

## § 780.1007

homeworker, must be determined on the facts in the particular case. In general, however the phrase "in or about a home" includes any home, apartment, or other dwelling place and surrounding premises, such yards, garages, sheds or basements. A convent, orphanage or similar institution is considered a home.

### **§ 780.1007 Exemption is inapplicable if wreath-making is not in or about a home.**

The section 13(d) exemption does not apply when the wreaths are made in or about a place which is not considered a "home". Careful consideration is required in many cases to determine whether work is being performed in or about a home. Thus, the circumstances under which an employee may engage in work in what ostensibly is a "home" may require the conclusion, on an examination of all the facts, that the work is not being performed in or about a home within the intent of the term and for purposes of section 13(d) of the Act.

### **§ 780.1008 Examples of places not considered homes.**

The following are examples of work-places which, on examination, have been considered not to be a "home":

(a) Living quarters allocated to and regularly used solely for production purposes, where workers work regular schedules and are under constant supervision by the employer, are not considered to be a home.

(b) While a convent, orphanage or similar institution is considered a home, an area in such place which is set aside for and used for sewing or other productive work under supervision is not a home.

(c) Where an employee performs work on wreaths in a home and also engages in work on the wreaths for the employer during that workweek in a factory, he is not exempt in that week, since some of his work is not performed in a home.

### **§ 780.1009 Wreaths.**

The only product which may be produced under the section 13(d) exemption by a homeworker is a wreath having no less than the specified evergreen

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content. The making of a product other than a wreath is nonexempt even though it is made principally of evergreens.

### **§ 780.1010 Principally.**

The exemption is intended to apply to the making of an evergreen wreath. Such a wreath is one made "principally" of evergreens. *Principally* means chiefly, in the main or mainly (*Hartford Accident and Indemnity Co. v. Casualty Underwriters Insurance Co.*, 130 F. Supp. 56). A wreath is made "principally" of evergreens when it is comprised mostly of evergreens. For example, where a wreath is composed of evergreens and other kinds of material, the evergreens should comprise a greater part of the wreath than all the other materials together, including materials such as frames, stands, and wires. The principal portion of a wreath may consist of any one or any combination of the evergreens listed in section 13(d), including "other evergreens." The making of wreaths in which natural evergreens are a secondary component is not exempt.

### **§ 780.1011 Evergreens.**

The material which must principally be used in making the wreaths is listed as "natural holly, pine, cedar, or other evergreens." Other plants or materials cannot be used to satisfy this requirement.

### **§ 780.1012 Other evergreens.**

The "other evergreens" of which the wreath may be principally made include any plant which retains its greenness through all the seasons of the year, such as laurel, ivy, yew, fir, 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 evergreens 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 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