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McCOMB REVISES BULLETIN ON OVERTIME EXEMPTION FOR EMPLOYEES OF MOTOR CARRIERS

Conditions under which some 470,000 persons in four classes of employees of motor carriers may be exempt from the overtime provisions of the Fair Labor Standards Act are described in a revised interpretative bulletin issued today by Wm. R. McComb, Administrator of the Wage and Hour and Public Contracts Divisions, U. S. Department of Labor.

The four classes of employees are those defined by the Interstate Commerce Commission as drivers, drivers' helpers, loaders, and mechanics, who are within the power of the Commission to establish qualifications and maximum hours of service because of the "safety of operation" involved in their work. The bulletin explains that an employee whose job involves work of the kind performed by any of these four classes is within the overtime exemption of the Wage and Hour Law if such work is the type "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," and if his employer operates such vehicles as a carrier subject to the jurisdiction of the Commission under Section 204 of the Motor Carrier Act.

Such an employee is held by the Administrator to be exempt from the overtime provisions of the Wage and Hour Law "in all workweeks when employed at such job" by a common or contract carrier engaged in transportation of persons or property in interstate or foreign commerce, or by a private carrier engaged in such transportation of property only. Application of the overtime exemption, of course, does not relieve

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employers from paying such employees in accordance with the Wage and Hour Law's minimum wage provision, which requires payment at the rate of at least 40 cents an hour.

Issued in the light of the Portal-to-Portal Act of 1947 as "a practical guide to employers and employees," the text of the revised bulletin, which reflects recent Supreme Court decisions defining the scope of the exemption, appears in the Federal Register today. It replaces and supersedes all previous bulletins, releases, opinion letters, and other statements on this subject, which has long represented a difficult administrative problem to the Wage and Hour Division because of the interrelationship of the Wage and Hour Law provisions and the powers of the Interstate Commerce Commission under the Motor Carrier Act.

Emphasizing that the exemption applies only to employees engaged in work "directly affecting" the safety of operation, as defined, the bulletin cites the following Commission definitions of the four classes of employees for whom the Wage and Hour Law's requirement that time and one-half be paid for work beyond 40 hours a week is held to be inoperative under stated conditions:

**DRIVER**—"an individual who drives a motor vehicle in transportation which is, within the meaning of the Motor Carrier Act, in interstate or foreign commerce."

**DRIVER'S HELPER**—"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."

**LOADER**—"an employee of a carrier subject to Section 204 of the Motor Carrier Act (other than a driver or driver's helper) 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."

**MECHANIC**—"an employee who is employed by a carrier subject to the Commission'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 good and safe working condition."

For each of these classes of employees, the bulletin explains what kinds of work have and have not been held to directly affect "safety of operation." The Commission's definition of "safety of operation" as used with respect to the activities of the four classes of employees is stated in the bulletin to be "the safety of operation of motor vehicles in the transportation of passengers or property in interstate or foreign commerce, and that alone."

The bulletin makes clear that the exemption available for drivers, drivers' helpers, loaders, or mechanics, does not apply to motor carrier employees whose jobs are confined to such work as that of dispatchers, office employees,

warehouse workers, carpenters, tarpaulin tailors, vehicle painters, or service men who do nothing but oil, gas, grease, or wash the motor vehicles.

Thus far, the Interstate Commerce Commission has actually exercised its regulatory power only with respect to drivers. Relying on Supreme Court decisions, however, the Wage and Hour Law Administrator's new bulletin states that the exemption will be considered fully applicable to all four classes of employees, when engaged as described in the bulletin, and that an employee in any of the four classes who "either regularly or from time to time" is called upon to perform "safety-affecting operations" of the type described "comes within the exemption in all workweeks when he is employed at such job." Furthermore, the bulletin makes clear that "this is true regardless of the proportion of his time or of his activities actually devoted to such safety-affecting work during his employment in the particular job, and even though in particular workweeks he may not actually engage in any activities directly affecting 'safety of operation.'"

Administrator McComb points out that the bulletin distinguishes between common or contract carriers and private carriers in one respect. For private carriers, the exemption applies only with respect to the transportation of property, not persons.

The bulletin also emphasizes that the scope of coverage under the Wage and Hour Law is held by the courts to be broader than that of the Motor Carrier Act, and that the overtime provisions of the Wage and Hour Law will apply to drivers, drivers' helpers, loaders, and mechanics who are "engaged in commerce or in the production of goods for commerce" under this law but are not engaged in "transportation in interstate or foreign commerce" within the meaning of the Motor Carrier Act.

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