

Wage and Hour Division, Labor

§ 784.111

hired by an employer who is engaged in one or more of the named operations or that the employee is employed by an establishment or in an industry in which operations enumerated in section 13(a)(5) or section 13(b)(4) are performed. The relationship between what he does and the performance of the named operations must be examined to determine whether an application of the above-stated principles to all the facts and circumstances will justify the conclusion that he is "employed in" such operations within the intentment of the exemption provision.

§ 784.107 Relationship of employee's work to operations on the specified aquatic products.

It is also necessary to the application of the exemptions that the operation of which the employee's work is a part be performed on the marine products named in the Act. Thus the operations described in section 13(a)(5) must be performed with respect to "any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life." The operations enumerated in section 13(b)(4) must be performed with respect to "any kind of fish, shellfish, or other aquatic forms of animal or vegetable life, or any by-product thereof". Work performed on products which do not fall within these descriptions is not within the exemptions (*Fleming v. Hawkeye Pearl Button Co.*, 113 F. 2d 52; *Mitchell v. Trade Winds, Inc.*, 289 F. 2d 278; *Walling v. Haden*, 153 F. 2d 196).

§ 784.108 Operations not included in named operations on forms of aquatic "life."

Since the subject matter of the exemptions is concerned with "aquatic forms of animal and vegetable life," the courts have held that the manufacture of buttons from clam shells or the dredging of shells to be made into lime and cement are not exempt operations because the shells are not living things (*Fleming v. Hawkeye Pearl Button Co.*, 113 F. 2d 52; *Walling v. Haden*, 153 F. 2d 196, certiorari denied 328 U.S. 866). Similarly, the production of such items as crushed shell and grit, shell lime, pearl buttons, knife handles, novelties, liquid glue, isinglass, pearl essence,

and fortified or refined fish oil is not within these exemptions.

§ 784.109 Manufacture of supplies for named operations is not exempt.

Employment in the manufacture of supplies for the named operations is not employment in the named operations on aquatic forms of life. Thus, the exemption is not applicable to the manufacture of boxes, barrels, or ice by a seafood processor for packing or shipping its seafood products or for use of the ice in its fishing vessels. These operations, when performed by an independent manufacturer, would likewise not be exempt (*Dize v. Maddix*, 144 F. 284 (C.A. 4), affirmed 324 U.S. 667, and approved on this point in *Farmers' Reservoir Co. v. McComb*, 337 U.S. 755).

§ 784.110 Performing operations both on nonaquatic products and named aquatic products.

By their terms, sections 13(a)(5) and 13(b)(4) provide no exemption with respect to operations performed on any products other than the aquatic products named in these subsections (see § 784.107). Accordingly, neither of the exemptions is applicable to the making of any commodities from ingredients only part of which consist of such aquatic products, if a substantial amount of other products is contained in the commodity so produced (compare *Walling v. Bridgeman-Russell Co.*, 6 Labor Cases 61, 422, 2 WH Cases 785 (D. Minn.) and *Miller v. Litchfield Creamery Co.*, 11 Labor Cases 63, 274, 5 WH Cases 1039 (N.D. Ind.), with *Mitchell v. Trade Winds, Inc.*, 289 F. 2d 278). Thus, the first processing, canning, or processing of codfish cakes, clam chowder, dog food, crab cakes, or livestock food containing aquatic products is often not exempt within the meaning of the relevant exemptions.

§ 784.111 Operations on named products with substantial amounts of other ingredients are not exempt.

To exempt employees employed in first processing, canning, or processing products composed of the named commodities and a substantial amount of ingredients not named in the exemptions would be contrary to the language and purposes of such exemptions