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act unless and until they are otherwise directed by authoritative decisions of the courts or conclude upon reexamination of an interpretation that it is incorrect.

(c) Public Law 89–670 (80 Stat. 931) transferred to and vested in the Secretary of Transportation all functions, powers, and duties of the Interstate Commerce Commission: (1) Under section 204 (a)(1) and (a)(2) to the extent they relate to qualifications and maximum hours of service of employees and safety of operations and equipment, and (2) under section 204(a)(5) of the Motor Carrier Act. The interpretations contained in this part are interpretations on which reliance may be placed as provided in section 10 of the Portal-to-Portal Act (Pub. L. 49, 80th Cong., first sess. (61 Stat. 84), discussed in part 790, statement on effect of Portal-to-Portal Act of 1947), so long as they remain effective and are not modified, amended, rescinded, or determined by judicial authority to be incorrect.

§ 782.1 Statutory provisions considered.

(a) Section 13(b)(1) of the Fair Labor Standards Act provides an exemption from the maximum hours and overtime requirements of section 7 of the act, but not from the minimum wage requirements of section 6. The exemption is applicable to any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of the Motor Carrier Act of 1935, (part II of the Interstate Commerce Act, 49 Stat. 546, as amended; 49 U.S.C. 304, as amended by Pub. L. 89–670, section 8e which substituted ''Secretary of Transportation'' for ''Interstate Commerce Commission''—Oct. 15, 1966) except that the exemption is not applicable to any employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service solely by virtue of section 204(a)(3a) of part II of the Interstate Commerce Act. (Pub. L. 939, 84th Cong., second sess., Aug. 3, 1956, secs. 2 and 3) The Fair Labor Standards Act confers no authority on the Secretary of Labor or the Administrator to extend or restrict the scope of this exemption. It is settled by decisions of the U.S. Supreme Court that the applicability of the exemption to an employee otherwise entitled to the benefits of the Fair Labor Standards Act is determined exclusively by the existence of the power conferred under section 204 of the Motor Carrier Act to establish qualifications and maximum hours of service with respect to him. It is not material whether such qualifications and maximum hours of service have actually been established by the Secretary of Transportation; the controlling consideration is whether the employee comes within his power to do so. The exemption is not operative in the absence of such power, but an employee with respect to whom the Secretary of Transportation has such power is excluded, automatically, from the benefits of section 7 of the Fair Labor Standards Act. (*Southland Gasoline Co.* v. *Bayley*, 319 U.S. 44; *Boutell* v. *Walling*, 327 U.S. 463; *Levinson* v. *Spector Motor Service*, 330 U.S. 649; *Pyramid Motor Freight Corp.* v. *Ispass*, 330 U.S. 695; *Morris* v. *McComb*, 332 U.S. 422)

(b) Section 204 of the Motor Carrier Act, 1935, provides that it shall be the duty of the Interstate Commerce Commission (now that of the Secretary of Transportation (see § 782.0(c))) to regulate common and contract carriers by motor vehicle as provided in that act, and that ''to that end the Commission may establish reasonable requirements with respect to * * * qualifications and maximum hours of service of employees, and safety of operation and equipment.'' (Motor Carrier Act, sec. 204(a)(1)(2), 49 U.S.C. 304(a)(1)(2)) Section 204 further provides for the establishing of similar regulations with respect to private carriers of property by motor vehicle, if need therefor is found. (Motor Carrier Act, sec. 204(a)(3), 49 U.S.C. 304(a)(3))

(c) Other provisions of the Motor Carrier Act which have a bearing on the scope of section 204 include those which define common and contract carriers by motor vehicle, motor carriers, private carriers of property by motor vehicle (Motor Carrier Act, sec. 203(a)(14), (15), (16), (17), 49 U.S.C. sec. 303(a)(14), (15), (16), (17)) and motor vehicle (Motor Carrier Act, sec. 203(a)(13));

those which confer regulatory powers with respect to the transportation of passengers or property by motor carriers engaged in interstate or foreign commerce (Motor Carrier Act, sec. 202(a)), as defined in the Motor Carrier Act, sec. 203(a) (10), (11), and reserve to each State the exclusive exercise of the power of regulation of intrastate commerce by motor carriers on its highways (Motor Carrier Act, sec. 202(b)); and those which expressly make section 204 applicable to certain transportation in interstate or foreign commerce which is in other respects excluded from regulation under the act. (Motor Carrier Act, sec. 202(c))

§ 782.2 Requirements for exemption in general.

(a) The exemption of an employee from the hours provisions of the Fair Labor Standards Act under section 13(b)(1) depends both on the class to which his employer belongs and on the class of work involved in the employee's job. The power of the Secretary of Transportation to establish maximum hours and qualifications of service of employees, on which exemption depends, extends to those classes of employees and those only who: (1) Are employed by carriers whose transportation of passengers or property by motor vehicle is subject to his jurisdiction under section 204 of the Motor Carrier Act (*Boutell* v. *Walling*, 327 U.S. 463; *Walling* v. *Casale*, 51 F. Supp. 520; and see Ex parte Nos. MC–2 and MC–3, in the Matter of Maximum Hours of Service of Motor Carrier Employees, 28 M.C.C. 125, 132), and (2) engage in activities of a character directly affecting the safety of operation of motor vehicles in the transportation on the public highways of passengers or property in interstate or foreign commerce within the meaning of the Motor Carrier Act. *United States* v. *American Trucking Assns.*, 310 U.S. 534; *Levinson* v. *Spector Motor Service*, 330 U.S. 649; Ex parte No. MC–28, 13 M.C.C. 481; Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125; *Walling* v. *Comet Carriers*, 151 F. (2d) 107 (C.A. 2).

(b)(1) The carriers whose transportation activities are subject to the Secretary of Transportation jurisdiction are specified in the Motor Carrier Act itself (see § 782.1). His jurisdiction over private carriers is limited by the statute to private carriers of property by motor vehicle, as defined therein, while his jurisdiction extends to common and contract carriers of both passengers and property. See also the discussion of special classes of carriers in § 782.8. And see paragraph (d) of this section. The U.S. Supreme Court has accepted the Agency determination, that activities of this character are included in the kinds of work which has been defined as the work of drivers, driver's helpers, loaders, and mechanics (see §§ 782.3 to 782.6) employed by such carriers, and that no other classes of employees employed by such carriers perform duties directly affecting such ''safety of operation.'' Ex parte No. MC–2, 11 M.C.C. 203; Ex parte No. MC–28, 13 M.C.C. 481; Ex parte No. MC–3, 23 M.C.C. 1; Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125; *Levinson* v. *Spector Motor Service*, 330 U.S. 649; *Pyramid Motor Freight Corp.* v. *Ispass*, 330 U.S. 695; *Southland Gasoline Co.* v. *Bayley*, 319 U.S. 44. See also paragraph (d) of this section and §§ 782.3 through 782.8.

(2) The exemption is applicable, under decisions of the U.S. Supreme Court, to those employees and those only whose work involves engagement in activities consisting wholly or in part of a class of work which is defined: (i) As that of a driver, driver's helper, loader, or mechanic, and (ii) as directly affecting the safety of operation of motor vehicles on the public highways in transportation in interstate or foreign commerce within the meaning of the Motor Carrier Act. *Pyramid Motor Freight Corp.* v. *Ispass*, 330 U.S. 695; *Levinson* v. *Spector Motor Service*, 330 U.S. 649; *Morris* v. *McComb*, 332 U.S. 442. Although the Supreme Court recognized that the special knowledge and experience required to determine what classifications of work affects safety of operation of interstate motor carriers was applied by the Commission, it has made it clear that the determination whether or not an individual employee is within any such classification is to be determined by judicial process. (*Pyramid Motor Freight Corp.* v. *Ispass*, 330 U.S. 695; Cf. *Missel* v. *Overnight Motor Transp.*, 40 F. Supp. 174 (D. Md.), reversed on other grounds 126 F. (2d) 98