

§782.8

29 CFR Ch. V (7-1-11 Edition)

Ice Co. v. Fleming, 127 F. (2d) 165 (C.A. 4); *Atlantic Co. v. Walling*, 131 F. (2d) 518 (C.A. 5); *Chapman v. Home Ice Co.*, 136 F. (2d) 353 (C.A. 6); *Walling v. Griffin Cartage Co.*, 62 F. Supp. 396 (E.D. Mich.), affirmed 153 F. (2d) 587 (C.A. 6); *Dallum v. Farmers Coop. Trucking Assn.*, 46 F. Supp. 785 (D. Minn.); *Walling v. Villaume Box & Lbr. Co.*, 58 F. Supp. 150 (D. Minn.); *Walling v. DeSoto Creamery & Produce Co.*, 51 F. Supp. 938 (D. Minn.); *Reynolds v. Rogers Cargate Co.*, 71 F. Supp. 870 (W.D. Ky.), reversed on other grounds 166 F. (2d) 317 (C.A. 6), *Hansen v. Salinas Valley Ice Co.* (Cal. App.), 144 P. (2d) 896).

§782.8 Special classes of carriers.

(a) The Interstate Commerce Commission consistently maintained that transportation with a State of consumable goods (such as food, coal, and ice) to railroad, docks, etc., for use of trains and steamships is not such transportation as is subject to its jurisdiction. (*New Pittsburgh Coal Co. v. Hocking Valley Ry. Co.*, 24 I.C.C. 244; *Cورونا Coal Co. v. Secretary of War*, 69 I.C.C. 389; *Bunker Coal from Alabama to Gulf Ports*, 227 I.C.C. 485.) The intrastate delivery of chandleries, including cordage, canvas, repair parts, wire rope, etc., to ocean-going vessels for use and consumption aboard such vessels which move in interstate or foreign commerce falls within this category. Employees of carriers so engaged are considered to be engaged in commerce, as that term is used in the Fair Labor Standards Act. These employees may also be engaged in the "production of goods for commerce" within the meaning of section 3(j) of the Fair Labor Standards Act. See cases cited in §782.7(c), and see *Mitchell v. Independent Ice Co.*, 294 F. 2d 186 (C.A. 5), certiorari denied 368 U.S. 952, and part 776 of this chapter. Since the Commission has disclaimed jurisdiction over this type of operation (see, in this connection §782.7(b)), it is the Division's opinion that drivers, driver's helpers, loaders, and mechanics employed by companies engaged in such activities are covered by the wage and hours provisions of the Fair Labor Standards Act, and are not within the exemption contained in section 13(b)(1).

(See *Hansen v. Salinas Valley Ice Co.* (Cal. App.), 144 P. (2d) 896.)

(b) Prior to June 14, 1972, when the Department of Transportation published a notice in the FEDERAL REGISTER (37 FR 11781) asserting its power to establish qualifications and maximum hours of service of employees of contract mail haulers, thereby reversing the long-standing position of the Interstate Commerce Commission, the Administrator of the Wage and Hour Division had taken the position that employees engaged in the transportation of mail under contract with the Postal Service were not within the exemption provided by section 13(b)(1) of the Fair Labor Standards Act. As the result of the notice of June 14, 1972, the Administrator will no longer assert that employees of contract mail carriers are not within the 13(b)(1) exemption for overtime work performed after June 14, 1972, pending authoritative court decisions to the contrary. This position is adopted without prejudice to the rights of individual employees under section 16(b) of the Fair Labor Standards Act.

(c) Section 202(c)(2) of the Motor Carrier Act, as amended on May 16, 1942, makes section 204 of that act "relative to qualifications and maximum hours of service of employees and safety of operations and equipment," applicable "to transportation by motor vehicle by any person (whether as agent or under a contractual arrangement) for a * * * railroad * * * express company * * * motor carrier * * * water carrier * * * or a freight forwarder * * * in the performance within terminal areas of transfer, collection, or delivery service." Thus, drivers, drivers' helpers, loaders, and mechanics of a motor carrier performing pickup and delivery service for a railroad, express company, or water carrier are to be regarded as within the 13(b)(1) exemption. (See *Levinson v. Spector Motor Service*, 330 U.S. 649 (footnote 10); cf. *Cedarblade v. Parmelee Transp. Co.* (C.A. 7), 166 F. (2d) 554, 14 Labor Cases, par. 64,340.) The same is true of drivers, drivers' helpers, loaders, and mechanics employed directly by a railroad, a water carrier or a freight forwarder in pickup and delivery service. Section 202(c)(1) of the Motor Carrier Act, as amended on May

16, 1942, includes employees employed by railroads, water carriers, and freight forwarders, in transfer, collection, and delivery service in terminal areas by motor vehicles within the Interstate Commerce Commission's regulatory power under section 204 of the same act. See *Morris v. McComb*, 332 U.S. 422 and §782.2(a). (Such employees of a carrier subject to part I of the Interstate Commerce Act may come within the exemption from the overtime requirements provided by section 13(b)(2). Cf. *Cedarblade v. Parmelee Transp. Co.* (C.A. 7), 166 F. (2d) 554, 14 Labor Cases, par. 64,340. Thus, only employees of a railroad, water carrier, or freight forwarder outside of the scope of part I of the Interstate Commerce Act and of the 13(b)(2) exemption are affected by the above on and after the date of the amendment.) Both before and after the amendments referred to, it has been the Division's position that the 13(b)(1) exemption is applicable to drivers, drivers' helpers, loaders, and mechanics employed in pickup and delivery service to line-haul motor carrier depots or under contract with forwarding companies, since the Interstate Commerce Commission had determined that its regulatory power under section 204 of the Motor Carrier Act extended to such employees.

(d) The determinations of the Interstate Commerce Commission discussed in paragraphs (a), (b), and (c) of this section have not been amended or revoked by the Secretary of Transportation. These determinations will continue to guide the Administrator of the Wage and Hour Division in his enforcement of section 13(b)(1) of the Fair Labor Standards Act.

[36 FR 21778, Nov. 13, 1971, as amended at 37 FR 23638, Nov. 7, 1972]

PART 783—APPLICATION OF THE FAIR LABOR STANDARDS ACT TO EMPLOYEES EMPLOYED AS SEAMEN

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