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amendments. (See Sen. Rep. No. 145, 87 Cong., first session, p. 33; Statement of Representative Roosevelt, 107 Cong. Rec. (daily ed.) p. 6716, as corrected May 4, 1961.) From this legislative history the intent is apparent that the application of these exemptions under the Act as amended in 1961 is to be determined by the practical and functional relationship of the employee's work to the performance of the operations specifically named in section 13(a)(5) and section 13(b)(4).

PRINCIPLES APPLICABLE TO THE TWO EXEMPTIONS

§ 784.106 Relationship of employee's work to the named operations.

It is clear from the language of section 13(a)(5) and section 13(b)(4) of the Act, and from their legislative history as discussed in §§ 784.102–784.105, that the exemptions which they provide are applicable only to those employees who are ''employed in'' the named operations. Under the Act as amended in 1961 and in accordance with the evident legislative intent (see § 784.105), an employee will be considered to be ''employed in'' an operation named in section 13(a)(5) or 13(b)(4) where his work is an essential and integrated step in performing such named operation (see *Mitchell* v. *Myrtle Grove Packing Co.*, 350 U.S. 891, approving *Tobin* v. *Blue Channel Corp.*, 198 F. 2d 245; *Mitchell* v. *Stinson*, 217 F. 2d 210), or where the employee is engaged in activities which are functionally so related to a named operation under the particular facts and circumstances that they are necessary to the conduct of such operation and his employment is, as a practical matter, necessarily and directly a part of carrying on the operation for which exemption was intended (*Mitchell* v. *Trade Winds, Inc.*, 289 F. 2d 278; see also *Waller* v. *Humphreys*, 133 F. 2d 193 and *McComb* v. *Consolidated Fisheries Co.*, 174 F. 2d 74). Under these principles, generally an employee performing functions without which the named operations could not go on is, as a practical matter, ''employed in'' such operations. It is also possible for an employee to come within the exemption provided by section 13(a)(5) or section 13(b)(4) even though he does not directly participate in the physical acts which are performed on the enumerated marine products in carrying on the operations which are named in that section of the Act. However, it is not enough to establish the applicability of such an exemption that an employee is 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 intendment 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 byproduct 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 which specifically enumerate the commodities on which exempt operations were intended to be performed. Consequently, in such situations all operations performed on the mixed products at and from the time of the addition of the foreign ingredients, including those activities which are an integral part of first processing, canning, or processing are nonexempt activities. However, activities performed in connection with such operations on the named aquatic products prior to the addition of the foreign ingredients are deemed exempt operations under the applicable exemption. Where the commodity produced from named aquatic products contains an insubstantial amount of products not named in the exemption, the operations will be considered as performed on the aquatic products and handling and preparation of the foreign ingredients for use in the exempt operations will also be considered as exempt activities.

§ 784.112 Substantial amounts of nonaquatic products; enforcement policy.

As an enforcement policy in applying the principles stated in §§ 784.110 and 784.111, if more than 20 percent of a commodity consists of products other than aquatic products named in section 13(a)(5) or 13(b)(4), the commodity will be deemed to contain a substantial amount of such nonaquatic products.

§ 784.113 Work related to named operations performed in off- or dead-season.

Generally, during the dead or inactive season when operations named in section 13(a)(5) or 13(b)(4) are not being performed on the specified aquatic forms of life, employees performing work relating to the plant or equipment which is used in such operations