

## 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

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in which canning operations are going on, to make room for the canned products coming off the line or to make storage room, come within the exemption. The fact that such activities relate in part to products canned during the previous weeks or seasons would not affect the application of the exemption, provided canning operations such as hermetic sealing and sterilizing, or labeling, are currently being carried on.

### § 784.147 Employees “employed in” canning.

All employees whose activities are directly and necessarily a part of the canning of the specified aquatic forms of life are within the exemption provided by section 13(b)(4). Thus, employees engaged in handling the fish or seafood, placing it into the cans, providing steam for cooking it or operating the machinery that seals the cans or the equipment that sterilizes the canned product are engaged in exempt activities. In addition, can loft workers, those engaged in removing and carrying supplies from the stock room for current use in canning operations, and employees whose duty it is to re-form cans, when canning operations are going on, for current use, are engaged in exempt activities. Similarly, the repairing, oiling, or greasing during the active season of canning machinery or equipment currently used in the actual canning operations are exempt activities. The making of repairs in the production room such as to the floor around the canning machinery or equipment would also be deemed exempt activities where the repairs are essential to the continued canning operations or to prevent interruptions in the canning operations. These examples are illustrative but not exhaustive. Employees engaged in other activities which are similarly integrated with and necessary to the actual conduct of the canning operations will also come within the exemption. Employees whose work is not directly and necessarily a part of the canning operations are not exempt. See §§ 784.106, 784.140, and 784.141.

## 29 CFR Ch. V (7–1–06 Edition)

### PROCESSING, FREEZING, AND CURING

### § 784.148 General scope of processing, freezing, and curing activities.

Processing, freezing, and curing embrace a variety of operations that change the form of the “aquatic forms of animal and vegetable life.” They include such operations as filleting, cutting, scaling, salting, smoking, drying, pickling, curing, freezing, extracting oil, manufacturing meal or fertilizer, drying seaweed preparatory to the manufacture of agar, drying and cleaning sponges (*Feming v. Hawkeye Pearl Button Co.*, 113 F. 2d 52).

### § 784.149 Typical operations that may qualify for exemption.

Such operations as transporting the specified aquatic products to the processing plant; moving the products from place to place in the plant; cutting, trimming, eviscerating, peeling, shelling, and otherwise working on the products; packing the products; and moving the products from the production line to storage or to the shipping platform are typical of the operations in processing plants which are included in the exemption. Removal of waste, such as clam and oyster shells, operation of processing and packing machinery, and providing steam and brine for the processing operations (see *Mitchell v. Trade Winds Inc.*, 289 F. 2d 278, explaining *Waller v. Humphreys*, 133 F. 2d 193) are also included. As for the application of the exemption to office, maintenance, warehouse, and other employees, see the discussion in § 784.106 *et seq.*, and §§ 784.140 and 784.141.

### § 784.150 Named operations performed on previously processed aquatic products.

It will be noted that section 13(b)(4) refers to employees employed in “processing” the named aquatic commodities and not just to “first processing” as does the provision in section 13(a)(5) for such processing at sea. Accordingly, if the aquatic products, though subjected to a processing operation, are still in a perishable state, the subsequent performance of any of the enumerated operations on the still perishable products will be within the exemption no matter who the employer