

120 Howard Street, Room 760
San Francisco, CA 94105

U.S. Office of Personnel Management
San Francisco Oversight Division



**Fair Labor Standards Act Decision
Under Section 4(f) of the Act as Amended**

Claimants:	[Names of claimants]
Position:	Supervisory Law Enforcement Ranger GS-1801-11
Organization:	U.S. Department of the Interior Bureau of Land Management
Locations:	[Locations of claimants]
Claim:	Exemption status
Decision:	Exempt
OPM Decision No.	F-1801-11-02

Signed by Denis J. Whitebook
DENIS J. WHITEBOOK
CLASSIFICATION APPEALS OFFICER

February 20, 1997
DATE

There is no right of further appeal from this decision. The Director of the U.S. Office of Personnel Management may at his discretion reopen and consider the case. The claimant has the right to bring action in the appropriate Federal court if dissatisfied with this decision.

Decision sent to:

[Names and addresses of claimants]

Director
National Human Resources Management Center
U.S. Department of the Interior
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P.O. Box 25047
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Manager, Interagency Human Resources Center
U.S. Department of the Interior
2800 Cottage Way, Room W-1102
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Director of Personnel
U.S. Department of the Interior
Washington, D.C. 20240

Introduction

In February and November 1996, the San Francisco Oversight Division of the U.S. Office of Personnel Management (OPM) received Fair Labor Standards Act (FLSA) claims from [names of claimants]. They believe that their FLSA exemption status should be nonexempt. Their positions are classified as Supervisory Law Enforcement Ranger GS-1801-11. [Name of one claimant] works in the [work location] and [name of other claimant] works in the [work location]. Both resource areas are located in the [name of District], Bureau of Land Management, Department of the Interior. We have accepted and decided their claim under section 4(f) of the FLSA as amended.

Position information

The claimants are assigned to Position Description (PD) [number] which states:

The primary purpose is to perform and supervise the enforcement of Federal laws and regulations relating to public lands and resources managed by the Bureau of Land Management (BLM). The incumbent is a uniformed law enforcement officer with full delegated law enforcement authority. The incumbent supervises three or more BLM Rangers who are assigned large geographical areas of public land subject to a variety of uses and are responsible for identifying and investigating criminal activity occurring on the public land, apprehending violators, and carrying out the Federal Land Policy and Management Act of 1976 (FLPMA) law enforcement objectives.

The claimants supervise three or more BLM Law Enforcement Rangers GS-1801-9. They assign, direct, and review the work; plan and provide for formal and informal training; evaluate work performance; interview candidates; recommend selections, promotions, awards, disciplinary actions, and separations; plan, schedule and coordinate work operations; resolve work problems; and explain management policies and goals. They ensure equal opportunity for all employees supervised. In addition, they are responsible for on-the-job safety and health. (25 percent)

The claimants personally investigate acts of criminal activity, theft, vandalism or offenses against the criminal laws and regulations of the United States that relate to the public lands and resources. They develop information through fact finding by collecting on-site evidence, interviewing witnesses or suspects, following up on leads, searching records, conducting surveillance, observing suspicious activity, and through information provided by informants, concerned citizens, and local, Federal, and State officials. The claimants prepare investigation reports by documenting findings and facts, obtaining witness statements and copies of official records, and including pertinent correspondence, maps, historical information, exhibits, and photographs. They issue citations or make arrests and file criminal complaints with the court. They book suspects when appropriate and feasible. As case agents, they represent the U.S. Government as the prosecutor in court. They obtain investigation reports and criminal history of the defendant and prepare testimony. They meet with prosecuting attorneys, present testimony, deliver evidence to the court, and respond to testimony presented by defense attorneys/defendants. They recommend sentences, e.g., fines, probation, time

in custody, administrative action, monetary restitution to the Government or reclamation of damage to the court. They request and present justification for arrest warrants for defendants who fail to appear in court. (55 percent)

They develop and maintain liaisons with other Federal, State, and local law enforcement agencies to share in the resources in order to provide additional protection of people and property on public lands. They cooperate in the investigation and disposition of cases. The claimants provide assistance, e.g., back-up, to other law enforcement officers, exchange case information, and coordinate other law enforcement activities of mutual interest. (5 percent)

They also perform other duties such as: special assignments involving multi-agency task forces to eradicate marijuana plantations, drug investigations, etc.; educating public land users about the Federal laws and regulations pertaining to use of public land and its resources; and assisting in searches and rescues of visitors to public lands. (15 percent)

The claimants and their supervisors have certified the PD as complete and accurate. The PD and other information of record furnish additional details about the duties and responsibilities actually performed by the claimants.

Exemption determination

Three types of employees are exempted from the FLSA's overtime benefits: executive, professional, and administrative. The exemption criteria are found in sections 551.204, 551.205, and 551.206 of Title 5, Code of Federal Regulations (CFR). We have used accepted OPM interpretations of the terms used in the exemption criteria.

The claimants are not covered by the professional exemption criteria. Neither the agency nor the claimants disagree. The agency believes that the claimants are exempt because they meet the executive exemption criteria. The claimants believe that they are nonexempt because they do not meet the administrative exemption criteria based on the *Adam v. United States* (26 Cl.Ct.782) court ruling. If the claimants meets the executive, professional, *or* administrative exemption criteria, the position is exempt from the FLSA.

Executive Exemption Criteria

The executive exemption criteria are found in 5 CFR 551.204:

An executive employee is a supervisor, foreman, or manager who manages a Federal agency or any subdivision thereof (including the lowest recognized organizational unit with a continuing function) and regularly and customarily directs the work of at least three subordinate employees (excluding support employees) and meets all the following criteria:

(a) The employee's primary duty consists of management or supervision. The primary duty requirement is met if the employee--

(1) Has authority to select or remove, and advance in pay and promote, or make any other status changes of subordinate employees, or has authority to suggest and recommend such actions with particular consideration given to these suggestions and recommendations; and

(2) Customarily and regularly exercises discretion and independent judgment in such activities as work planning and organization; work assignment, direction, review, and evaluation; and other aspects of management of subordinates, including personnel administration.

(b) In addition to the primary duty criterion that applies to all employees, foreman level supervisors in the Federal Wage System (or the equivalent in other wage systems), employees at the GS-7 through GS-9 level subject to section 207(k) of title 29, United States Code, and employees classified at the GS-5 or GS-6 level (or equivalent in other white collar pay systems) must spend 80 percent or more of the worktime in a representative workweek on supervisory and closely related work.

The general principles governing exemptions found in 5 CFR 551.202 provide that the exemption criteria shall be narrowly construed to apply only to those employees who are clearly within the terms and spirit of the exemption, that the burden of proof rests with the agency that asserts the exemption, and that all employees who clearly meet the criteria for exemption must be exempted.

Evaluation

The introductory paragraph of 5 CFR 551.204 is met as the claimants are supervisors. Each manages a Sectors Section and regularly and customarily directs the work of three or more Law Enforcement Rangers GS-1801-9 in a manner meeting criterion (a) as discussed below.

The claimants' meet criterion (a)(1) as the PD states that the claimants have the authority to recommend selections, promotions, and separations. They also meet criterion (a)(2) as their PD states that they plan, schedule, and coordinate work operations; assign, direct, and review their subordinates' work; evaluate work performance; plan and provide formal and informal training; recommend awards; resolve work problems; and explain management policies and goals. We also referenced their subordinates' PD [number] for Law Enforcement Rangers GS-1801-9 which was included in related claims. PD[number] states that the claimants assign work to their subordinates in terms of goals and annual work plan commitments, program priorities, and special considerations. The subordinates' PD also states that the claimants review their subordinates' work in terms of results achieved, adherence to policies and procedures, and the effectiveness of results. Criterion (a) is met.

Criterion (b) does not apply to the claimants even though they spend only 25 percent of their time on supervisory duties. This criterion requires that employees spend 80 percent or more of the worktime in a representative workweek on supervisory and closely related work. However, it does not apply when, as in the claimants' situation, the employees are classified at the GS-11 level.

The claimants meet the executive exemption criteria in 5 CFR 551.204 and are exempt from the provisions of the FLSA. Only one of the exemption categories needs to be met for the positions to be considered exempt from the FLSA; therefore, we have not applied the administrative exemption criteria.

Decision

The claimants' Supervisory Law Enforcement Ranger GS-1801-11 positions (PD number) are exempt from the FLSA.