

an employee by reason of the fact that he engages in fabricating supplies for the named operations. Employment in connection with the furnishing of supplies for the processing or canning operations named in section 13(b)(4) is not exempt as employment "in" such named operations unless the functional relationship of the work to the actual conduct of the named operations is such that, as a practical matter, the employment is directly and necessarily a part of the operations for which exemption is intended. Employees who meet the daily needs of the canning or processing operations by delivering from stock, handling, and working on supplies such as salt, condiments, cleaning supplies, containers, etc., which must be provided as needed if the named operations are to continue, are within the exemption because such work is, in practical effect, a part of the operations for which exemption is intended. On the other hand, the receiving, unloading, and storing of such supplies during seasons when the named operations are not being carried on for subsequent use in the operations expected to be performed during the active season, are ordinarily too remote from the actual conduct of the named operations to come within the exemption (see § 784.113), and are not affected by the natural factors (§ 784.137) which were considered by the Congress to constitute a fundamental reason for providing the exemption. Whether the receiving, unloading, and storing of supplies during periods when the named operations are being carried on are functionally so related to the actual conduct of the operations as to be, in practical effect, a part of the named operations and within the exemption, will depend on all the facts and circumstances of the particular situation and the manner in which the named operations are carried on. Normally where such activities are directed to building up stock for use at a relatively remote time and there is no direct integration with the actual conduct of the named operations, the exemption will not apply.

(b) It may be that employees are engaged in the same workweek in performing exempt and nonexempt work. For example, a shop machinist engaged

in making a new part to be used in the repair of a machine currently used in canning operations would be doing exempt work. If he also in the same workweeks makes parts to be used in a manufacturing plant operated by his employer, this work, since it does not directly or necessarily contribute to the conduct of the canning operations, would be nonexempt work causing the loss of the exemption if such work occupied a substantial amount (for enforcement purposes, more than 20 percent) of the employee's worktime in that workweek (see § 784.116 for a more detailed discussion).

#### **§ 784.141 Examples of nonexempt employees.**

An employer who engaged in operations specified in section 13(b)(4) which he performs on the marine products and byproducts described in that section may operate a business which engages also in operations of a different character or one in which some of the activities carried on are not functionally necessary to the conduct of operations named in section 13(b)(4). In such a business there will ordinarily 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 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