

MAY 7 1993

This is in response to your inquiry on behalf of \_\_\_\_\_ of \_\_\_\_\_ which was forwarded to us by the Health Care Financing Administration of the Department of Health and Human Services. \_\_\_\_\_ is concerned about the application of the Fair Labor Standards Act (FLSA) to emergency medical service (EMS) employees.

The FLSA is the law of most general application concerning wages and hours of work. This law requires that all covered and nonexempt employees be paid not less than the minimum wage of \$4.25 an hour for all hours worked and not less than one and one-half times their regular rates of pay for all hours worked over 40 in a workweek. The FLSA provides a number of special provisions for state and local government employees that are discussed in detail in Regulations, 29 CFR Part 553.

Section 7(k) of the FLSA provides a partial overtime pay exemption for public agency employees employed in fire protection or law enforcement activities (including security personnel in correctional institutions). Under this provision, an employer may establish a work period ranging from 7 to 28 consecutive days for the purpose of paying overtime compensation to employees employed in such activities. The maximum hours standard for fire protection personnel ranges from 53 hours worked in a 7-day work period to 212 hours worked in a 28-day work period. The maximum hours standard for law enforcement personnel ranges from 43 hours worked in a 7-day work period to 171 hours worked in a 28-day work period. See §§ 553.201 and 553.230 of the regulations.

EMS employees who are employed by a public fire protection or law enforcement agency, and whose work is an integral part of that agency's fire protection or law enforcement activities, may be paid overtime compensation pursuant to the provisions of §7(k). This is explained in §§ 553.210(a) and 553.211(b).

EMS employees who are not employed by a fire protection or law enforcement agency, but who are stationed at a fire station or police station in order to respond to calls, may be paid pursuant to the 7(k) exemption where they are an integral part of fire

protection or law enforcement activities. EMS employees who are not employed by a fire protection or law enforcement agency, and are not stationed at a fire station or a police station, may also be paid pursuant to the 7(k) exemption under certain conditions. As explained in §553.215, EMS employees of a public ("third service") agency, other than a fire protection or law enforcement agency, may be treated as employees engaged in fire protection or law enforcement activities if their services are substantially related to fire protection or law enforcement. However, this section of the regulations also refers to the fact that the provisions of §7(k) do not apply to EMS employees of a public agency, such as a hospital, that was subject to the FLSA prior to the Fair Labor Standards Amendments of 1974. Additionally, the exemption is not applicable to personnel employed by private EMS organizations.

Section 553.215 of the regulations contains two tests for determining if public EMS (third service) agency employees are providing services that are substantially related to fire protection or law enforcement:

1. The first test requires that individuals, in order to qualify as fire protection employees, must be trained to rescue fire victims, accident victims, or firefighters who are injured in the performance of their firefighting duties. Similarly, in order for individuals to qualify as law enforcement employees, they must be trained to rescue crime victims or law enforcement personnel who are injured in the performance of their law enforcement duties.
2. The second test requires that such individuals be regularly dispatched to fires, riots, natural disasters, or accidents in order for them to qualify as fire protection employees. Similarly, in order for them to qualify as law enforcement employees, they must be regularly dispatched to crime scenes, riots, natural disasters, or accidents.

As indicated in §553.215, where EMS employees perform both fire protection and law enforcement activities, the applicable overtime standard is the one in which the EMS employees spend the majority of work time during the work period.

Most EMS employees respond to a variety of emergency calls. Some calls are related to law enforcement emergencies, some are related to fire protection emergencies, and some are related to medical emergencies not attributable to either law enforcement or fire protection. Thus, the application of §7(k) to EMS

employees of public agencies that are not an integral part of fire protection or law enforcement agencies must be made on a case-by-case basis in accordance with the criteria discussed above. The results will necessarily vary depending on the nature of the EMS calls serviced.

With regard to changing the regulations to allow EMS organizations to claim the partial overtime exemption under §7(k) for fire protection employees, the Department of Labor gave full consideration to such proposed regulatory modifications during the 1987 rulemaking (52 FR 2012, 2023) for the regulations implementing the Fair Labor Standards Amendments of 1985. The position stated in the regulations is consistent with the legislative history of the Fair Labor Standards Amendments of 1974. We appreciate the concerns raised by \_\_\_\_\_ but do not believe (absent congressional action) that there is an adequate basis to presently change the regulations.

With respect to your constituent's comment as to whether the Secretary of Labor may appoint an "industry committee" on this issue, please note that the FLSA currently provides for such a process only to recommend minimum wages to be paid under §6 to employees in American Samoa. See §5 of the FLSA.

If you have any further questions, please do not hesitate to contact this office.

Sincerely,

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Daniel F. Sweeney  
Deputy Assistant Administrator