

AUG 24 1995

This is in response to your letter requesting an opinion on the application of section 7(i) of the Fair Labor Standards Act (FLSA) to sales technicians engaged in the selling and installing of mobile home additions, such as awnings, carports, room additions and porches. You state that the sales technicians are paid on a commission basis which is a percentage of their sales.

Section 7(i) provides an exemption from the overtime pay provisions of the FLSA for any employee of a retail or service establishment if (1) the regular rate of pay of such employee is in excess of one and one-half times the minimum wage of \$4.25 an hour, and (2) more than half of his or her compensation for a representative period (not less than one month) represents commissions on goods or services. A retail or service establishment means an establishment 75 per centum of whose annual dollar volume of sales of goods or service (or of both) is not for resale and is recognized as retail sales or services in the particular industry. There is not enough information in your letter for us to determine whether or not your client's business meets the definition of a retail or service establishment for purposes of section 7(i). However, the following should be of assistance to you in making your own determination.

Mobile homes that are intended to be a permanent structure on a fixed site would allow for the construction of awnings, carports, room additions and porches. The sale and installation of such items that involve substantial structural changes, such as, cutting away from the existing structure to enlarge doors or windows, or other construction work, such as digging foundations, pouring cement footings, grading and related work, are construction activities to which the retail concept does not apply. Where more than 25 per centum of an establishment's annual dollar volume is derived from such activities, the

establishment would not qualify as a retail or service establishment for purposes of section 7(i). On the other hand, some installation activities which are incidental to a retail sale are considered exempt activities. An example of such an exempt activity would include the installation of an aluminum awning that requires little more than boring holes and inserting screws. For a more detailed discussion of what constitutes retail sales of goods and services under the FLSA see sections 779.314 to 779.321 of Interpretative Bulletin, 29 CFR Part 779, a copy of which is enclosed.

We trust that the above is responsive to your inquiry. However, if you have any further questions please do not hesitate to let us know.

Sincerely,

Del F. Sweeney
City Assistant Administrator

Enclosure
