

## Office of Personnel Management

## §551.215

(b) *Foreign exemption applies.* If an employee meets one of the two following criteria, the employee is subject to the foreign exemption of the Act and the minimum wage, overtime, and child labor provisions of the Act do not apply:

(1) The employee is permanently stationed in an exempt area and spends all hours of work in a given workweek in one or more exempt areas; or

(2) The employee is not permanently stationed in an exempt area, but spends all hours of work in a given workweek in one or more exempt areas.

(c) *Foreign exemption does not apply.* For any given workweek, the minimum wage, overtime, and child labor provisions of the Act apply to an employee permanently stationed in an exempt area who spends any hours of work in any nonexempt area. For that workweek, the employee is not subject to the foreign exemption, and the agency must determine the exemption status of such an employee as described in paragraphs (c)(1) and (c)(2) of this section. The foreign exemption does not resume until the employee again meets one of the criteria in paragraph (b) of this section.

(1) *Same duties.* If the duties performed during that workweek are consistent with the primary duties of the employee's official position, the agency must designate the employee the same FLSA exemption status as if the employee were permanently stationed in any nonexempt area.

(2) *Different duties.* If the duties performed during that workweek are not consistent with the primary duties of the employee's official position:

(i) The agency must first designate the employee the same FLSA exemption status as the employee would have been designated based on the duties included in the employee's official position if the employee was permanently stationed in any nonexempt area; and

(ii) The agency must determine the employee's exemption status for that workweek by applying §551.211.

(d) *Resumption of foreign exemption.* When an employee returns to any exempt area from performing any hours of work in any nonexempt area, the employee is not subject to the foreign

exemption until the employee meets one of the criteria in paragraph (b) of this section.

### **§551.213 Exemption of employees receiving availability pay.**

The following employees are exempt from the hours of work and overtime pay provisions of the Act:

(a) A criminal investigator receiving availability pay under §550.181(a) of this chapter, as provided in 29 U.S.C. 213(a)(16));

(b) A pilot employed by U.S. Customs and Border Protection or its successor who is a law enforcement officer as defined in section 5541(3) of title 5, United States Code, and who receives availability pay under section 5545a(i) of title 5, United States Code.

### **§551.214 Statutory exclusion.**

A customs officer who receives overtime pay under subsection (a) or premium pay under subsection (b) of 19 U.S.C. 267 and under 19 CFR 24.16 for time worked may not receive pay or other compensation for that work under any other provision of law.

### **§551.215 Fire protection activities and 7(k) coverage for FLSA pay and exemption determinations.**

(a) The Office of Personnel Management may determine that the provisions of section 7(k) of the Act apply to certain categories of fire protection employees based on appropriate factors, such as the type of premium payments they receive (see §551.501(a)(1) and (5) and §551.541).

(b) *Fire protection activities.* Fire protection activities involve the performance of functions directly concerned with the response to and the control and extinguishment of fires; or performance of inspection of facilities and equipment for the primary purpose of reducing or eliminating fire hazards by trained firefighters eligible for reassignment to fire control and suppression or prevention duties; or provision of the primary (*i.e.*, the first called) rescue and ambulance service in connection with fire protection functions.

(c) *Engaged in fire protection activities.* (1) An employee (including a firefighter, paramedic, emergency medical technician, rescue worker, ambulance

## §551.216

## 5 CFR Ch. I (1–12 Edition)

personnel, or hazardous materials worker) is considered engaged in fire protection activities for the purpose of determining possible application of section 7(k) of the Act as provided for in §551.501(a)(1) and (5) and §551.541 if the employee:

(i) Is trained in fire suppression, has authority and responsibility to engage in fire suppression, and is employed by an organization with fire suppression as a primary mission; and

(ii) Is engaged in the prevention, control, and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

(2) Subject to the requirements of paragraph (c)(1) of this section, the following types of employees are engaged in fire protection activities for the purpose of determining possible application of section 7(k) of the Act:

(i) Employees in positions properly classified in the Fire Protection and Prevention series, including any qualified firefighter who is assigned to perform support functions (e.g., communications or dispatching functions, equipment maintenance or repair) or who is transferred to an administrative or supervisory position within the fire protection activity, except when such administrative or supervisory work exempts the employee under executive, administrative, and professional considerations;

(ii) Employees in positions properly classified in other series, such as Forestry Technician, for whom fire protection functions constitute substantially full-time assignments throughout the year, or for the duration of a specified fire season within the year;

(iii) Temporary employees hired solely to perform fire suppression work on an as-needed basis;

(iv) Members of rescue and ambulance crews with fire suppression training, authority, and responsibility, who are part of a fire suppression organization, as described in paragraph (c)(1)(i) of this section; and

(v) Any other employee in any workweek in which the employee performs fire control or suppression work for 80 percent or more of the total hours worked.

(d) *Not engaged in fire protection activities.* Examples of types of employees who are not engaged in fire protection activities for the purpose of applying section 7(k) of the Act (as provided for in §551.501(a)(1) and (5) and §551.541) include the following:

(1) Professional engineers, engineering technicians, and similar employees involved in fire protection research or in the design and development of fire protection and prevention equipment and materials;

(2) Employees who perform functions that support fire protection activities but who are *not* trained, qualified firefighters eligible for reassignment to fire control and suppression or prevention duties. Supporting functions (such as maintenance of fire apparatus, equipment, alarm systems, etc., or communications and dispatching work or preparation of records and reports) are included when performed by firefighters but are *not* included when performed by mechanics, communications systems and radio operators, clerks, or other employees;

(3) Employees whose primary duties are *not* related to fire protection but who perform fire control or suppression work on an as needed basis, *provided* that the fire control or suppression work constitutes less than 80 percent of the employees' hours of work within any workweek; and

(4) Employees on rescue and ambulance crews who:

(i) Are not trained in fire suppression;

(ii) Do not have fire suppression authority and responsibility; or

(iii) Are employed by an organization, such as a hospital, that does not have fire suppression as a primary mission.

### **§551.216 Law enforcement activities and 7(k) coverage for FLSA pay and exemption determinations.**

(a) The Office of Personnel Management may determine that the provisions of section 7(k) of the Act apply to certain categories of law enforcement employees based on appropriate factors, such as the type of premium payments they receive (see §551.501(a)(1) and (5) and §551.541).