

FLSA-505

February 7, 1992

This is in response to your letter of January 3, concerning correspondence sent to the Wage and Hour Division (the Division) on March 8, 1991, by the law firm of *** seeking an exemption from the minimum wage and overtime pay provisions of the Fair Labor Standards Act (FLSA) for helicopter pilots. We have no record of receiving the earlier correspondence from ***.

In the March 8 correspondence, a petition was submitted on behalf of the Helicopter Association International (HAI) requesting that the Division declare all helicopter pilots working on public contracts exempt from the provisions of the FLSA as bona fide professional employees, as that term is defined in Regulations, 29 CFR Part 541. This request was made pursuant to section 541.6 of the Regulations, which allows any person wishing a revision of any of the terms of the Regulations to submit in writing to the Administrator of the Division a petition setting forth the changes desired and the reasons for proposing them. In addition, it was also requested on behalf of the HAI that the Division clarify which helicopter pilots meet the requirements of the Division's nonenforcement policy with regard to pilots or copilots of airplanes and rotorcraft.

In 1985 the Department of Labor published in the Federal Register (50 FR 47696) an advanced notice of proposed rule making (ANPR) requesting the views of the public on any changes that interested parties believed were necessary to the Regulations. We expect to publish proposed rules for public comment when the review of the comments submitted in response to the ANPR is completed. Since the petition submitted by *** with regard to helicopter pilots would also require a revision of the Regulations, consideration of this petition will be made in conjunction with the review of the comments received in response to the ANPR.

With regard to the concern about the Division's nonenforcement policy, it is our position that we will take no enforcement action with respect to pilots or copilots of airplanes and rotorcraft who hold an FAA Airline Transport Certificate or Commercial Certificate who are paid not less than \$300 per week and who are engaged in the following activities:

- (1) Flying of aircraft as business or company pilots;
- (2) Aerial mineral exploration;
- (3) Aerial mapping and photography;
- (4) Aerial forest fire protection;
- (5) Aerial meteorological research;
- (6) Test flights of aircraft in connection with engineering, production, or sale;
- (7) Aerial logging, fire suppression, forest fertilizing, forest seeding, forest spraying, and related activities involving the ultimate in precision flying over mountainous forest areas;
- (8) Flying activities in connection with transmission tower construction, transmission line construction, transportation of completed structures with precision setting of footings, concrete pouring; and
- (9) Aerial construction of sections of oil drilling rigs and pipe-lines, and ski-lift and fire lookout

constructions.

No enforcement action will be taken, also, with respect to flight engineers engaged primarily in flight testing airplanes or rotorcraft who have formal training equivalent to at least 2 years of college engineering education, 500 hours flight time as a flight engineer or pilot, and who are paid on a salary or fee basis of at least \$300 per week.

This enforcement position does not apply to airplane and helicopter pilots engaged in agricultural crop-dusting operation. This policy does not relieve an employer from compliance with the minimum wage and overtime pay standards for support and maintenance personnel covered by the provisions of FLSA. In addition, this enforcement position does not apply to employees, including pilots and copilots, subject to the provisions of the McNamara-O'Hara Service Contract Act, the Davis-Bacon Act, and the Contract Work Hours and Safety Standards Act, nor relieve any employer for any obligation incurred under a collective bargaining agreement.

We trust that the above satisfactorily responds to your inquiry.

Sincerely,

John R. Fraser
Acting Administrator