

be, in addition to the employees employed in such named operations, other employees who are nonexempt because their work is concerned entirely or in substantial part with carrying on activities which constitute neither the actual engagement in the named operations nor the performance of functions which are, as a practical matter, directly and necessarily a part of their employer's conduct of such named operations. Ordinarily, as indicated in §784.156, such nonexempt employees will not be employed in an establishment which is exclusively devoted by the employer to the named operations during the period of their employment. It is usually when the named operations are not being carried on, or in places wholly or partly devoted to other operations, that employees of such an employer will be performing functions which are not so necessarily related to the conduct of the operations named in section 13(b)(4) as to come within the exemption. Typical illustrations of the occupations in which such nonexempt workers may be found (although employment in such an occupation does not necessarily mean that the worker is nonexempt) are the following: General office work (such as maintaining employment, social security, payroll and other records, handling general correspondence, etc., as distinguished from "marketing" or "distributing" work like that described in §784.155), custodial, maintenance, watching, and guarding occupations; furnishing food, lodging, transportation, or nursing services to workers; and laboratory occupations such as those concerned with development of new products. Such workers are, of course, not physically engaged in operations named in section 13(b)(4) in the ordinary case, and they are not exempt unless they can be shown to be "employed in" such operations on other grounds. But any of them may come within the exemption in a situation where the employer can show that the functions which they perform, in view of all the facts and circumstances under which the named operations are carried on, are actually so integrated with or essential to the conduct of the named operations as to be, in practical effect directly and necessarily a part of

the operations for which exemption was intended. Thus, for example, if canning operations described in section 13(b)(4) are carried on in a location where the canning employees cannot obtain necessary food unless the canner provides it, his employment of culinary employees to provide such food is functionally so necessary to the conduct of the canning operations that their work is, as a practical matter, a part of such operations, and the exemption will apply to them. On like principle, the exemption may apply to a watchman whose services are required during performance of the named operations in order to guard against spontaneous combustion of the products of such operations and other occurrences which may jeopardize the conduct of the operations.

"CANNING"

§784.142 Meaning and scope of "canning" as used in section 13(b)(4).

Section 13(b)(4) exempts any employee employed in the canning of aquatic forms of animal or vegetable life or byproducts thereof from the overtime requirements of the Act. As previously stated, it was made a limited exemption by the Fair Labor Standards Amendments of 1949. The legislative history of this section in specifically explaining what types of activities are included in the term "canning" and the antecedents from which this section evolved make it clear that the exemption applies to those employees employed in the activities that Congress construed as being embraced in the term and not to all those engaged in the fish canning industry (*Mitchell v. Stinson*, 217 F. 2d 214). Congress defined Report No. 1453, 81st Cong., first session 95 Cong. Rec. 14878, 14932-33) as follows:

Under the conference agreement "canning" means hermetically sealing and sterilizing or pasteurizing and has reference to a process involving the performance of such operations. It also means other operations performed in connection therewith such as necessary preparatory operations performed on the products before they are placed in bottles, cans, or other containers to be hermetically sealed, as well as the actual placing of the commodities in such containers. Also included are subsequent operations such as the

Wage and Hour Division, Labor

§ 784.146

labeling of the cans or other cases or boxes whether such subsequent operations are performed as part of an uninterrupted or interrupted process. It does not include the placing of such products or byproducts thereof in cans or other containers that are not hermetically sealed as such an operation is "processing" as distinguished from "canning" and comes within the complete exemption contained in section 13(a)(5).

Of course, the processing other than canning, referred to in the last sentence quoted above, is now like canning, in section 13(a)(5).

§ 784.143 "Necessary preparatory operations."

All necessary preparatory work performed on the named aquatic products as an integral part of a single uninterrupted canning process is subject to section 13(b)(4) (see *Tobin v. Blue Channel Corp.*, 198 F. 2d 245, approved in *Mitchell v. Myrtle Grove Packing Co.*, 350 U.S. 891). Such activities conducted as essential and integrated steps in the continuous and uninterrupted process of canning are clearly within the definition of "canning" as contemplated by Congress and cannot be viewed in isolation from the canning process as a whole. Exempt preparatory operations include the necessary weighing, cleaning, picking, peeling, shucking, cutting, heating, cooling, steaming, mixing, cooking, carrying, conveying, and transferring to the containers the exempt aquatic products (see *Mitchell v. Stinson*, 217 F. 2d 214). But the preparatory operations do not include operations specified in section 13(a)(5) pertaining to the acquisition of the exempt products from nature. Therefore, if a canner employs fishermen or others to catch, take, harvest, cultivate or farm aquatic animal and vegetable life, section 13(a)(5) and not section 13(b)(4) would apply to these particular operations.

§ 784.144 Preliminary processing by the canner.

The mere fact that operations preparatory to canning are physically separated from the main canning operations of hermetically sealing and sterilizing or pasteurizing would not be sufficient to remove them from the scope of section 13(b)(4). Where preparatory operations such as the steam-

ing or shucking of oysters are performed in an establishment owned, operated, or controlled by a canner of seafood as part of a process consisting of continuous series of operations in which such products are hermetically sealed in containers and sterilized or pasteurized, all employees who perform any part of such series of operations on any portion of such aquatic products for canning purposes are within the scope of the term "canning."

§ 784.145 Preliminary processing by another employer as part of "canning."

If the operations of separate processors are integrated in producing canned seafood products all employees of such processors who perform any part of the described continuous series of operations to accomplish this result would be "employed in the canning of" such products. Moreover, preliminary operations performed in a separately owned processing establishment which are directed toward the particular requirements of a cannery pursuant to some definite arrangement between the operators of the two establishments would generally appear to be integrated with the cannery operations within the meaning of the above principles, so that the employees engaged in the preliminary operations in the separate establishment would be employed in "canning" within the meaning of section 13(b)(4) of the Act. Whether or not integration exists in a specific case of this general nature will depend, of course, upon all the relevant facts and circumstances in such case.

§ 784.146 "Subsequent operations."

Canning, within the meaning of the exemption, includes operations performed after hermetic sealing of the cans or other containers, such as labeling of them and placing of them in cases or boxes, which are required to place the canned product in the form in which it will be sold or shipped by the canner. This is so whether or not such operations immediately follow the actual canning operations as a part of an uninterrupted process. Storing and shipping operations performed by the employees of the cannery in connection with its canned products, during weeks