also requests that Congress approve the proposed Regulations, as further specified in the accompanying Notice.

Any inquiries regarding the accompanying Notice should be addressed to William W. Thompson II, Executive Director of the Office of Compliance, 110 2nd Street, S.E., Room LA–200, Washington, DC 20540; 202–724–9250, TDD 202–426–1912.

Sincerely,

SUSAN S. ROBFOGEL,
Chair of the Board of Directors.

OFFICE OF COMPLIANCE

NOTICE OF ADOPTION OF SUBSTANTIVE REGULATIONS, AND SUBMISSION FOR CONGRESSIONAL APPROVAL.

Proposed Replacement of the Office of Compliance Regulations implementing exemptions from the overtime pay requirements under the Fair Labor Standards Act of 1938 (FLSA).

Procedural Summary:

Issuance of the Board's Initial Notice of Proposed Rulemaking: On September 29, 2004, the Board of Directors of the Office of Compliance issued a **Notice of Proposed Rulemaking** in the Congressional Record at 150 Cong. Rec. S9917 (daily ed.), and at 150 Cong. Rec. H7850 (daily ed.). The Notice of Proposed Rulemaking was prompted by the promulgation by the Secretary of Labor, effective August 23, 2004, of amended regulations regarding various exemptions from the overtime pay requirements of the FLSA. ***See: Federal Register, Vol. 69, No. 79 (August 23, 2004).***

Why did the Board propose these new Regulations? Section 203(c)(2) of the CAA, 2 U.S.C. 1313(c)(2), requires that the Board of Directors propose substantive regulations implementing the FLSA overtime requirements which are "the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions . . . except insofar as the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulation would be more effective for the implementation of the rights and protections under this section."

What procedure followed the Board's initial September 29, 2004 Notice of Proposed Rulemaking?
The September 29, 2004 Notice of Proposed Rulemaking included a **thirty day comment period**, which began on September 30, 2004. A number of comments to the proposed substantive regulations were received by the Office of Compliance from interested parties. The Board of Directors has reviewed the comments from interested parties, made a number of changes to the proposed substantive regulations in response to comments, and has adopted the amended regulations.

What is the effect of the Board's "adoption" of these proposed substantive regulations? Adoption of these substantive regulations by the Board of Directors does not complete the promulgation process. Pursuant to section 304 of the CAA, 2 U.S.C. 1384, the procedure for promulgating such substantive regulations requires that: (1) the Board of Directors issue proposed substantive regulations and publish a general notice of proposed rulemaking in the *Congressional Record* (the September 29 Notice); (2) there be a comment period of at least 30 days after the date of publication of the general notice of proposed rulemaking; and (3) after consideration of comments by the Board of Directors, that the Board adopt regulations and transmit notice of such action together with the regulations and a recommendation regarding the method for Congressional approval of the regulations to the Speaker of the House and President pro tempore of the Senate for publication in the *Congressional Record*. This **Notice of Adoption of Substantive Regulations and Submission for Congressional Approval** completes the third step described above.

What are the next steps in the process of promulgation of these regulations? Pursuant to section 304(b)(4) of the CAA, 2 U.S.C. 1384(b)(4), the Board of Directors is required to "include a recommendation in the general notice of proposed rulemaking and in the regulations as to whether the regulations should be approved by resolution of the Senate, by resolution of the House of Representatives, by concurrent resolution, or by joint resolution." The Board of Directors recommends that the procedure used in 1996 be used to adopt these proposed overtime exemption regulations: that the House of Representatives adopt the "H" version of the regulations by resolution; that the Senate adopt the "S" version of the regulations by resolution; and that the House and Senate adopt the "C" version of the regulations applied to the other employing offices by a concurrent resolution.

Are there regulations covering overtime exemptions currently in force under the CAA? Yes. Unless and until the House of Representatives and the Senate adopt these regulations, all employing offices and covered employees continue to be required to follow the existing Part 541 Regulations which were proposed by the Board of Directors and adopted by the House of Representatives and the Senate.

If adopted, will these regulations completely replace the existing Part 541 overtime exemption regulations applicable under the CAA? Yes.

The Board's Responses to Comments

As the result of the September 29, 2004 Notice of Proposed Regulations, and the ensuing 30 day comment period, the Office received comments from various interested parties. The Board has reviewed all comments, and has deliberated regarding the question whether comments establish "good cause" pursuant to section 203(c)(2) of the CAA, 2 U.S.C. 1313(c)(2), for varying the Office of Compliance proposed regulations from the Department of Labor regulations. The following discussion outlines the comments, and the Board's response to them.

What changes from the regulations as proposed on September 29, 2004 have been made by the Board in response to comments received from interested parties?

Removal of private sector terminology: Several commenters pointed out that reference to such terms as "business" and "enterprise" throughout the proposed regulations should be replaced by "employing office." The Board agreed with this suggestion in part. Certain provisions of the proposed regulations of general applicability have been amended to replace terms such as "business" or "enterprise" with the term "employing office." However, other provisions, particularly those which refer to "business operations," a term relating to ubiquitous operational functions such as accounting, auditing, procurement, personnel management and the like, or those references which are descriptive or exemplary have not been so amended, since to do so would detract from the clarity of the reference.

Sec. 541.0: Commenters correctly pointed out that a principal statutory authority for adoption of these regulations was not included in the proposed regulations. Therefore, a reference was added citing section 225(f)(1) of the CAA (2 U.S.C. 1361(f)(1)) as authority for the promulgation of these overtime exemption rules. Commenters also noted that the reference in the proposed regulation to "enforcement" by the Office of Compliance of the equal pay provision found at section 6(d) of the FLSA reflected an authority not given to the Office under the CAA. The Office of Compliance is authorized to administer the dispute resolution process for employee claims of a violation of the equal pay requirement at section 6(d) of the FLSA, but not to engage in its own self-initiated enforcement of the provision. Therefore, the reference to "enforcement" of section 6(d) was deleted.

Sec. 541.1: A commenter suggested that a reference to the existing regulation which defines the term "intern" be added to the exemption regulations. The Board concurs with the comment. Therefore, a reference was added to the definition of "intern" found at section 501.102(h) of the existing FLSA regulations of the Office of Compliance.

Section 541.4: Several commenters pointed out that the proposed section maintained an erroneous requirement that employing offices must comply with " . . .State or municipal laws, regulations, or ordinances establishing a higher minimum wage or lower maximum workweek than those established under the FLSA" as applied via the CAA. The Board concurs with the comment. That requirement has been deleted from the proposed regulation.

What changes to the proposed substantive regulations suggested by commenters were not made by the Board of Directors? The Board of Directors reviewed all suggestions included in comments pursuant to the statutory requirement that the regulations "shall be the same as substantive regulations promulgated by the Secretary of Labor to implement the statutory provisions . . . except insofar as the Board may determine, for good cause shown and stated together with the regulation, that a modification of such regulations would be more effective for the implementation of the rights and protections under this section." (section 203(c)(2) of the CAA, 2 USC 1313(c)(2)). If the Board declined to adopt a suggestion, it determined that there was not good cause for such a change in implementing the FLSA.

Alleged "irrelevant" regulations: Commenters broadly suggested that portions of the proposed regulations which arguably do not directly concern types or categories of employment found among employees covered by the CAA should be deleted from the proposed regulations. These commenters urged that references to such employment categories as "outside

salespersons," "non-Federal employees in American Samoa," "insurance claims adjusters," work in a "factory," etc. should be entirely removed. Several of these commenters also suggested that substantively distinct sets of new regulations be developed for the House of Representatives, the Senate, and the other employing offices, based upon the differences among the types of employees who work in each body or agency.

The Board of Directors has been aware since its initial preparation of these proposed regulations that many of the job classifications and types of work processes treated in Part 541 are probably not found within the Legislative Branch of the Federal Government, that there may be job categories in the Legislative Branch not directly reflected in Part 541, and that there are differences among the work forces in the several employing offices covered by the CAA. However, the Board has concluded that adding or removing exemplary and descriptive provisions from the regulations as applied to all employing offices would reflect a basic misunderstanding of the purpose and goal of the new Part 541 of 29 CFR, and of the Congressional mandate in the CAA that the Board issue regulations based upon the Secretary of Labor's regulations promulgated for the private sector (See section 203(c)(2) of the CAA, 2 USC 1313(c)(2)).

While the Labor Department's "old," i.e. pre-2004, Part 541 overtime exemption regulations included a great deal of descriptive material, it was not binding, since almost all of the descriptive portions of 29 CFR Part 541 (Subpart B) were merely "interpretive" explanatory bulletins. Thus, the 1996 Part 541 regulations adopted by the Board of Directors and promulgated by Congress under the CAA did not include any of the Labor Department's interpretive regulations, since those interpretive regulations had not been formally promulgated under the Administrative Procedures Act.

In revamping Part 541, the Secretary of Labor explained that the Labor Department intended to "eliminate this distinction between the formal 'regulations' in Subpart A and the 'interpretations' in Subpart B. . . . This proposed restructuring of Part 541 was intended to consolidate and streamline the regulatory text, . . . make the regulations easier to understand and decipher when applying them to particular factual situations, and eliminate the confusion regarding the appropriate level of deference to be given to the provisions of each subpart." (69 Fed. Reg. 22126 (4/23/04)). While the new Part 541 does not directly discuss every conceivable employment situation, it does provide a broad sample of authoritative exemplary and descriptive material for many types of employers.

The key concept for purposes of explaining the Board's decision not to delete seemingly "irrelevant" descriptive and exemplary material is the intent of the new Labor Department regulations to make the tests for exemption "easier to understand and decipher when applying them to particular factual situations." No single employer or group of employers subject to the Part 541 regulations in the private sector employs all or even most of the categories of employees referenced in Part 541. However, the new Part 541 regulations for the first time provide a wealth of authoritative exemplary and descriptive material which can assist employers and employees to discern whether a particular position or job is exempt. The usefulness of this material does not depend upon the direct applicability of each and every provision of the regulations to each and every position or job.

The Board of Directors has concluded that employing offices and employees covered by the CAA should be accorded the same opportunity to utilize the full wealth of descriptive and exemplary material in the new Part 541 regulations as has been accorded employers and employees in the private sector. Any effort to carve this integrated body of regulations into segments which only refer to employment categories presently included within each category of employing office under the CAA would not only subvert the overall integration of Part 541, but prove to be enormously difficult in implementation.

References to "business," "enterprise," or other private sector employer categories. Several commenters suggested that all references in the proposed regulations to private enterprise concepts be replaced by terms derived from the CAA or governmental parlance. The proposed regulations have addressed the commenters' concern through language in section 541.1, which includes the stipulation that "Employer, company, business, enterprise, or public agency each mean an "employing office" as defined in section 101(9) of the CAA, 2 USC 1301(9)." However, reference to such "private sector" concepts in descriptive or exemplary regulations have not been excised, because to do so could well blunt the clarity or usefulness of the description or example. Whether or not specific work processes or functions as described in the proposed regulations are applicable directly or by analogy to a particular "employing office" are questions of fact for CAA employing offices and covered employees, just as for all other categories of employers and employees covered by the Labor Department regulations, including State and local governments.

Various FLSA overtime rules for "police officers" should not apply to police officers employed by the United States Capitol Police. One commenter asserted that the new proposed regulation establishing exceptions for the application of the FLSA section 13(a)(1) exemption tests for police officers and other public safety employees at proposed section 541.3(b) should not apply to members of the United States Capitol Police in those categories because the work performed by the United States Capitol Police is not "traditional police work performed by most state and local organizations." Rather, the commenter asserted the "unique nature of the USCP work as an organization charged with providing comprehensive and fully integrated security services which includes physical security and counter-terrorism components as well as a personal protective function, all requiring full and robust participation in the intelligence community." The commenter also noted that some members of the Capitol Police perform office and non-manual work.

The Board has carefully considered the assertion that the Capitol Police force is unique among all law enforcement agencies otherwise covered by Part 541 of the Department of Labor Regulations. The Board takes administrative notice that other major law enforcement agencies, such as the Uniformed Division of the Secret Service, District of Columbia Metropolitan Police, and many other large urban police forces, and police forces charged with security of state and local government premises and officials, are charged with providing security services, counter-terrorism capabilities, personal protective services, participation in the intelligence community, and include employees who perform office and non-manual work. While the relative emphasis and extent of any one or another such function may vary among such law enforcement agencies, the Board has concluded that the United States Capitol Police operation is not unique in any or all of these dimensions of law enforcement work. Therefore, the Board has determined that there is not "good cause" for exempting the members of the United States Capitol Police from the

application of section 541.3(b) of the proposed substantive regulations.

Reference to section 13(a)(1) of the FLSA "as amended." A commenter asserted that the phrase "as amended" in referencing section 13(a)(1) of the FLSA, 29 USC 213(a)(1), in the proposed substantive regulation is in error. The commenter asserted that the reference to laws being applied via the CAA is a "specific reference," and further asserted that canons of statutory construction therefore require that the referenced statute can only be applied as it existed as of the date of the reference. Therefore, said the commenter, subsequent amendments to CAA referenced laws such as the FLSA would not apply under the CAA. The commenter also asserted that the CAA's waiver of sovereign immunity of the United States did not include a waiver with regard to subsequent amendments to the laws applied via the CAA. In other words, the commenter argued that the statutes applied to Congress and the Legislative Branch via the CAA are "frozen" as they existed in 1995. The Board does not respond to the commenter's suggested interpretation of the CAA at this time, because section 13(a)(1) of the FLSA has not been amended since the CAA was enacted.

Inclusion of interns for purposes of establishing supervisory status under section 541.104. One commenter pointed out that interns (as defined in section 501.102(h) of the Office's FLSA regulations) are not "covered employees" for purposes of the CAA, but suggested that interns be counted as "employees" for purposes of application of the "direct the work of two or more other employees" test at section 541.104 of the proposed regulations. At the direction of the Board, the Office of Compliance inquired of the Department of Labor whether the Department interprets the term "employee" in regulation 541.104 to include individual workers who are not "employees" as defined under the balance of Part 541. The Labor Department responded informally that such workers are not counted as "employees" for purposes of the application of section 541.104 of the regulations. The Board has concluded that there is no good cause for varying from that practice under these proposed regulations, and has declined to include interns as "employees" for the purpose of section 541.104.

Members of the House of Representatives and Senators are not "covered employees" for purposes of the CAA. One commenter concluded that Members of the House of Representatives are not "covered employees." Rather than limit the response to this comment to the House of Representatives, the Board has reviewed the issue both with regard to Members of the House of Representatives and Senators. The Board has concluded that Members of the House and Senators are "covered employees" for purposes of the application of the CAA. An "employee of the House of Representatives" is defined at section 101(7) to include "an individual occupying a position the pay for which is disbursed by the Clerk of the House of Representatives, or another official designated by the House of Representatives . . . ." 2 USC 1301(7). The pay of Members of the House is disbursed by the Chief Administrative Officer of the House of Representatives. An "'employee of the Senate' includes any employee whose pay is disbursed by the Secretary of the Senate . . . ." The pay of Senators is disbursed by the Secretary of the Senate. Therefore, both Members of the House and Senators are "covered employees" for the purposes of applicability of these proposed regulations. However, Members of the House and Senators are also clearly identified at section 541.1 of the proposed regulations as exempt "senior executives" for purposes of the application of overtime eligibility.

Additional General Information

Why are there separate sets of existing FLSA regulations which have been applicable since 1996 for the House of Representatives, the Senate, and the other employing offices covered by the CAA? Section 304(a)(2)(B) of the CAA, 2 U.S.C. 1384(a)(2)(B), requires that the substantive rules of the Board of Directors of the Office of Compliance "shall consist of 3 separate bodies of regulations, which shall apply, respectively, to - (i) the Senate and employees of the Senate; (ii) the House of Representatives and employees of the House of Representatives; and (iii) the other covered employees and employing offices." In 1996, the House of Representatives (H.Res.400) and the Senate (S.Res.242) each adopted by resolution the FLSA regulations applicable to each body. The Senate and House of Representatives adopted by concurrent resolution (S.Con.Res.51) the regulations applicable to other employing offices and employees.

Are there substantive differences in the proposed regulations for the House of Representatives, the Senate, and the other employing offices? No. While there are some differences in other parts of the existing FLSA regulations applicable to the Senate, the House of Representatives, and the other employing offices (chiefly related to the mandate at section 203(c)(3) of the CAA, 2 U.S.C. 1313(c)(3), regarding "covered employees whose work schedules directly depend on the schedule of the House of Representatives or the Senate . . ."), the existing Part 541 regulations are substantively identical. The Board of Directors has identified no "good cause" for varying the text of these proposed new regulations. Therefore, if the proposed part 541 regulations are adopted to replace the pre-existing Part 541 regulations, the prefixes "H," "S," and "C" will be affixed to each of the sets of regulations for the House, for the Senate, and for the other employing offices, but otherwise the text of the part 541 regulations will be identical.

How does the Board of Directors recommend that Congress approve these proposed regulations? Pursuant to section 304(b)(4) of the CAA, 2 U.S.C. 1384(b)(4), the Board of Directors is required to "include a recommendation in the general notice of proposed rulemaking and in the regulations as to whether the regulations should be approved by resolution of the Senate, by resolution of the House of Representatives, by concurrent resolution, or by joint resolution." The Board of Directors recommends that the procedure used in 1996 be used to adopt these proposed overtime exemption regulations: the House of Representatives adopted the "H" version of the regulations by resolution; the Senate adopted the "S" version of the regulations by resolution; and the House and Senate adopted the "C" version of the regulations applied to the other employing offices by a concurrent resolution.

Are these proposed regulations also recommended by the Office of Compliance's Executive Director, the Deputy Executive Director for the House of Representatives, and the Deputy Executive Director for the Senate? Yes, as required by section 304(b)(1) of the CAA, 2 U.S.C. 1384(b)(1), the substance of these regulations have also been recommended by the Executive Director and Deputy Executive Directors of the Office of Compliance.

Are these proposed CAA regulations available to persons with disabilities in an alternate

format? This Notice of Adoption of Substantive Regulations, and Submission for Congressional Approval is available on the Office of Compliance web site, www. Compliance. gov which is compliant with section 508 of the Rehabilitation Act of 1973 as amended, 29 U.S.C. 794d. This Notice can also be made available in large print or Braille. Requests for this Notice in an alternative format should be made to: Alma Candelaria, Deputy Executive Director, Office of Compliance, 110 2nd Street, S.E., Room LA-200, Washington, D.C. 20540; 202-724-9250; TDD: 202-426-1912; FAX: 202-426-1913.

How To Read The Proposed Amendments

In order to make comparison of these regulations with the regulations promulgated by the Secretary of Labor, the text of the proposed regulations reproduces the text of the regulations promulgated on August 23, 2004 by the Secretary of Labor at 29 CFR Part 541, and shows changes proposed for the CAA version of these same regulations. Changes adopted by the Board of Directors of the Office of Compliance are shown as follows: *[]*deletions within italicized brackets*]], and added text in italicized bold.* Further changes adopted by the Board in response to comments regarding the initial proposed regulations as issued on September 29, 2004 by the Board *are bolded, italicized, and underlined.* Therefore, if these regulations are approved as proposed, *[[bracketed text will disappear from the regulations]], and added text will remain.* If these regulations are approved for the House of Representatives by resolution of the House, they will be promulgated with the prefix "H" appearing before each regulations section number. If these regulations are approved for the Senate by resolution of the Senate, they will be promulgated with the prefix "S" appearing before each regulations section number. If these regulations are approved for the other employing offices by joint or concurrent resolution of the House of Representatives and the Senate, they will be promulgated with the prefix "C" appearing before each regulations section number.

Supplementary Information: The Congressional Accountability Act of 1995 (CAA), PL 104-1, was enacted into law on January 23, 1995. The CAA applies the rights and protections of 12 federal labor and employment statutes to covered employees and employing offices within the Legislative Branch of Government. Section 301 of the CAA (2 U.S.C. 1381) establishes the Office of Compliance as an independent office within the Legislative Branch.

TEXT OF PROPOSED OVERTIME EXEMPTION REGULATIONS

as adopted by the Board of Directors of the Office of Compliance.

NOTE: As and when approved by the House of Representatives and/or the Senate, these proposed regulations will entirely replace the current Part 541 regulations which were promulgated by the Office of Compliance and approved by the House of Representatives and the Senate in 1996. Until new Part 541 regulations are approved by the House of Representatives and/or the Senate, the 1996 regulations regarding overtime exemptions remain in full force and effect.

When approved by the House of Representatives for the House of Representatives, these regulations will have the prefix "H." When approved by the Senate for the Senate, these regulations will have the prefix "S." When approved by Congress for the other employing offices covered by the CAA, these regulations will have the prefix "C."

PART 541--DEFINING AND DELIMITING THE EXEMPTIONS FOR EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL, COMPUTER AND OUTSIDE SALES EMPLOYEES

Subpart A--General Regulations Sec.
541.0 Introductory statement.
541.1 Terms used in regulations.
541.2 Job titles insufficient.
541.3 Scope of the section 13(a)(1) exemptions.
541.4 Other laws and collective bargaining agreements.

Subpart B--Executive Employees
541.100 General rule for executive employees.
541.101 Business owner.
541.102 Management.
541.103 Department or subdivision.
541.104 Two or more other employees.
541.105 Particular weight.
541.106 Concurrent duties.

Subpart C--Administrative Employees
541.200 General rule for administrative employees.
541.201 Directly related to management or general business operations.
541.202 Discretion and independent judgment.
541.203 Administrative exemption examples.
541.204 Educational establishments.

Subpart D--Professional Employees
541.300 General rule for professional employees.
541.301 Learned professionals.
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541.303 Teachers.
541.304 Practice of law or medicine.

Subpart E--Computer Employees
541.400 General rule for computer employees.
541.401 Computer manufacture and repair.
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Subpart F--Outside Sales Employees
541.500 General rule for outside sales employees.
541.501 Making sales or obtaining orders.
541.502 Away from employer's place of business.
541.503 Promotion work.
541.504 Drivers who sell.

Subpart G--Salary Requirements
541.600 Amount of salary required.
541.601 Highly compensated employees.
541.602 Salary basis.
541.603 Effect of improper deductions from salary.
541.604 Minimum guarantee plus extras.
541.605 Fee basis.
541.606 Board, lodging or other facilities.

Subpart H--Definitions And Miscellaneous Provisions
541.700 Primary duty.

541.701 Customarily and regularly.
541.702 Exempt and nonexempt work.
541.703 Directly and closely related.
541.704 Use of manuals.
541.705 Trainees.
541.706 Emergencies.
541.707 Occasional tasks.
541.708 Combination exemptions.
541.709 Motion picture producing industry.
541.710 Employees of public agencies.

Authority: 29 U.S.C. 213;[[Public Law 101-583, 104 Stat. 2871]]; ***2 U.S.C. 203; 2 U.S.C. 304.*** [[Reorganization Plan No. 6 of 1950 (3 CFR 1945-53 Comp. p. 1004); Secretary's Order No. 4-2001 (66 FR 29656).]]

Subpart A--General Regulations

Sec. 541.0 Introductory statement. (a) Section 13(a)(1) of the Fair Labor Standards Act **(Act)**, as amended, ***and as applied pursuant to sections 203 and 225(f)(1) of the Congressional Accountability Act of 1995, 2 U.S.C. 1313 and 1361(f)(1),*** provides an exemption from the Act's minimum wage and overtime requirements for any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of an outside sales employee*.[[*, [[as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act.]] Section 13(a)(17) of the Act provides an exemption from the minimum wage and overtime requirements for computer systems analysts, computer programmers, software engineers, and other similarly skilled computer employees. (b) The requirements for these exemptions are contained in this part as follows: executive employees, subpart B; administrative employees, subpart C; professional employees, subpart D; computer employees, subpart E; outside sales employees, subpart F. Subpart G contains regulations regarding salary requirements applicable to most of the exemptions, including salary levels and the salary basis test. Subpart G also contains a provision for exempting certain highly compensated employees. Subpart H contains definitions and other miscellaneous provisions applicable to all or several of the exemptions. (c) Effective July 1, 1972, the Fair Labor Standards Act was amended to include within the protection of the equal pay provisions those employees exempt from the minimum wage and overtime pay provisions as bona fide executive, administrative, and professional employees (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of an outside sales employee under section 13(a)(1) of the Act. The equal pay provisions in section 6(d) of the Fair Labor Standards Act are **also** administered *[[*and enforced*]]* by the [[United States Equal Employment Opportunity Commission]] ***Office of Compliance.***

Sec. 541.1 Terms used in regulations. Act means the Fair Labor Standards Act of 1938, as amended. [[Administrator means the Administrator of the Wage and Hour Division, United States Department of Labor. The Secretary of Labor has delegated to the Administrator the functions vested in the Secretary under sections 13(a)(1) and 13(a)(17) of the Fair Labor

Standards Act.]] ***CAA means Congressional Accountability Act of 1995, as amended. Office means the Office of Compliance. Employee means a "covered employee" as defined in section 101 (3) through (8) of the CAA, 2 U.S.C. 1301(3) through (8), but not an "intern" as defined in section 203(a)(2) of the CAA, 2 U.S.C. 1313(a)(2), and in section 501.102(h) of the FLSA implementing regulations of the Office of Compliance. Employer, company, business, enterprise, or public agency each mean an "employing office" as defined in section 101(9) of the CAA, 2 U.S.C. 1301(9). Senior executive includes but is not limited to a Member of the House of Representatives or a Senator***

Sec. 541.2 Job titles insufficient. A job title alone is insufficient to establish the exempt status of an employee. The exempt or nonexempt status of any particular employee must be determined on the basis of whether the employee's salary and duties meet the requirements of the regulations in this part.

Sec. 541.3 Scope of the section 13(a)(1) exemptions.
(a) The section 13(a)(1) exemptions and the regulations in this part do not apply to manual laborers or other ``blue collar'' workers who perform work involving repetitive operations with their hands, physical skill and energy. Such nonexempt ``blue collar'' employees gain the skills and knowledge required for performance of their routine manual and physical work through apprenticeships and on-the-job training, not through the prolonged course of specialized intellectual instruction required for exempt learned professional employees such as medical doctors, architects and archeologists. Thus, for example, non-management production-line employees and non-management employees in maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers and laborers are entitled to minimum wage and overtime premium pay under the Fair Labor Standards Act, and are not exempt under the regulations in this part no matter how highly paid they might be.

(b)(1) The section 13(a)(1) exemptions and the regulations in this part also do not apply to police officers, detectives, deputy sheriffs, state troopers, highway patrol officers, investigators, inspectors, correctional officers, parole or probation officers, park rangers, fire fighters, paramedics, emergency medical technicians, ambulance personnel, rescue workers, hazardous materials workers and similar employees, regardless of rank or pay level, who perform work such as preventing, controlling or extinguishing fires of any type; rescuing fire, crime or accident victims; preventing or detecting crimes; conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; detaining or supervising suspected and convicted criminals, including those on probation or parole; interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work.
(2) Such employees do not qualify as exempt executive employees because their primary duty is not management of the ***[[***enterprise***]] employing office*** in which the employee is employed or a customarily recognized department or subdivision thereof as required under Sec. 541.100. Thus, for example, a police officer or fire fighter whose primary duty is to investigate crimes or fight fires is not exempt under section 13(a)(1) of the Act merely because the police officer or fire fighter also directs the work of other employees in the conduct of an investigation or fighting a fire.

(3) Such employees do not qualify as exempt administrative employees because their primary duty is not the performance of work directly related to the management or general business operations of the employer or the employer's customers as required under Sec. 541.200.
(4) Such employees do not qualify as exempt professionals because their primary duty is not the performance of work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction or the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor as required under Sec. 541.300. Although some police officers, fire fighters, paramedics, emergency medical technicians and similar employees have college degrees, a specialized academic degree is not a standard prerequisite for employment in such occupations.

Sec. 541.4 Other laws and collective bargaining agreements. The Fair Labor Standards Act provides minimum standards that may be exceeded, but cannot be waived or reduced. Employers must comply, for example, with any ***applicable*** Federal *[[*, State or municipal*]]* laws*[[*, regulations or ordinances*]]* establishing a higher minimum wage or lower maximum workweek than those established under the Act. Similarly, employers, on their own initiative or under a collective bargaining agreement with a labor union, are not precluded by the Act from providing a wage higher than the statutory minimum, a shorter workweek than the statutory maximum, or a higher overtime premium (double time, for example) than provided by the Act. While collective bargaining agreements cannot waive or reduce the Act's protections, nothing in the Act or the regulations in this part relieves employers from their contractual obligations under collective bargaining agreements.

Subpart B--Executive Employees

Sec. 541.100 General rule for executive employees.
(a) The term ``employee employed in a bona fide executive capacity'' in section 13(a)(1) of the Act shall mean any employee: (1) Compensated on a salary basis at a rate of not less than $455 per week (or $380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities; (2) Whose primary duty is management of the *[[*enterprise*]]* ***employing office*** in which the employee is employed or of a customarily recognized department or subdivision thereof; (3) Who customarily and regularly directs the work of two or more other employees; and (4) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring, firing, advancement, promotion or any other change of status of other employees are given particular weight.
(b) The phrase ``salary basis'' is defined at Sec. 541.602; ``board, lodging or other facilities'' is defined at Sec. 541.606; ``primary duty'' is defined at Sec. 541.700; and ``customarily and regularly'' is defined at Sec. 541.701.

Sec. 541.101 Business owner. The term ``employee employed in a bona fide executive capacity'' in section 13(a)(1) of the Act also includes any employee who owns at least a bona fide 20-percent equity interest in the enterprise in which the employee is employed, regardless of whether the business is a corporate or other type of organization, and who is actively engaged in its management. The term ``management'' is defined in Sec. 541.102. The requirements of Subpart

G (salary requirements) of this part do not apply to the business owners described in this section.

Sec. 541.102 Management. Generally, ``management'' includes, but is not limited to, activities such as interviewing, selecting, and training of employees; setting and adjusting their rates of pay and hours of work; directing the work of employees; maintaining production or sales records for use in supervision or control; appraising employees' productivity and efficiency for the purpose of recommending promotions or other changes in status; handling employee complaints and grievances; disciplining employees; planning the work; determining the techniques to be used; apportioning the work among the employees; determining the type of materials, supplies, machinery, equipment or tools to be used or merchandise to be bought, stocked and sold; controlling the flow and distribution of materials or merchandise and supplies; providing for the safety and security of the employees or the property; planning and controlling the budget; and monitoring or implementing legal compliance measures.

Sec. 541.103 Department or subdivision. (a) The phrase ``a customarily recognized department or subdivision'' is intended to distinguish between a mere collection of employees assigned from time to time to a specific job or series of jobs and a unit with permanent status and function. A customarily recognized department or subdivision must have a permanent status and a continuing function. For example, a large employer's human resources department might have subdivisions for labor relations, pensions and other benefits, equal employment opportunity, and personnel management, each of which has a permanent status and function. (b) When an *[[*enterprise*]]* ***employing office*** has more than one establishment, the employee in charge of each establishment may be considered in charge of a recognized subdivision of the *[[*enterprise*]]* ***employing office***. (c) A recognized department or subdivision need not be physically within the employer's establishment and may move from place to place. The mere fact that the employee works in more than one location does not invalidate the exemption if other factors show that the employee is actually in charge of a recognized unit with a continuing function in the organization. (d) Continuity of the same subordinate personnel is not essential to the existence of a recognized unit with a continuing function. An otherwise exempt employee will not lose the exemption merely because the employee draws and supervises workers from a pool or supervises a team of workers drawn from other recognized units, if other factors are present that indicate that the employee is in charge of a recognized unit with a continuing function.

Sec. 541.104 Two or more other employees. (a) To qualify as an exempt executive under Sec. 541.100, the employee must customarily and regularly direct the work of two or more other employees. The phrase ``two or more other employees'' means two full-time employees or their equivalent. One full-time and two half- time employees, for example, are equivalent to two full-time employees. Four half-time employees are also equivalent. (b) The supervision can be distributed among two, three or more employees, but each such employee must customarily and regularly direct the work of two or more other full-time employees or the equivalent. Thus, for example, a department with five full-time nonexempt workers may have up to two exempt supervisors if each such supervisor customarily and regularly directs the work of two of those workers. (c) An employee who merely assists the manager of a particular department and supervises two or more employees only in the actual manager's absence does not meet this requirement. (d) Hours worked by an employee cannot be credited more than once for different executives. Thus, a shared responsibility for the supervision of the same two employees in the

same department does not satisfy this requirement. However, a full-time employee who works four hours for one supervisor and four hours for a different supervisor, for example, can be credited as a half-time employee for both supervisors.

Sec. 541.105 Particular weight. To determine whether an employee's suggestions and recommendations are given ``particular weight,'' factors to be considered include, but are not limited to, whether it is part of the employee's job duties to make such suggestions and recommendations; the frequency with which such suggestions and recommendations are made or requested; and the frequency with which the employee's suggestions and recommendations are relied upon. Generally, an executive's suggestions and recommendations must pertain to employees whom the executive customarily and regularly directs. It does not include an occasional suggestion with regard to the change in status of a co-worker. An employee's suggestions and recommendations may still be deemed to have ``particular weight'' even if a higher level manager's recommendation has more importance and even if the employee does not have authority to make the ultimate decision as to the employee's change in status.

Sec. 541.106 Concurrent duties.
(a) Concurrent performance of exempt and nonexempt work does not disqualify an employee from the executive exemption if the requirements of Sec. 541.100 are otherwise met. Whether an employee meets the requirements of Sec. 541.100 when the employee performs concurrent duties is determined on a case-by-case basis and based on the factors set forth in Sec. 541.700. Generally, exempt executives make the decision regarding when to perform nonexempt duties and remain responsible for the success or failure of business operations under their management while performing the nonexempt work. In contrast, the nonexempt employee generally is directed by a supervisor to perform the exempt work or performs the exempt work for defined time periods. An employee whose primary duty is ordinary production work or routine, recurrent or repetitive tasks cannot qualify for exemption as an executive.
(b) For example, an assistant manager in a retail establishment may perform work such as serving customers, cooking food, stocking shelves and cleaning the establishment, but performance of such nonexempt work does not preclude the exemption if the assistant manager's primary duty is management. An assistant manager can supervise employees and serve customers at the same time without losing the exemption. An exempt employee can also simultaneously direct the work of other employees and stock shelves.
(c) In contrast, a relief supervisor or working supervisor whose primary duty is performing nonexempt work on the production line in a manufacturing plant does not become exempt merely because the nonexempt production line employee occasionally has some responsibility for directing the work of other nonexempt production line employees when, for example, the exempt supervisor is unavailable. Similarly, an employee whose primary duty is to work as an electrician is not an exempt executive even if the employee also directs the work of other employees on the job site, orders parts and materials for the job, and handles requests from the prime contractor.

Subpart C--Administrative Employees

Sec. 541.200 General rule for administrative employees.
a) The term ``employee employed in a bona fide administrative capacity'' in section 13(a)(1) of the Act shall mean any employee: (1) Compensated on a salary or fee basis at a rate of not less

than $455 per week (or $380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities; (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.
(b) The term ``salary basis'' is defined at Sec. 541.602; ``fee basis'' is defined at Sec. 541.605; ``board, lodging or other facilities'' is defined at Sec. 541.606; and ``primary duty'' is defined at Sec. 541.700.

Sec. 541.201 Directly related to management or general business operations.
(a) To qualify for the administrative exemption, an employee's primary duty must be the performance of work directly related to the management or general business operations of the employer or the employer's customers. The phrase ``directly related to the management or general business operations'' refers to the type of work performed by the employee. To meet this requirement, an employee must perform work directly related to assisting with the running or servicing of the ***[[***business***]] employing office***, as distinguished, for example, from working on a manufacturing production line or selling a product in a retail or service establishment.
(b) Work directly related to management or general business operations includes, but is not limited to, work in functional areas such as tax; finance; accounting; budgeting; auditing; insurance; quality control; purchasing; procurement; advertising; marketing; research; safety and health; personnel management; human resources; employee benefits; labor relations; public relations, government relations; computer network, internet and database administration; legal and regulatory compliance; and similar activities. Some of these activities may be performed by employees who also would qualify for another exemption.
(c) An employee may qualify for the administrative exemption if the employee's primary duty is the performance of work directly related to the management or general business operations of the employer's customers. Thus, for example, employees acting as advisers or consultants to their employer's clients or customers (as tax experts or financial consultants, for example) may be exempt.

Sec. 541.202 Discretion and independent judgment.
(a) To qualify for the administrative exemption, an employee's primary duty must include the exercise of discretion and independent judgment with respect to matters of significance. In general, the exercise of discretion and independent judgment involves the comparison and the evaluation of possible courses of conduct, and acting or making a decision after the various possibilities have been considered. The term ``matters of significance'' refers to the level of importance or consequence of the work performed.
(b) The phrase ``discretion and independent judgment'' must be applied in the light of all the facts involved in the particular employment situation in which the question arises. Factors to consider when determining whether an employee exercises discretion and independent judgment with respect to matters of significance include, but are not limited to: whether the employee has authority to formulate, affect, interpret, or implement management policies or operating practices; whether the employee carries out major assignments in conducting the operations of the ***[[***business***]] employing office***; whether the employee performs work that affects business operations to a substantial degree, even if the employee's assignments are related to operation of

a particular segment of the [[business]] ***employing office***; whether the employee has authority to commit the employer in matters that have significant financial impact; whether the employee has authority to waive or deviate from established policies and procedures without prior approval; whether the employee has authority to negotiate and bind the [[company]] ***employing office*** on significant matters; whether the employee provides consultation or expert advice to management; whether the employee is involved in planning long- or short-term [[business]] objectives; whether the employee investigates and resolves matters of significance on behalf of management; and whether the employee represents the [[company]] ***employing office*** in handling complaints, arbitrating disputes or resolving grievances.

(c) The exercise of discretion and independent judgment implies that the employee has authority to make an independent choice, free from immediate direction or supervision. However, employees can exercise discretion and independent judgment even if their decisions or recommendations are reviewed at a higher level. Thus, the term ``discretion and independent judgment'' does not require that the decisions made by an employee have a finality that goes with unlimited authority and a complete absence of review. The decisions made as a result of the exercise of discretion and independent judgment may consist of recommendations for action rather than the actual taking of action. The fact that an employee's decision may be subject to review and that upon occasion the decisions are revised or reversed after review does not mean that the employee is not exercising discretion and independent judgment. For example, the policies formulated by the credit manager of a large corporation may be subject to review by higher company officials who may approve or disapprove these policies. The management consultant who has made a study of the operations of a business and who has drawn a proposed change in organization may have the plan reviewed or revised by superiors before it is submitted to the client.

(d) An employer's volume of [[business]] ***work*** may make it necessary to employ a number of employees to perform the same or similar work. The fact that many employees perform identical work or work of the same relative importance does not mean that the work of each such employee does not involve the exercise of discretion and independent judgment with respect to matters of significance.

(e) The exercise of discretion and independent judgment must be more than the use of skill in applying well-established techniques, procedures or specific standards described in manuals or other sources. See also Sec. 541.704 regarding use of manuals. The exercise of discretion and independent judgment also does not include clerical or secretarial work, recording or tabulating data, or performing other mechanical, repetitive, recurrent or routine work. An employee who simply tabulates data is not exempt, even if labeled as a ``statistician.''

(f) An employee does not exercise discretion and independent judgment with respect to matters of significance merely because the employer will experience financial losses if the employee fails to perform the job properly. For example, a messenger who is entrusted with carrying large sums of money does not exercise discretion and independent judgment with respect to matters of significance even though serious consequences may flow from the employee's neglect. Similarly, an employee who operates very expensive equipment does not exercise discretion and independent judgment with respect to matters of significance merely because improper performance of the employee's duties may cause serious financial loss to the employer. Sec. 541.203 Administrative exemption examples.

(a) Insurance claims adjusters generally meet the duties requirements for the administrative exemption, whether they work for an insurance company or other type of company, if their duties

include activities such as interviewing insureds, witnesses and physicians; inspecting property damage; reviewing factual information to prepare damage estimates; evaluating and making recommendations regarding coverage of claims; determining liability and total value of a claim; negotiating settlements; and making recommendations regarding litigation.

(b) Employees in the financial services industry generally meet the duties requirements for the administrative exemption if their duties include work such as collecting and analyzing information regarding the customer's income, assets, investments or debts; determining which financial products best meet the customer's needs and financial circumstances; advising the customer regarding the advantages and disadvantages of different financial products; and marketing, servicing or promoting the employer's financial products. However, an employee whose primary duty is selling financial products does not qualify for the administrative exemption.

(c) An employee who leads a team of other employees assigned to complete major projects for the employer (such as purchasing, selling or closing all or part of the business, negotiating a real estate transaction or a collective bargaining agreement, or designing and implementing productivity improvements) generally meets the duties requirements for the administrative exemption, even if the employee does not have direct supervisory responsibility over the other employees on the team.

(d) An executive assistant or administrative assistant to a business owner or senior executive of a large business generally meets the duties requirements for the administrative exemption if such employee, without specific instructions or prescribed procedures, has been delegated authority regarding matters of significance.

(e) Human resources managers who formulate, interpret or implement employment policies and management consultants who study the operations of a business and propose changes in organization generally meet the duties requirements for the administrative exemption. However, personnel clerks who ``screen'' applicants to obtain data regarding their minimum qualifications and fitness for employment generally do not meet the duties requirements for the administrative exemption. Such personnel clerks typically will reject all applicants who do not meet minimum standards for the particular job or for employment by the company. The minimum standards are usually set by the exempt human resources manager or other company officials, and the decision to hire from the group of qualified applicants who do meet the minimum standards is similarly made by the exempt human resources manager or other company officials. Thus, when the interviewing and screening functions are performed by the human resources manager or personnel manager who makes the hiring decision or makes recommendations for hiring from the pool of qualified applicants, such duties constitute exempt work, even though routine, because this work is directly and closely related to the employee's exempt functions.

(f) Purchasing agents with authority to bind the company on significant purchases generally meet the duties requirements for the administrative exemption even if they must consult with top management officials when making a purchase commitment for raw materials in excess of the contemplated plant needs.

(g) Ordinary inspection work generally does not meet the duties requirements for the administrative exemption. Inspectors normally perform specialized work along standardized lines involving well- established techniques and procedures which may have been catalogued and described in manuals or other sources. Such inspectors rely on techniques and skills acquired by special training or experience. They have some leeway in the performance of their work but only within closely prescribed limits.

(h) Employees usually called examiners or graders, such as employees that grade lumber, generally do not meet the duties requirements for the administrative exemption. Such employees usually perform work involving the comparison of products with established standards which are frequently catalogued. Often, after continued reference to the written standards, or through experience, the employee acquires sufficient knowledge so that reference to written standards is unnecessary. The substitution of the employee's memory for a manual of standards does not convert the character of the work performed to exempt work requiring the exercise of discretion and independent judgment.
(i) Comparison shopping performed by an employee of a retail store who merely reports to the buyer the prices at a competitor's store does not qualify for the administrative exemption. However, the buyer who evaluates such reports on competitor prices to set the employer's prices generally meets the duties requirements for the administrative exemption.
(j) Public sector inspectors or investigators of various types, such as fire prevention or safety, building or construction, health or sanitation, environmental or soils specialists and similar employees, generally do not meet the duties requirements for the administrative exemption because their work typically does not involve work directly related to the management or general business operations of the employer. Such employees also do not qualify for the administrative exemption because their work involves the use of skills and technical abilities in gathering factual information, applying known standards or prescribed procedures, determining which procedure to follow, or determining whether prescribed standards or criteria are met.

Sec. 541.204 Educational establishments.
(a) The term ``employee employed in a bona fide administrative capacity'' in section 13(a)(1) of the Act also includes employees: (1) Compensated for services on a salary or fee basis at a rate of not less than $455 per week (or $380 per week, if employed in American Samoa by employers other than the Federal Government) exclusive of board, lodging or other facilities, or on a salary basis which is at least equal to the entrance salary for teachers in the educational establishment by which employed; and (2) Whose primary duty is performing administrative functions directly related to academic instruction or training in an educational establishment or department or subdivision thereof.
(b) The term ``educational establishment'' means an elementary or secondary school system, an institution of higher education or other educational institution. Sections 3(v) and 3(w) of the Act define elementary and secondary schools as those day or residential schools that provide elementary or secondary education, as determined under State law. Under the laws of most States, such education includes the curriculums in grades 1 through 12; under many it includes also the introductory programs in kindergarten. Such education in some States may also include nursery school programs in elementary education and junior college curriculums in secondary education. The term ``other educational establishment'' includes special schools for mentally or physically disabled or gifted children, regardless of any classification of such schools as elementary, secondary or higher. Factors relevant in determining whether post-secondary career programs are educational institutions include whether the school is licensed by a state agency responsible for the state's educational system or accredited by a nationally recognized accrediting organization for career schools. Also, for purposes of the exemption, no distinction is drawn between public and private schools, or between those operated for profit and those that are not for profit.
(c) The phrase ``performing administrative functions directly related to academic instruction or

training" means work related to the academic operations and functions in a school rather than to administration along the lines of general business operations. Such academic administrative functions include operations directly in the field of education. Jobs relating to areas outside the educational field are not within the definition of academic administration.
(1) Employees engaged in academic administrative functions include: the superintendent or other head of an elementary or secondary school system, and any assistants, responsible for administration of such matters as curriculum, quality and methods of instructing, measuring and testing the learning potential and achievement of students, establishing and maintaining academic and grading standards, and other aspects of the teaching program; the principal and any vice-principals responsible for the operation of an elementary or secondary school; department heads in institutions of higher education responsible for the administration of the mathematics department, the English department, the foreign language department, etc.; academic counselors who perform work such as administering school testing programs, assisting students with academic problems and advising students concerning degree requirements; and other employees with similar responsibilities.
(2) Jobs relating to building management and maintenance, jobs relating to the health of the students, and academic staff such as social workers, psychologists, lunch room managers or dietitians do not perform academic administrative functions. Although such work is not considered academic administration, such employees may qualify for exemption under Sec. 541.200 or under other sections of this part, provided the requirements for such exemptions are met.

Subpart D--Professional Employees

Sec. 541.300 General rule for professional employees.
(a) The term ``employee employed in a bona fide professional capacity" in section 13(a)(1) of the Act shall mean any employee: (1) Compensated on a salary or fee basis at a rate of not less than $455 per week (or $380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging, or other facilities; and (2) Whose primary duty is the performance of work: (i) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or (ii) Requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor.
(b) The term ``salary basis" is defined at Sec. 541.602; ``fee basis" is defined at Sec. 541.605; ``board, lodging or other facilities" is defined at Sec. 541.606; and ``primary duty" is defined at Sec. 541.700.

Sec. 541.301 Learned professionals.
(a) To qualify for the learned professional exemption, an employee's primary duty must be the performance of work requiring advanced knowledge in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction. This primary duty test includes three elements: (1) The employee must perform work requiring advanced knowledge; (2) The advanced knowledge must be in a field of science or learning; and (3) The advanced knowledge must be customarily acquired by a prolonged course of specialized intellectual instruction.
(b) The phrase ``work requiring advanced knowledge" means work which is predominantly

intellectual in character, and which includes work requiring the consistent exercise of discretion and judgment, as distinguished from performance of routine mental, manual, mechanical or physical work. An employee who performs work requiring advanced knowledge generally uses the advanced knowledge to analyze, interpret or make deductions from varying facts or circumstances. Advanced knowledge cannot be attained at the high school level.

(c) The phrase ``field of science or learning'' includes the traditional professions of law, medicine, theology, accounting, actuarial computation, engineering, architecture, teaching, various types of physical, chemical and biological sciences, pharmacy and other similar occupations that have a recognized professional status as distinguished from the mechanical arts or skilled trades where in some instances the knowledge is of a fairly advanced type, but is not in a field of science or learning.

(d) The phrase ``customarily acquired by a prolonged course of specialized intellectual instruction'' restricts the exemption to professions where specialized academic training is a standard prerequisite for entrance into the profession. The best prima facie evidence that an employee meets this requirement is possession of the appropriate academic degree. However, the word ``customarily'' means that the exemption is also available to employees in such professions who have substantially the same knowledge level and perform substantially the same work as the degreed employees, but who attained the advanced knowledge through a combination of work experience and intellectual instruction. Thus, for example, the learned professional exemption is available to the occasional lawyer who has not gone to law school, or the occasional chemist who is not the possessor of a degree in chemistry. However, the learned professional exemption is not available for occupations that customarily may be performed with only the general knowledge acquired by an academic degree in any field, with knowledge acquired through an apprenticeship, or with training in the performance of routine mental, manual, mechanical or physical processes. The learned professional exemption also does not apply to occupations in which most employees have acquired their skill by experience rather than by advanced specialized intellectual instruction.

(e) (1) Registered or certified medical technologists. Registered or certified medical technologists who have successfully completed three academic years of pre-professional study in an accredited college or university plus a fourth year of professional course work in a school of medical technology approved by the Council of Medical Education of the American Medical Association generally meet the duties requirements for the learned professional exemption. (2) Nurses. Registered nurses who are registered by the appropriate State examining board generally meet the duties requirements for the learned professional exemption. Licensed practical nurses and other similar health care employees, however, generally do not qualify as exempt learned professionals because possession of a specialized advanced academic degree is not a standard prerequisite for entry into such occupations. (3) Dental hygienists. Dental hygienists who have successfully completed four academic years of pre-professional and professional study in an accredited college or university approved by the Commission on Accreditation of Dental and Dental Auxiliary Educational Programs of the American Dental Association generally meet the duties requirements for the learned professional exemption. (4) Physician assistants. Physician assistants who have successfully completed four academic years of pre-professional and professional study, including graduation from a physician assistant program accredited by the Accreditation Review Commission on Education for the Physician Assistant, and who are certified by the National Commission on Certification of Physician Assistants generally meet the duties requirements for the learned professional exemption. (5) Accountants. Certified public

accountants generally meet the duties requirements for the learned professional exemption. In addition, many other accountants who are not certified public accountants but perform similar job duties may qualify as exempt learned professionals. However, accounting clerks, bookkeepers and other employees who normally perform a great deal of routine work generally will not qualify as exempt professionals. (6) Chefs. Chefs, such as executive chefs and sous chefs, who have attained a four-year specialized academic degree in a culinary arts program, generally meet the duties requirements for the learned professional exemption. The learned professional exemption is not available to cooks who perform predominantly routine mental, manual, mechanical or physical work. (7) Paralegals. Paralegals and legal assistants generally do not qualify as exempt learned professionals because an advanced specialized academic degree is not a standard prerequisite for entry into the field. Although many paralegals possess general four-year advanced degrees, most specialized paralegal programs are two-year associate degree programs from a community college or equivalent institution. However, the learned professional exemption is available for paralegals who possess advanced specialized degrees in other professional fields and apply advanced knowledge in that field in the performance of their duties. For example, if a law firm hires an engineer as a paralegal to provide expert advice on product liability cases or to assist on patent matters, that engineer would qualify for exemption. (8) Athletic trainers. Athletic trainers who have successfully completed four academic years of pre-professional and professional study in a specialized curriculum accredited by the Commission on Accreditation of Allied Health Education Programs and who are certified by the Board of Certification of the National Athletic Trainers Association Board of Certification generally meet the duties requirements for the learned professional exemption. (9) Funeral directors or embalmers. Licensed funeral directors and embalmers who are licensed by and working in a state that requires successful completion of four academic years of pre-professional and professional study, including graduation from a college of mortuary science accredited by the American Board of Funeral Service Education, generally meet the duties requirements for the learned professional exemption.

(f) The areas in which the professional exemption may be available are expanding. As knowledge is developed, academic training is broadened and specialized degrees are offered in new and diverse fields, thus creating new specialists in particular fields of science or learning. When an advanced specialized degree has become a standard requirement for a particular occupation, that occupation may have acquired the characteristics of a learned profession. Accrediting and certifying organizations similar to those listed in paragraphs (e)(1), (e)(3), (e)(4), (e)(8) and (e)(9) of this section also may be created in the future. Such organizations may develop similar specialized curriculums and certification programs which, if a standard requirement for a particular occupation, may indicate that the occupation has acquired the characteristics of a learned profession.

Sec. 541.302 Creative professionals.

(a) To qualify for the creative professional exemption, an employee's primary duty must be the performance of work requiring invention, imagination, originality or talent in a recognized field of artistic or creative endeavor as opposed to routine mental, manual, mechanical or physical work. The exemption does not apply to work which can be produced by a person with general manual or intellectual ability and training.

(b) To qualify for exemption as a creative professional, the work performed must be ``in a recognized field of artistic or creative endeavor.'' This includes such fields as music, writing,

acting and the graphic arts.
(c) The requirement of ``invention, imagination, originality or talent'' distinguishes the creative professions from work that primarily depends on intelligence, diligence and accuracy. The duties of employees vary widely, and exemption as a creative professional depends on the extent of the invention, imagination, originality or talent exercised by the employee. Determination of exempt creative professional status, therefore, must be made on a case-by-case basis. This requirement generally is met by actors, musicians, composers, conductors, and soloists; painters who at most are given the subject matter of their painting; cartoonists who are merely told the title or underlying concept of a cartoon and must rely on their own creative ability to express the concept; essayists, novelists, short-story writers and screen-play writers who choose their own subjects and hand in a finished piece of work to their employers (the majority of such persons are, of course, not employees but self-employed); and persons holding the more responsible writing positions in advertising agencies. This requirement generally is not met by a person who is employed as a copyist, as an ``animator'' of motion-picture cartoons, or as a retoucher of photographs, since such work is not properly described as creative in character.
(d) Journalists may satisfy the duties requirements for the creative professional exemption if their primary duty is work requiring invention, imagination, originality or talent, as opposed to work which depends primarily on intelligence, diligence and accuracy. Employees of newspapers, magazines, television and other media are not exempt creative professionals if they only collect, organize and record information that is routine or already public, or if they do not contribute a unique interpretation or analysis to a news product. Thus, for example, newspaper reporters who merely rewrite press releases or who write standard recounts of public information by gathering facts on routine community events are not exempt creative professionals. Reporters also do not qualify as exempt creative professionals if their work product is subject to substantial control by the employer. However, journalists may qualify as exempt creative professionals if their primary duty is performing on the air in radio, television or other electronic media; conducting investigative interviews; analyzing or interpreting public events; writing editorials, opinion columns or other commentary; or acting as a narrator or commentator.

Sec. 541.303 Teachers.
(a) The term ``employee employed in a bona fide professional capacity'' in section 13(a)(1) of the Act also means any employee with a primary duty of teaching, tutoring, instructing or lecturing in the activity of imparting knowledge and who is employed and engaged in this activity as a teacher in an educational establishment by which the employee is employed. The term ``educational establishment'' is defined in Sec. 541.204(b).
(b) Exempt teachers include, but are not limited to: Regular academic teachers; teachers of kindergarten or nursery school pupils; teachers of gifted or disabled children; teachers of skilled and semi- skilled trades and occupations; teachers engaged in automobile driving instruction; aircraft flight instructors; home economics teachers; and vocal or instrumental music instructors. Those faculty members who are engaged as teachers but also spend a considerable amount of their time in extracurricular activities such as coaching athletic teams or acting as moderators or advisors in such areas as drama, speech, debate or journalism are engaged in teaching. Such activities are a recognized part of the schools' responsibility in contributing to the educational development of the student.
(c) The possession of an elementary or secondary teacher's certificate provides a clear means of identifying the individuals contemplated as being within the scope of the exemption for teaching

professionals. Teachers who possess a teaching certificate qualify for the exemption regardless of the terminology (e.g., permanent, conditional, standard, provisional, temporary, emergency, or unlimited) used by the State to refer to different kinds of certificates. However, private schools and public schools are not uniform in requiring a certificate for employment as an elementary or secondary school teacher, and a teacher's certificate is not generally necessary for employment in institutions of higher education or other educational establishments. Therefore, a teacher who is not certified may be considered for exemption, provided that such individual is employed as a teacher by the employing school or school system.
(d) The requirements of Sec. 541.300 and Subpart G (salary requirements) of this part do not apply to the teaching professionals described in this section.

Sec. 541.304 Practice of law or medicine.
(a) The term ``employee employed in a bona fide professional capacity'' in section 13(a)(1) of the Act also shall mean: (1) Any employee who is the holder of a valid license or certificate permitting the practice of law or medicine or any of their branches and is actually engaged in the practice thereof; and (2) Any employee who is the holder of the requisite academic degree for the general practice of medicine and is engaged in an internship or resident program pursuant to the practice of the profession.
(b) In the case of medicine, the exemption applies to physicians and other practitioners licensed and practicing in the field of medical science and healing or any of the medical specialties practiced by physicians or practitioners. The term ``physicians'' includes medical doctors including general practitioners and specialists, osteopathic physicians (doctors of osteopathy), podiatrists, dentists (doctors of dental medicine), and optometrists (doctors of optometry or bachelors of science in optometry).
(c) Employees engaged in internship or resident programs, whether or not licensed to practice prior to commencement of the program, qualify as exempt professionals if they enter such internship or resident programs after the earning of the appropriate degree required for the general practice of their profession.
(d) The requirements of Sec. 541.300 and subpart G (salary requirements) of this part do not apply to the employees described in this section.

Subpart E--Computer Employees

Sec. 541.400 General rule for computer employees.
(a) Computer systems analysts, computer programmers, software engineers or other similarly skilled workers in the computer field are eligible for exemption as professionals under section 13(a)(1) of the Act and under section 13(a)(17) of the Act. Because job titles vary widely and change quickly in the computer industry, job titles are not determinative of the applicability of this exemption.
(b) The section 13(a)(1) exemption applies to any computer employee compensated on a salary or fee basis at a rate of not less than $455 per week (or $380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities, and the section 13(a)(17) exemption applies to any computer employee compensated on an hourly basis at a rate not less than $27.63 an hour. In addition, under either section 13(a)(1) or section 13(a)(17) of the Act, the exemptions apply only to computer employees whose primary duty consists of: (1) The application of systems analysis techniques and procedures, including

consulting with users, to determine hardware, software or system functional specifications; (2) The design, development, documentation, analysis, creation, testing or modification of computer systems or programs, including prototypes, based on and related to user or system design specifications; (3) The design, documentation, testing, creation or modification of computer programs related to machine operating systems; or (4) A combination of the aforementioned duties, the performance of which requires the same level of skills.
(c) The term ``salary basis'' is defined at Sec. 541.602; ``fee basis'' is defined at Sec. 541.605; ``board, lodging or other facilities'' is defined at Sec. 541.606; and ``primary duty'' is defined at Sec. 541.700.

Sec. 541.401 Computer manufacture and repair. The exemption for employees in computer occupations does not include employees engaged in the manufacture or repair of computer hardware and related equipment. Employees whose work is highly dependent upon, or facilitated by, the use of computers and computer software programs (e.g., engineers, drafters and others skilled in computer-aided design software), but who are not primarily engaged in computer systems analysis and programming or other similarly skilled computer-related occupations identified in Sec. 541.400(b), are also not exempt computer professionals.

Sec. 541.402 Executive and administrative computer employees. Computer employees within the scope of this exemption, as well as those employees not within its scope, may also have executive and administrative duties which qualify the employees for exemption under subpart B or subpart C of this part. For example, systems analysts and computer programmers generally meet the duties requirements for the administrative exemption if their primary duty includes work such as planning, scheduling, and coordinating activities required to develop systems to solve complex business, scientific or engineering problems of the employer or the employer's customers. Similarly, a senior or lead computer programmer who manages the work of two or more other programmers in a customarily recognized department or subdivision of the employer, and whose recommendations as to the hiring, firing, advancement, promotion or other change of status of the other programmers are given particular weight, generally meets the duties requirements for the executive exemption.

Subpart F--Outside Sales Employees

Sec. 541.500 General rule for outside sales employees. (a) The term ``employee employed in the capacity of outside salesman'' in section 13(a)(1) of the Act shall mean any employee: (1) Whose primary duty is: (i) making sales within the meaning of section 3(k) of the Act, or (ii) obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer; and (2) Who is customarily and regularly engaged away from the employer's place or places of business in performing such primary duty.
(b) The term ``primary duty'' is defined at Sec. 541.700. In determining the primary duty of an outside sales employee, work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including incidental deliveries and collections, shall be regarded as exempt outside sales work. Other work that furthers the employee's sales efforts also shall be regarded as exempt work including, for example, writing sales reports, updating or revising the employee's sales or display catalogue, planning itineraries and attending sales conferences.

(c) The requirements of subpart G (salary requirements) of this part do not apply to the outside sales employees described in this section.

Sec. 541.501 Making sales or obtaining orders.
(a) Section 541.500 requires that the employee be engaged in: (1) Making sales within the meaning of section 3(k) of the Act, or (2) Obtaining orders or contracts for services or for the use of facilities.
(b) Sales within the meaning of section 3(k) of the Act include the transfer of title to tangible property, and in certain cases, of tangible and valuable evidences of intangible property. Section 3(k) of the Act states that ``sale'' or ``sell'' includes any sale, exchange, contract to sell, consignment for sale, shipment for sale, or other disposition.
(c) Exempt outside sales work includes not only the sales of commodities, but also ``obtaining orders or contracts for services or for the use of facilities for which a consideration will be paid by the client or customer.'' Obtaining orders for ``the use of facilities'' includes the selling of time on radio or television, the solicitation of advertising for newspapers and other periodicals, and the solicitation of freight for railroads and other transportation agencies.
(d) The word ``services'' extends the outside sales exemption to employees who sell or take orders for a service, which may be performed for the customer by someone other than the person taking the order.

Sec. 541.502 Away from employer's place of business. An outside sales employee must be customarily and regularly engaged ``away from the employer's place or places of business.'' The outside sales employee is an employee who makes sales at the customer's place of business or, if selling door-to-door, at the customer's home. Outside sales does not include sales made by mail, telephone or the Internet unless such contact is used merely as an adjunct to personal calls. Thus, any fixed site, whether home or office, used by a salesperson as a headquarters or for telephonic solicitation of sales is considered one of the employer's places of business, even though the employer is not in any formal sense the owner or tenant of the property. However, an outside sales employee does not lose the exemption by displaying samples in hotel sample rooms during trips from city to city; these sample rooms should not be considered as the employer's places of business. Similarly, an outside sales employee does not lose the exemption by displaying the employer's products at a trade show. If selling actually occurs, rather than just sales promotion, trade shows of short duration (i.e., one or two weeks) should not be considered as the employer's place of business.

Sec. 541.503 Promotion work.
(a) Promotion work is one type of activity often performed by persons who make sales, which may or may not be exempt outside sales work, depending upon the circumstances under which it is performed. Promotional work that is actually performed incidental to and in conjunction with an employee's own outside sales or solicitations is exempt work. On the other hand, promotional work that is incidental to sales made, or to be made, by someone else is not exempt outside sales work. An employee who does not satisfy the requirements of this subpart may still qualify as an exempt employee under other subparts of this rule.
(b) A manufacturer's representative, for example, may perform various types of promotional activities such as putting up displays and posters, removing damaged or spoiled stock from the merchant's shelves or rearranging the merchandise. Such an employee can be considered an

exempt outside sales employee if the employee's primary duty is making sales or contracts. Promotion activities directed toward consummation of the employee's own sales are exempt. Promotional activities designed to stimulate sales that will be made by someone else are not exempt outside sales work.

(c) Another example is a company representative who visits chain stores, arranges the merchandise on shelves, replenishes stock by replacing old with new merchandise, sets up displays and consults with the store manager when inventory runs low, but does not obtain a commitment for additional purchases. The arrangement of merchandise on the shelves or the replenishing of stock is not exempt work unless it is incidental to and in conjunction with the employee's own outside sales. Because the employee in this instance does not consummate the sale nor direct efforts toward the consummation of a sale, the work is not exempt outside sales work.

Sec. 541.504 Drivers who sell.

(a) Drivers who deliver products and also sell such products may qualify as exempt outside sales employees only if the employee has a primary duty of making sales. In determining the primary duty of drivers who sell, work performed incidental to and in conjunction with the employee's own outside sales or solicitations, including loading, driving or delivering products, shall be regarded as exempt outside sales work.

(b) Several factors should be considered in determining if a driver has a primary duty of making sales, including, but not limited to: a comparison of the driver's duties with those of other employees engaged as truck drivers and as salespersons; possession of a selling or solicitor's license when such license is required by law or ordinances; presence or absence of customary or contractual arrangements concerning amounts of products to be delivered; description of the employee's occupation in collective bargaining agreements; the employer's specifications as to qualifications for hiring; sales training; attendance at sales conferences; method of payment; and proportion of earnings directly attributable to sales.

(c) Drivers who may qualify as exempt outside sales employees include: (1) A driver who provides the only sales contact between the employer and the customers visited, who calls on customers and takes orders for products, who delivers products from stock in the employee's vehicle or procures and delivers the product to the customer on a later trip, and who receives compensation commensurate with the volume of products sold. (2) A driver who obtains or solicits orders for the employer's products from persons who have authority to commit the customer for purchases. (3) A driver who calls on new prospects for customers along the employee's route and attempts to convince them of the desirability of accepting regular delivery of goods. (4) A driver who calls on established customers along the route and persuades regular customers to accept delivery of increased amounts of goods or of new products, even though the initial sale or agreement for delivery was made by someone else.

(d) Drivers who generally would not qualify as exempt outside sales employees include: (1) A route driver whose primary duty is to transport products sold by the employer through vending machines and to keep such machines stocked, in good operating condition, and in good locations. (2) A driver who often calls on established customers day after day or week after week, delivering a quantity of the employer's products at each call when the sale was not significantly affected by solicitations of the customer by the delivering driver or the amount of the sale is determined by the volume of the customer's sales since the previous delivery. (3) A driver primarily engaged in making deliveries to customers and performing activities intended to

promote sales by customers (including placing point-of-sale and other advertising materials, price stamping commodities, arranging merchandise on shelves, in coolers or in cabinets, rotating stock according to date, and cleaning and otherwise servicing display cases), unless such work is in furtherance of the driver's own sales efforts.

Subpart G--Salary Requirements

Sec. 541.600 Amount of salary required.
(a) To qualify as an exempt executive, administrative or professional employee under section 13(a)(1) of the Act, an employee must be compensated on a salary basis at a rate of not less than $455 per week (or $380 per week, if employed in American Samoa by employers other than the Federal Government), exclusive of board, lodging or other facilities. Administrative and professional employees may also be paid on a fee basis, as defined in Sec. 541.605.
(b) The $455 a week may be translated into equivalent amounts for periods longer than one week. The requirement will be met if the employee is compensated biweekly on a salary basis of $910, semimonthly on a salary basis of $985.83, or monthly on a salary basis of $1,971.66. However, the shortest period of payment that will meet this compensation requirement is one week.
(c) In the case of academic administrative employees, the compensation requirement also may be met by compensation on a salary basis at a rate at least equal to the entrance salary for teachers in the educational establishment by which the employee is employed, as provided in Sec. 541. 204(a)(1).
(d) In the case of computer employees, the compensation requirement also may be met by compensation on an hourly basis at a rate not less than $27.63 an hour, as provided in Sec. 541. 400(b).
(e) In the case of professional employees, the compensation requirements in this section shall not apply to employees engaged as teachers (see Sec. 541.303); employees who hold a valid license or certificate permitting the practice of law or medicine or any of their branches and are actually engaged in the practice thereof (see Sec. 541.304); or to employees who hold the requisite academic degree for the general practice of medicine and are engaged in an internship or resident program pursuant to the practice of the profession (see Sec. 541.304). In the case of medical occupations, the exception from the salary or fee requirement does not apply to pharmacists, nurses, therapists, technologists, sanitarians, dietitians, social workers, psychologists, psychometrists, or other professions which service the medical profession.

Sec. 541.601 Highly compensated employees.
(a) An employee with total annual compensation of at least $100,000 is deemed exempt under section 13(a)(1) of the Act if the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee identified in subparts B, C or D of this part.
(b) (1) ``Total annual compensation'' must include at least $455 per week paid on a salary or fee basis. Total annual compensation may also include commissions, nondiscretionary bonuses and other nondiscretionary compensation earned during a 52-week period. Total annual compensation does not include board, lodging and other facilities as defined in Sec. 541.606, and does not include payments for medical insurance, payments for life insurance, contributions to retirement plans and the cost of other fringe benefits. (2) If an employee's total annual

compensation does not total at least the minimum amount established in paragraph (a) of this section by the last pay period of the 52-week period, the employer may, during the last pay period or within one month after the end of the 52-week period, make one final payment sufficient to achieve the required level. For example, an employee may earn $80,000 in base salary, and the employer may anticipate based upon past sales that the employee also will earn $20,000 in commissions. However, due to poor sales in the final quarter of the year, the employee actually only earns $10,000 in commissions. In this situation, the employer may within one month after the end of the year make a payment of at least $10,000 to the employee. Any such final payment made after the end of the 52-week period may count only toward the prior year's total annual compensation and not toward the total annual compensation in the year it was paid. If the employer fails to make such a payment, the employee does not qualify as a highly compensated employee, but may still qualify as exempt under subparts B, C or D of this part. (3) An employee who does not work a full year for the employer, either because the employee is newly hired after the beginning of the year or ends the employment before the end of the year, may qualify for exemption under this section if the employee receives a pro rata portion of the minimum amount established in paragraph (a) of this section, based upon the number of weeks that the employee will be or has been employed. An employer may make one final payment as under paragraph (b)(2) of this section within one month after the end of employment. (4) The employer may utilize any 52-week period as the year, such as a calendar year, a fiscal year, or an anniversary of hire year. If the employer does not identify some other year period in advance, the calendar year will apply.

(c) A high level of compensation is a strong indicator of an employee's exempt status, thus eliminating the need for a detailed analysis of the employee's job duties. Thus, a highly compensated employee will qualify for exemption if the employee customarily and regularly performs any one or more of the exempt duties or responsibilities of an executive, administrative or professional employee identified in subparts B, C or D of this part. An employee may qualify as a highly compensated executive employee, for example, if the employee customarily and regularly directs the work of two or more other employees, even though the employee does not meet all of the other requirements for the executive exemption under Sec. 541.100.

(d) This section applies only to employees whose primary duty includes performing office or non-manual work. Thus, for example, non- management production-line workers and non-management employees in maintenance, construction and similar occupations such as carpenters, electricians, mechanics, plumbers, iron workers, craftsmen, operating engineers, longshoremen, construction workers, laborers and other employees who perform work involving repetitive operations with their hands, physical skill and energy are not exempt under this section no matter how highly paid they might be.

Sec. 541.602 Salary basis.

(a) General rule. An employee will be considered to be paid on a ``salary basis'' within the meaning of these regulations if the employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee's compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed. Subject to the exceptions provided in paragraph (b) of this section, an exempt employee must receive the full salary for any week in which the employee performs any work without regard to the number of days or hours worked. Exempt employees need not be paid for any workweek in which they perform no work. An employee is not paid on a

salary basis if deductions from the employee's predetermined compensation are made for absences occasioned by the employer or by the operating requirements of the business. If the employee is ready, willing and able to work, deductions may not be made for time when work is not available.

(b) Exceptions. The prohibition against deductions from pay in the salary basis requirement is subject to the following exceptions: (1) Deductions from pay may be made when an exempt employee is absent from work for one or more full days for personal reasons, other than sickness or disability. Thus, if an employee is absent for two full days to handle personal affairs, the employee's salaried status will not be affected if deductions are made from the salary for two full-day absences. However, if an exempt employee is absent for one and a half days for personal reasons, the employer can deduct only for the one full-day absence. (2) Deductions from pay may be made for absences of one or more full days occasioned by sickness or disability (including work-related accidents) if the deduction is made in accordance with a bona fide plan, policy or practice of providing compensation for loss of salary occasioned by such sickness or disability. The employer is not required to pay any portion of the employee's salary for full-day absences for which the employee receives compensation under the plan, policy or practice. Deductions for such full-day absences also may be made before the employee has qualified under the plan, policy or practice, and after the employee has exhausted the leave allowance thereunder. Thus, for example, if an employer maintains a short-term disability insurance plan providing salary replacement for 12 weeks starting on the fourth day of absence, the employer may make deductions from pay for the three days of absence before the employee qualifies for benefits under the plan; for the twelve weeks in which the employee receives salary replacement benefits under the plan; and for absences after the employee has exhausted the 12 weeks of salary replacement benefits. Similarly, an employer may make deductions from pay for absences of one or more full days if salary replacement benefits are provided under a State disability insurance law or under a State workers' compensation law. (3) While an employer cannot make deductions from pay for absences of an exempt employee occasioned by jury duty, attendance as a witness or temporary military leave, the employer can offset any amounts received by an employee as jury fees, witness fees or military pay for a particular week against the salary due for that particular week without loss of the exemption. (4) Deductions from pay of exempt employees may be made for penalties imposed in good faith for infractions of safety rules of major significance. Safety rules of major significance include those relating to the prevention of serious danger in the workplace or to other employees, such as rules prohibiting smoking in explosive plants, oil refineries and coal mines. (5) Deductions from pay of exempt employees may be made for unpaid disciplinary suspensions of one or more full days imposed in good faith for infractions of workplace conduct rules. Such suspensions must be imposed pursuant to a written policy applicable to all employees. Thus, for example, an employer may suspend an exempt employee without pay for three days for violating a generally applicable written policy prohibiting sexual harassment. Similarly, an employer may suspend an exempt employee without pay for twelve days for violating a generally applicable written policy prohibiting workplace violence. (6) An employer is not required to pay the full salary in the initial or terminal week of employment. Rather, an employer may pay a proportionate part of an employee's full salary for the time actually worked in the first and last week of employment. In such weeks, the payment of an hourly or daily equivalent of the employee's full salary for the time actually worked will meet the requirement. However, employees are not paid on a salary basis within the meaning of these regulations if they are employed occasionally for a few days, and the employer pays them a

proportionate part of the weekly salary when so employed. (7) An employer is not required to pay the full salary for weeks in which an exempt employee takes unpaid leave under the Family and Medical Leave Act. Rather, when an exempt employee takes unpaid leave under the Family and Medical Leave Act, an employer may pay a proportionate part of the full salary for time actually worked. For example, if an employee who normally works 40 hours per week uses four hours of unpaid leave under the Family and Medical Leave Act, the employer could deduct 10 percent of the employee's normal salary that week.

(c) When calculating the amount of a deduction from pay allowed under paragraph (b) of this section, the employer may use the hourly or daily equivalent of the employee's full weekly salary or any other amount proportional to the time actually missed by the employee. A deduction from pay as a penalty for violations of major safety rules under paragraph (b)(4) of this section may be made in any amount.

Sec. 541.603 Effect of improper deductions from salary.

(a) An employer who makes improper deductions from salary shall lose the exemption if the facts demonstrate that the employer did not intend to pay employees on a salary basis. An actual practice of making improper deductions demonstrates that the employer did not intend to pay employees on a salary basis. The factors to consider when determining whether an employer has an actual practice of making improper deductions include, but are not limited to: the number of improper deductions, particularly as compared to the number of employee infractions warranting discipline; the time period during which the employer made improper deductions; the number and geographic location of employees whose salary was improperly reduced; the number and geographic location of managers responsible for taking the improper deductions; and whether the employer has a clearly communicated policy permitting or prohibiting improper deductions.

(b) If the facts demonstrate that the employer has an actual practice of making improper deductions, the exemption is lost during the time period in which the improper deductions were made for employees in the same job classification working for the same managers responsible for the actual improper deductions. Employees in different job classifications or who work for different managers do not lose their status as exempt employees. Thus, for example, if a manager at a company facility routinely docks the pay of engineers at that facility for partial-day personal absences, then all engineers at that facility whose pay could have been improperly docked by the manager would lose the exemption; engineers at other facilities or working for other managers, however, would remain exempt.

(c) Improper deductions that are either isolated or inadvertent will not result in loss of the exemption for any employees subject to such improper deductions, if the employer reimburses the employees for such improper deductions.

(d) If an employer has a clearly communicated policy that prohibits the improper pay deductions specified in Sec. 541.602(a) and includes a complaint mechanism, reimburses employees for any improper deductions and makes a good faith commitment to comply in the future, such employer will not lose the exemption for any employees unless the employer willfully violates the policy by continuing to make improper deductions after receiving employee complaints. If an employer fails to reimburse employees for any improper deductions or continues to make improper deductions after receiving employee complaints, the exemption is lost during the time period in which the improper deductions were made for employees in the same job classification working for the same managers responsible for the actual improper deductions. The best evidence of a clearly communicated policy is a written policy that was distributed to employees prior to the

improper pay deductions by, for example, providing a copy of the policy to employees at the time of hire, publishing the policy in an employee handbook or publishing the policy on the employer's Intranet.
(e) This section shall not be construed in an unduly technical manner so as to defeat the exemption.

Sec. 541.604 Minimum guarantee plus extras.
(a) An employer may provide an exempt employee with additional compensation without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly-required amount paid on a salary basis. Thus, for example, an exempt employee guaranteed at least $455 each week paid on a salary basis may also receive additional compensation of a one percent commission on sales. An exempt employee also may receive a percentage of the sales or profits of the employer if the employment arrangement also includes a guarantee of at least $455 each week paid on a salary basis. Similarly, the exemption is not lost if an exempt employee who is guaranteed at least $455 each week paid on a salary basis also receives additional compensation based on hours worked for work beyond the normal workweek. Such additional compensation may be paid on any basis (e.g., flat sum, bonus payment, straight-time hourly amount, time and one-half or any other basis), and may include paid time off.
(b) An exempt employee's earnings may be computed on an hourly, a daily or a shift basis, without losing the exemption or violating the salary basis requirement, if the employment arrangement also includes a guarantee of at least the minimum weekly required amount paid on a salary basis regardless of the number of hours, days or shifts worked, and a reasonable relationship exists between the guaranteed amount and the amount actually earned. The reasonable relationship test will be met if the weekly guarantee is roughly equivalent to the employee's usual earnings at the assigned hourly, daily or shift rate for the employee's normal scheduled workweek. Thus, for example, an exempt employee guaranteed compensation of at least $500 for any week in which the employee performs any work, and who normally works four or five shifts each week, may be paid $150 per shift without violating the salary basis requirement. The reasonable relationship requirement applies only if the employee's pay is computed on an hourly, daily or shift basis. It does not apply, for example, to an exempt store manager paid a guaranteed salary of $650 per week who also receives a commission of one-half percent of all sales in the store or five percent of the store's profits, which in some weeks may total as much as, or even more than, the guaranteed salary.

Sec. 541.605 Fee basis.
(a) Administrative and professional employees may be paid on a fee basis, rather than on a salary basis. An employee will be considered to be paid on a ``fee basis'' within the meaning of these regulations if the employee is paid an agreed sum for a single job regardless of the time required for its completion. These payments resemble piecework payments with the important distinction that generally a ``fee'' is paid for the kind of job that is unique rather than for a series of jobs repeated an indefinite number of times and for which payment on an identical basis is made over and over again. Payments based on the number of hours or days worked and not on the accomplishment of a given single task are not considered payments on a fee basis.
(b) To determine whether the fee payment meets the minimum amount of salary required for exemption under these regulations, the amount paid to the employee will be tested by

determining the time worked on the job and whether the fee payment is at a rate that would amount to at least $455 per week if the employee worked 40 hours. Thus, an artist paid $250 for a picture that took 20 hours to complete meets the minimum salary requirement for exemption since earnings at this rate would yield the artist $500 if 40 hours were worked.

Sec. 541.606 Board, lodging or other facilities.
(a) To qualify for exemption under section 13(a)(1) of the Act, an employee must earn the minimum salary amount set forth in Sec. 541.600, ``exclusive of board, lodging or other facilities.'' The phrase ``exclusive of board, lodging or other facilities'' means ``free and clear'' or independent of any claimed credit for non-cash items of value that an employer may provide to an employee. Thus, the costs incurred by an employer to provide an employee with board, lodging or other facilities may not count towards the minimum salary amount required for exemption under this part 541. Such separate transactions are not prohibited between employers and their exempt employees, but the costs to employers associated with such transactions may not be considered when determining if an employee has received the full required minimum salary payment.
(b) Regulations defining what constitutes ``board, lodging, or other facilities'' are contained in 29 CFR part 531. As described in 29 CFR 531.32, the term ``other facilities'' refers to items similar to board and lodging, such as meals furnished at company restaurants or cafeterias or by hospitals, hotels, or restaurants to their employees; meals, dormitory rooms, and tuition furnished by a college to its student employees; merchandise furnished at company stores or commissaries, including articles of food, clothing, and household effects; housing furnished for dwelling purposes; and transportation furnished to employees for ordinary commuting between their homes and work. **[[*NOTE:* There is good cause for the inclusion of subsection (b): The regulations referenced in this paragraph at 29 CFR 531.29 are not substantive regulations, but are "interpretive" regulations which were not incorporated in Part 531 of the CAA regulations adopted in 1996. However, the Board of Directors has determined that, since these particular interpretive regulations are incorporated by reference in the new substantive regulations, employing offices and employees may reference these particular interpretive regulations as part of the new substantive regulations as proposed here.]]**

Subpart H--Definitions and Miscellaneous Provisions

Sec. 541.700 Primary duty.
(a) To qualify for exemption under this part, an employee's ``primary duty'' must be the performance of exempt work. The term ``primary duty'' means the principal, main, major or most important duty that the employee performs. Determination of an employee's primary duty must be based on all the facts in a particular case, with the major emphasis on the character of the employee's job as a whole. Factors to consider when determining the primary duty of an employee include, but are not limited to, the relative importance of the exempt duties as compared with other types of duties; the amount of time spent performing exempt work; the employee's relative freedom from direct supervision; and the relationship between the employee's salary and the wages paid to other employees for the kind of nonexempt work performed by the employee.
(b) The amount of time spent performing exempt work can be a useful guide in determining whether exempt work is the primary duty of an employee. Thus, employees who spend more than

50 percent of their time performing exempt work will generally satisfy the primary duty requirement. Time alone, however, is not the sole test, and nothing in this section requires that exempt employees spend more than 50 percent of their time performing exempt work. Employees who do not spend more than 50 percent of their time performing exempt duties may nonetheless meet the primary duty requirement if the other factors support such a conclusion.
(c) Thus, for example, assistant managers in a retail establishment who perform exempt executive work such as supervising and directing the work of other employees, ordering merchandise, managing the budget and authorizing payment of bills may have management as their primary duty even if the assistant managers spend more than 50 percent of the time performing nonexempt work such as running the cash register. However, if such assistant managers are closely supervised and earn little more than the nonexempt employees, the assistant managers generally would not satisfy the primary duty requirement.

Sec. 541.701 Customarily and regularly. The phrase ``customarily and regularly'' means a frequency that must be greater than occasional but which, of course, may be less than constant. Tasks or work performed ``customarily and regularly'' includes work normally and recurrently performed every workweek; it does not include isolated or one-time tasks.

Sec. 541.702 Exempt and nonexempt work. The term ``exempt work'' means all work described in Sec. 541.100, 541.101, 541.200, 541.300, 541.301, 541.302, 541.303, 541.304, 541.400 and 541.500, and the activities directly and closely related to such work. All other work is considered ``nonexempt.''

Sec. 541.703 Directly and closely related.
(a) Work that is ``directly and closely related'' to the performance of exempt work is also considered exempt work. The phrase ``directly and closely related'' means tasks that are related to exempt duties and that contribute to or facilitate performance of exempt work. Thus, ``directly and closely related'' work may include physical tasks and menial tasks that arise out of exempt duties, and the routine work without which the exempt employee's exempt work cannot be performed properly. Work ``directly and closely related'' to the performance of exempt duties may also include recordkeeping; monitoring and adjusting machinery; taking notes; using the computer to create documents or presentations; opening the mail for the purpose of reading it and making decisions; and using a photocopier or fax machine. Work is not ``directly and closely related'' if the work is remotely related or completely unrelated to exempt duties.
(b) The following examples further illustrate the type of work that is and is not normally considered as directly and closely related to exempt work: (1) Keeping time, production or sales records for subordinates is work directly and closely related to an exempt executive's function of managing a department and supervising employees. (2) The distribution of materials, merchandise or supplies to maintain control of the flow of and expenditures for such items is directly and closely related to the performance of exempt duties. (3) A supervisor who spot checks and examines the work of subordinates to determine whether they are performing their duties properly, and whether the product is satisfactory, is performing work which is directly and closely related to managerial and supervisory functions, so long as the checking is distinguishable from the work ordinarily performed by a nonexempt inspector. (4) A supervisor who sets up a machine may be engaged in exempt work, depending upon the nature of the industry and the operation. In some cases the setup work, or adjustment of the machine for a

particular job, is typically performed by the same employees who operate the machine. Such setup work is part of the production operation and is not exempt. In other cases, the setting up of the work is a highly skilled operation which the ordinary production worker or machine tender typically does not perform. In large plants, non- supervisors may perform such work. However, particularly in small plants, such work may be a regular duty of the executive and is directly and closely related to the executive's responsibility for the work performance of subordinates and for the adequacy of the final product. Under such circumstances, it is exempt work. (5) A department manager in a retail or service establishment who walks about the sales floor observing the work of sales personnel under the employee's supervision to determine the effectiveness of their sales techniques, checks on the quality of customer service being given, or observes customer preferences is performing work which is directly and closely related to managerial and supervisory functions. (6) A business consultant may take extensive notes recording the flow of work and materials through the office or plant of the client· after returning to the office of the employer, the consultant may personally use the computer to type a report and create a proposed table of organization. Standing alone, or separated from the primary duty, such note-taking and typing would be routine in nature. However, because this work is necessary for analyzing the data and making recommendations, the work is directly and closely related to exempt work. While it is possible to assign note-taking and typing to nonexempt employees, and in fact it is frequently the practice to do so, delegating such routine tasks is not required as a condition of exemption. (7) A credit manager who makes and administers the credit policy of the employer, establishes credit limits for customers, authorizes the shipment of orders on credit, and makes decisions on whether to exceed credit limits would be performing work exempt under Sec. 541.200. Work that is directly and closely related to these exempt duties may include checking the status of accounts to determine whether the credit limit would be exceeded by the shipment of a new order, removing credit reports from the files for analysis, and writing letters giving credit data and experience to other employers or credit agencies. (8) A traffic manager in charge of planning a company's transportation, including the most economical and quickest routes for shipping merchandise to and from the plant, contracting for common- carrier and other transportation facilities, negotiating with carriers for adjustments for damages to merchandise, and making the necessary rearrangements resulting from delays, damages or irregularities in transit, is performing exempt work. If the employee also spends part of the day taking telephone orders for local deliveries, such order-taking is a routine function and is not directly and closely related to the exempt work. (9) An example of work directly and closely related to exempt professional duties is a chemist performing menial tasks such as cleaning a test tube in the middle of an original experiment, even though such menial tasks can be assigned to laboratory assistants. (10) A teacher performs work directly and closely related to exempt duties when, while taking students on a field trip, the teacher drives a school van or monitors the students' behavior in a restaurant.

Sec. 541.704 Use of manuals. The use of manuals, guidelines or other established procedures containing or relating to highly technical, scientific, legal, financial or other similarly complex matters that can be understood or interpreted only by those with advanced or specialized knowledge or skills does not preclude exemption under section 13(a)(1) of the Act or the regulations in this part. Such manuals and procedures provide guidance in addressing difficult or novel circumstances and thus use of such reference material would not affect an employee's exempt status. The section 13(a)(1) exemptions are not available, however, for employees who

simply apply well-established techniques or procedures described in manuals or other sources within closely prescribed limits to determine the correct response to an inquiry or set of circumstances.

Sec. 541.705 Trainees. The executive, administrative, professional, outside sales and computer employee exemptions do not apply to employees training for employment in an executive, administrative, professional, outside sales or computer employee capacity who are not actually performing the duties of an executive, administrative, professional, outside sales or computer employee.

Sec. 541.706 Emergencies.
(a) An exempt employee will not lose the exemption by performing work of a normally nonexempt nature because of the existence of an emergency. Thus, when emergencies arise that threaten the safety of employees, a cessation of operations or serious damage to the employer's property, any work performed in an effort to prevent such results is considered exempt work.
(b) An ``emergency'' does not include occurrences that are not beyond control or for which the employer can reasonably provide in the normal course of business. Emergencies generally occur only rarely, and are events that the employer cannot reasonably anticipate.
(c) The following examples illustrate the distinction between emergency work considered exempt work and routine work that is not exempt work: (1) A mine superintendent who pitches in after an explosion and digs out workers who are trapped in the mine is still a bona fide executive. (2) Assisting nonexempt employees with their work during periods of heavy workload or to handle rush orders is not exempt work. (3) Replacing a nonexempt employee during the first day or partial day of an illness may be considered exempt emergency work depending on factors such as the size of the establishment and of the executive's department, the nature of the industry, the consequences that would flow from the failure to replace the ailing employee immediately, and the feasibility of filling the employee's place promptly. (4) Regular repair and cleaning of equipment is not emergency work, even when necessary to prevent fire or explosion; however, repairing equipment may be emergency work if the breakdown of or damage to the equipment was caused by accident or carelessness that the employer could not reasonably anticipate.

Sec. 541.707 Occasional tasks. Occasional, infrequently recurring tasks that cannot practicably be performed by nonexempt employees, but are the means for an exempt employee to properly carry out exempt functions and responsibilities, are considered exempt work. The following factors should be considered in determining whether such work is exempt work: Whether the same work is performed by any of the exempt employee's subordinates; practicability of delegating the work to a nonexempt employee; whether the exempt employee performs the task frequently or occasionally; and existence of an industry practice for the exempt employee to perform the task.

Sec. 541.708 Combination exemptions. Employees who perform a combination of exempt duties as set forth in the regulations in this part for executive, administrative, professional, outside sales and computer employees may qualify for exemption. Thus, for example, an employee whose primary duty involves a combination of exempt administrative and exempt executive work may qualify for exemption. In other words, work that is exempt under one section of this part will not defeat the exemption under any other section.

Sec. 541.709 Motion picture producing industry. The requirement that the employee be paid ``on a salary basis'' does not apply to an employee in the motion picture producing industry who is compensated at a base rate of at least $695 a week (exclusive of board, lodging, or other facilities). Thus, an employee in this industry who is otherwise exempt under subparts B, C or D of this part, and who is employed at a base rate of at least $695 a week is exempt if paid a proportionate amount (based on a week of not more than 6 days) for any week in which the employee does not work a full workweek for any reason. Moreover, an otherwise exempt employee in this industry qualifies for exemption if the employee is employed at a daily rate under the following circumstances: (a) The employee is in a job category for which a weekly base rate is not provided and the daily base rate would yield at least $695 if 6 days were worked; or (b) The employee is in a job category having a weekly base rate of at least $695 and the daily base rate is at least one-sixth of such weekly base rate.

Sec. 541.710 Employees of Public Agencies. (a) An employee of a public agency who otherwise meets the salary basis requirements of section 541.602 shall not be disqualified from exemption under sections 541.100, 541.200, 541.300 or 541.400 on the basis that such employee is paid according to a pay system established by statute, ordinance, or regulation, or by a policy or practice established pursuant to principles of public accountability, under which the employee accrues personal leave and sick leave and which requires the public agency employee's pay to be reduced or such employee to be placed on leave without pay for absences for personal reasons or because of illness or injury of less than one work-day when accrued leave is not used by an employee because: (1) Permission for its use has not been sought or has been sought or denied; (2) Accrued leave has been exhausted; (3) The employee chooses to use leave without pay. (b) Deductions from the pay of an employee of a public agency for absences due to a budget-required furlough shall not disqualify the employee from being paid on a salary basis except on the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

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