



JUN 1 2004

This is in response to your request for an opinion regarding the applicability of the law enforcement designation, for purposes of Section 7(k) of the Fair Labor Standards Act, for _____ Port of Entry Officers.

You state that the Port of Entry Officers are responsible for enforcing weight and size laws for commercial carriers, enforcing Commercial Driver License (CDL) standards which include CDL classes and endorsements, and ensuring that drivers have all necessary permits and documents and have paid all applicable fees. Some officers have received training in drug recognition and roadside sobriety tests. The officers enforce the safety standards found in 49 CFR and adhere to the directives from the Federal Motor Carrier Safety Administration. Additionally, an elite group of these inspectors is responsible for radioactive route controlled shipments and is often on call while waiting for the shipments to arrive at a port facility.

You state that the Port of Entry Officers are sworn law enforcement officers who are issued a badge and are uniformed. You describe that they have the power to detain illegal vehicles and drivers suspected of crimes and misdemeanors, but then State or local police officers are called upon to make arrests and transport offenders to jail. The Port of Entry Officers appear in court and testify on behalf of the State in criminal trials. According to your letter, Port of Entry Officers are law enforcement personnel who are empowered by the State of _____ to enforce laws designed to:

- Maintain peace and order (through the enforcement of state and federal laws regarding interstate vehicle registration, appropriate permits, and adherence to weight and size limitations).

- Protect life and property (by detaining vehicles found to be unsafe in safety inspections, and ensuring that vehicles carrying hazardous materials are properly identified, licensed and operated).
- Prevent and detect crimes (by discovering and detaining trucks carrying stolen goods or illegal drugs).

They do not attend a law enforcement-training academy, but they do receive on-the-job training in applicable laws, enforcement of laws, crime detection and the gathering and presentation of evidence.

Section 7(k) of the FLSA provides a partial overtime pay exemption for fire protection and law enforcement personnel (including security personnel in correctional institutions) who are employed by public agencies on a work period basis. In the case of such employees who have a work period of at least 7 but less than 28 consecutive days, overtime compensation is required when the ratio of the number of hours worked to the number of days in the work period exceeds ratio of 212 (for fire protection employees) or 171 (for law enforcement employees) hours to 28 days. 29 CFR §553.201(a).

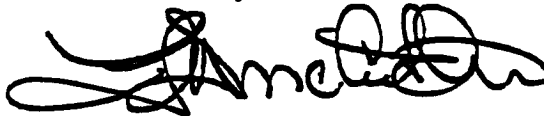
As used in section 7(k), the term "any employee...in law enforcement activities" is defined in the regulations as "any employee (1) who is a uniformed or plainclothed member of a body of officers and subordinates who are empowered by State statute or local ordinance to enforce laws designed to maintain public peace and order and to protect both life and property from accidental or willful injury, and to prevent and detect crimes, (2) who has the power to arrest, and (3) who is presently undergoing or has undergone or will undergo on-the-job training and/or a course of instruction and study which typically includes physical training, self-defense, firearm proficiency, criminal and civil law principles, investigative and law enforcement techniques, community relations, medical aid and ethics." 29 CFR §553.211.

Based on the information provided, you appear to concede that the Port of Entry Officers do not have the "power to arrest", which is one of the three requirements described in the §553.211 of the Regulations Part 553 (enclosed). Further, while the Port of Entry officers do receive some on-the-job training in law enforcement, they do not receive physical training, self-defense, firearms proficiency, medical aid, community relations or ethics, all typically part of law enforcement training. Therefore, it is our opinion that the Port of Entry Officers do not qualify as law enforcement employees and are not eligible for the section 7(k) exemption. See 29 CFR §553.211(e).

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

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

Sincerely,

A handwritten signature in black ink, appearing to read "Tammy D. McCutchen", written in a cursive style.

Tammy D. McCutchen
Administrator