§ 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 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.
§ 784.148 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, shell ing, 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 performing the exempt operations may be. He may be the same employer who performed the prior processing or other exempt operation, another processor, or a wholesaler, as the case may be. As noted in § 784.138(b), the Department has not questioned the applicability of the foregoing rule where the operation is performed on frozen, salted, smoked, or cured fish.

§ 784.151 Operations performed after product is rendered nonperishable.

As indicated in § 784.138, after the character of the aquatic products as taken from nature has been altered by the performance of the enumerated operations so as to render them nonperishable (e.g., drying and cleaning sponges) section 13(b)(4) provides no exemption for any subsequent operations on the preserved products, unless the subsequent operation is performed as an integrated part of the operations named in the exemption which are performed by an employer on aquatic commodities described in section 13(b)(4) after receiving them in the perishable state. In the case of an employer who is engaged in performing on perishable aquatic forms of life specified in section 13(b)(4) any operations named in that section which result in a nonperishable product, the employment of his employees in the storing, marketing, packing for shipment, or distributing of nonperishable products resulting from such operations performed by him (including products processed during previous weeks or seasons) will be considered to be an integrated part of his operations on the perishable aquatic forms of life during those workweeks when he is actively engaged in such operations. The employees employed by him in such work on the nonperishable products are, accordingly, within the exemption in such workweeks.

§ 784.152 Operations performed on by-products.

The principles stated in the two preceding sections would also be applicable where the specified operations are performed on perishable byproducts. Any operation performed on perishable fish scraps, an unsegregated portion of which is to be canned, would come