

§ 782.3

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 way-bills, 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 en-

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gaged 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*, 300 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 or 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 non exempt).) 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 Drivers’ 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 com-

merce 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