21 BC 201.1
21 BC 102.11
21 BC 204.3

U.S. DEPARTMENT OF LABOR
EMPLOYMENT STANDARDS ADMINISTRATION
WASHINGTON, D.C. 20210

6/4/73

This is in reply to your letter of April 11, 1973, on behalf of the You ask that all employees of an agricultural aviation firm be considered as agricultural employees within the definition of "primary agriculture" under the Fair Labor Standards Act. As agreed at the time we discussed your request, we have given the proposal careful consideration.

The general scope of the term "agriculture" as defined in section 3(f) of the Act is explained in Subpart B of 29 CFR 780. As noted in sections 780.303 and 780.403 of Part 780, the language of sections 13(a)(6) and 13(b)(12) of the Act, which apply to "any employee employed in agriculture * * *", indicates the intent of Congress to make the activities of the employee, rather than the business of the employer, the basis for exemption from the Act's monetary requirements.

It appears, also, that many operations performed by employees of an agricultural aviation firm cannot be considered as primary agriculture. Office work, truck driving and maintaining equipment, for example, can never be so regarded. When such operations are done in conjunction with farming, they can qualify only as secondary agriculture, that is, as operations performed by a farmer or on a farm as an incident to the farming operations carried on. An agricultural aviation operator is not, of course, a farmer. We must conclude, therefore, that we cannot issue an interpretation applicable to all employees of any agricultural aviation firm.

Generally speaking, activities performed on a farm by employees of such a firm constitute practices performed as an incident to and in conjunction with farming. When the activities of agricultural aviation employees in a workweek are done on a farm, such employees, for example, as the pilot and flagman would generally be exempt from the

overtime requirements pursuant to section 13(b)(12) of the Act. See section 780.136 for an explanation of the work performed by employees of such firms which is not considered as constituting employment in agriculture.

We understand that your primary interest is in the manner in which the Act applies to the work of the aircraft loaders. The work of loaders would be within the definition of agriculture where the loading and application work is done on the same farm. In this connection you will also be interested in the following examples of activities that are not within the definition of agriculture. In any workweek in which a loader does any loading of aircraft at an airport, he would not be performing the work on a farm, as explained in section 780.136. In any workweek in which the loader works at a landing strip which is on a farm but performs loading of the aircraft for crop spraying operations which are done on another farm, such work would not be in conjunction with the farming operations of the particular farm on which the loading was done.

In summary, for a loader to be exempt from the Act's overtime provisions, under section 13(b)(12), he must be both working on the farm where the application work is being done, and he must be "employed in agriculture" for the entire workweek (see section 780.10).

If we can help your members in complying with the Act, please feel free to call upon us.

Sincerely,

/s/ Ben P. Robertson

Ben P. Robertson
Acting Administrator
Wage and Hour Division

Enclosure