

Wage and Hour Division, Labor

§ 782.0

and others. While plants other than evergreens may be used in making the wreaths, such plants, whether they are forest products cultivated plants, cannot be considered as part of the required principal evergreen component of the wreath.

§ 780.1013 Natural evergreens.

Only "natural" evergreens may comprise the principal part of the wreath. The word "natural" qualifies all of the evergreens listed in the section, including "other evergreens." The term *natural* means that the evergreens at the time they are being used in making a wreath must be in the raw and natural state in which they have been harvested. Artificial evergreens (*Herring Magic v. U.S.*, 258 F. 2d 197; *Cal. Casualty Indemnity Exchange v. Industrial Accident Commission of Cal.* 90 P. 2d 289) or evergreens which have been processed as by drying and spraying with tinsel or by other means are not included. It is immaterial whether the natural evergreen used in making a wreath has been cultivated or is a product of the woods or forest.

§ 780.1014 Harvesting.

The homeworker is permitted to harvest evergreens and other forest products to be used in making the wreath. The word *harvesting* means the removal of evergreens and other forest products from their growing positions in the woods or forest, including transportation of the harvested products to the home of the homeworker and the performance of other duties necessary for such harvesting.

§ 780.1015 Other forest products.

The homeworker may also harvest "other forest products" for use in making wreaths. The term *other forest products* means any plant of the forest and includes, of course, deciduous plants as well.

§ 780.1016 Use of evergreens and forest products.

Harvesting of evergreens and other forest products is exempt only when these products will be "used in making such wreaths." The phrase "used in making such wreaths" places a definite limitation on the purpose for which ev-

ergreens may be harvested under section 13(d). Harvesting of these materials for a use other than making wreaths is nonexempt. Also, such harvesting is nonexempt when the evergreens are used for wreathmaking by persons other than the homeworkers (see *Mitchell v. Hunt*, 263 F. 2d 913). For example, harvesting of evergreens for sale or distribution to an employer who uses them in his factory to make wreaths is not exempt.

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

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AUTHORITY: 52 Stat. 1060, as amended; 29 U.S.C. 201 *et seq.*

SOURCE: 36 FR 21778, Nov. 13, 1971, unless otherwise noted.

§ 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

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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 (Pub. L. 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 Pub. L. 89-670, section 8e which substituted "Secretary of Transportation" for "Inter-

state 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. (Pub. L. 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. 304(a)(1)(2)) Section 204 further provides for the establishing of similar regulations with respect to private carriers of property by