# FLSA - 1169

June 17, 1988

This is in further reference to your letter concerning the application of the Fair Labor Standards Act (FLSA) to firefighters. You seek guidance as to when meal periods may be excluded from compensable hours of work of firefighters. On January 16, 1987, the Department of Labor published final Regulations, 29 CFR Part 553, which implement the Fair Labor Standards Amendments of 1985 (the Amendments). These regulations contain rules concerning statutory exclusions and exemptions, recordkeeping requirements and compensatory time provisions which apply to State and local government workers in general, in addition to specific rules for volunteers and for fire protection and law enforcement employees.

The FLSA is the Federal 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 $3.35 an hour and not less than one and one-half times their regular rates of pay for all hours worked over 40 in a workweek. The provisions of FLSA apply to all employees of State and local governments except to those who are specifically excluded in Section 3(e)(2)(C) of FLSA and to those who may qualify for exemption from the minimum wage and/or overtime pay provisions of FLSA.

You specifically asked what is meant by the language in 29 CFR Part 553.223(d) that for "firefighters who are on a tour of duty of more than 24 hours, meal time may be excluded from compensable hours of work provided that the tests in 29 CFR Part 785.19 and 785.22 are met."

As discussed with you by a member of my staff, the Department has carefully considered the issue regarding the exclusion from hours worked of meal times for employees employed under section 7(k). Firefighters paid under section 7(k) who are confined to a duty station and who work tours of duty of more than 24 hours may not have bona fide meal times excluded from their hours of work unless the employer and the employee agree to exclude such meal periods. Where no express or implied agreement to the contrary is present, the meal periods constitute hours worked.

If the meal period is interrupted by a call to duty, the entire time is considered working time. Ordinarily 30 minutes or more is long enough for a bona fide meal period. It is not necessary that an employee be permitted to leave the premises if he or she is otherwise completely free from duties during the meal period.

You also asked what is the maximum amount of time which may be deducted from hours worked for meals? The Act is construed to be proscriptive in nature. It sets the minimum standards for compliance. There is nothing in FLSA which prohibits the employee and employer from negotiating a standard more beneficial to the employee than required by FLSA. However, the employer and employees may not establish standards lower than required by FLSA. As an enforcement position, Wage and Hour would closely examine a meal period longer than 60 minutes in length.

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

Sincerely,

Paula V. Smith
Administrator