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U.S. DEPARTMENT OF LABOR  
WAGE AND HOUR AND PUBLIC CONTRACTS DIVISIONS  
WASHINGTON, D.C. 20210

JUN 11 1970

MWHS

Application of the Fair Labor Standards Act

26 CD 702.12  
21 BJ 971.7  
21 BJ 504

This is in further response to your letter of April 2, 1970, in behalf of the above firm which wishes to establish a commission payment plan for its employees as provided in section 7(i) of the Fair Labor Standards Act. This section provides an exemption from the overtime pay provisions of the Act for "any employee of a retail or service establishment" compensated under a commission payment plan which meets the conditions there specified.

This exemption provision, by its own terms, applies only to employees of a "retail or service establishment", defined in the Act as "an establishment 75 per centum of whose annual dollar volume of sales of goods or services (or of both) is not for resale and is recognized as retail sales or services in the particular industry." See section 779.411 of the enclosed Interpretative Bulletin Part 779 on Retailers of Goods or Services. It is clear from your letter, and from information disclosed in the investigation of your client's firm, that its business is essentially and predominantly directed to providing washing, cleaning, disinfecting and related services to large industrial and commercial firms, transportation companies and the like by use of a truck especially designed for this purpose and containing its own water supply, power system and equipment.

Where the facilities and equipment of an establishment are designed for the service of factory or commercial buildings or vehicles of over-the-road truck or bus carriers and are of a type which the general consuming public does not ordinarily have occasion to use, the services are specialized and are not traditionally recognized as retail within the meaning of the exemption even though the firm may also, occasionally, render service to the general consuming public. (See sections 779.316 and 779.321 of the bulletin.)

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Since the firm cannot satisfy the definition of a retail or service establishment the section 7(i) exemption is not available for its employees.

Sincerely,

Robert D. Moran  
Administrator by Francis J. Moran  
Assist.

2 Enclosures