

FLSA-633

May 14, 1980

This is in reply to your letter on April 15, 1980, requesting a reconsideration of our opinion of February 1, 1980, concerning the application of section 13(a)(1) of the Fair Labor Standards Act to Permit Agents.

Your current letter presents new information concerning the salary levels and duties of the employees. You state that the Permit Agents receive a weekly salary between \$300 and \$475 depending upon experience level and tenure with the company. You also point out that the Permit Agents do not participate in seismic surveying as appeared to be the case in your first correspondence to this office. It appears that the primary duty of a Permit Agent is to determine the name of owners of realty, leases, and minerals in the path of a seismic project. These employees then approach the owners and negotiate the right to travel over the respective estate and supervise the compliance by the seismic crew with the terms and conditions of the permit. Also, the Permit Agent negotiates on behalf of the seismic company for any damage claims which arise as a result of normal operations across or over the estate of an owner. The procedure to be utilized in investigations of the cause of the damage and the appraisal of the damage is left to the discretion of the Permit Agent.

Your discussion of the duties, responsibilities and salaries of the Permit Agents has been carefully considered. Additionally, we have contacted Mr. Alfred A. Ramsey, Assistant Regional Administrator for the Wage and Hour Division in the Dallas Region, concerning information you presented in your meeting with him. Based on our review of the new information submitted, it is our view that the Permit Agent described in your letter who meets the "upset" salary test found in section 541.2(e)(2) of 29 CFR Part 541 (guarantee of at least \$250 per week) would qualify as an exempt administrative employee under the special proviso for high salaried administrative employees as discussed in explanatory material found in section 541.214. Such employees appear to have as their primary duty the performance of work directly related to the general business operation of their employer, including the exercise of discretion and independent judgement. It should be noted that this determination applies to the employees specifically described in your letter since a blanket determination as to the exempt status of a group of employees cannot be given.

If you have any questions, please feel free to contact this office at any time.

Sincerely,

Henry T. White, Jr.

Deputy Administrator

Enclosure