U.S. Highway 82 to Prattville and return over the same route, serving all intermediate points; (9) between Selma and Maplesville, Ala., from Selma over Alabama Highway 22 to Maplesville and return over the same route, serving all intermediate points; and (10) between Catherine, Ala., and the intersection of Alabama Highway 28 and U.S. Highway 80; from Catherine over Alabama Highway 28 to the intersection of U.S. Highway 80 and return over the same route, serving all intermediate points, for 180 days. NOTE: This authority is restricted to traffic originating at, destined to, or moving through points in Alabama. Applicant intends to tack this authority with certificate No. MC-97310 and subs thereunder and interline at all terminal sites. Supported by: There are approximately 51 statements attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: Alan C. Tarrant, District Supervisor, Bureau of Operations, Interstate Commerce Commission, Room 212, 145 East Amite Building, Jackson, Miss. 39201.

No. MC 117765 (Sub-No. 136 TA), filed October 29, 1971. Applicant: HAHN TRUCK LINE, INC., 5315 Northwest Fifth, Post Office Box 75267, Oklahoma City, OK 73107. Applicant's representative: R. E. Ragen (same address as above). Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Nonfrozen preserved foodstuffs*, in containers, from the plantsite of Lakeside Packing Co., Plainview, Minn., to points in Alabama, Arkansas, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, Tennessee, and Texas, for 180 days. Supporting shipper: Lakeside Packing Co., E. James Kraska, General Traffic Manager, Post Office Box 186, Manitowoc, WI 54220. Send protests to: C. L. Phillips, District Supervisor, Interstate Commerce Commission, Bureau of Operations, Room 240, Old Post Office Building, 215 Northwest Third, Oklahoma City, OK 73102.

No. MC 128235 (Sub-No. 8 TA) (amendment), filed October 12, 1971, published FEDERAL REGISTER, October 27, 1971, amended and republished in part as amended this issue. Applicant: ALVIN JOHNSON, 137 13th Avenue NE., Minneapolis, MN 55413. Applicant's representative: Earl Hacking, 503 11th Avenue South, Minneapolis, MN 55415. NOTE: The purpose of this partial republication is to include the applicant's representative, which was inadvertently omitted in previous publication. The rest of the application remains as previously published.

No. MC 129558 (Sub-No. 4 TA), filed October 27, 1971. Applicant: ROY ROSS, doing business as ROY ROSS TRUCKING COMPANY, 297 Spruce Street, Post Office Box 405, Gallipolis, OH 45631. Applicant's representative: James R. Stiverson, Suite 2240, Leveque-Lincoln Tower, 50 West Broad Street, Columbus, OH 43215. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Prepared, processed and packaged meat and meat products*, in refrigerated equipment, from Bidwell (Gallia County) and Xenia (Greene County), Ohio, to Washington and Pittsburgh, Pa., for 180 days. Supporting shipper: Bob Evans Frams, 3776 South High Street, Post Office Box No. 7863, Station G, Columbus, OH 43207. Attention: Mr. Daniel E. Evans, Chairman of the Board. Send protests to: H. R. White, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 3108 Federal Office Building, 500 Quarrier Street, Charleston, WV 25301.

No. MC 136114 TA, filed October 29, 1971. Applicant: P. & H. TRANSPORT, INC., North 2128 Waterworks Street, Spokane, WA 99202. Applicant's representative: George R. LaBissoniere, 1424 Washington Building, Seattle, Wash. 98101. Authority sought to operate as a *common carrier*, by motor vehicle, over irregular routes, transporting: *Lumber*, from points in Washington on and east of U.S. Highway 97 and points in Idaho north of the southern boundary of Idaho and Lemhi Counties, Idaho, to points in Wyoming, North Dakota, South Dakota, Nebraska, Minnesota, Iowa, Missouri, Illinois, Wisconsin, Indiana, Michigan, Ohio, Pennsylvania, New York, Kansas, and Oklahoma, for 180 days. Supported by: There are approximately 15 statements of support attached to the application, which may be examined here at the Interstate Commerce Commission in Washington, D.C., or copies thereof which may be examined at the field office named below. Send protests to: E. J. Casey, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 6130 Arcade Building, Seattle, Wash. 98101.

No. MC 136118 TA, filed November 1, 1971. Applicant: CERNI TRANSPORTATION CORP., 18-20 Parsons Boulevard, Whitestone, NY 11357. Applicant's representative: Paul J. Keeler, Post Office Box 253, South Plainfield, NJ 07080. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Forms or molds, concrete construction, and materials and equipment* used in the installation and removal of the same, *plywood, steel scaffolding*, (1) Between the plantsites and warehouses of Symons Manufacturing Co., a division of Symons Corp., located in Des Plaines, Ill., Victor, N.Y., King of Prussia, Pa., Fairfield, N.J., and Baltimore, Md., and (2) between the warehouse of Symons Manufacturing Co., a division of Symons Corp., located in Fairfield, N.J., on the one hand, and, on the other, points in New York, N.Y., points in Nassau, Suffolk, Westchester, Putnam, Dutchess, Columbia, Greene, Ulster, Sullivan, Orange, and Rockland Counties, N.Y., for 180 days. Supporting shipper: Symons Manufacturing Co., Division of (S) Symons Corp., 200 East Touhy Avenue, Des Plaines, IL 60018. Send protests to: Anthony Chiusano, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 26 Federal Plaza, New York, NY 10007.

No. MC 136119 TA, filed October 29, 1971. Applicant: D. H. S., INC., 112½ Main Street, Parsons, TN 38363. Applicant's representative: R. Connor Wiggins, Jr., 909 100 North Main Building, Memphis, Tenn. 38103. Authority sought to operate as a *contract carrier*, by motor vehicle, over irregular routes, transporting: *Refrigeration and freezer equipment, and parts components, attachments, and accessories therefor*, from the plantsites of Kolpak Industries, Inc., at or near Decaturville and Flat Woods, Tenn., to points in the United States (except Alaska and Hawaii) and *materials components, supplies, parts, attachments, and accessories* used in the manufacture, erection, installation, shipment, and testing of refrigeration and freezer equipment and parts, components, attachments and accessories therefor, from points in the United States (except Alaska and Hawaii) to the plantsite of Kolpak Industries, Inc., at or near Decaturville and Flat Woods, Tenn., the Service would be performed pursuant to a continuing contract between applicant and Kolpak Industries, Inc., for 180 days. Supporting shipper: Kolpak Industries, Inc., Post Office Box 7, Decaturville, Tenn. 38329. Send protests to: Floyd A. Johnson, District Supervisor, Interstate Commerce Commission, Bureau of Operations, 933 Federal Office Building, 167 North Main Street, Memphis, TN 38103.

By the Commission.

[SEAL] ROBERT L. OSWALD, *Secretary*.

[FR Doc.71-16618 Filed 11-12-71;8:47 am]

[Rev. S.O. 994; ICC Order 63]

LOUISVILLE AND NASHVILLE RAILROAD CO. AND BIRMINGHAM SOUTHERN RAILROAD CO.

Rerouting and Diversion of Traffic

In the opinion of R. D. Pfahler, agent, the Louisville and Nashville Railroad Co. and the Birmingham Southern Railroad Co. are unable to transport certain carload traffic, loaded to excessive dimensions, over their lines in the vicinity of Bessemer, Ala., due to restricted clearances at their normal interchange points.

It is ordered, That:

(a) *Rerouting traffic*. The Louisville and Nashville Railroad Co. and the Birmingham Southern Railroad Co. being unable to transport certain carload traffic, loaded to excessive dimensions, over their lines in the vicinity of Bessemer, Ala., due to restricted clearances at their normal interchange points, are hereby authorized to reroute or divert such traffic over any available route to expedite the movement.

(b) *Concurrence of receiving road to be obtained*. The Louisville and Nashville Railroad Co. shall receive the concurrence of the Birmingham Southern Railroad Co. before the rerouting or diversion is ordered.

(c) In executing the directions of the Commission and of such agent provided for in this order, the common carriers involved shall proceed even though no contracts, agreements, or arrangements now exist between them with reference to the divisions of the rates of transportation applicable to said traffic. Divisions shall be, during the time this order remains in force, those voluntarily agreed upon by and between said carriers; or upon failure of the carriers to so agree, said divisions shall be those hereafter fixed by the Commission in accordance with pertinent authority conferred upon it by the Interstate Commerce Act.

(d) *Effective date.* This order shall become effective at 12:01 a.m., November 15, 1971.

(e) *Expiration date.* This order shall expire at 11:59 p.m., December 31, 1971, unless otherwise modified, changed, or suspended.

It is further ordered, That this order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement; and upon the American Short Line Railroad Association; and that it be filed with the Director, Office of the Federal Register

Issued at Washington, D.C., November 8, 1971.

INTERSTATE COMMERCE COMMISSION,
[SEAL] R. D. PFAHLER,
Agent.

[FR Doc.71-16621 Filed 11-12-71;8:47 am]

CUMULATIVE LIST OF PARTS AFFECTED—NOVEMBER

The following numerical guide is a list of parts of each title of the Code of Federal Regulations affected by documents published to date during November.

3 CFR

Page

PROCLAMATIONS:
3279 (amended by Proc. 4092) - 21397
4091 - 21329
4092 - 21397
4093 - 21401

EXECUTIVE ORDERS:
Nov. 9, 1871 (see PLO 5144) - 21036
July 2, 1910 (revoked in part by PLO 5144) - 21036
June 16, 1911 (revoked in part by PLO 5144) - 21036
Mar. 21, 1917 (revoked in part by PLO 5144) - 21036
Dec. 9, 1926 (see PLO 5144) - 21036
11627 (amended by EO 11630) - 21023
11630 - 21023
11631 - 21575

5 CFR

213 - 20931, 21577, 21665
230 - 21180

6 CFR

101 - 21788
201 - 21790
300 - 21792

7 CFR

20 - 21577
601 - 21403
722 - 21751
777 - 21256
796 - 21277
815 - 21277
874 - 21449
906 - 21403
907 - 21119, 21577
908 - 21119, 21578
910 - 20932, 21331, 21751
912 - 21331, 21752
913 - 21331, 21752
926 - 21025
966 - 21449
1036 - 21578
1823 - 21666
1890p - 21450

PROPOSED RULES:
724 - 21208
780 - 21291
913 - 21522
928 - 20980
929 - 21411
932 - 21059

7 CFR—Continued

Page

PROPOSED RULES—Continued
982 - 21411
984 - 21291
989 - 20981, 21599
1030 - 20981, 21413
1049 - 20981
1464 - 21209
1701 - 21522

8 CFR

214 - 21277

9 CFR

75 - 21755
76 - 20932, 21181
92 - 20932
101 - 21579
102 - 21579
112 - 21579
113 - 21579
114 - 21579
117 - 21579
120 - 21579
132 - 21579

PROPOSED RULES:
11 - 21318
76 - 21652
113 - 21058
201 - 21683
309 - 21414
318 - 20984

10 CFR

50 - 21579
140 - 21580

12 CFR

11 - 21451
210 - 21403
222 - 21666
225 - 21666
545 - 21025
563 - 21667
572 - 21667

PROPOSED RULES:
269 - 21212
291 - 21212
545 - 21363
546 - 21066
563 - 21067

13 CFR

120 - 21332
121 - 21183

14 CFR

Page

23 - 21278
25 - 21278
27 - 21278
29 - 21278
39 - 21729, 21581, 21668, 21752
65 - 21280
71 - 21029, 21030, 21182, 21280–21282, 21403, 21582–21584, 21670
75 - 21030, 21584–21586, 21670, 21671
95 - 21671
97 - 21282, 21673
103 - 21183
241 - 20933
1204 - 21753

PROPOSED RULES:
39 - 21064, 21210
47 - 21414
71 - 21064, 21065, 21211, 21293, 21415, 21416, 21600, 21601, 21696, 21697, 21763
225 - 21601
245 - 21361
1245 - 21068

16 CFR

13 - 21586
251 - 21517
410 - 21518

PROPOSED RULES:
436 - 21607

17 CFR

240 - 21178
249 - 21178

PROPOSED RULES:
240 - 21525

19 CFR

1 - 21335
4 - 21025
16 - 21336

20 CFR

PROPOSED RULES:
404 - 21360, 21696

21 CFR

3 - 21587
121 - 21588
130 - 21026

21 CFR—Continued

	Page
135	21404
135a	21404
135b	21404, 21405
135c	21184, 21404, 21452
135e	20938, 21405
135g	21186
146c	21186
146d	21188
146e	21188
148i	20938
308	21336
420	21189, 21190
PROPOSED RULES:	
3	21688
27	20985
31	20985
148i	20985
191	20985, 20986
311	21057
312	21057

22 CFR

42	20939
121	20939
123	20940
124	20940
125	20941
126	20942
201	21190

24 CFR

242	21674
1914	20942, 21408, 21589
1915	20943, 21409, 21590
PROPOSED RULES:	
1710	21043

26 CFR

1	20944
PROPOSED RULES:	
1	20980, 21057, 21206, 21207, 21291

28 CFR

50	21028

29 CFR

55	21282, 21337
782	21778
PROPOSED RULES:	
1904	21687

30 CFR

75	21756
81	21405
PROPOSED RULES:	
270	21610

31 CFR

405	21338

32 CFR

1	21120
2	21128
3	21128
4	21131
5	21133
6	21136
7	21139
8	21152
9	21152
10	21153

32 CFR—Continued

11	21153
12	21153
13	21159
14	21160
15	21161
16	21167
17	21168
18	21168
19	21169
22	21169
24	21174
25	21174
26	21174
30	21175
45	21178
61	21339
65	21339
78	21339
87	21178
141	21339
187	21339
275	20944
713	21519
1467	21339
1806	21178
PROPOSED RULES:	
1600	21216
1602	21072
1603	21072
1604	21072, 21216
1606	21216
1609	21216
1611	21072
1613	21216
1617	21072, 21216
1619	21216
1621	21072, 21216
1622	21072
1623	21072
1624	21072
1625	21072
1626	21072
1627	21072
1628	21072
1630	21072
1631	21072
1632	21072
1642	21072
1655	21072
1660	21072, 21294

32A CFR

OEP (Ch. I):	
ES Reg. 1	21761
Circ. 25	21598
Circ. 26	21761
Ch. X	21284

33 CFR

110	21756
117	21359, 21590
208	21190
PROPOSED RULES:	
117	21063, 21763
199	21523

36 CFR

7	20945, 21666

38 CFR

3	20945
17	21030
21	21406

41 CFR

1-16	21453
5A-1	21676
5A-2	21406
5B-2	21407
5B-18	21407
8-2	21676
8-4	21676
9-4	21191
14-1	20946
14-2	20947
14-3	20947
14-6	20947
14-7	20947
15-1	20947
15-3	21192
18-1	21454
18-2	21469
18-3	21472
18-5	21485
18-6	21485
18-7	21486
18-8	21492
18-9	21496
18-11	21498
18-13	21499
18-15	21500
18-16	21501, 21588
18-26	21504
18-50	21507
18-51	21508
18-52	21513
101-11	21031
101-26	21284
PROPOSED RULES:	
101-17	21059
101-18	21059
101-20	21059

42 CFR

PROPOSED RULES:	
52	21292
73	21292, 21696

43 CFR

4	21284, 21756
24	21034
2780	21677
3100	21035
PUBLIC LAND ORDERS:	
5116	21591
5142	21195
5143	21036
5144	21036
PROPOSED RULES:	
25	21207
3000	21610
3045	21610
3104	21610
3200	21610

45 CFR

213	21520
249	21409, 21591
250	21591
801	20949
PROPOSED RULES:	
170	21600

46 CFR

2	21196
146	21196, 21284
PROPOSED RULES:	
542	21524
546	21524

47 CFR

Page

1 21677
21 21677
73 ..... 21197, 21592
74 21677
81 20956
83 20970
85 20977
89 ..... 21200, 21677
91 ..... 21200, 21677
93 ..... 21200, 21677
95 21677

PROPOSED RULES:

73 ..... 21066, 21293, 21602
74 20988
81 21602
83 21602

49 CFR

Page

171 21201
172 ..... 21201, 21287
173 ..... 21201, 21287, 21339, 21343
174 ..... 21201, 21202
175 21201
177 ..... 21201, 21202
178 ..... 21202, 21287
179 ..... 21339, 21343
566 20977
571 ..... 21355, 21594
1033 ..... 21203, 21452
1048 21452
1056 21358
1062 21596

PROPOSED RULES:

173 21360

49 CFR—Continued

Page

PROPOSED RULES—Continued

192 21698
195 21211
566 20987
1047 21071
1048 21524
1115 21698
1252 21610

50 CFR

28 21203
32 ..... 21203, 21597
33 ..... 21407, 21520, 21597, 21598
260 21037

PROPOSED RULES:

32 21411

LIST OF FEDERAL REGISTER PAGES AND DATES—NOVEMBER

Pages	*Date*	*Pages*	*Date*
20925–21016	Nov. 2	21393–21442	9
21017–21112	3	21443–21567	10
21113–21270	4	21569–21658	11
21271–21321	5	21659–21745	12
21323–21391	6	21747–21799	13

federal register

SATURDAY, NOVEMBER 13, 1971
WASHINGTON, D.C.
Volume 36 ■ Number 220

PART II

DEPARTMENT OF LABOR

Wage and Hour Division

■

Exemption from Maximum Hours

Provisions for Certain Employees of Motor Carriers

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

SUBCHAPTER B—STATEMENTS OF GENERAL POLICY OR INTERPRETATION NOT DIRECTLY RELATED TO REGULATIONS

PART 782—EXEMPTION FROM MAXIMUM HOURS PROVISIONS FOR CERTAIN EMPLOYEES OF MOTOR CARRIERS

Part 782 of Title 29 of the Code of Federal Regulations is hereby revised to adapt it to the changes made by the "Department of Transportation Act," Public Law 89-670 (80 Stat. 931 et seq.) (49 U.S.C. 1651 et seq.), in which certain functions were transferred from the Interstate Commerce Commission to the Department of Transportation and which amended section 13(b)(1) of the Fair Labor Standards Act to conform to this transfer of functions. The format also is amended to incorporate into the text many references heretofore set forth as footnotes including additional citations.

The administrative procedure provisions of 5 U.S.C. 553 which require notice of proposed rule making, opportunity for public participation, and delay in effective date are not applicable because these are interpretive rules. I do not believe such procedures will serve a useful purpose here. Accordingly, this amendment revising Part 782 shall become effective immediately.

The revised 29 CFR Part 782 reads as follows:

Sec.
782.0 Introductory statement.
782.1 Statutory provisions considered.
782.2 Requirements for exemption in general.
782.3 Drivers.
782.4 Drivers' helpers.
782.5 Loaders.
782.6 Mechanics.
782.7 Interstate commerce requirements of exemption.
782.8 Special classes of carriers.

AUTHORITY: The provisions of this Part 782 issued under 52 Stat. 1060, as amended; 29 U.S.C. 201 et seq.

§ 782.0 Introductory statement.

(a) Since the enactment of the Fair Labor Standards Act of 1938, the views of the Administrator of the Wage and Hour Division as to the scope and applicability of the exemption provided by section 13(b)(1) of the act have been expressed in interpretations issued from time to time in various forms. This part, as of the date of its publication in the FEDERAL REGISTER, supersedes and replaces such prior interpretations. Its purpose is to make available in one place general interpretations of the Administrator which will provide "a practical guide to employers and employees as to how the office representing the public interest in enforcement of the law will seek to apply it." (Skidmore v. Swift & Co., 323 U.S. 134)

(b) The interpretations contained in this part indicate, with respect to the scope and applicability of the exemption provided by section 13(b)(1) of the Fair Labor Standards Act, the construction of the law which the Secretary of Labor and the Administrator believe to be correct in the light of the decisions of the courts, the Interstate Commerce Commission, and since October 15, 1966, its successor, the Secretary of Transportation, and which will guide them in the performance of their administrative duties under the 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 (Public Law 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 Public Law 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. (Public Law 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. sec. 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. sec. 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 §§ 782.3–782.8.

(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 (C.A. 4), affirmed 316 U.S. 572; West v. Smoky Mountains Stages, 40 F. Supp. 296 (N.D. Ga.); Magann v. Long's Baggage Transfer Co., 39 F. Supp. 742 (W.D. Va.); Walling v. Burlington Transp. Co. (D. Nebr.), 5 W.H. Cases 172, 9 Labor Cases par. 62,576; Hager v. Brinks, Inc., 6 W.H. Cases 262 (N.D. Ill.)) In determining whether an employee falls within such an exempt category, neither the name given to his position nor that given to the work that he does is controlling (Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Porter v. Poindexter, 158 F. (2d) 759 (C.A. 10); Keeling v. Huber & Huber Motor Express, 57 F. Supp. 617 (W.D. Ky.); Crean v. Moran Transp. Lines (W.D. N.Y.), 9 Labor Cases, par. 62,416 (see also earlier opinion in 54 F. Supp. 765)); what is controlling is the character of the activities involved in the performance of his job.

(3) As a general rule, if the bona fide duties of the job performed by the employee are in fact such that he is (or, in the case of a member of a group of drivers, driver's helpers, loaders, or mechanics employed by a common carrier and engaged in safety-affecting occupations, that he is likely to be) called upon in the ordinary course of his work to perform, either regularly or from time to time, safety-affecting activities of the character described in subparagraph (2) of this paragraph, he comes within the exemption in all workweeks when he is employed at such job. This general rule assumes that the activities involved in the continuing duties of the job in all such workweeks will include activities which have been determined to affect directly the safety of operation of motor vehicles on the public highways in transportation in interstate commerce. Where this is the case, the rule applies regardless of the proportion of the employee's time or of his activities which is actually devoted to such safety-affecting work in the particular workweek, and the exemption will be applicable even in a workweek when the employee happens to perform no work directly affecting "safety of operation." On the other hand, where the continuing duties of the employee's job have no substantial direct effect on such safety of operation or where such safety-affecting activities are so trivial, casual, and insignificant as to be de minimis, the exemption will not apply to him in any workweek so long as there is no change in his duties. (Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Morris v. McComb, 332 U.S. 422; Levinson v. Spector Motor Service, 330 U.S. 649; Rogers Cartage Co. v. Reynolds, 166 F. (2d) 317 (C.A. 6); Opelika Bottling Co. v. Goldberg, 299 F. (2d) 37 (C.A. 5); Tobin v Mason & Dixon Lines, Inc., 102 F. Supp. 466 (E.D. Tenn.)) If in particular workweeks other duties are assigned to him which result, in those workweeks, in his performance of activities directly affecting the safety of operation of motor vehicles in interstate commerce on the public highways, the exemption will be applicable to him in those workweeks, but not in the workweeks when he continues to perform the duties of the non-safety-affecting job.

(4) Where the same employee of a carrier is shifted from one job to another periodically or on occasion, the application of the exemption to him in a particular workweek is tested by application of the above principles to the job or jobs in which he is employed in that workweek. Similarly, in the case of an employee of a private carrier whose job does not require him to engage regularly in exempt safety-affecting activities described in subparagraph (1) of this paragraph and whose engagement in such activities occurs sporadically or occasionally as the result of his work assignments at a particular time, the exemption will apply to him only in those workweeks when he engages in such activities. Also, because the jurisdiction of the Secretary of Transportation over private carriers is limited to carriers of property (see subparagraph (1) of this paragraph) a driver, driver's helper, loader, or mechanic employed by a private carrier is not within the exemption in any workweek when his safety-affecting activities relate only to the transportation of passengers and not to the transportation of property.

(c) The application of these principles may be illustrated as follows:

(1) In a situation considered by the U.S. Supreme Court, approximately 4 percent of the total trips made by drivers employed by a common carrier by motor vehicle involved the hauling of interstate freight. Since it appeared that the employer, as a common carrier, was obligated to take such business, and that any driver might be called upon at any time to perform such work, which was indiscriminately distributed among the drivers, the Court considered that such trips were a natural, integral, and apparently inseparable part of the common carrier service performed by the employer and driver employees. Under these circumstances, the Court concluded that such work, which directly affected the safety of operation of the vehicles in interstate commerce, brought the entire classification of drivers employed by the carrier under the power of the Interstate Commerce Commission to establish qualifications and maximum hours of service, so that all were exempt even though the interstate driving of particular employees was sporadic and occasional, and in practice some drivers would not be called upon for long periods to perform any such work. (Morris v. McComb, 332 U.S. 422)

(2) In another situation, the U.S. Court of Appeals (Seventh Circuit) held that the exemption would not apply to truckdrivers employed by a private carrier on intrastate routes who engaged in no safety-affecting activities of the character described above even though other drivers of the carrier on interstate

routes were subject to the jurisdiction of the Motor Carrier Act. The court reaffirmed the principle that the exemption depends not only upon the class to which the employer belongs but also the activities of the individual employee. (Goldberg v. Faber Industries, 291 F. (2d) 232)

(d) The limitations, mentioned in paragraph (a) of this section, on the regulatory power of the Secretary of Transportation (as successor to the Interstate Commerce Commission) under section 204 of the Motor Carrier Act are also limitations on the scope of the exemption. Thus, the exemption does not apply to employees of carriers who are not carriers subject to his jurisdiction, or to employees of noncarriers such as commercial garages, firms engaged in the business of maintaining and repairing motor vehicles owned and operated by carriers, firms engaged in the leasing and renting of motor vehicles to carriers and in keeping such vehicles in condition for service pursuant to the lease or rental agreements. (Boutell v. Walling, 327 U.S. 463; Walling v. Casale, 51 F. Supp. 520) Similarly, the exemption does not apply to an employee whose job does not involve engagement in any activities which have been defined as those of drivers, drivers' helpers, loaders, or mechanics, and as directly affecting the "safety of operation" of motor vehicles. (Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Levinson v. Spector Motor Service, 330 U.S. 649; United States v. American Trucking Assn., 310 U.S. 534; Gordon's Transports v. Walling, 162 F. (2d) 203 (C.A. 6); Porter v. Poindexter, 158 F. (2d) 759 (C.A. 10)) Except in so far as the Commission has found that the activities of drivers, drivers' helpers, loaders, and mechanics, as defined by it, directly affect such "safety of operation," it has disclaimed its power to establish qualifications or maximum hours of service under section 204 of the Motor Carrier Act. (Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695) "Safety of operation" as used in section 204 of the Motor Carrier Act means "the safety of operation of motor vehicles in the transportation of passengers or property in interstate or foreign commerce, and that alone." (Ex parte Nos. MC–2 and MC–3 (Conclusions of Law No. 1), 28 M.C.C. 125, 139) Thus, the activities of drivers, drivers' helpers, loaders, or mechanics in connection with transportation which is not in interstate or foreign commerce within the meaning of the Motor Carrier Act provide no basis for exemption under section 13(b)(1) of the Fair Labor Standards Act. (Walling v. Comet Carriers, 151 F. (2d) 107 (C.C.A. 2); Hansen v. Salinas Valley Ice Co. (Cal. App.) 144 P. (2d) 896; Reynolds v. Rogers Cartage Co., 71 F. Supp. 870 (W.D. Ky.), reversed on other grounds, 166 F (d) 317 (C.A. 6); Earle v. Brinks, Inc., 54 F. Supp. 676 (S.D. N.Y.); Walling v. Villaume Box & Lumber Co., 58 F. Supp. 150 D. Minn.); Hager v. Brinks, Inc., 11 Labor Cases, par. 63,296 (N.D. Ill.), 6 W.H. Cases 262; Walling v. DeSoto Creamery & Produce Co., 51 F. Supp. 938 (D. Minn.); Dallum v. Farmers Cooperative Trucking Assn., 46 F. Supp. 785 (D. Minn.); McLendon v. Bewley Mills (N.D. Tex.); 3 Labor Cases, par. 60,247, 1 W.H. Cases 934; Gibson v. Glasgow (Tenn. Sup. Ct.), 157 S.W. (2d) 814; cf. Morris v. McComb, 332 U.S. 422. See also § 782.1 and §§ 782.7–782.8.)

(e) The jurisdiction of the Secretary of Transportation under section 204 of the Motor Carrier Act relates to safety of operation of motor vehicles only, and "to the safety of operation of such vehicles on the highways of the country, and that alone." (Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125, 192. See also United States v. American Trucking Assns., 319 U.S. 534, 548.) Accordingly, the exemption does not extend to employees merely because they engage in activities affecting the safety of operation of motor vehicles operated on private premises. Nor does it extend to employees engaged solely in such activities as operating freight and passenger elevators in the carrier's terminals or moving freight or baggage therein or the docks or streets by hand trucks, which activities have no connection with the actual operation of motor vehicles. (Gordon's Transport v. Walling, 162 F. (2d) 203 (C.A. 6), certorari denied 322 U.S. 774; Walling v. Comet Carriers, 57 F. Supp. 1018, affirmed, 151 F. (2d) 107 (C.A. 2), certiorari dismissed, 382 U.S. 819; Gibson v. Glasgow (Tenn. Sup. Ct.), 157 S.W. (2d) 814; Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125, 128. See also Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Levinson v. Spector Motor Serv., 330 U.S. 949.)

(f) Certain classes of employees who are not within the definitions of drivers, drivers' helpers, loaders, and mechanics are mentioned in §§ 782.3–782.6, inclusive. Others who do not come within these definitions include the following, whose duties are considered to affect safety of operation, if at all, only indirectly; stenographers (including those who write letters relating to safety or prepare accident reports); clerks of all classes (including rate clerks, billing clerks, clerks engaged in preparing schedules, and filing clerks in charge of filing accident reports, hours-of-service records, inspection reports, and similar documents); foremen, warehousemen, superintendents, salesmen, and employees acting in an executive capacity. (Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125; Ex parte No. MC–28, 13 M.C.C. 481. But see §§ 782.5(b) and 782.6(b) as to certain foremen and superintendents.) Such employees are not within the section 13(b)(1) exemption. (Overnight Motor Transp. Co. v. Missel, 316 U.S. 572 (rate clerk who performed incidental duties as cashier and dispatcher); Levinson v. Spector Motor Service, 330 U.S. 649; Porter v. Poindexter, 158 F. (2d) 759 (C.A. 10) (checker of freight and bill collector); Potashnik, Local Truck System v. Archer (Ark. Sup. Ct.), 179 S.W. (2d) 696 (night manager who did clerical work on waybills, filed day's accumulation of bills and records, billed out local accumulation of shipments, checked mileage on trucks and made written reports, acted as night dispatcher, answered telephone calls, etc.).)

§ 782.3 Drivers.

(a) A "driver," as defined for Motor Carrier Act jurisdiction (49 CFR Parts 390–395; Ex parte No. MC–2, 3 M.C.C. 665; Ex parte No. MC–3, 23 M.C.C. 1; Ex parte No. MC–4, 1 M.C.C. 1), is an individual who drives a motor vehicle in transportation which is, within the meaning of the Motor Carrier Act, in interstate or foreign commerce. (As to what is considered transportation in interstate or foreign commerce within the meaning of the Motor Carrier Act, see § 782.7.) This definition does not require that the individual be engaged in such work at all times; it is recognized that even full-duty drivers devote some of their working time to activities other than such driving. "Drivers," as thus officially defined, include, for example, such partial-duty drivers as the following, who drive in interstate or foreign commerce as part of a job in which they are required also to engage in other types of driving or nondriving work: Individuals whose driving duties are concerned with transportation some of which is in intrastate commerce and some of which is in interstate or foreign commerce within the meaning of the Motor Carrier Act; individuals who ride on motor vehicles engaged in transportation in interstate or foreign commerce and act as assistant or relief drivers of the vehicles in addition to helping with loading, unloading, and similar work; drivers of chartered buses or of farm trucks who have many duties unrelated to driving or safety of operation of their vehicles in interstate transportation on the highways; and so-called "driver-salesmen" who devote much of their time to selling goods rather than to activities affecting such safety of operation. (Levinson v. Spector Motor Service, 330 U.S. 649; Morris v. McComb, 332 U.S. 422; Richardson v. James Gibbons Co., 132 F. (2d) 627 (C.A. 4), affirmed 319 U.S. 44; Gavril v. Kraft Cheese Co., 42 F. Supp. 702 (N.D. Ill.); Walling v. Craig, 53 F. Supp. 479 (D. Minn.); Vannoy v. Swift & Co. (Mo. S. Ct.), 201 S.W. (2d) 350; Ex parte No. MC–2, 3 M.C.C. 665; Ex parte No. MC–3, 23 M.C.C. 1; Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125; Ex parte No. MC–4, 1 M.C.C. 1. Cf. Colbeck v. Dairyland Creamery Co. (S.D. Supp. Ct.), 17 N.W. (2d) 262, in which the court held that the exemption did not apply to a refrigeration mechanic by reason solely of the fact that he crossed State lines in a truck in which he transported himself to and from the various places at which he serviced equipment belonging to his employer.)

(b) The work of an employee who is a full-duty or partial-duty "driver," as the term "driver" is above defined, directly affects "safety of operation" within the meaning of section 204 of the Motor Carrier Act whenever he drives a motor vehicle in interstate or foreign commerce within the meaning of that act. (Levinson v. Spector Motor Service, 330 U.S. 649, citing Richardson v. James Gibbons Co., 132 F. (2d) 627 (C.A. 4), affirmed 319 U.S. 44; Morris v. McComb, 332 U.S. 422; Ex parte No MC–28, 13 M.C.C. 481, 482, 488; Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125, 139 (Conclusion of Law No. 2). See also Ex parte No. MC–2, 3 M.C.C. 665; Ex parte No. MC–3, 23 M.C.C. 1; Ex parte No. MC–4, 1 M.C.C. 1.) The

Secretary has power to establish, and has established, qualifications and maximum hours of service for such drivers employed by common and contract carriers of passengers or property and by private carriers of property pursuant to section 204 of the Motor Carrier Act. (See Ex parte No. MC–4, 1 M.C.C. 1; Ex parte No. MC–2, 3 M.C.C. 665; Ex parte No. MC–3, 23 M.C.C. 1; Ex parte No. MC–28, 13 M.C.C. 481; Levinson v. Spector Motor Service, 330 U.S. 649; Southland Gasoline Co. v. Bayley, 319 U.S. 44; Morris v. McComb, 332 U.S. 422; Safety Regulations (Carriers by Motor Vehicle), 49 CFR Parts 390, 391, 395.) In accordance with principles previously stated (see § 782.2), such drivers to whom this regulatory power extends are, accordingly, employees exempted from the overtime requirements of the Fair Labor Standards Act by section 13(b)(1). (Southland Gasoline Co. v. Bayley, 319 U.S. 44; Levinson v. Spector Motor Service, 330 U.S. 649; Morris v. McComb, 332 U.S. 422; Rogers Cartage Co. v. Reynolds, 166 F. (2d) 317 (C.A. 6). This does not mean that an employee of a carrier who drives a motor vehicle is exempted as a "driver" by virtue of that fact alone. He is not exempt if his job never involves transportation in interstate or foreign commerce within the meaning of the Motor Carrier Act (see §§ 782.2 (d) and (e), 782.7, and 782.8), or if he is employed by a private carrier and the only such transportation called for by his job is not transportation of property. (See § 782.2. See also Ex parte No. MC–28, 13 M.C.C. 481. Cf. Colbeck v. Dairyland Creamery Co. (S. Ct. S.D.), 17 N.W. (2d) 262 (driver of truck used only to transport himself to jobsites, as an incident of his work in servicing his employer's refrigeration equipment, held nonexempt).) It has been held that so-called "hostlers" who "spot" trucks and trailers at a terminal dock for loading and unloading are not exempt as drivers merely because as an incident of such duties they drive the trucks and tractors in and about the premises of the trucking terminal. (Keegan v. Ruppert (S.D. N.Y.), 7 Labor Cases, par. 61,726 6 Wage Hour Rept. 676, cf. Walling v. Silver Fleet Motor Express, 67 F. Supp. 846)

§ 782.4 Driver's helpers.

(a) A driver's "helper," as defined for Motor Carrier Act jurisdiction (Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125, 135, 136, 138, 139), is an employee other than a driver, who is required to ride on a motor vehicle when it is being operated in interstate or foreign commerce within the meaning of the Motor Carrier Act. (The term does not include employees who ride on the vehicle and act as assistants or relief drivers. Ex parte Nos. MC–2 and MC–3, supra. See § 782.3.) This definition has classified all such employees, including armed guards on armored trucks and conductorettes on buses, as "helpers" with respect to whom he has power to establish qualifications and maximum hours of service because of their engagement in some or all of the following activities which, in his opinion, directly affect the safety of operation of such motor vehicles in interstate or foreign commerce (Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125, 135–136): Assist in loading the vehicles (they may also assist in unloading (Ex parte Nos. MC–2 and MC–3, supra), an activity which has been held not to affect "safety of operation," see § 782.5(c); as to what it meant by "loading" which directly affects "safety of operation," see § 782.5(a)); dismount when the vehicle approaches a railroad crossing and flag the driver across the tracks, and perform a similar duty when the vehicle is being turned around on a busy highway or when it is entering or emerging from a driveway; in case of a breakdown, (1) place the flags, flares, and fuses as required by the safety regulations, (2) go for assistance while the driver protects the vehicle on the highway, or vice versa, or (3) assist the driver in changing tires or making minor repairs; and assist in putting on or removing chains.

(b) An employee may be a "helper" under the official definition even though such safety-affecting activities constitute but a minor part of his job. Thus, although the primary duty of armed guards on armored trucks is to protect the valuables in the case of attempted robberies, they are classified as "helpers" where they ride on such trucks being operated in interstate or foreign commerce, because, in the case of an accident or other emergency and in other respects, they act in a capacity somewhat similar to that of the helpers described in the text. Similarly, conductorettes on buses whose primary duties are to see to the comfort of the passengers are classified as "helpers" whose such buses are being operated in interstate or foreign commerce, because in instances when accidents occur, they help the driver in obtaining aid and protect the vehicle from oncoming traffic.

(c) In accordance with principles previously stated (see § 782.2), the section 13(b)(1) exemption applies to employees who are, under the Secretary of Transportation's definitions, engaged in such activities as full- or partial-duty "helpers" on motor vehicles being operated in transportation in interstate or foreign commerce within the meaning of the Motor Carrier Act. (Ispass v. Pyramid Motor Freight Corp., 152 F. (2d) 619 (C.A. 2); Walling v. McGinley Co. (E.D. Tenn.), 12 Labor Cases, par. 63,731, 6 W.H. Cases 916. See also Levinson v. Spector Motor Service, 330 U.S. 649; Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Dallum v. Farmers Coop. Trucking Assn., 46 F. Supp. 785 (D. Minn.).) The exemption has been held inapplicable to so-called helpers who ride on motor vehicles but do not engage in any of the activities of "helpers" which have been found to affect directly the safety of operation of such vehicles in interstate or foreign commerce. (Walling v. Gordon's Transports (W.D. Tenn.), 10 Labor Cases par. 62,934, 6 W.H. Cases 831, affirmed 162 F. (2d) 203 (C.A. 6), certiorari denied, 332 U.S. 774 (helpers on city "pickup and delivery trucks" where it was not shown that the loading in any manner affected safety of operation and the helpers' activities were "in no manner similar" to those of a driver's helper in over-the-road operation).) It should be noted also that an employee, to be exempted as a driver's "helper" under the Secretary's definitions, must be "required" as part of his job to ride on a motor vehicle when it is being operated in interstate or foreign commerce; an employee of a motor carrier is not exempted as a "helper" when he rides on such a vehicle, not as a matter of fixed duty, but merely as a convenient means of getting himself to, from, or between places where he performs his assigned work. (See Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695, modifying, on other grounds, 152 F. (2d) 619 (C.A. 2).)

§ 782.5 Loaders.

(a) A "loader," as defined for Motor Carrier Act jurisdiction (Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125, 133, 134, 139), is an employee of a carrier subject to section 204 of the Motor Carrier Act (other than a driver or driver's helper as defined in §§ 782.3 and 782.4) whose duties include, among other things, the proper loading of his employer's motor vehicles so that they may be safely operated on the highways of the country. A "loader" may be called by another name, such as "dockman," "stacker," or "helper," and his duties will usually also include unloading and the transfer of freight between the vehicles and the warehouse, but he engages, as a "loader," in work directly affecting "safety of operation" so long as he has responsibility, when such motor vehicles are being loaded, for exercising judgment and discretion in planning and building a balanced load or in placing, distributing, or securing the pieces of freight in such a manner that the safe operation of the vehicles on the highways in interstate or foreign commerce will not be jeopardized. (Levinson v. Spector Motor Service, 330 U.S. 649; Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Walling v. Gordon's Transport (W.D. Tenn.), 10 Labor Cases, par. 62,934, affirmed 162 F. (2) 203 (C.A. 6), certiorari denied 332 U.S. 774; Walling v. Huber & Huber Motor Express, 67 F. Supp. 855; Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125, 133, 134)

(b) The section 13(b)(1) exemption applies, in accordance with principles previously stated (see § 782.2), to an employee whose job involves activities consisting wholly or in part of doing, or immediately directing, a class of work defined (1) as that of a loader, and (2) as directly affecting the safety of operation of motor vehicles in interstate or foreign commerce within the meaning of the Motor Carrier Act, since such an employee is an employee with respect to whom the Secretary of Transportation has power to establish qualifications and maximum hours of service. (Levinson v. Spector Motor Service, 330 U.S. 649; Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Walling v. Silver Fleet

Motor Express, 67 F. Supp. 846; Walling v. Huber & Huber Motor Express, 67 F. Supp. 855; Walling v. Gordon's Transports (W.D. Tenn.); 10 Labor Cases, par. 62,934, affirmed 162 F. (2d) 203 (C.A. 6), certiorari denied 332 U.S. 774; Tinerella v. Des Moines Transp. Co., 41 F. Supp. 798.) Where a checker, foreman, or other supervisor plans and immediately directs the proper loading of a motor vehicle as described above, he may come within the exemption as a partial-duty loader. (Levinson v. Spector Motor Service, 330 U.S. 649; Walling v. Gordon's Transports (W.D. Tenn.), 10 Labor Cases, par. 62,934; affirmed 162 F. (2d) 203 (C.A. 6), certiorari denied 332 U.S. 774; Walling v. Huber & Huber Motor Express, 67 F. Supp. 885; Walling v. Silver Fleet Motor Express, 67 F. Supp. 846; Crean v. Moran Transportation Lines, 57 F. Supp. 212 (W.D. N.Y.). See also 9 Labor Cases, par. 62,416; Walling v. Commercial Motor Freight (S.D. Ind.), 11 Labor Cases, par. 63,451; Hogla v. Porter (E.D. Okla.), 11 Labor Cases, par. 63,389, 6 W.H. Cases 608.)

(c) An employee is not exempt as a loader where his activities in connection with the loading of motor vehicles are confined to classes of work other than the kind of loading described above, which directly affects "safety of operation." (Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Levinson v. Spector Motor Service, 330 U.S. 649) The mere handling of freight at a terminal, before or after loading, or even the placing of certain articles of freight on a motor carrier truck may form so trivial, casual, or occasional a part of an employee's activities, or his activities may relate only to such articles or to such limited handling of them, that his activities will not come within the kind of "loading" which directly affects "safety of operation." Thus, the following activities have been held to provide no basis for exemption: Unloading; placing freight in convenient places in the terminal, checking bills of lading; wheeling or calling freight being loaded or unloaded; loading vehicles for trips which will not involve transportation in interstate or foreign commerce within the meaning of the Motor Carrier Act; and activities relating to the preservation of the freight as distinguished from the safety of operation of the motor vehicles carrying such freight on the highways. (Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Levinson v. Spector Motor Service, 330 U.S. 649; Porter v. Poindexter, 158 F. (2d) 759 (C.A. 10); McKeown v. Southern Calif. Freight Forwarders, 49 F. Supp. 543; Walling v. Gordon's Transports (W.D. Tenn.), 10 Labor Cases, par. 62,934, affirmed 162 F. (2d) 203 (C.A. 6), certiorari denied 332 U.S. 774; Walling v. Huber & Huber Motor Express, 67 F. Supp. 855; Walling v. Silver Fleet Motor Express, 67 F. Supp. 846; Crean v. Moran Transp. Lines, 50 F. Supp. 107, 54 F. Supp. 765 (cf. 57 F. Supp. 212); Gibson v. Glasgow (Tenn. Sup. Ct.), 157 S.W. (2d) 814. See also Keeling v. Huber & Huber Motor Express, 57 F. Supp. 617.) As is apparent from opinion in Ex Parte Nos. MC-2 and MC-3, 28 M.C.C. 125, red caps of bus companies engaged in loading baggage on buses are not loaders engaged in work directly affecting safety of operation of the vehicles. In the same opinion, it is expressly recognized that there is a class of freight which, because it is light in weight, probably could not be loaded in a manner which would adversely affect "safety of operation." Support for this conclusion is found in Wirtz v. C & P Shoe Corp., 335 F. (2d) 21 (C.A. 5), wherein the court held the loading of boxes of shoes, patterned on the last in, first out principle clearly was not of a safety affecting character "in view of the light weight of the cargo involved." In the case of coal trucks which are loaded from stockpiles by the use of an electric bridge crane and a mechanical conveyor, it has been held that employees operating such a crane or conveyor in the loading process are not exempt as "loaders" under section 13(b)(1). (Barrick v. South Chicago Coal & Dock Co. (N.D. Ill.), 8 Labor Cases, par. 62,242, affirmed 149 F. (2d) 960 (C.A. 7)). It seems apparent from the foregoing discussion that an employee who has no responsibility for the proper loading of a motor vehicle is not within the exemption as a "loader" merely because he furnishes physical assistance when necessary in loading heavy pieces of freight, or because he deposits pieces of freight in the vehicle for someone else to distribute and secure in place, or even because he does the physical work of arranging pieces of freight in the vehicle where another employee tells him exactly what to do in each instance and he is given no share in the exercise of discretion as to the manner in which the loading is done. (See Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Yellow Transit Freight Lines Inc. v. Balven, 320 F. (2d) 495 (C.A. 8); Foremost Dairies v. Ivey, 204 F. (2d) 186 (C.A. 5); Ispass v. Pyramid Motor Freight Corp., 78 F. Supp. 475 (S.D. N.Y.); Mitchell v. Meco Steel Supply Co., 183 F. Supp. 779 (S.D. Tex.); Garton v. Sanders Transfer & Storage Co., 124 F. Supp. 84 (M.D. Tenn.); McKeown v. Southern Calif. Freight Forwarders, 49 F. Supp. 543; Walling v. Gordon's Transports (W.D. Tenn.), 10 Labor Cases, par. 62,934, affirmed 162 F. (2d) 203 (C.A. 6), certiorari denied 332 U.S. 774; Crean v. Moran Transportation Lines, 50 F. Supp. 107 (see also further opinion in 54 F. Supp. 765, and cf. the court's holding in 57 F. Supp. 212 with Walling v. Gordon's Transports, cited above). See also Levinson v. Spector Motor Service, 330 U.S. 649.) Such activities would not seem to constitute the kind of "loading" which directly affects the safety of operation of the loaded vehicle on the public highways, under the official definitions. (See Ex parte Nos. MC-2 and MC-3, 28 M.C.C. 125, 133, 134.)

§ 782.6 Mechanics.

(a) A "mechanic," for purposes of safety regulations under the Motor Carrier Act is an employee who is employed by a carrier subject to the Secretary's jurisdiction under section 204 of the Motor Carrier Act and whose duty it is to keep motor vehicles operated in interstate or foreign commerce by his employer in a good and safe working condition. (Ex parte Nos. MC-2 and MC-3, 28 M.C.C. 125, 132, 133. Ex parte No. MC-40 (Sub. No. 2), 88 M.C.C. 710 (repair of refrigeration equipment). See also Morris v. McComb, 332 U.S. 422.) It has been determined that the safety of operation of such motor vehicles on the highways is directly affected by those activities of mechanics, such as keeping the lights and brakes in a good and safe working condition, which prevent the vehicles from becoming potential hazards to highway safety and thus aid in the prevention of accidents. The courts have held that mechanics perform work of this character where they actually do inspection, adjustment, repair, or maintenance work on the motor vehicles themselves (including trucks, tractors and trailers, and buses) and are, when so engaged, directly responsible for creating or maintaining physical conditions essential to the safety of the vehicles on the highways through the correction or prevention of defects which have a direct causal connection with the safe operation of the unit as a whole. (Walling v. Silver Bros., 136 F. (2d) 168 (C.A. 1); McDuffie v. Hayes Freight Lines, 71 F. Supp. 755; Walling v. Silver Fleet Motor Express, 67 F. Supp. 846; Keeling v. Huber & Huber Motor Express, 57 F. Supp. 617; Walling v. Huber & Huber Motor Express, 67 F. Supp. 855; Tinerella v. Des Moines Transp. Co., 41 F. Supp. 798; Robbins v. Zabarsky, 44 F. Supp. 867; West v. Smoky Mt. Stages, 40 F. Supp. 296; Walling v. Cumberland & Liberty Mills Co. (S.D. Fla.), 6 Labor Cases, par. 61,184; Esibill v. Marshall (D. N.J.), 6 Labor Cases, par. 61,256; Keegan v. Ruppert (S.D. N.Y.), 7 Labor Cases, par. 61,726; Baker v. Sharpless Hendler Ice Cream Co. (E.D. Pa.), 10 Labor Cases, par. 62,956; Kentucky Transport Co. v. Drake (Ky. Ct. App.), 182 S.W. (2d) 960.) The following activities performed by mechanics on motor vehicles operated in interstate or foreign commerce are illustrative of the specific kinds of activities which the courts, in applying the foregoing principles, have regarded as directly affecting "safety of operation": The inspection, repair, adjustment, and maintenance for safe operation of steering apparatus, lights, brakes, horns, windshield wipers, wheels and axles, bushings, transmissions, differentials, motors, starters and ignition, carburetors, fifth wheels, springs and spring hangers, frames, and gasoline tanks. (McDuffie v. Hayes Freight Lines, 71 F. Supp. 755; Walling v. Silver Fleet Motor Express, 67 F. Supp. 846; Wolfe v. Union Transfer & Storage Co., 48 F. Supp. 855; Mason & Dixon Lines v. Ligon (Tenn. Ct. App.), 7 Labor Cases, par. 61,962; Walling v. Palmer, 67 F. Supp. 12; Kentucky Transport Co. v. Drake (Ky. Ct. App.), 182 S.W. (2d) 960.) Inspecting and checking air pressure in tires, changing tires, and repairing and rebuilding tires for immediate replacement on the vehicle from which they were removed have also been held to affect safety of operation directly. (Walling v. Silver Fleet Motor

Express, 67 F. Supp. 846; Walling v. Palmer, 67 F. Supp. 12. See also McDuffie v. Hayes Freight Lines, 71 F. Supp. 755.) The same is true of hooking up tractors and trailers, including light and brake connections, and the inspection of such hookups. (Walling v. Silver Fleet Motor Express, 67 F. Supp. 846; Walling v. Palmer, 67 F. Supp. 12. See also Walling v. Gordon's Transports (W.D. Tenn.), 10 Labor Cases, par. 62,934, affirmed 162 F. (2d) 203 (C.A. 6), certiorari denied 332 U.S. 744.)

(b) The section 13(b)(1) exemption applies, in accordance with principles previously stated (see § 782.2), to an employee whose job involves activities consisting wholly or in part of doing, or immediately directing, a class of work which, under the definitions referred to above, is that of a "mechanic" and directly affects the safety of operation of motor vehicles on the public highways in interstate or foreign commerce within the meaning of the Motor Carrier Act. The power under the Motor Carrier Act to establish qualifications and maximum hours of service for such an employee has been sustained by the courts. (Morris v. McComb, 332 U.S. 422. See also Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Levinson v. Spector Motor Service, 330 U.S. 649; Walling v. Silver Bros., 136 F. (2d) 168 (C.C.A. 1).) A supervisory employee who plans and immediately directs and checks the proper performance of this class of work may come within the exemption as a partial-duty mechanic. (Robbins v. Zabarsky, 44 F. Supp. 867; Mason & Dixon Lines v. Ligon (Tenn. Ct. App.), 7 Labor Cases par. 61,962; cf. Morris v. McComb, 332 U.S. 422 and Levinson v. Spector Motor Service, 330 U.S. 649)

(c) (1) An employee of a carrier by motor vehicle is not exempted as a "mechanic" from the overtime provisions of the Fair Labor Standards Act under section 13(b)(1) merely because he works in the carrier's garage, or because he is called a "mechanic," or because he is a mechanic by trade and does mechanical work. (Wirtz v. Tyler Pipe & Foundry Co., 369 F. 2d 927 (C.A. 5).) The exemption applies only if he is doing a class of work defined as that of a "mechanic," including activities which directly affect the safety of operation of motor vehicles in transporation on the public highways in interstate or foreign commerce. (Morris v. McComb, 332 U.S. 422; Keeling v. Huber & Huber Motor Express, 57 F. Supp. 617; Walling v. Huber & Huber Motor Express, 67 F. Supp. 855; Walling v. Silver Fleet Motor Express, 67 F. Supp. 846; McDuffie v. Hayes Freight Lines, 71 F. Supp. 755; Anuchick v. Transamerican Freight Lines, 46 F. Supp. 861; Walling v. Burlington Transp. Co. (D. Nebr.), 9 Labor Cases, par. 62,576. Compare Ex parte No. MC–40 (Sub. No. 2), 88 M.C.C. 710 with Colbeck v. Dairyland Creamery Co. (S.D. Sup. Ct.), 17 N.W. (2d) 262. See also Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695.) Activities which do not directly affect such safety of operation include those performed by employees whose jobs are confined to such work as that of dispatchers, carpenters, tarpaulin tailors, vehicle painters, or servicemen who do nothing but oil, gas, grease, or wash the motor vehicles. (Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125, 132, 133, 135) To these may be added activities such as filling radiators, checking batteries, and the usual work of such employees as stockroom personnel, watchmen, porters, and garage employees performing menial nondiscretionary tasks or disassembling work. Employees whose work is confined to such "nonsafety" activities are not within the exemption, even though the proper performance of their work may have an indirect effect on the safety of operation of the motor vehicles on the highways. (Morris v. McComb, 332 U.S. 422; Campbell v. Riss & Co. (W.D. Mo.), 5 Labor Cases, par. 61,092 (dispatcher); McDuffie v. Hayes Freight Lines, 71 F. Supp. 755 (work of janitor and caretaker, carpentry work, body building, removing paint, preparing for repainting, and painting); Walling v. Silver Fleet Motor Express, 67 F. Supp. 846 (body building, construction work, painting and lettering); Hutchinson v. Barry, 50 F. Supp. 292 (washing vehicles); Walling v. Palmer, 67 F. Supp. 12 (putting water in radiators and batteries, oil and gas in vehicles, and washing vehicles); Anuchick v. Transamerican Freight Lines, 46 F. Supp. 861 (body builders, tarpaulin worker, stockroom boy, night watchman, porter); Bumpus v. Continental Baking Co. (W.D. Tenn.), 1 Wage Hour Cases 920 (painter), reversed on other grounds 124 F. (2d) 549; Green v. Riss & Co., 45 F. Supp. 648 (night watchman and gas pump attendant); Walling v. Burlington Transp. Co. (D. Nebr.), 9 Labor Cases, par. 62,576 (body builders); Keegan v. Ruppert (S.D. N.Y.), 7 Labor Cases, par. 61,726 (greasing and washing); Walling v. East Texas Freight Lines (N.D. Tex.), 8 Labor Cases, par. 62,083 (menial tasks); Collier v. Acme Freight Lines, unreported (S.D. Fla., Oct. 1943) (same); Potashnik Local Truck System v. Archer (Ark. Sup. Ct.), 179 S.W. (2d) 696 (checking trucks in and out and acting as night dispatcher, among other duties); Overnight Motor Corp. v. Missel, 316 U.S. 572 (rate clerk with part-time duties as dispatcher).) The same has been held true of employees whose activities are confined to construction work, manufacture or rebuilding of truck, bus, or trailer bodies, and other duties which are concerned with the safe carriage of the contents of the vehicle rather than directly with the safety of operation on the public highways of the motor vehicle itself. (Anuchick v. Transamerican Freight Lines, 46 F. Supp. 861; Walling v. Silver Fleet Motor Express, 67 F. Supp. 846; McDuffie v. Hayes Freight Lines, 71 F. Supp. 755; Walling v. Burlington Transp. Co. (D. Nebr.), 9 Labor Cases, par. 62,576. Compare Colbeck v. Dairyland Creamery Co. (S.D. Sup. Ct.), 17 N.W. (2d) 262 with Ex parte No. MC–40 (Sub. No. 2), 88 M.C.C. 710.)

(2) The distinction between direct and indirect effects on safety of operation is exemplified by the comments in rejecting the contention in Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125, 135, that the activities of dispatchers directly affect safety of operation. It was stated: "It is contended that if a dispatcher by an error in judgment assigns a vehicle of insufficient size and weight-carrying capacity to transport the load, or calls a driver to duty who is sick, fatigued, or otherwise not in condition to operate the vehicle, or requires or permits the vehicle to depart when the roads are icy and the country to be traversed is hilly, an accident may result. While this may be true, it is clear that such errors in judgment are not the proximate causes of such accidents, and that the dispatchers engage in no activities which directly affect the safety of operation of motor vehicles in interstate or foreign commerce."

(3) Similarly, the exemption has been held inapplicable to mechanics repairing and rebuilding parts, batteries, and tires removed from vehicles where a direct causal connection between their work and the safe operation of motor vehicles on the highways is lacking because they do no actual work on the vehicles themselves and entirely different employees have the exclusive responsibility for determining whether the products of their work are suitable for use, and for the correct installation of such parts, on the vehicles. (Keeling v. Huber & Huber Motor Express, 57 F. Supp. 617; Walling v. Huber & Huber Motor Express, 67 F. Supp. 855) Mechanical work on motor vehicles of a carrier which is performed in order to make the vehicles conform to technical legal requirements rather than to prevent accidents on the highways has not been regarded by the courts as work directly affecting "safety of operation." (Kentucky Transport Co. v. Drake (Ky. Ct. App.), 182 S.W. (2d) 960; Anuchick v. Transamerican Freight Lines, 46 F. Supp. 861; Yellow Transit Freight Lines Inc. v. Balsen 320 F. (2d) 495 (C.A. 8)) And it is clear that no mechanical work on motor vehicles can be considered to affect safety of operation of such vehicles in interstate or foreign commerce if the vehicles are never in fact used in transportation in such commerce on the public highways. (Baker v. Sharpless Hendler Ice Cream Co. (E.D. Pa.), 10 Labor Cases, par. 62,956)

§ 782.7 Interstate commerce requirements of exemption.

(a) As explained in preceding sections of this part, section 13(b)(1) of the Fair Labor Standards Act does not exempt an employee of a carrier from the act's overtime provisions unless it appears, among other things, that his activities as a driver, driver's helper, loader, or mechanic directly affect the safety of operation of motor vehicles in transportation in interstate or foreign commerce within the meaning of the Motor Carrier Act. What constitutes such transportation in interstate or foreign commerce, sufficient to bring such an employee

within the regulatory power of the Secretary of Transportation under section 204 of that act, is determined by definitions contained in the Motor Carrier Act itself. These definitions are, however, not identical with the definitions in the Fair Labor Standards Act which determine whether an employee is within the general coverage of the wage and hours provisions as an employee "engaged in (interstate or foreign) commerce." For this reason, the interstate commerce requirements of the section 13(b)(1) exemption are not necessarily met by establishing that an employee is "engaged in commerce" within the meaning of the Fair Labor Standards Act when performing activities as a driver, driver's helper, loader, or mechanic, where these activities are sufficient in other respects to bring him within the exemption. (Hager v. Brinks, Inc. (N.D. Ill.), 11 Labor Cases, par. 63,296, 6 W.H. Cases 262; Earle v. Brinks, Inc., 54 F. Supp. 676 (S.D. N.Y.); Thompson v. Daugherty, 40 F. Supp. 279 (D. Md.). See also, Walling v. Villaume Box & Lbr. Co., 58 F. Supp. 150 (D. Minn.). And see in this connection paragraph (b) of this section and § 782.8.) To illustrate, employees of construction contractors are, within the meaning of the Fair Labor Standards Act, engaged in commerce where they operate or repair motor vehicles used in the maintenance, repair, or reconstruction of instrumentalities of interstate commerce (for example, highways over which goods and persons regularly move in interstate commerce). (Walling v. Craig, 53 F. Supp. 479 (D. Minn.). See also Engbretson v. E. J. Albrecht Co., 150 F. (2d) 602 (C.A. 7); Overstreet v. North Shore Corp., 318 U.S. 125; Pedersen v. J. F. Fitzgerald Constr. Co., 318 U.S. 740, 742.) Employees so engaged are not, however, brought within the exemption merely by reason of that fact. In order for the exemption to apply, their activities, so far as interstate commerce is concerned, must relate directly to the transportation of materials moving in interstate or foreign commerce within the meaning of the Motor Carrier Act. Asphalt distributor-operators, although not exempt by reason of their work in applying the asphalt to the highways, are within the exemption where they transport to the road site asphalt moving in interstate commerce. See Richardson v. James Gibbons Co., 132 F. (2d 627 (C.A. 4), affirmed 319 U.S. 44 (and see reference to this case in footnote 18 of Levinson v. Spector Motor Service, 330 U.S. 649); Walling v. Craig, 53 F. Supp. 479 (D. Minn.).

(b) (1) Highway transportation by motor vehicle from one State to another, in the course of which the vehicles cross the State line, clearly constitutes interstate commerce under both acts. Employees of a carrier so engaged, whose duties directly affect the safety of operation of such vehicles, are within the exemption in accordance with principles previously stated. (Southland Gasoline Co. v. Bayley, 319 U.S. 44; Plunkett v. Abraham Bros., 129 F. (2d) 419 (C.A. 6); Vannoy v. Swift & Co. (Mo. Sup. Ct.), 201 S.W. (2d) 350; Nelson v. Allison & Co. (E.D. Tenn.), 13 Labor Cases, par. 64,021; Reynolds v. Rogers Cartage Co. (W.D. Ky.), 13 Labor Cases, par. 63,978, reversed on other grounds 166 F. (2d) 317 (C.A. 6); Walling v. McGinley Co. (E.D. Tenn.), 12 Labor Cases, par. 63,731; Walling v. A. H. Phillips, Inc., 50 F. Supp. 749, affirmed (C.A. 1) 144 F. (2d) 102, 324 U.S. 490. See §§ 782.2–782.8.) The result is no different where the vehicles do not actually cross State lines but operate solely within a single State, if what is being transported is actually moving in interstate commerce within the meaning of both acts; the fact that other carriers transport it out of or into the State is not material. (Morris v. McComb, 68 S. Ct. 131; Pyramid Motor Freight Corp. v. Ispass, 330 U.S. 695; Walling v. Silver Bros. Co. 136 F. (2d) 168 (C.A. 1); Walling v. Mutual Wholesale Food & Supply Co., 141 F. (2d) 331 (C.A. 8); Dallum v. Farmers Cooperative Trucking Assn., 46 F. Supp. 785 (D. Minn.); Gavril v. Kraft Cheese Co., 42 F. Supp. 702 (N.D. Ill.); Keegan v. Rupport (S.D. N.Y.), 7 Labor Cases, par. 61,726, 3 W.H. Cases 412; Baker v. Sharpless Hendler Ice Cream Co. (E.D. Pa.), 10 Labor Cases, par. 62,956, 5 W.H. Cases 926) Transportation within a single State is in interstate commerce within the meaning of the Fair Labor Standards Act where it forms a part of a "practical continuity of movement" across State lines from the point of origin to the point of destination. (Walling v. Jacksonville Paper Co., 317 U.S. 564; Walling v. Mutual Wholesale Food & Supply Co., 141 F. (2d) 331 (C.A. 8); Walling v. American Stores Co., 133 F. (2d) 840 (C.A. 3); Baker v. Sharpless Hendler Ice Cream Co. (E.D. Pa.), 10 Labor Cases, par. 62,956, 5 W.H. Cases 926) Since the interstate commerce regulated under the two acts is not identical (see paragraph (a) of this section), such transportation may or may not be considered also a movement in interstate commerce within the meaning of the Motor Carrier Act. Decisions of the Interstate Commerce Commission prior to 1966 seemingly have limited the scope of the Motor Carrier Act more narrowly than the courts have construed the Fair Labor Standards Act. (See § 782.8.) It is deemed necessary, however, as an enforcement policy only and without prejudice to any rights of employees under section 16(b) of the Act, to assume that such a movement in interstate commerce under the Fair Labor Standards Act is also a movement in interstate commerce under the Motor Carrier Act, except in those situations where the Commission has held or the Secretary of Transportation or the courts hold otherwise. (See § 782.8(a); and compare Beggs v. Kroger Co., 167 F. (2d) 700, with the Interstate Commerce Commission's holding in Ex parte No. MC–48, 71 M.C.C. 17, discussed in paragraph (b)(2) of this section.) Under this enforcement policy it will ordinarily be assumed by the Administrator that the interstate commerce requirements of the section 13(b)(1) exemption are satisfied where it appears that a motor carrier employee is engaged as a driver, driver's helper, loader, or mechanic in transportation by motor vehicle which, although confined to a single State, is a part of an interstate movement of the goods or persons being thus transported so as to constitute interstate commerce within the meaning of the Fair Labor Standards Act. This policy does not extend to drivers, driver's helpers, loaders, or mechanics whose transportation activities are "in commerce" or "in the production of goods for commerce" within the meaning of the act but are not a part of an interstate movement of the goods or persons carried (see, e.g., Wirtz v. Crystal Lake Crushed Stone Co., 327 F. 2d 455 (C.A. 7)). Where, however, it has been authoritatively held that transportation of a particular character within a single State is not in interstate commerce as defined in the Motor Carrier Act (as has been done with respect to certain transportation of petroleum products from a terminal within a State to other points within the same State—see subparagraph (2) of this paragraph), there is no basis for an exemption under section 13(b)(1), even though the facts may establish a "practical continuity of movement" from out-of-State sources through such in-State trip so as to make the trip one in interstate commerce under the Fair Labor Standards Act. Of course, engagement in local transportation which is entirely in intrastate commerce provides no basis for exempting a motor carrier employee. (Kline v. Wirtz, 373 F. 2d 281 (C.A. 5). See also paragraph (b) of this section.)

(2) The Interstate Commerce Commission held that transportation confined to points in a single State from a storage terminal of commodities which have had a prior movement by rail, pipeline, motor, or water from an origin in a different State is not in interstate or foreign commerce within the meaning of part II of the Interstate Commerce Act if the shipper has no fixed and persisting transportation intent beyond the terminal storage point at the time of shipment. See Ex parte No. MC–48 (71 M.C.C. 17, 29). The Commission specifically ruled that there is no fixed and persisting intent where (i) at the time of shipment there is no specific order being filled for a specific quantity of a given product to be moved through to a specific destination beyond the terminal storage, and (ii) the terminal storage is a distribution point or local marketing facility from which specific amounts of the product are sold or allocated, and (iii) transportation in the furtherance of this distribution within the single State is specifically arranged only after sale or allocation from storage. In Baird v. Wagoner Transportation Co., 425 F. (2d) 407 (C.A. 6), the court found each of these factors to be present and held the intrastate transportation activities were not "in interstate commerce" within the meaning of the Motor Carrier Act and denied the section 13(b)(1) exemption. While Ex parte No. MC–48 deals with petroleum and petroleum products, the decision indicates that the same reasoning applies to general commodities moving interstate into a warehouse for distribution (71 M.C.C. at 27). Accordingly, employees engaged in

such transportation are not subject to the Motor Carrier Act and therefore not within the section 13(b)(1) exemption. They may, however, be engaged in commerce within the meaning of the Fair Labor Standards Act. (See in this connection, Mid-Continent Petroleum Corp. v. Keen, 157 F. 2d 310 (C.A. 8); DeLoach v. Crowley's Inc., 128 F. 2d 378 (C.A. 5); Walling v. Jacksonville Paper Co., 69 F. Supp. 599, affirmed 167 F. 2d 448, reversed on another point in 336 U.S. 187; and Standard Oil Co. v. Trade Commission, 340 U.S. 231, 238).

(c) The wage and hours provisions of the Fair Labor Standards Act are applicable not only to employees engaged in commerce, as defined in the act, but also to employees engaged in the production of goods for such commerce. Employees engaged in the "production" of goods are defined by the act as including those engaged in "handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State." (Fair Labor Standards Act, sec. 3(j), 29 U.S.C., sec. 203(j), as amended by the Fair Labor Standards Amendments of 1949, 63 Stat. 910. See also the Division's Interpretative Bulletin, Part 776 of this chapter on general coverage of the wage and hours provisions of the act.) Where transportation of persons or property by motor vehicle between places within a State falls within this definition, and is not transportation in interstate or foreign commerce within the meaning of the Motor Carrier Act because movement from points out of the State has ended or because movement to points out of the State has not yet begun, the employees engaged in connection with such transportation (this applies to employees of common, contract, and private carriers) are covered by the wage and hours provisions of the Fair Labor Standards Act and are not subject to the jurisdiction of the Secretary of Transportation. Examples are: (1) Drivers transporting goods in and about a plant producing goods for commerce; (2) chauffeurs or drivers of company cars or buses transporting officers or employees from place to place in the course of their employment in an establishment which produces goods for commerce; (3) drivers who transport goods from a producer's plant to the plant of a processor, who, in turn, sells goods in interstate commerce, the first producer's goods being a part or ingredient of the second producer's goods; (4) drivers transporting goods between a factory and the plant of an independent contractor who performs operations on the goods, after which they are returned to the factory which further processes the goods for commerce; and (5) drivers transporting goods such as machinery or tools and dies, for example, to be used or consumed in the production of other goods for commerce. These and other employees engaged in connection with the transportation within a State of persons or property by motor vehicle who are subject to the Fair Labor Standards Act because engaged in the production of goods for commerce and who are not subject to the Motor Carrier Act because not engaged in interstate or foreign commerce within the meaning of that act, are not within the exemption provided by section 13(b)(1). (Walling v. Comet Carriers, 151 F. (2d) 107 (C.A. 2); Griffin Cartage Co. v. Walling, 153 F. (2d) 587 (C.A. 6); Walling v. Morris, 155 F. (2d) 832 (C.A. 6), reversed on other grounds in Morris v. McComb, 332 U.S. 422; West Kentucky Coal Co. v. Walling, 153 F. (2d) 582 (C.A. 6); Hamlet 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 Cartage 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 within a State of consumable goods (such as food, coal, and ice) to railroad, docks, etc., for use on 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; Corona 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 oceangoing 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) The Interstate Commerce Commission disclaimed jurisdiction under the Motor Carrier Act of employees engaged in the transportation of mail under contract with the Post Office Department in vehicles used exclusively for that purpose. (See 3 M.C.C. 694, 697.) It would thus appear that such employees of mail contractors are not within the exemption provided by section 13(b)(1) of the Fair Labor Standards Act. Employees of mail contractors are not employees of the United States within the meaning of section 3(d) of the Fair Labor Standards Act. (Fleming v. Gregory, 36 F. Supp. 776; Thompson v. Daugherty, 40 F. Supp. 279; Mangann v. Long's Baggage Transfer Co. 39 F. Supp. 742.) Since they are considered "engaged in commerce" within the meaning of the act, it is the position of the Division that they are entitled to overtime compensation under section 7 of the Fair Labor Standards Act. (Repsher v. Streepy (E.D. Pa.), 7 Wage Hour Cases 769; 14 Labor Cases, par. 64,364; Thompson v. Daugherty, 40 F. Supp. 279; Mitchell v. Steinmetz et al., 36 Labor Cases par. 65,274, affirmed 268 F. (2d) 501; Mitchell v. Raines (E.D. Pa.), 30 Labor Cases, par. 70,015, 12 Wage Hour Cases 856; Mitchell v. Steinmetz (N.D. Ga.) 37 Labor Cases, par. 65,562, 14 Wage Hour Cases 202; Mitchell v. Blackburn (D. Md.), 37 Labor Cases, par. 65,399, 14 Wage Hour Cases 146. But see Magann v. Long's Baggage Transfer Co., 39 F. Supp. 742, contra.)

(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.

Signed at Washington, D.C., this 19th day of October 1971.

HORACE E. MENASCO,
Administrator, Wage and Hour Division, U.S. Department of Labor.

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PART III

COST OF LIVING COUNCIL

PAY BOARD

PRICE COMMISSION

■

Economic Stabilization

Title 6—ECONOMIC STABILIZATION

Chapter I—Cost of Living Council

PART 101—COVERAGE, EXEMPTIONS AND CLASSIFICATION OF ECONOMIC UNITS

Part 101—Coverage, Exemptions and Classification of Economic Units is added to Title 6, Chapter I, Code of Federal Regulations.

Since the immediate implementation of Executive Order No. 11627 is required, the Council finds that notice and public procedure with respect to these regulations is impracticable and that good cause exists for making the regulations effective in less than 30 days. Therefore, Title 6 of the Code of Federal Regulations is amended by adding a new Title 6, by adding a new Chapter I, and by adding a new Part 101, as set forth below, effective at 12:01 a.m. on November 14, 1971.

DONALD RUMSFELD,
Director, Cost of Living Council.

Subpart A—General

Sec.
101.1 Purpose and scope.

Subpart B—Price Adjustments—Classification and Procedures

101.11 Price category I firms; prenotification and reporting requirements.
101.13 Price category II firms; reporting requirements.
101.15 Price category III firms; monitoring and spot checks.
101.17 Reclassification.

Subpart C—Pay Adjustments—Classification and Procedures

101.21 Category I pay adjustments; construction pay adjustments; prenotification requirements.
101.23 Category II pay adjustments; reporting requirements.
101.25 Category III pay adjustments; monitoring and spot checks.
101.27 Reclassification.

Subpart D—Exemptions; Items Not Included in Coverage

101.31 General.
101.32 Exemptions.
101.33 Items not included in coverage.

Subpart E—Definitions

101.51 Definitions.

Subpart F—Special Temporary Provisions

101.101 Special provisions applicable from Nov. 14, 1971–Jan. 1, 1972.

AUTHORITY: The provisions of this Part 101 issued pursuant to Economic Stabilization Act of 1970, as amended, Public Law 91-379, 84 Stat. 799; Public Law 91-588, 84 Stat. 1468; Public Law 92-8, 85 Stat. 13; Public Law 92-15, 85 Stat. 38; Executive Order No. 11627, October 15, 1971, 36 F.R. 20139.

Subpart A—General

§ 101.1 Purpose and scope.

(a) The purpose of this part is to establish the economic units and transactions which are covered by, and exempt from, the controls, standards and criteria established for the post-freeze economic stabilization period. The purpose is also to establish categories of economic units which must comply with the prenotification, reporting, and other procedural requirements prescribed by the Cost of Living Council. In general, such controls, standards and criteria are applicable to all price adjustments and to all pay adjustments, unless otherwise provided, regardless of the category into which any such adjustment falls. However, the procedural requirements vary depending upon the category.

(b) This part applies to all price adjustments and all pay adjustments which occur during the post-freeze economic stabilization period, except those which are specifically exempt under this part.

(c) This part does not apply to economic transactions which are not prices, rents, wages, and salaries within the meaning of the Economic Stabilization Act of 1970, as amended. Examples of transactions not within the meaning of the Act are:

(1) State or local income, sales and real estate taxes;

(2) Workmen's compensation payments;

(3) Welfare payments;

(4) Child support payments; and

(5) Alimony payments.

(d) The Cost of Living Council may allow such exceptions or permit such exemptions as it deems appropriate with respect to the coverage, classification, and other procedural requirements prescribed in this part. Requests for exceptions to and exemptions from the coverage, classification, and other procedural requirements of this part shall be submitted to the Cost of Living Council through procedures established by the Internal Revenue Service.

Subpart B—Price Adjustments—Classification and Procedures

§ 101.11 Price category I firms; prenotification and reporting requirements.

(a) A price category I firm is a firm with annual sales or revenues of $100 million or more.

(b) Each price category I firm shall submit a prenotification to the Price Commission of each proposed price adjustment in accordance with regulations issued by the Price Commission.

(c) No proposed price adjustment shall be put into effect by any price category I firm unless such price adjustment has been approved or permitted to take effect in accordance with regulations issued by the Price Commission.

(d) Each price category I firm shall submit quarterly reports to the Price Commission with information on prices, costs, and profits in accordance with regulations issued by the Price Commission.

§ 101.13 Price category II firms; reporting requirements.

(a) A price category II firm is a firm with annual sales or revenues from $50 million to $100 million.

(b) Each price category II firm shall submit quarterly reports to the Price Commission with information on prices, costs, and profits in accordance with regulations issued by the Price Commission.

§ 101.15 Price category III firms; monitoring and spot checks.

(a) A price category II firm is a firm with annual sales or revenues of less than $50 million.

(b) The price adjustments of price category III firms are not subject to prenotification or reporting. However, they are subject to monitoring and spot checks, as are price adjustments by firms in other categories.

§ 101.17 Reclassification.

(a) Upon the recommendation of the Price Commission, the Director of the Cost of Living Council has authority to reclassify firms so as to subject a price category II firm to the procedures applicable to price category I firms, and to subject price category III firms to the procedures applicable to price category I firms or price category II firms.

(b) If the pay adjustments of a firm are classified as category I pay adjustments, the Director of the Cost of Living Council has authority to reclassify the firm, for price adjustment purposes, as a price category I firm. If the pay adjustments of a firm are classified as category II pay adjustments and, for price adjustment purposes, the firm is classified in category III, the Director of the Cost of Living Council has authority to reclassify the firm as a price category II firm.

Subpart C—Pay Adjustments—Classification and Procedures

§ 101.21 Category I pay adjustments; construction pay adjustments; prenotification requirements.

(a) A category I pay adjustment means a pay adjustment which applies to or affects 5,000 or more employees or which applies to or affects employees who are engaged in construction as defined by section 11(a) of Executive Order No. 11588, March 29, 1971.

(b) Prenotification of each proposed category I pay adjustment shall be submitted to the Pay Board in accordance with regulations issued by the Pay Board.

(c) No proposed category I pay adjustment shall be put into effect unless such pay adjustment has been approved or permitted to take effect in accordance with regulations issued by the Pay Board.

§ 101.23 Category II pay adjustments; reporting requirements.

(a) A category II pay adjustment means a pay adjustment which applies to or affects from 1,000 to 5,000 employees.

(b) Each category II pay adjustment shall be reported to the Pay Board in accordance with regulations issued by the Pay Board.

§ 101.25 Category III pay adjustments; monitoring and spot checks.

(a) A category III pay adjustment means a pay adjustment which applies to or affects less than 1,000 employees.

(b) Category III pay adjustments are not subject to prenotification and reporting. However, they are subject to monitoring and spot checks as are pay adjustments by firms in other categories.

§ 101.27 Reclassification.

(a) Upon the recommendation of the Pay Board, the Director of the Cost of Living Council has authority to reclassify category II pay adjustments to category I pay adjustments, and to reclassify category III pay adjustments to category I pay adjustments or category II pay adjustments.

(b) If a firm is a price category I firm, the Director has the authority to classify all pay adjustments of the firm as category I pay adjustments. If a firm is a price category II firm, the Director has the authority to classify all pay adjustments of the firm as pay category II pay adjustments, unless that firm's pay adjustments are already classified as category I pay adjustments.

Subpart D—Exemptions; Items Not Included in Coverage

§ 101.31 General.

Price adjustments with respect to the property and services set forth in this subpart are exempt from or not included in the coverage of the economic stabilization program established pursuant to the Economic Stabilization Act of 1970 and Executive Order No. 11627, October 15, 1971.

§ 101.32 Exemptions.

(a) *Raw agricultural products.* Agricultural products which retain their original physical form and have not been processed. Processed agricultural products are products which have been canned, frozen, slaughtered, milled, or otherwise changed in their physical form. Packaging is not considered a processing activity. Examples:

Exempt	*Nonexempt*
Live cattle, calves, hogs, sheep and lambs.	Carcasses and meat cuts.
Live Poultry	Dressed broilers and turkeys.
Raw milk	Pasteurized milk and processed products such as butter, cheese, ice cream.
Shell eggs, packaged or loose.	Frozen, dried or liquid eggs.
Sheared or pulled wool.	Wool products.
Raw honeycomb honey.	Processed and blended honeybutter product.
Mohair.	
Hay: bulk, pelleted, cubed or baled.	Dehydrated alfalfa meal or alfalfa meal pellets.
Wheat	Flour.
Feed grains including:	
Corn	Mixed feed.
Sorghum	Cracked corn.
Barley	Rolled barley.
Oats	Rolled oats.
Soybean	Soybean meal and oil.
Leaf tobacco	Cigarettes and cigars.
Baled cotton, cottonseed, cotton lint.	Cotton yarn, cottonseed oil, cottonseed meal.
Fresh potatoes, packaged or not.	Frozen french fries, dehydrated potatoes.
Unmilled rice	Milled rice.
All raw nuts—shelled and unshelled.	Roasted, salted or otherwise processed nuts.
Fresh mushrooms	Canned or freeze dried mushrooms.
Fresh mint	Mint oil.
Fresh hops.	
Dried beans, peas, and lentils.	
Sugar beets and sugar cane.	Refined sugar.
Maple sap	Maple syrup and sugar.
All seeds for planting.	Seeds processed for other uses.
Raw coffee bean	Roasted coffee bean.
All fresh vegetables and melons including:	Canned and frozen vegetables.
Tomatoes.	
Lettuce.	
Sweet corn.	
Onions.	
Green beans.	
Cantaloupe.	
Cucumbers	Dill pickles.
Cabbage	Packaged slaw.
Carrots.	
Watermelons.	
Green peas.	
Asparagus.	
Pepper.	
Broccoli.	
Cauliflower.	
Spinach.	
Green lima beans.	
Honeydews.	
Escarole.	
Garlic.	
Artichokes.	
Eggplant.	
Brussel sprouts.	
Beets.	
Unpopped popcorn	Popped popcorn.
Stumpage, or trees cut from the stump.	Milled lumber.
All fresh or naturally dried fruits, packaged or not, including:	Canned, artificially dried frozen fruit or juices.
Fresh oranges	Glazed citrus peel.
Grapes and raisins.	Canned grapes, wine.
Apples	Applesauce.
Peaches	
Strawberries	
Grapefruit	
Pears	
Lemons	
Plums and prunes.	Canned prunes and prune juice.
Cherries	
Cranberries	
Avocados	
Blueberries	
Apricots	
Tangerines	
Olives, uncured.	Canned olives.
Nectarines	
Raspberries	
Blackberries	
Figs	
Tangelos	
Limes	
Dates	
Papayas	
Bananas	
Pomegranates	
Currants	
Persimmons	
Garden plants and cut flowers.	Floral wreath.

(b) *Seafood products.* Raw seafood products including those which have been shelled, shucked, iced, skinned, scaled, eviscerated, or decapitated.

(c) *Custom products and services.* (1) The following products when custom made to individual order:

(i) Leather goods;

(ii) Wigs and toupees;

(iii) Fur apparel;

(iv) Jewelry.

(2) The following custom services when provided to individual order:

(i) Tailoring of clothing;

(ii) Framing of pictures and mirrors;

(iii) Taxidermy.

(d) *Exports, imports, and shipping rates.* (1) Exports, including products sold to a domestic purchaser who certifies that the product is for export.

(2) Imports, but only the first sale into U.S. commerce.

(3) International ocean shipping rates.

(e) *Damaged and used products.* Damaged products and used products other than rebuilt products.

(f) *Government property.* (1) Abandoned or confiscated property sold by a government agency (Federal, State or local) pursuant to authorization of a court.

(2) Property sold by the United States, including lease-sales.

(g) *Real estate.* (1) Sales:

(i) Unimproved real estate.

(ii) Real estate with improvements completed prior to August 15, 1971.

(iii) Real estate with improvements completed on or after August 15, 1971, if

(*a*) The sales price is determined after the completion of construction; or

(*b*) The wage rates are known to the builder and are not altered by actions of the Pay Board after the sales price is established.

(2) Rentals:

(i) Industrial, farm, and nonresidential commercial property.

(*a*) Rental units, including houses, apartments, or any other residential rental property, on which construction is completed, and which are offered for rent for the first time, after August 15, 1971.

(*b*) Rehabilitated dwellings for which the cost of rehabilitation exceeds one-third of the total value of the rehabilitated property (including the cost of rehabilitation), offered for rent in the newly rehabilitated condition for the first time after August 15, 1971.

(h) *Securities and financial instruments.* (1) Securities as defined in § 101.51.

(2) Property subject to net leases as defined in 26 United States Code 163(4)(a).

(3) Commercial paper.

(4) Commodity futures sold on an organized commodities exchange but not including the commodity (unless otherwise exempt).

(i) *Miscellaneous.* (1) Royalties and other payments from the sale of copyrights, manuscripts, and like materials prepaid for publication.

(2) Dues paid to nonprofit organizations.

(3) Wages below the minimum wage established by Federal law.

(4) Insurance premiums charged for all new life insurance policies including ordinary, term, and group policies, and individual endowments and annuities (fixed and variable), but excluding credit-life insurance.

(5) Antiques.

(6) Art objects including paintings, etchings, and sculpture.

(7) Collectors' coins and stamps.

(8) Precious stones and mountings into which precious stones are set.

(9) Rock and stone specimens.

(10) Handicraft objects.

§ 101.33 Items not included in coverage.

The following items are not covered by this part or Executive Order No. 11627, October 15, 1971, on and after the effective date of this part.

(a) *Federal pay adjustments.* Federal Government employees' pay adjustments which are based upon Federal law and regulations and are determined by Presidential directives and adjustments in the compensation and allowances of members of the Armed Forces.

(b) *Raw sugar prices.* Raw sugar price adjustments, which are controlled under the provisions of the Sugar Act of 1948, as amended.

Subpart E—Definitions

§ 101.51 Definitions.

As used in this part—

"Annual sales or revenues" means the total income of a firm during its most recent fiscal year from whatever source derived.

"Cost of Living Council" means the Council established pursuant to Executive Order No. 11615, August 15, 1971, as amended, and continued under the provisions of Executive Order No. 11627, October 15, 1971.

"Employer" means a firm which employs one or more persons who receive a wage or salary.

"Exception" means a waiver in a particular case of the requirements of any order or regulation issued pursuant to the Economic Stabilization Act of 1970, as amended.

"Exemption" means a general waiver with respect to a certain class of property, services, or economic transactions set forth in Executive Order No. 11627, October 15, 1971, or these regulations and which excludes such property, services, or economic transactions from the application of the Economic Stabilization Act of 1970, as amended.

"Firm" means any person, croporation, partnership, joint-venture, or sole proprietorship or any other entity however organized, including charitable, educational, or other eleemosynary institutions and any Federal, State, or local governmental entity.

"Pay adjustment" means a change in wages and salaries which includes all forms of direct or indirect remuneration or inducement to employees by their employers for personal services, which are reasonably subject to valuation, including but not limited to: Vacation and holiday payments; bonus; layoff and severance pay plans; supplemental unemployment benefits; night shift, overtime, production; and incentive pay; employer contributions for insurance plans (but not including public plans, e.g. old age, survivors, health, and disability insurance under the Social Security system, Railroad Retirement Acts, Federal Insurance Contributions Act, Federal Unemployment Tax Acts, Civil Service Retirement Acts and the Carriers and Employees Tax Act); savings, pension, profit sharing, annuity funds, and other deferred compensation and welfare benefits; payments in kind, job perquisites; housing allowances; uniform and other work clothing allowances (but not including employer-required uniforms and work clothing whether or not for safety purposes); cost-of-living allowances; commission rates, stock options, and other fringe benefits; and benefits which result in more pay per hour or other unit of work or production (e.g. by shortening the workday without a proportionate decrease in pay).

"Pay Board" means the Board established pursuant to section 7, Executive Order No. 11627, October 15, 1971.

"Prenotification" means notice submitted to the Price Commission or Pay Board relating to a proposed price adjustment or pay adjustment.

"Price adjustment" means a change in the unit price of property or services or a decrease in the quality of substantially the same property or services, unless exempt or outside the scope of the Economic Stabilization Act of 1970, as amended.

"Price Commission" means the Commission established pursuant to section 8, Executive Order No. 11627, October 15, 1971.

"Security" means any note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, or, in general, any interest or instrument commonly known as a "security," or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to our purchase, any of the foregoing.

Subpart F—Special Temporary Provisions

§ 101.101 Special provisions applicable from Nov. 14, 1971–Jan. 1, 1972.

Notwithstanding the provisions of §§ 100.11 and 100.21:

(a) Pay adjustments scheduled to take effect between November 14, 1971 and January 1, 1972 pursuant to existing contracts or pay practices in effect before November 14, 1971, need not be prenotified to, or approved by, the Pay Board, but must be reported to the Pay Board in accordance with its regulations and will be otherwise subject to such regulations. The provisions of this subparagraph shall not apply to pay adjustments which are subject to the provisions of Executive Order No. 11588, March 29, 1971.

(b) After November 14, 1971 and until January 1, 1972, a price category I firm is not required to submit a prenotification and obtain approval of a proposed price adjustment if it meets the criteria of § 300.51 of this title.

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Chapter II—Pay Board

PART 201—STABILIZATION OF WAGES AND SALARIES

On August 15, 1971 the President announced a freeze on prices, rents, wages, and salaries for a period of 90 days ending midnight, November 13, 1971. By Executive Order No. 11627 of October 15, 1971, the President provided for an orderly transition from the 90-day general freeze to a more flexible system of economic restraints. Under that Order, the President established a Pay Board to be composed of 15 members (i.e., five representatives each from labor, business, and the general public) to be appointed by him. On November 8, 1971, the Pay Board adopted policies governing pay adjustments to be effective after the 90-day general freeze. A statement of that policy is set forth below as an appendix to regulations prescribed by the Pay Board.

Pursuant to the authority vested in the Pay Board by the Economic Stabilization Act of 1970, as amended (Public Law 91-379, 84 Stat. 799; Public Law 91-558, 84 Stat. 1468; Public Law 92-8, 85 Stat. 13; Public Law 92-15, Stat. 38), Executive Order No. 11627 (36 F.R. 20139, October 16, 1971), and Cost of Living Council Order No. 3 (36 F.R. 20202, October 16, 1971), the Pay Board hereby adopts the following regulations (including the policy statement) in implementation of the President's economic program. A new Chapter II—Pay Board is hereby established in title 6—Economic Stabilization of the Code of Federal Regulations and a new Part 201—Stabilization of Wages and Salaries is added thereto.

Because of the need for immediate guidance from the Pay Board with respect to the provisions contained in these regulations, it is hereby found impracti-