CWHSSA-1

July 28, 1975

This is in further reply to your letter of February 10, 1975, requesting a clarification of the enforcement policy set forth in our letter of January 20 with respect to helicopter pilots and copilots engaged in certain named activities while performing contract work covered by the Service Contract Act, the Davis-Bacon Act, and the Contract Work Hours and Safety Standards Act.

We have carefully reviewed your submission in light of the statutory purposes of the above Acts and our responsibilities thereunder, and have concluded that we cannot extend the non enforcement position taken with respect to certain pilots and copilots under the Fair Labor Standards Act as set forth in our January 20 letter to such employees who perform work subject to the Service Contract Act, the Davis-Bacon and Related Acts, or the Contract Work Hours and Safety Standards Act. As noted in our previous letter, such employees are clearly not "professional" employees within the meaning of section 541.3 of Regulations, 29 CFR Part 541, and, therefore, cannot fall within the policy regarding professional employees under the Service Contract Act or the Contract Work Hours and Safety Standards Act. (See sections 4.113(b), 4.156, and 4.181(b) of Regulations, 29 CFR Part 4.)

It is the position of this Department that pilots and copilots are "laborers and mechanics" within the meaning of the Davis-Bacon and Related Acts and the Contract Work Hours and Safety Standards Act, and "service employees" within the meaning of the Service Contract Act. While the work of a pilot requires a need for manual dexterity, a degree of physical strength, and other physical processes necessary to control an airplane or helicopter in flight, this in itself is not dispositive of the issue. The fact is that much of the work being performed by helicopter pilots as noted in our previous letter (e.g., transmission tower construction, transmission line construction, precision setting of footings, concrete pouring, etc.) is in essence construction work which has always been considered to be the work of a "laborer or mechanic." The use of new sophisticated equipment and techniques (i.e., helicopters) for construction work in the place of, for example, cranes, does not change the character of the work nor our position that employees performing such work are laborers and mechanics.

In addition, we also wish to point out that the application of the Contract Work Hours and Safety Standards Act is not limited to laborers and mechanics employed on a "public work" only. In general, the Act applies to all laborers or mechanics, including guards and watchmen, employed on any contract to which the U.S. Government is a party, including construction contracts in excess of $2,000, Government service contracts in excess of $2,500, and Government supply contracts in excess of $2,500 but less than $10,000. (See section 103(a) of the Act and sections 5.14(b)(3) and (4) of Regulations, 29 CFR Part 5.)

Finally, we wish to note that none of these statutes prohibits the compensation of an employee on a weekly salary basis, as long as the compensation received is greater than or equal to the compensation required by an applicable wage determination. (See, for example, section 4.166 of the Regulations.) In addition, the methods for computing the regular rate of pay under the Fair

Labor Standards Act, as explained in Interpretative Bulletin, part 778, are also applicable in computing the basic rate of pay under the Contract Work Hours and Safety Standards Act. Therefore, overtime compensation for salaried employees under the Contract work Hours and Safety Standards Act may be computed using the fluctuating workweek method set forth in section 778.114. However, it should be kept in mind that the Contract Work Hours and Safety Standards Act daily overtime provision will necessitate a slightly different calculation in those workweeks in which the daily overtime hours exceed the weekly overtime hours.

Sincerely,

Warren D. Landis
Acting Administrator