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 operations.'' 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 inplace, 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 Transporation 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 SW (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 SW (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 gargage, 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. 816; *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 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