

FLSA-565

January 20, 1975

We regret the delay in responding to your letter of December 16, 1974, concerning the matter of ***, and its request that the Wage and Hour Division extend its nonenforcement position under the Fair Labor Standards Act to helicopter pilots engaged in forest management and certain other flying activities.

As you know, section 13(a)(1) of the Fair Labor Standards Act provides a complete exemption from both its minimum wage and overtime pay requirements for an employee employed in a bona fide executive, administrative or professional capacity, or as an outside salesman, as these terms are defined and delimited in CFR 29, Regulations Part 541.3. While it has been the Division's position that this exemption would not apply to pilots on an industry-wide basis, we have had a nonenforcement policy in regard to pilots and copilots of airplanes and rotorcraft holding an FAA Airline Transport Certificate or a Commercial Certificate engaged in certain specified duties.

We have made a comprehensive analysis of the material submitted in August 1973 and have concluded that we would be defeating the purpose of the exemption were we to exempt helicopter pilots on an industry-wide basis as "professionals" under Regulations Part 541.3. While it is true that the duties of many helicopter pilots and copilots require considerable knowledge of navigation, meteorology, engineering and flight theory, and they must pass stringent examinations given by Federal Aviation Administration, it is still the experience in actual flight which is the most important element in qualifying as a pilot or copilot. Thus, their work could not be characterized as "work requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study", as specified in Regulations, Part 541.

However, based on the review of the material you submitted detailing the duties of a helicopter pilot when engaged in forest management activities and certain other activities in remote areas, we have accordingly determined that the Wage and Hour Division will take no enforcement action with respect to pilots or copilots of rotorcraft who hold an FAA Airline Transport Certificate or a Commercial Certificate who are engaged in such activities, provided that such pilots and copilots receive compensation on a salary or fee basis at a rate of at least \$300 a week. This policy applies only to FLSA.

Specifically under the FLSA, this policy would include flying activities related to logging, fire suppression, fertilizing, seeding, spraying, and other activities involving the ultimate in precision flying over mountainous forest areas. It would also include flying activities in connection with transmission tower construction, transmission line construction, transportation of completed structures with precision setting of footings, concrete pouring, transportation and construction of sections of oil drilling rigs and pipelines, and ski-lift and fire lookout construction. It does not apply to airplane and helicopter pilots engaged in agricultural crop dusting operations.

This policy is extended only to pilots engaged in the activities enumerated above. It 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 the Fair Labor Standards Act, nor employees covered by the Service Contract Act, the Davis-Bacon Act, and the Contract Work Hours and Safety Standards Act, nor from any obligations incurred under a collective bargaining agreement.

Sincerely,

Betty Southard Murphy

Administrator
Wage and Hour Division