

§ 784.104 The 1949 amendments.

In deleting employees employed in canning aquatic products from the section 13(a)(5) exemption and providing them with an exemption in like language from the overtime provisions only in section 13(b)(4), the conferees on the Fair Labor Standards Amendments of 1949 did not indicate any intention to change in any way the category of employees who would be exempt as “employed in the canning of” the aquatic products. As the Supreme Court has pointed out in a number of decisions, “When Congress amended the Act in 1949 it provided that pre-1949 rulings and interpretations by the Administrator should remain in effect unless inconsistent with the statute as amended 63 Stat. 920” (*Mitchell v. Kentucky Finance Co.*, 359 U.S. 290). In connection with this exemption the conference report specifically indicates what operations are included in the canning process (see § 784.142). In a case decided before the 1961 amendments to the Act, this was held to “indicate that Congress intended that only those employees engaged in operations physically essential in the canning of fish, such as cutting the fish, placing it in cans, labelling and packing the cans for shipment are in the exempt category” (*Mitchell v. Stinson*, 217 F. 2d 210).

§ 784.105 The 1961 amendments.

(a) The statement of the Managers on the Part of the House in the conference report on the Fair Labor Standards Amendments of 1961 (H. Rept. No. 327, 87th Cong., first session, p. 16) refers to the fact that the changes made in sections 13(a)(5) and 13(b)(4) originated in the Senate amendment to the House bill and were not in the bill as passed by the House. In describing the Senate provision which was retained in the final legislation, the Managers stated that it “changes the exemption in the act for” the operations transferred to section 13(b)(4) from section 13(a)(5) “from a minimum wage and overtime exemption to an overtime only exemption.” They further stated: “The present complete exemption is retained for employees employed in catching, propagating, taking, harvesting, cultivating, or farming fish and certain other marine products, or in the first

processing, canning, or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by such an employee.” In the report of the Senate committee on the provision included in the Senate bill (S. Rept. No. 145, 87th Cong., first session, p. 33), the committee stated: “The bill would modify the minimum wage and overtime exemption in section 13(a)(5) of the Act for employees engaged in fishing and in specified activities on aquatic products.” In further explanation, the report states that the bill would amend this section “to remove from this exemption those so-called on-shore activities and leave the exemption applicable to ‘offshore’ activities connected with the procurement of the aquatic products, including first processing, canning, or packing at sea performed as an incident to fishing operations, as well as employment in loading and unloading such products for shipment when performed by any employee engaged in these procurement operations.” It is further stated in the report that “persons who are employed in the activities removed from the section 13(a)(5) exemption will have minimum wage protection but will continue to be exempt from the Act’s overtime requirements under an amended section 13(b)(4). The bill will thus have the effect of placing fish processing and fish canning on the same basis under the Act. There is no logical reason for treating them differently and their inclusion within the Act’s protection is desirable and consistent with its objectives.”

(b) The language of the Managers on the Part of the House in the conference report and of the Senate committee in its report, as quoted above, is consistent with the position supported by the earlier legislative history and by the courts, that the exemption of an employee under these provisions of the Act depends on what he does. The Senate report speaks of the exemption “for employees engaged in fishing and in specified activities” and of the “activities now enumerated in this section.” While this language confirms the legislative intent to continue to