



FLSA2007-11

September 17, 2007

Dear **Name***:

This is in response to your request for an opinion concerning whether Field Inspectors employed by your client qualify for the executive or administrative exemption under section 13(a)(1) of the Fair Labor Standards Act (FLSA), 29 U.S.C. § 213(a)(1).¹ Based on a review of the information provided, it is our opinion that the Field Inspectors described below qualify for the executive exemption. Because we conclude that the Field Inspectors are exempt executive employees, we do not address the administrative exemption.

Your client, a membership-based association (Association) composed of cattle producers and operators, employs Field Inspectors who are stationed in particular districts. The Association offers numerous services to its members, including law enforcement (*e.g.*, assisting in recovery of stolen livestock and ranch-related property and serving as a liaison between the Association's members and law enforcement agencies) and livestock inspection. According to your letter and the job description you provided, the Field Inspectors' primary duty is management of one of the assigned districts. Each district has a permanent status and a continuing function in the Association. Field Inspectors interview, hire, and train new employees, including Market Inspectors. Market Inspectors inspect four to five million heads of cattle each year at more than one hundred livestock markets and terminals. Market Inspectors record the physical description of each livestock and seller information, and report their findings to the Association's headquarters. Field Inspectors select Market Inspectors who are of good moral character and whose background would not be detrimental to their credibility in a court of law. Field Inspectors also ensure that a newly hired Market Inspector completes and submits all necessary documents. Field Inspectors must review the "Market Inspectors Manual" with the new hire, answer any questions, and ensure that the newly-hired Market Inspector understands all of his or her duties. A fundamental part of the Field Inspector's job is supervising Market Inspectors and market inspections within his or her assigned district. Field Inspectors customarily and regularly supervise and direct the work of at least two Market Inspectors. In monitoring employee performance, productivity, and compliance, Field Inspectors ensure that Market Inspectors arrive on time and remain until the sale is over; inquire with Market owners/operators regarding the Market Inspectors' performance and ability to work in a cooperative manner; conduct random evaluations of Market Inspectors' work; and check their paperwork for completeness, accuracy, neatness, and legibility. In conducting performance evaluations, Field Inspectors prepare written performance evaluations and hold face-to-face meetings during or at the conclusion of a new Market Inspector's 90-day probationary period, and annually thereafter, and counsel Market Inspectors if their work is not satisfactory.

¹ Unless otherwise noted, any statutes, regulations, opinion letters, or other interpretive material cited in this letter can be found at www.wagehour.dol.gov.

In addition, Field Inspectors report all job-related injuries and accidents involving your client's vehicles to appropriate headquarters personnel. Field Inspectors reappportion work to other employees in the event of a Market Inspector's absence. Field Inspectors stay abreast of any "special sales" of livestock and assign Market Inspectors to cover such events. Field Inspectors handle employee complaints and grievances and recommend disciplinary action or termination of Market Inspectors. Field Inspectors' suggestions and recommendations regarding disciplinary action or termination of Market Inspectors are given particular weight and are typically relied upon by upper-level management.

Field Inspectors are certified peace officers commissioned as Special Rangers by the public safety agencies of the states where they operate. As part of their duties, Field Inspectors are often called upon to assist law enforcement agencies in recovering stolen livestock and ranch-related property. Investigations are conducted as requested by Association members, other law enforcement agencies, or the public. Investigations require traveling to the scene, meeting with the victim or agency requesting assistance, collecting any available physical evidence, completing any reports, following up on leads or suspects, and requesting assistance from fellow Field Inspectors, a Regional Supervisor, or other agencies when applicable. Field Inspectors receive at least \$455 per week on a salary basis.

In a discussion with a member of my staff, you stated that a Field Inspector generally spends a majority of his or her time managing his or her assigned district and supervising Market Inspectors and market inspections; the balance of his or her time involves performing duties related to investigations. Also, there may be situations where two Field Inspectors supervise one Market Inspector; this shared supervision, however, is in addition to the two or more full-time Market Inspectors each Field Inspector supervises and directs.

You request an opinion in light of 29 C.F.R. § 541.3(b)(1), which states that the section 13(a)(1) exemptions and the implementing regulations "do not apply to . . . inspectors . . . who perform work such as . . . conducting investigations or inspections for violations of law; performing surveillance; pursuing, restraining and apprehending suspects; . . . interviewing witnesses; interrogating and fingerprinting suspects; preparing investigative reports; or other similar work." You would like to know whether § 541.3(b)(1) excludes the Field Inspectors you describe from the section 13(a)(1) exemptions.

Section 13(a)(1) provides a complete minimum wage and overtime pay exemption for "any employee employed in a bona fide executive, administrative, or professional capacity," as those terms are defined in 29 C.F.R. Part 541. An employee may qualify for exemption if all of the pertinent tests relating to duties and salary are met.

Under 29 C.F.R. § 541.100(a), the term "employee employed in a bona fide executive capacity" means "any employee":

- (1) Compensated on a salary basis at a rate of not less than \$455 per week . . . ;
- (2) Whose primary duty is management of the enterprise 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.

Management, as discussed in the regulations, includes such activities as

interviewing, selecting, and training of employees; setting and adjusting their . . . 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 . . . [and] apportioning the work among the employees,

among others. *See* 29 C.F.R. § 541.102.

An employee's "primary duty" is defined in 29 C.F.R. § 541.700(a) as the "principal, main, major or most important duty that the employee performs" based on all the facts in each case with the major emphasis on the character of the employee's job as a whole. As further explained in 29 C.F.R. § 541.700(b), "[t]he 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."

Field Inspectors employed by your client meet the requirements of § 541.100(a)(2)-(4), because the primary duty of the Field Inspector is management of his or her assigned district, including the supervision of Market Inspectors and market inspections; these activities generally consume a majority of the Field Inspector's time. The supervision of Market Inspectors includes training; apportioning work; monitoring employee performance, productivity, and compliance; conducting performance evaluations; counseling Market Inspectors; and handling employee complaints and grievances. The Field Inspector customarily and regularly supervises and directs the work of at least two full-time Market Inspectors. The Field Inspector interviews, selects, and hires new Market Inspectors. In addition, the Field Inspector's suggestions and recommendations regarding disciplinary action or termination of a Market Inspector are given particular weight and are typically relied upon. Field Inspectors differ from the inspectors described in § 541.3(b)(2), because the Field Inspectors' primary duty is management of a customarily recognized department, not duties related to investigations.² Therefore, based on a

² As noted in 29 C.F.R. § 541.3(b)(2), employees such as police officers, investigators, and inspectors often

do not qualify as exempt executive employees because their primary duty is not management of the enterprise in which the employee is employed or a customarily recognized department or subdivision thereof as required under § 541.100. Thus, for example, a police officer . . . whose primary duty is to

review of the information provided, it is our opinion that the Field Inspectors you describe qualify for the executive exemption under FLSA section 13(a)(1).

This opinion is based exclusively on the facts and circumstances described in your request and is given based on your representation, express or implied, that you have provided a full and fair description of all the facts and circumstances that would be pertinent to our consideration of the question presented. Existence of any other factual or historical background not contained in your letter might require a conclusion different from the one expressed herein. You have represented that this opinion is not sought by a party to pending private litigation concerning the issues 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 this letter is responsive to your inquiry.

Sincerely,

Paul DeCamp
Administrator

***Note: The actual name(s) was removed to preserve privacy in accordance with 5 U.S.C. § 552(b)(7).**

investigate crimes . . . is not exempt under section 13(a)(1) of the Act merely because the police officer . . . also directs the work of other employees in the conduct of an investigation.