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## 29 C.F.R. § 782.2

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### Requirements for exemption in general.

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

(b)

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

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

*Motor Freight Corp. v. Ispass*, 330 U.S. 695; Cf. *Missel v. Overnight Motor Transp.*, 40 F. Supp. 174 (D. Md.), reversed on other grounds 126 F. (2d) 98 (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.

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