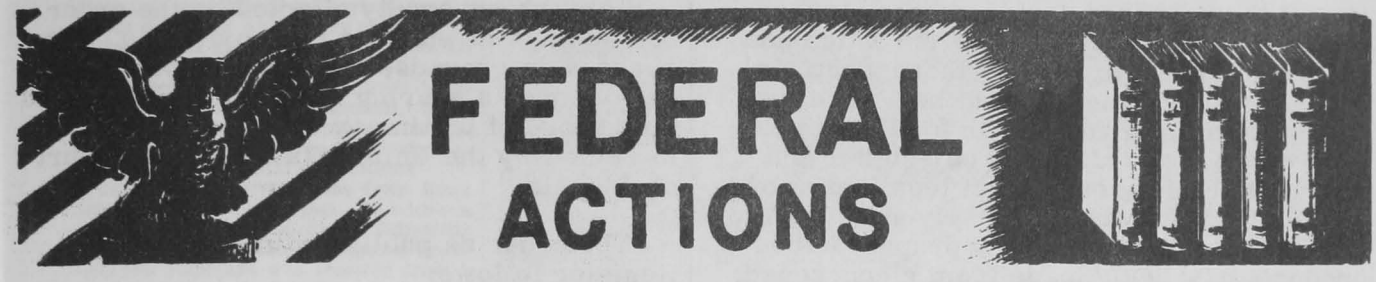

Department of Commerce

AREA REDEVELOPMENT ADMINISTRATION

INDUSTRIAL LOAN TO FLORIDA CANNING FIRM APPROVED:

The Area Redevelopment Administration (ARA) of the U. S. Department of Commerce has approved a $652,135 industrial loan to a Florida fish canning firm. The loan will help provide more than 350 permanent new jobs in Apalachicola, Fla.

The loan, repayable over a 25-year period and bearing an annual interest rate of 4 percent, will be made to the Florida Seafood Canning Company, Inc. of Apalachicola. In addition to the money which is being borrowed from the Federal Government, a State group, the Industrial Development Corporation of Florida, will contribute $100,328 and the Florida Seafood Canning Company has raised $250,822.

The Department of the Interior investigated the feasibility of the Apalachicola Project, and the Small Business Administration negotiated the loan for ARA with the concurrence of the Community Facilities Administration. The project was also approved by the Florida Development Commission, the agency designated by Governor Farris Bryant to represent the State in redevelopment matters. This is in accordance with action taken by the Secretary of Commerce in delegating responsibility for key phases of the area redevelopment program to Federal and state agencies and departments in order to take advantage of existing Government facilities and to prevent duplication of effort.

The project will make possible the construction of a new fish processing plant, marine ways, machine shop, and the installation of machinery and equipment. The company will be processing seafood such as oysters, crab, scallops, shrimp, edible fish, and fish for animal diets.

Simultaneously with the loan for the construction of the processing plant, ARA is also making a public facility loan of $28,000 to the City of Apalachicola, repayable from revenue, to extend water and sewer facilities to serve the canning company.

Apalachicola is located in Franklin County, Fla., which was designated a redevelopment area eligible for participation in the area redevelopment program because of its substantial and persistent unemployment. The Apalachicola project came into being because of action on the part of the Apalachicola community to create local industry and new job opportunities by broadening the area's economic base. The 350 new jobs which will result from the ARA-assisted enterprise represent only the direct new employment at the Apalachicola processing plant. In addition, permanent employment will be created because of the firm's increased need for local services; other jobs will result in the service trades because of increased local purchasing power; and temporary employment will also be increased during the period of the construction of the plant.

Department of Health, Education, and Welfare

FOOD AND DRUG ADMINISTRATION

STANDARD OF IDENTITY FOR FISH FLOUR APPROVED:

A standard of identity for fish flour or fish protein supplement was approved on January 24, 1962, by the U. S. Food and Drug Administration. The standard requires that fish flour be made from cleaned fish after discarding the heads, tails, fins, viscera, and intestinal contents. The notice of approval appeared in the January 25, 1962, Federal Register. The order becomes effective on April 25, 1962.

The Commissioner of the Agency issued the following statement concerning the action:

"The Food and Drug Administration has completed study of almost 2,000 comments received on a previously published proposal to establish a standard of identity and thus legalize the marketing in the United States of a 'whole fish flour' made by grinding and drying entire fish of various sizes and varieties. During informal discussions before the proposal was submitted, we had expressed the opinion that such a product would be classed as filthy and thus illegal under the terms of the Federal Food, Drug, and Cosmetic Act because of the inclusion of the heads, tails, fins, viscera and intestinal contents. Proponents of the product, however, had maintained that we were not properly interpreting consumer understanding of the term 'filth.' For this reason the proposal for a standard was published, inviting all to express their views in the public record.

"Of the several hundred individual consumers and groups representing consumer interests who wrote, most opposed the adop-

tion of the proposed standard because the article was to be made from fish which had not been cleaned to remove those portions not customarily regarded in the United States as suitable for human food. Members of the food industries objected to the proposal on the grounds that legalization of such a product would adversely affect public confidence in commercially prepared food products now being made from clean, sound, wholesome ingredients under sanitary conditions. Many State and local food control agencies expressed the view that the product as described in the proposal would be classed as in violation of State and local laws.

"The proposal was strongly supported by firms and individuals connected with the fishing industry, many of whom frankly stated that authorization for this product as human food in the United States would be of great economic benefit to that industry and its employees. Others who favored the proposal pointed out that the product would be an excellent source of protein available at a low price for shipment to the underdeveloped countries of the world.

"Under the present terms of the Food, Drug, and Cosmetic Act it is entirely legal to prepare such a whole fish flour in the United States for export to any country in the world the laws of which do not prohibit that product. It is not unusual to encounter situations where a food entirely acceptable to the people of one country is not authorized for sale in others. This works both ways, in that certain countries prohibit the marketing of certain foods which are readily available and legal in the United States.

"While some have suggested that the 'whole fish flour' be so labeled that American consumers could choose or reject it, as they desire, this would not resolve the problem, since whole fish flour would not be eaten 'as is.' It would be used in preparing foods in factories, restaurants, and the like.

"As a result of consideration of all the available facts and opinions, the Food and Drug Administration is publishing an order which establishes a standard for 'fish flour' but requires that this be made from the cleaned fish after discarding the heads, tails, fins, viscera and intestinal contents. A product meeting this standard would be legal for shipment within the United States.

"Anyone adversely affected by the order has 30 days in which to file objections, with reasonable grounds, calling for a public hearing. If such a hearing is held, its results and the record of testimony taken will be subject to review by the United States Circuit Court of Appeals."

The order as published in the Federal Register follows:

Title 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

SUBCHAPTER B—FOOD AND FOOD PRODUCTS

PART 37—FISH; DEFINITIONS AND STANDARDS OF IDENTITY; STANDARDS OF FILL OF CONTAINER

Fish Flour; Identity

In the FEDERAL REGISTER of September 15, 1961 (26 F.R. 8641), there was published a proposal for a standard of identity for fish protein concentrate, whole fish flour as submitted by Mr. Harold Putnam of Washington, D.C.

During the 60-day period thereafter, the Hearing Clerk of the Department of Health, Education, and Welfare received over 1,800 comments on the published proposal. Of the several hundred received from individual consumers who were opposed to the proposal as published, many specifically stated that they would class the article as filthy because of the use of the entire fish. In addition to comments from consumers and groups representing consumer interests, views were received from many connected with various food industries. A great many communications came from firms and individuals identified as being associated with the fishery industry and, with few exceptions, these favored the adoption of the standard as proposed. The view was repeatedly expressed that the adoption of the standard would be economically helpful to the fishing industry. Many of the comments favoring the proposal did so on the basis of the view that the nutritive value of the article described was such that it should be made available to those individuals in other countries suffering from a deficiency of protein in their diet. Only a few letters suggested or implied that the diet of the American public, generally, is deficient in protein or needs supplementation with a whole fish flour.

Officials charged with the enforcement of 21 State food laws opposed the proposed standard on the grounds that such a product would be in conflict with the laws of the States because of the inclusion of filth; some also stated that, in their view, such a product should be classed as adulterated under the Federal Food, Drug, and Cosmetic Act.

Bakery groups, a number of individual bakers, and some other food manufacturers opposed the proposal as published on several grounds. They referred to the high standards of cleanliness in their industries, their use of clean, sound, wholesome ingredients and expressed the

view that any official authorization of a whole fish flour, which they regarded as filthy, would have an adverse effect on public confidence in commercially prepared foods, and would significantly defeat effective law enforcement, local, State and Federal, in preventing the marketing of filthy foods and foods prepared under insanitary conditions.

Comments received came from more than half of the 50 States. In addition to firms in the United States indicating interest in manufacturing such a product, one comment was received from a producer of whole fish flour in Sweden stating that the firm has marketed most of its output principally for inclusion in a Swedish type of enriched bread. That firm contemplated that if the standard is adopted, it would be interested in marketing the product in the United States.

A few comments, including the one from the Swedish manufacturer, suggested some changes in the specifications of the proposed standard. These dealt with proposals to increase the moisture content, increase or decrease the protein content, increase or decrease the permitted ash content, and increase the bacteria limit. However, these comments furnished insufficient data to demonstrate that the changes advocated would promote the interests of consumers.

In view of section 402(a)(3) of the Federal Food, Drug, and Cosmetic Act, which states "A food shall be deemed to be adulterated if * * * it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for food," the Commissioner was particularly interested in learning the views of those who commented on the question of whether they would be willing to eat foods containing a whole fish flour so manufactured.

Seven hundred and thirty six of the comments clearly opposed establishment of the proposed standard. One hundred and sixty-six of these specifically referred to their objection to the inclusion of viscera, heads, intestinal contents, etc., on the basis that they would regard the finished product as filthy. Of the 1,036 comments in favor of the standard as proposed, including the many duplicates signed by different individuals, only 17 specifically stated or strongly implied that they would be willing to eat such a product.

Therefore, on the basis of the information before him, the Commissioner finds:

1. That consumers in the United States generally would regard the product described in the proposal as filthy. Thus, such a product would be in conflict with section 402(a)(3) of the Federal Food, Drug, and Cosmetic Act.

2. That is would not promote honesty and fair dealing in the interest of consumers to establish a standard of identity for a whole fish flour containing those portions of the fish which would be regarded as filthy by American consumers generally.

3. That it is apparent from the information available that many persons who advocate the establishment of the proposed standard are concerned with the reported need for a source of good protein by people in underdeveloped countries of the world where local food supplies and raw materials are inadequate to supply that need. To the extent that such a need for a product as described in the proposal exists in countries other than the United States, section 801(d) of the Federal Food, Drug, and Cosmetic Act provides for the manufacture of such a product in the United States for export to any other country of the world, the laws of which do not prohibit that article.

4. That even though there is no evidence that there is a deficiency of protein in the diet of the people of the United States, a factor which would have no bearing on whether or not certain parts of fish in a ground product constitute filth, there appears to be a reasonable basis for establishing a standard of identity for fish flour prepared from properly cleaned and eviscerated fish.

Accordingly, it is concluded that it will promote honesty and fair dealing in the interests of consumers to establish a definition and standard of identity for fish flour, as hereinafter set forth. Therefore, pursuant to the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (secs. 401, 701, 52 Stat. 1046, 1055, as amended 70 Stat. 919; 21 U.S.C. 341, 371) and delegated to the Commissioner of Food and Drugs by the Secretary (25 F.R. 8625): *It is ordered*, That the following definition and standard of identity be established:

§ 37.5 Fish flour; identity.

(a) Fish flour is the finely ground, dried product made from edible species of fish. From the time of catching until the finished article is packaged the fish are handled expeditiously and with the sanitary precautions which are recognized as proper for fish which are used in other forms for human food. Before processing, the fish are properly prepared to remove and discard the heads, fins, tails, viscera, and intestinal contents. The cleaned fish are ground and treated to reduce the fat content of the finished fish flour to less than 1 percent. The product may be deodorized. The finished fish flour shall meet all of the requirements set out in paragraph (b) of this section.

(b)(1) *Protein content.* Protein content (N×6.25), measured by methods of the Association of Official Agricultural Chemists, shall not be less than 70 percent by weight of the final product (Official Methods of Analysis, A.O.A.C., 9th Ed. secs. 22.011; ch. 22, p. 285). Biological values of the finished fish flour shall not be less than 105 percent as measured by the official A.O.A.C. method for the biological evaluation of protein quality (secs. 39.133–39.137, inclusive, ch. 39, p. 680).

(2) *Moisture, ash and fat content.* Moisture, ash and fat content shall not exceed 6 percent, 25 percent and 1 percent respectively, by weight of the final product, measured by A.O.A.C. methods (secs. 22.003, 22.010, ch. 22, p. 283, 284; sec. 18.011–18.012, inclusive, ch. 18, p. 235).

(3) *Odor and taste.* The final product shall have no more than a faint fish odor and taste.

(4) *Storage stability.* Fish flour, after 6 months' storage at temperatures prevailing in areas of intended use (but not exceeding 38° C.) and when packed in metal containers or in polyethylene bags, shall show no spoilage as judged by the development of off-flavors, mold growth, production of toxic amines (histamine, tyramine), or by deterioration in protein quality.

(5) *Bacteria.* The product shall be free of Escherichia coli, Salmonella, and pathogenic anaerobes, and the total bacterial plate count shall not exceed 2,000 per gram.

(6) *Safety.* The finished product shall contain no food additive unless specifically authorized by regulation issued pursuant to section 409 of the Federal Food, Drug, and Cosmetic Act.

Any person who will be adversely affected by the foregoing order may at any time prior to the thirtieth day from the date of its publication in the FEDERAL REGISTER file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D.C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by the order and specify with particularity the provisions of the order deemed objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing, and such objections must be supported by grounds legally sufficient to justify the relief sought. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall become effective 90 days from the date of its publication in the FEDERAL REGISTER, except as to any provisions that may be stayed by the filing of proper objections. Notice of the filing of objections or lack thereof will be announced by publication in the FEDERAL REGISTER.

(Secs. 401, 701, 52 Stat. 1046, 1055 as amended 70 Stat. 919; 21 U.S.C. 341, 371)

Dated: January 22, 1962.

GEO. P. LARRICK,
Commissioner of Food and Drugs.

Note: See Commercial Fisheries Review, Nov. 1961 p. 70.

Department of Labor

WAGE AND HOUR AND PUBLIC CONTRACTS DIVISION

INTERPRETIVE BULLETIN ISSUED ON MINIMUM WAGE AND OVERTIME FOR FISHING AND FISHERY PROCESSING:

An interpretative bulletin was issued on February 10, 1962, on the provisions of the Fair Labor Standards Act applicable to fishing and operations on or processing of aquatic products.

The bulletin gives the official position of the Department of Labor with respect to the provisions of the Act which govern rights and obligations of employees and employers in the various enterprises engaged in fishing and related activities and in operations on or processing of aquatic products.

It points out that amendments to sections 13(a)(5) and 13(b)(4) of the Act removed a minimum wage exemption, but retained an overtime exemption, for employees engaged in the processing (other than canning), marketing, freezing, curing, storing, packing for shipment, or distributing of fish, shellfish, or other aquatic forms of animal or vegetable life and their byproducts. (Canning operations prior to enactment of the amendment were already subject to the minimum wage, but had an overtime exemption.) As a result, the minimum wage for those workers engaged in the processing (other than canning), marketing, freezing, curing, storing, packing for shipment, or distributing of fishery products or byproducts became $1.00 an hour on September 3, 1961. The amendments also extended the minimum wage and overtime exemption to employees engaged in canning and processing of marine products at sea.

The new bulletin is intended to make available in one place the official interpretations of such provisions by which the Department will be guided in carrying out its responsibilities under the Act. It discusses in some detail those exemption provisions of the Act in sections 13(a)(5) and 13(b)(4).

The complete text of the bulletin as published in the February 10 Federal Register follows:

Title 29—LABOR

Chapter V—Wage and Hour Division, Department of Labor

SUBCHAPTER B—STATEMENTS OF GENERAL POLICY OR INTERPRETATION NOT DIRECTLY RELATED TO REGULATIONS

PART 784—PROVISIONS OF THE FAIR LABOR STANDARDS ACT APPLICABLE TO FISHING AND OPERATIONS ON AQUATIC PRODUCTS

Revision

Part 784 of Chapter V, Title 29 of the Federal Regulations, is hereby revised in the manner indicated below in order to adapt it to the Fair Labor Standards Amendments of 1961 (Pub. Law 87–30).

As this revision is concerned solely with interpretative rules, neither public procedure nor delay in the effective date is required by section 4 of the Administrative Procedure Act, and it will become effective upon publication in the FEDERAL REGISTER.

As revised, 29 CFR Part 784 reads as follows:

Subpart A—General

INTRODUCTORY

SOME BASIC DEFINITIONS

APPLICATION OF COVERAGE AND EXEMPTION PROVISIONS OF THE ACT

Subpart B—Exemption Provisions Relating to Fishing and Aquatic Products

THE STATUTORY PROVISIONS

LEGISLATIVE HISTORY OF EXEMPTIONS

PRINCIPLES APPLICABLE TO THE TWO EXEMPTIONS

GENERAL CHARACTER AND SCOPE OF THE SECTION 13(a)(5) EXEMPTION

FIRST PROCESSING, CANNING, OR PACKING OF MARINE PRODUCTS UNDER SECTION 13(a)(5)

AUTHORITY: §§ 784.0 to 784.159 issued under secs. 1–19 52 Stat. 1060, as amended; 75 Stat. 65; 29 U.S.C. 201–219.

Subpart A—General

INTRODUCTORY

§ 784.0 Purpose.

It is the purpose of this part to provide an official statement of the views of the Department of Labor with respect to the application and meaning of those provisions of the Fair Labor Standards Act which govern rights and obligations of employees and employers in the various enterprises engaged in fishing and related activities and in operations on aquatic products. The application of the Act to employment in such enterprises was broadened by amendments effective September 3, 1961. Under the amended Act, a substantial number of employees employed in the processing (other than canning), marketing, freezing, curing, storing, packing for shipment, or distributing of fish, shellfish, or other aquatic forms of animal or vegetable life and their by-products will be subject to its minimum wage provisions for the first time. Also, certain employers engaged in some of these activities may have employees who are newly subject to the Act under the amendments extending coverage to employees employed in specified enterprises engaged in commerce or in the production of goods for commerce. An exemption from minimum wages as well as overtime pay has been extended by the 1961 amendments to certain employees employed in canning of marine products at sea. It is an objective of this part to make available in one place, for the information of those who may be concerned with these and related provisions of the law, the official interpretations of such provisions by which the Department of Labor will be guided in carrying out its responsibilities under the Act.

§ 784.1 General scope of the Act.

The Fair Labor Standards Act, as amended, is a Federal statute of general application which establishes minimum wage, overtime pay, and child labor requirements that apply as provided in the Act. Employers and employees in enterprises engaged in fishing and related activities, or in operations on aquatic products on shore, need to know how the Act applies to employment in these enterprises so that they may understand their rights and obligations under the law. All employees whose employment has the relationship to interstate or foreign commerce which the Act specifies are subject to the prescribed labor standards unless specifically exempted from them. Employers having such employees are required to comply with the Act's provisions in this regard and with specified record-keeping requirements contained in Part 516 of this chapter. The law authorizes the Department of Labor to investigate for compliance and, in the event of violations, to supervise the payment of unpaid minimum wages or unpaid overtime compensation owing to any employee. The law also provides for enforcement in the courts.

§ 784.2 Matters discussed in this part.

This part discusses generally the provisions of the Act which govern its application to employers and employees in enterprises and establishments of the fisheries, seafood processing, and related industries. It discusses in some detail those exemption provisions of the Act in sections 13(a)(5) and 13(b)(4) which refer specifically to employees employed in described activities with respect to seafood and other forms of aquatic life.

§ 785.3 Matters discussed in other interpretations.

Interpretations having general application to others subject to the law, as well as to fishermen and seafood canners, processors, or distributors and their employees, have been issued on a number of subjects of general interest. These will be found in other parts of this chapter. Reference should be made to them for guidance on matters which they discuss in detail, which this part does not undertake to do. They include Part 777 of this chapter, discussing methods of payment of wages; Part 778 of this chapter, discussing computation and payment of overtime compensation; Part 785 of this chapter, discussing the calculation of hours worked; Part 791 of this chapter, discussing joint employment relationships; and Part 776 of this chapter, discussing the general coverage provisions of the Act. Reference should also be made to Subpart G of Part 4 of this title, which contains the official interpretations of the child labor provisions of the Act.

§ 784.4 Significance of official interpretations.

The regulations in this part contain the official interpretations of the Department of Labor pertaining to the exemptions provided in sections 13(a)(5) and 13(b)(4) of the Fair Labor Standards Act of 1938, as amended. It is intended that the positions stated will serve as "a practical guide to employers and employees as to how the office representing the public interest in its enforcement will seek to apply it" (Skidmore v. Swift, 323 U.S. 134, 138). These interpretations indicate the construction of the law which the Secretary of Labor and the Administrator believe to be correct and which will guide them in the performance of their duties under the Act, unless and until they are otherwise directed by authoritative decisions of the courts or conclude upon the re-examination of an interpretation that it is incorrect. The interpretations contained herein may be relied upon in accordance with section 10 of the Portal-to-Portal Act (29 U.S.C. 251–262), so long as they remain effective and are not modified, amended, rescinded, or determined by judicial authority to be incorrect.

§ 784.5 Basic support for interpretations.

The ultimate decisions on interpretations of the Act are made by the courts (Mitchell v. Zachry, 362 U.S. 310; Kirschbaum v. Walling, 316 U.S. 517). Court decisions supporting interpretations contained in this part are cited where it is believed they may be helpful. On matters which have not been determined by the courts, it is necessary for the Secretary of Labor and the Administrator to reach conclusions as to the meaning and the application of provisions of the law in order to carry out their responsibilities of administration and enforcement (Skidmore v. Swift, 323 U.S. 134). In order that these positions may be made known to persons who may be affected by them, official interpretations are issued by the Administrator on the advice of the Solicitor of Labor, as authorized by the Secretary (Reorganization Plan 6 of 1950, 64 Stat. 1263; Gen. Ord. 45A, May 24, 1950; 15 F.R. 3290). As included in the regulations in this part, these interpretations are believed to express the intent of the law as reflected in its provisions and as construed by the courts and evidenced by its legislative history. References to pertinent legislative history are made in this part where it appears that they will contribute to a better understanding of the interpretations.

§ 784.6 Interpretations made, continued, and superseded by this part.

On and after publication of this Part 784 in the FEDERAL REGISTER, the interpretations contained therein shall be in effect and shall remain in effect until they are modified, rescinded or withdrawn. This part supersedes and replaces the interpretations previously published in the FEDERAL REGISTER and

Code of Federal Regulations as Part 784 of this chapter. Prior opinions, rulings, and interpretations and prior enforcement policies which are not inconsistent with the interpretations in this part or with the Fair Labor Standards Act as amended by the Fair Labor Standards Amendments of 1961 are continued in effect; all other opinions, rulings, interpretations, and enforcement policies on the subjects discussed in the interpretations in this part are rescinded and withdrawn. The interpretations in this part provide statements of general principles applicable to the subjects discussed and illustrations of the application of these principles to situations that frequently arise. They do not and cannot refer specifically to every problem which may be met by employers and employees in the application of the Act. The omission to discuss a particular problem in this part or in interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor or the Administrator with respect to such problem or to constitute an administrative interpretation or practice or enforcement policy. Questions on matters not fully covered by this part may be addressed to the Administrator of the Wage and Hour and Public Contracts Divisions, United States Department of Labor, Washington 25, D.C., or to any Regional Office of the Divisions.

Some Basic Definitions

§ 784.7 Definition of terms used in the Act.

The meaning and application of the provisions of law discussed in this part depend in large degree on the definitions of terms used in these provisions. The Act itself defines some of these terms. Others have been defined and construed in decisions of the courts. In the following sections some of these basic definitions are set forth for ready reference in connection with the part's discussion of the various provisions in which they appear. These definitions and their application are further considered in other interpretative bulletins to which reference is made, and in the sections of this part where the particular provisions containing the defined terms are discussed.

§ 784.8 "Employer", "employee", and "employ".

The Act's major provisions impose certain requirements and prohibitions on every "employer" subject to their terms. The employment by an "employer" of an "employee" is, to the extent specified in the Act, made subject to minimum wage and overtime pay requirements and to prohibitions against the employment of oppressive child labor. The Act provides its own definitions of "employer", "employee", and "employ", under which "economic reality" rather than "technical concepts" determines whether there is employment subject to its terms (Goldberg v. Whitaker House Cooperative, 366 U.S. 28; United States v. Silk, 331 U.S. 704; Rutherford Food Corp. v. McComb, 331 U.S. 772). An "employer", as defined in section 3(d) of the Act, "includes any person acting directly or indirectly in the interest of an employer in relation to an employee but shall not include the United States or any State or political subdivision of a State, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization". An "employee", as defined in section 3(e) of the Act, "includes any individual employed by an employer", and "employ", as used in the Act, is defined in section 3(g) to include "to suffer or permit to work". It should be noted, as explained in Part 791 of this chapter, dealing with joint employment, that in appropriate circumstances two or more employers may be jointly responsible for compliance with the statutory requirements applicable to employment of a particular employee. It should also be noted that "employer", "enterprise", and "establishment" are not synonymous terms, as used in the Act. An employer may have an enterprise with more than one establishment, or he may have more than one enterprise, in which he employs employees within the meaning of the Act. Also, there may be different employers who employ employees in a particular establishment or enterprise.

§ 784.9 "Person".

As used in the Act (including the definition of "enterprise" set forth below in § 784.10), "person" is defined as meaning "an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons" (Act, section 3(a)).

§ 784.10 "Enterprise".

The term "enterprise" which may, in some situations, be pertinent in determining coverage of this Act to employees employed by employers engaged in the procurement, processing, or distribution of aquatic products, is defined in section 3(r) of the Act. Section 3(r) states:

> Enterprise means the related activities performed (either through unified operation or common control) by any person or persons for a common business purpose, and includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units including departments of an establishment operated through leasing arrangements, but shall not include the related activities performed for such enterprise by an independent contractor * * *.

The scope and application of this definition is discussed in Part 776 of this chapter and in §§ 779.200–779.235 of this chapter.

§ 784.11 "Establishment".

As used in the Act (including the provision quoted below in § 784.12), the term "establishment", which is not specially defined therein, refers to a "distinct physical place of business" rather than to "an entire business or enterprise" which may include several separate places of business. This is consistent with the meaning of the term as it is normally used in business and in government, is judicially settled, and has been recognized in the Congress in the course of enactment of amendatory legislation (Phillips v. Walling, 324 U.S. 490; Mitchell v. Bekins Van & Storage Co., 352 U.S. 1027; 95 Cong. Rec. 12505, 12579, 14877; H. Rept. No. 1455, 81st Cong., 1st Sess., p. 25). This is the meaning of the term as used in sections 3(r), 3(s), and 6(b) of the Act.

§ 784.12 "Enterprise engaged in commerce or in the production of goods for commerce".

Portions of the definition of "enterprise engaged in commerce or in the production of goods for commerce" (Act, section 3(s)) which may in some situations determine the application of provisions of the Act to employees employed by employers engaged in the procurement, processing, or distribution of aquatic products are as follows:

> (s) "Enterprise engaged in commerce or in the production of goods for commerce" means any of the following in the activities of which employees are so engaged, including employees handling, selling, or otherwise working on goods that have been moved in or produced for commerce by any person:
>
> * * * * *
>
> (3) any establishment of any such enterprise * * * which has employees engaged in commerce or in the production of goods for commerce if the annual gross volume of sales of such enterprise is not less than $1,000,000.
>
> * * * * *
>
> *Provided,* That an establishment shall not be considered to be an enterprise engaged in commerce or in the production of goods for commerce, or a part of an enterprise engaged in commerce or in the production of goods for commerce, and the sales of such establishment shall not be included for the purpose of determining the annual gross volume of sales of any enterprise for the purpose of this subsection, if the only employees of such establishment are the owner thereof or persons standing in the relationship of parent, spouse, or child of such owner.

The application of this definition is considered in Part 776 of this chapter.

§ 784.13 "Commerce".

"Commerce" as used in the Act includes interstate and foreign commerce. It is defined in section 3(b) of the Act to mean "trade, commerce, transportation, transmission, or communication among the several States or between any State and any place outside thereof." (For the definition of "State", see § 784.16.) The application of this definition and the kinds of activities which it includes are discussed at length in Part 776 of this chapter dealing with the general coverage of the Act.

§ 784.14 "Production".

To understand the meaning of "production" of goods for commerce as used in the Act it is necessary to refer to the definition in section 3(j) of the term "produced". A detailed discussion of the application of the term as defined is contained in Part 776 of this chapter, dealing with the general coverage of the Act. Section 3(j) provides that "produced" as used in the Act "means produced, manufactured, mined, handled, or in any other manner worked on in any State; and for the purposes of this Act an employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly essential to the production thereof, in any State." (For the definition of "State" see § 784.16.)

§ 784.15 "Goods".

The definition in section 3(i) of the Act states that "goods", as used in the Act, means "goods (including ships and marine equipment), wares, products, commodities, merchandise, or articles or subjects of commerce of any character, or any part or ingredient thereof, but

does not include goods after their delivery into the actual physical possession of the ultimate consumer thereof other than a producer, manufacturer, or processor thereof." Part 776 of this chapter, dealing with the general coverage of the Act, contains a detailed discussion of the application of this definition and what is included in it.

§ 784.16 "State".

As used in the Act, "State" means "any State of the United States or the District of Columbia or any Territory or possession of the United States" (Act, section 3(c)). The application of this definition in determining questions of coverage under the Act's definition of "commerce" and "produced" (see §§ 784.13, 784.14) is discussed in Part 776 of this chapter, dealing with general coverage.

§ 784.17 "Regular rate".

As explained in Part 778 of this chapter, dealing with overtime compensation, employees subject to the overtime pay provisions of the Act must generally receive for their overtime work in any workweek as provided in the Act not less than one and one-half times their regular rates of pay. Section 7(d) of the Act defines the term "regular rate" "to include all remuneration for employment paid to, or on behalf of, the employee" except certain payments which are expressly described in and excluded by the statutory definition. This definition, which is discussed at length in Part 778 of this chapter, determines the regular rate upon which time and one-half overtime compensation must be computed under section 7(a) of the Act for employees within its general coverage who are not exempt from the overtime provisions under either of the fishery and seafood exemptions provided by sections 13(a)(15) and 13(b)(4) or under some other exemption contained in the Act. It should be noted that if such an employee is not himself engaged in commerce or in the production of goods for commerce as defined by the Act and in the courts, and is within the Act's coverage only by reason of his employment in an enterprise engaged in commerce or in the production of goods for commerce, under the amendments to the Act effective on September 3, 1961, there is no obligation to pay overtime to him until September 3, 1963, as explained below in § 784.25.

APPLICATION OF COVERAGE AND EXEMPTION PROVISIONS OF THE ACT

§ 784.18 Basic coverage in general.

Except as otherwise provided in specific exemptions, the minimum wage, overtime pay, and child labor standards of the Act are generally applicable to employees who engage in specified activities concerned with interstate or foreign commerce. The employment of oppressive child labor in or about establishments producing goods for such commerce is also restricted by the Act. Beginning on September 3, 1961, the monetary and child labor standards of the Act are also generally applicable to other employees, not specifically exempted, who are employed in specified enterprises engaged in such commerce or in the production of goods for such commerce. The monetary standards applicable to all the foregoing employees, covered under the provisions discussed below in §§ 784.19 and 784.20, are explained subsequently in §§ 784.23 to 784.25 of this Subpart A. The employer must observe these monetary standards with respect to all such employees in his employ except those who may be denied one or both of these benefits by virtue of some specific exemption provision of the Act, such as section 13(a)(5) or 13(b)(4). It should be noted that enterprises having employees subject to these exemptions may also have other employees who may be exempt under section 13(a)(1) of the Act, subject to conditions specified in regulations, as employees employed in a bona fide executive, administrative, or professional capacity, or in the capacity of outside salesman. The regulations governing these exemptions are set forth and explained in Part 541 of this chapter.

§ 784.19 Commerce activities of employees.

The Fair Labor Standards Act has applied since 1938 to all employees, not specifically exempted, who are engaged (a) in interstate or foreign commerce or (b) in the production of goods for such commerce, which is defined to include any closely related process or occupation directly essential to such production (29 U.S.C. 206(a), 207(a); and see §§ 784.13 to 784.16 for definitions governing the scope of this coverage). The Act as amended in 1961 continues this coverage. In general, employees of businesses concerned with fisheries and with operations on seafood and other aquatic products are engaged in interstate or foreign commerce, or in the production of goods for such commerce, as defined in the Act, and are subject to the Act's provisions except as otherwise provided in sections 13(a)(5) and 13(b)(4) or other express exemptions. A detailed discussion of the activities in commerce or in the production of goods for commerce which will bring an employee under the Act is contained in Part 776 of this chapter, dealing with general coverage.

§ 784.20 Commerce activities of enterprise in which employee is employed.

Under amendments to the Fair Labor Standards Act effective September 3, 1961 (Pub. Law 87–30, 75 Stat. 65), employees not covered by reason of their personal engagement in interstate commerce activities, as explained in § 784.19, are nevertheless brought within the coverage of the Act if they are employed in an enterprise which is defined in section 3(s) of the Act as an enterprise engaged in commerce or in the production of goods for commerce, or by an establishment described in section 3(s)(3) of the Act (see § 784.12.) Such employees, if not exempt from minimum wages and overtime pay under section 13(a)(5) or exempt from overtime pay under section 13(b)(4), will have to be paid in accordance with these monetary standards of the Act unless expressly exempt under some other provision. This would generally be true of employees employed in enterprises and by establishments engaged in the procurement, processing, marketing or distribution of seafood and other aquatic products, where the enterprise has an annual gross sales volume of $1,000,000 or more. Enterprise coverage is more fully discussed in Part 776 of this chapter, dealing with general coverage.

§ 784.21 Exemptions from the Act's provisions.

The Act provides a number of specific exemptions from the general requirements previously described. Some are exemptions from the overtime provisions only. Others are from the child labor provisions only. Several are exemptions from both the minimum wage and the overtime requirements of the Act. Finally, there are some exemptions from all three—minimum wage, overtime pay, and child labor requirements. An examination of the terminology in which the exemptions from the general coverage of the Fair Labor Standards Act are stated discloses language patterns which reflect congressional intent. Thus, Congress specified in varying degree the criteria for application of each of the exemptions and in a number of instances differentiated as to whether employees are to be exempt because they are employed by a particular kind of employer, employed in a particular type of establishment, employed in a particular industry, employed in a particular capacity or occupation, or engaged in a specified operation. (See 29 U.S.C. 203(d); 207 (b), (c), (h); 213 (a), (b), (c), (d). And see Addison v. Holly Hill, 322 U.S. 607; Mitchell v. Trade Winds, Inc., 289 F. 2d 278; Mitchell v. Stinson, 217 F. 2d 210.) In general, there are no exemptions from the child labor requirements that apply in enterprises or establishments engaged in fishing or in operations on aquatic products see Part 4, Subpart G of this Title). Such enterprises or establishments will, however, be concerned with the exemption from overtime pay in section 13(b)(4) of the Act for employees employed in specified "on-shore" operations (see § 784.101) and the exemption from minimum wages and overtime pay provided by section 13(a)(5) for employees employed in fishing, fish-farming, and other specified "off-shore" operations on aquatic products. These exemptions, which are subject to the general rules stated in § 784.22, are discussed at length in Subpart B of this Part 784.

§ 784.22 Guiding principles for applying coverage and exemption provisions.

It is clear that Congress intended the Fair Labor Standards Act to be broad in its scope. "Breadth of coverage is vital to its mission" (Powell v. U.S. Cartridge Co., 339 U.S. 497). An employer who claims an exemption under the Act has the burden of showing that it applies (Walling v. General Industries Co., 330 U.S. 545; Mitchell v. Kentucky Finance Co., 359 U.S. 290; Tobin v. Blue Channel Corp., 198 F. 2d 245, approved in Mitchell v. Myrtle Grove Packing Co., 350 U.S. 891; Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52). Conditions specified in the language of the Act are "explicit prerequisites to exemption" (Arnold v. Kanowsky, 361 U.S. 388). In their application, the purpose of the exemption as shown in its legislative history as well as its language should be given effect. However, "the details with which the exemptions in this Act have been made preclude their enlargement by implication" and "no matter how broad the exemption, it is meant to apply only to" the specified activities (Addison v. Holly Hill, 322 U.S. 607; Maneja V. Waialua, 349 U.S. 254). Exemptions provided in the

Act "are to be narrowly construed against the employer seeking to assert them" and their application limited to those who come "plainly and unmistakably within their terms and spirit." This construction of the exemptions is necessary to carry out the broad objectives for which the Act was passed (Phillips v. Walling, 324 U.S. 490; Mitchell v. Kentucky Finance Co., supra; Arnold v. Kanowsky, supra; Calaf v. Gonzalez, 127 F. 2d 934; Bowie v. Gonzalez, 117 F. 2d 11; Mitchell v. Stinson, 217 F. 2d 210; Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52).

§ 784.23 Minimum wages and overtime pay for "old" and "new" coverage.

Under the Act as amended in 1961, an employer may have some employees subject to its minimum wage, overtime pay, or child labor provisions who would be covered by such provisions under the "old" law even if the amendments had not been enacted, and other employees whose coverage under such provisions was provided for the first time by the 1961 amendments. As previously explained, such provisions of the Act, as amended, may apply to an employee by reason of the activities in which he is individually engaged, or because he is employed in an enterprise whose activities satisfy the conditions prescribed in the law. However, the minimum wage rates and overtime pay provisions will not be uniform for all such employees until September 3, 1965. On and after that date, every such employee subject to the minimum wage provisions will be entitled to not less than $1.25 an hour and every such employee subject to the overtime provisions will be entitled to overtime pay for all hours worked in excess of 40 in a workweek at a rate not less than one and one-half times his regular rate of pay. In contrast, during the period beginning with the effective date of the 1961 amendments on September 3, 1961 and ending September 2, 1965, the minimum wage rates applicable to employees subject to the minimum wage provisions, and the overtime pay provisions applicable to such employees who are not specifically exempt therefrom, will be different for employees in employment brought under the Act for the first time by the amendments than for employees whose coverage may be based on the "old" provisions of the Act. During this period employees whose coverage depends on the "new" provisions may be paid a lower minimum wage rate than those covered under the "old" provisions and may be employed for a longer workweek without overtime pay, as specified in the Act. Accordingly, employers who do not wish to pay to all covered employees the minimum wages and overtime pay required for employees covered under the "old" provisions will need to identify those employees who are covered under the "old" and those who are covered under the "new" provisions when wages are computed and paid under the Act.

§ 784.24 Pay standards for employees subject to "old" coverage of the Act.

The 1961 amendments did not change the tests described in § 784.20 by which coverage based on the employee's individual activities is determined. Any employee whose employment satisfies these tests and would not have come within some exemption (such as section 13(a)(5)) in the Act prior to the 1961 amendments is subject to the "old" provisions of the law and entitled to a minimum wage of at least $1.15 an hour beginning September 3, 1961 and not less than $1.25 an hour beginning September 3, 1963 (29 U.S.C. 206(a)(1)), unless expressly exempted by some provision of the amended Act. Such an employee is also entitled to overtime pay for hours worked in excess of 40 in any workweek at a rate not less than one and one-half times his regular rate of pay (29 U.S.C. 207(a)(1)), unless expressly exempt from overtime by some exemption such as section 13(b)(4). (Minimum wage rates in Puerto Rico, the Virgin Islands, and American Samoa are governed by special provisions of the Act (29 U.S.C. 206(a)(3); 206(c).) Information on these rates is available at any office of the Wage and Hour and Public Contracts Divisions.

§ 784.25 Pay standards for "newly covered" employees.

There are some employees whose individual activities would not bring them within the minimum wage or overtime pay provisions of the Act as it was prior to the 1961 amendments, but who are brought within minimum wage or overtime coverage or both for the first time by the new "enterprise" coverage provisions or changes in exemptions, or both, which were enacted as part of the amendments and made effective September 3, 1961. Typical of such employees are those who, regardless of any engagement in commerce or in the production of goods for commerce, were exempt from minimum wages as well as overtime pay by virtue of section 13(a)(5) of the Act until the 1961 amendments, but who by virtue of these amendments are exempt only from overtime pay on and after September 3, 1961, under the amended section 13(d)(4) of the Act. These "newly covered" employees for whom no specific exemption has been retained or provided in the amendments must be paid not less than the minimum wages for hours worked and unless exempted by section 13(d)(4) or some other provision, not less than one and one-half times their regular rates of pay (see § 784.18) for overtime, as shown in the following schedule:

Beginning:	Minimum wage (29 U.S.C. 206(b))	Overtime pay (29 U.S.C. 207(a)(2))
Sept. 3, 1961	$1 an hour	None required.
Sept. 3, 1963	No change	After 44 hours in a workweek.
Sept. 3, 1964	$1.15 an hour	After 42 hours in a workweek.
Sept. 3, 1965 [1] and thereafter.	$1.25 an hour	After 40 hours in a workweek.

[1] Requirements identical to those for employees under "old" coverage. (Minimum wage rates for newly covered employees in Puerto Rico, the Virgin Islands, and American Samoa are set by wage order on recommendations of special industry committees (29 U.S.C. 206(a)(3); 206(c)(2)). Information on these rates may be obtained at any Office of the Wage and Hour and Public Contracts Divisions.)

Subpart B—Exemption Provisions Relating to Fishing and Aquatic Products

THE STATUTORY PROVISIONS

§ 784.100 The section 13(a)(5) exemption.

Section 13(a)(5) grants an exemption from both the minimum wage and the overtime requirements of the Act and applies to "any employee employed in the catching, taking, propagating, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life, or in the first processing, canning or packing of 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 any such employee."

§ 784.101 The section 13(b)(4) exemption.

Section 13(b)(4) grants an exemption only from the overtime requirements of the Act and applies to "any employee employed in the canning, processing, marketing, freezing, curing, storing, packing for shipment, or distributing of any kind of fish, shellfish, or other aquatic forms of animal or vegetable life, or any byproduct thereof."

LEGISLATIVE HISTORY OF EXEMPTIONS

§ 784.102 General legislative history.

(a) As originally enacted in 1938, the Fair Labor Standards Act provided an exemption from both the minimum wage requirements of section 6 and the overtime pay requirements of section 7 which was made applicable to "any employee employed in the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds or other aquatic forms of animal and vegetable life, including the going to and returning from work and including employment in the loading, unloading, or packing of such products for shipment or in propagating, processing, marketing, freezing, canning, curing, storing, or distributing the above products or byproducts thereof" (52 Stat. 1060, sec. 13(a)(5)).

(b) In 1949 the minimum wage was extended to employees employed in canning such products by deleting the word "canning" from the above exemption, adding the parenthetical phrase "(other than canning)" after the word "processing" therein, and providing a new exemption in section 13(b)(4), from overtime pay provisions only, applicable to "any employee employed in the canning of any kind of fish, shellfish, or other aquatic forms of animal or vegetable life, or any byproduct thereof". All other employees included in the original minimum wage and overtime exemption remained within it (63 Stat. 910).

(c) By the Fair Labor Standards Amendments of 1961, effective September 3, 1961 (75 Stat. 65), both these exemptions were further revised to read as set forth in §§ 784.100 and 784.101. The effect of this change was to provide a means of equalizing the application of the Act as between canning employees and employees employed in other processing, marketing, and distributing of aquatic products on shore, to whom minimum wage protection, formerly provided only for canning employees, was extended by this action. The 1961 amendments, however, left employees employed in fishing, in fish farming, and in related occupations concerned with procurement of aquatic products from nature, under the existing exemption from minimum wages as well as overtime pay.

§ 784.103 Adoption of the exemption in the original 1938 Act.

Although in the course of consideration of the legislation in Congress before passage in 1938, provisions to exempt employment in fisheries and aquatic products activities took various forms, section 13(a)(5), as drafted by the conference committee and finally approved, followed the language of an amendment adopted during consideration of the bill by the House of Representatives on May 24, 1938, which was proposed by Congressman Bland of Virginia. He had, earlier on the same day, offered an amendment which had as its objective the exemption of the "fishery industry", broadly defined. This amendment had been defeated (83 Cong. Rec. 7408), as had an amendment subsequently offered by Congressman Mott of Oregon (to a pending amendment proposed by Congressman Coffee of Nebraska) which would have provided an exemption for "industries engaged in producing, processing, distributing, or handling * * * fishery or seafood products which are seasonal or perishable" (83 Cong. Rec. 7421–7423). Against this background, when Congressman Bland offered his amendment which ultimately became section 13(a)(5) of the Act he took pains to explain: "This amendment is not the same. In the last amendment I was trying to define the fishery industry. I am now dealing with those persons who are exempt, and I call the attention of the Committee to the language with respect to the employment of persons in agriculture * * * I am only asking for the seafood and fishery industry that which has been done for agriculture." It was after this explanation that the amendment was adopted (83 Cong. Rec. 7443). When the conference committee included in the final legislation this provision from the House bill, it omitted from the bill another House provision granting an hours exemption for "employees in any place of employment" where the employer was "engaged in the processing of or in canning fresh fish or fresh seafood" and the provision of the Senate bill providing an hours exemption for employees "employed in connection with" the canning or other packing of fish, etc. (see Mitchell v. Stinson, 217 F. 2d 210; McComb v. Consolidated Fisheries, 75 F. Supp. 798). The indication in this legislative history that the exemption in its final form was intended to depend upon the employment of the particular employee in the specified activities is in accord with the position of the Department of Labor and the weight of judicial authority.

§ 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 § 784.143). 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).

§ 734.105 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. Rep. No. 327, 87th Cong., 1st Sess., 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. Rep. No. 145, 87th Cong., 1st Sess., 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 onshore 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 provide exemptions for employees employed in specified activities rather than to grant exemption on an industry, employer, or establishment basis (see Mitchell v. Trade Winds, Inc., 289 F. 2d 278), the report also refers with apparent approval to certain prior judicial interpretations indicating that the list of activities set out in the exemption provisions is intended to be "a complete catalog of the activities involved in the fishery industry" and that an employee, to be exempt, need not engage directly in the physical acts of catching, processing, canning, etc. of aquatic products which are included in the operations specifically named in the statute (McComb v. Consolidated Fisheries Co., 174 F. 2d 74). It was stated that an interpretation of section 13(a)(5) and section 13(b)(4) which would include within their purview "any employee who participates in activities which are necessary to the conduct of the operations specifically described in the exemptions" is "consistent with the congressional purpose" of the 1961 amendments. (See Sen. Rep. No. 145, 87th Cong., 1st sess., 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 opertion 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 prin-

ciples, 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 operations 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 by-product 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. Maddrix, 144 F. 2d 284 (C.A. 4), affirmed 324 U.S. 697, 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 63,247, 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, crabcakes, 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 during the active season are not exempt. Illustrative of such employees are those who repair, overhaul, or recondition fishing equipment or processing or canning equipment and machinery during the off-season periods when fishing, processing, or canning is not going on. An exemption provided for employees employed "in" specified operations is plainly not intended to apply to employees employed in other activities during periods when the specified operations are not being carried on, where their work is functionally remote from the actual conduct of the operations for which exemption is provided and is unaffected by the natural factors which the Congress relied on as reason for exemption. The courts have recognized these principles. See Maneja v. Waialua, 349 U.S. 254; Mitchell v. Stinson, 217 F. 2d 210; Maisonet v. Central Coloso, 6 Labor Cases (CCH) par. 61,337, 2 WH Cases 753 (D. P.R.); Abram v. San Joaquin Cotton Oil Co., 49 F. Supp. 393 (S.D. Calif.), and Heaburg v. Independent Oil Mill Inc., 46 F. Supp. 751 (W.D. Tenn.). On the other hand, there may be situations where employees performing certain preseason or postseason activities immediately prior or subsequent to carrying on operations named in section 13(a)(5) or section 13(b)(4) are properly to be considered as employed "in" the named operations because their work is so close in point of time and function to the conduct of the named operations that the employment is, as a practical matter, necessarily and directly a part of carrying on the operation for which exemption was intended. Depending on the facts and circumstances, this may be true, for example, of employees who perform such work as placing boats and other equipment in condition for use at the beginning of the fishing season, and taking the necessary protective measures with respect to such equipment which are required in connection with termination of the named operations at the end of the season. Where such work is integrated with and is required for the actual conduct of the named operations on the specified aquatic forms of life, and is necessarily performed immediately before or immediately after such named operations, the employees performing it may be considered as employed in the named operations, so as to come within the exemption. It should be kept in mind that the relationship between the work of an employee and the named operations which is required for exemption is not necessarily identical with the relationship between such work and the production of goods for commerce which is suffcient to establish its general coverage under the Act. Thus, repair, overhaul, and reconditioning work during the inactive season which does not come within the exemption is nevertheless closely related and directly essential to the production of goods for commerce which takes place during the active season and, therefore, is subject to the provisions of the Act (Farmers' Reservoir Co. v. McComb, 337 U.S. 755; Mitchell v. Stinson, 217 F. 2d 210; Bowie v. Gonzalez, 117 F. 2d 11; Weaver v. Pittsburgh Steamship Co., 153 F. 2d 597, cert. den. 328 U.S. 858).

§ 784.114 Application of exemptions on a workweek basis.

The general rule is that the unit of time to be used in determining the application of the exemption to an employee is the workweek (see Overnight Motor Transportation Co. v. Missel, 316 U.S. 572; Mitchell v. Stinsen, 217 F. 2d 210; Mitchell v. Hunt, 263 F. 2d 913; Puerto Rico Tobacco Marketing Co-op. Ass'n. v. McComb, 181 F. 2d 697). Thus, the workweek is the unit of time to be taken as the standard in determining the applicability to an employee of section 13(a)(5) or section 13(b)(4) (Mitchell v. Stinson, supra). An employee's workweek is a fixed and regularly recurring period of 168 hours—seven consecutive 24-hour periods. It may begin at any hour of any day set by the employer and need not coincide with the calendar week. Once the workweek has been set it commences each succeeding week on the same day and at the same hour. Changing the workweek for the purpose of escaping the requirements of the Act is not permitted. If in any workweek an employee does only exempt work he is exempt from the wage and hours provisions of the Act during that workweek, irrespective of the nature of his work in any other workweek or workweeks. An employee may thus be exempt in one workweek and not the next (see Mitchell v. Stinson, supra). But the burden of effecting segregation between exempt and nonexempt work as between particular workweek is on the employer (see Tobin v. Blue Channel Corp., 198 F. 2d 245).

§ 784.115 Exempt and noncovered work performed during the workweek.

The wage and hours requirements of the Act do not apply to any employee during any workweek in which a portion of his activities falls within section 13(a)(5) if no part of the remainder of his activities is covered by the Act. Similarly, the overtime requirements are inapplicable in any workweek in which a portion of an employee's activities falls within section 13(b)(4) if no part of the remainder of his activities is covered by the Act. Covered activities for purposes of the above statements mean engagement in commerce, or in the production of goods for commerce, or in an occupation closely related or directly essential to such production or employment in an enterprise engaged in commerce or in the production of goods for commerce, as explained in §§ 784.17 and 784.18.

§ 784.116 Exempt and nonexempt work in the same workweek.

Where an employee, during any workweek, performs work that is exempt under section 13(a)(5) or 13(b)(4), and also performs nonexempt work, some part of which is covered by the Act, the exemption will be deemed inapplicable unless the time spent in performing nonexempt work during that week is not substantial in amount. For enforcement purposes, nonexempt work will be considered substantial in amount if more than 20 percent of the time worked by the employee in a given workweek is devoted to such work (see Mitchell v. Stinson, 217 F. 2d 210). Where exempt and nonexempt work is performed during a workweek by an employee and is not or cannot be segregated so as to permit separate measurement of the time spent in each, the employee will not be exempt (see Tobin v. Blue Channel Corp., 198 F. 2d 245; Walling v. Public Quick Freezing and Cold Storage Co., 62 F. Supp. 924).

§ 784.117 Combinations of exempt work.

The combination of exempt work under sections 13(a)(5) and 13(b)(4), or of one of these sections with exempt work under another section of the Act, is permitted. Where a part of an employee's covered work in a workweek is exempt under section 13(a)(5) and the remainder is exempt under another section which grants an exemption from the minimum wage and overtime provisions of the Act, the wage and hours requirements are not applicable. If the scope of the exemption is not the same, however, the exemption applicable to the employee is that provided by whichever exemption provision is more limited in scope unless, of course, the time spent in performing work which is nonexempt under the broader exemption is not substantial. For example, an employee may devote part of his workweek to work within section 13(b)(4) and the remainder to work exempt from both the minimum wage and overtime requirements under another section of the Act. In such a case he must receive the minimum wage but is not required to receive time and one-half for his overtime work during that week (Cf. Mitchell v. Myrtle Grove Packing Co., 350 U.S. 891; Tobin v. Blue Channel Corp., 198 F. 2d 245). Each activity is tested separately under the applicable exemption as though it were the sole activity of the employee for the whole workweek in question. Unless the employee meets all the requirements of each exemption a combination exemption would not be available.

§ 784.118 Work subject to different minimum wage rates in same workweek.

Work subject to different minimum wage rates in the same workweek calls for application of a rule similar to that generally applied where work subject to two exemptions unequal in scope is involved. For example, section 13(b)(4) exempts both employment in canning and employment in processing other than canning of the named marine products from the overtime requirements, but the minimum wage requirements that must be observed for the two operations will not be the same until September 3, 1965. If employed in canning for his entire workweek, an employee will be entitled to the higher minimum wage rate prescribed by section 6(a) of the Act; if employed in processing other than canning throughout the workweek, he will be entitled only to the lower minimum wage rate prescribed by section 6(b). Prior to the 1961 amendments the situation differed only in that the Act provided a minimum wage exemption for the employment in processing other than canning. An employee employed in canning in a particular workweek was entitled to the minimum wage applicable to such employment, however, even where his processing of aquatic products for canning was intermingled in the same workweek with the processing of such products for other purposes (see Tobin v. Blue Channel Corp., 198 F. 2d 245, approved in Mitchell v. Myrtle Grove Packing Co., 350 U.S. 891).

GENERAL CHARACTER AND SCOPE OF THE SECTION 13(a)(5) EXEMPTION

§ 784.119 The exemption is intended for work affected by natural factors.

As indicated by the legislative history, the purpose of the section 13(a)(5) exemption is to exempt from the minimum wage and overtime provisions of the Act employment in those activities in the fishing industry that are controlled or materially affected by natural factors or elements, such as the vicissitudes of the weather, the changeable conditions of the water, the run of the catch, and the perishability of the products obtained (83 Cong. Rec. 7408, 7443; S. Rep. No. 145, p. 33 on H.R. 3935, 87th Cong., 1st sess.; Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52; Walling v. Haden, 153 F. 2d 196, certiorari denied 328 U.S. 866).

§ 784.120 Effect of natural factors on named operations.

The various activities enumerated in section 13(a)(5)—the catching, taking, propagating, harvesting, cultivating, or farming of aquatic forms of animal or vegetable life as well as "the going to and returning from work" are materially controlled and affected by the natural elements. Similarly, the activities of "first processing, canning or packing of such marine products at sea as an incident to, or in conjunction with, such fishing operations" are subject to the natural factors mentioned above. The "loading and unloading" of such aquatic products when performed at sea are also subject to the natural forces.

§ 784.121 Application of exemption to "offshore" activities in general.

The expression "offshore activities" is used to describe the category of named operations pertaining to the acquisition from nature of aquatic forms of animal and vegetable life. As originally enacted in 1938, section 13(a)(5) exempted not only employees employed in such "offshore" or "trip" activities but also employees employed in related activities on shore which were similarly affected by the natural factors previously discussed (see § 784.103, and Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52). However, the intent of the 1961 amendments to the Act was to remove from the exemption the so-called onshore activities and "leave the exemption applicable to 'offshore' activities connected with the procurement of the aquatic products" (S. Rep. 145, 87th Cong., 1st sess., p. 33). Despite its comprehensive reach (see §§ 784.105 and 784.106), the exemption, like the similar exemption in the Act for agriculture, is "meant to apply only" to the activities named in the statute (see Maneja v. Waialua, 349 U.S. 254; Farmers Reservoir Co. v. McComb, 337 U.S. 755).

§ 784.122 Exempt fisheries operations.

Employees engaged in the named operations, such as "catching" or "taking," are clearly exempt. As indicated in § 784.106, employees engaged in activities that are "directly and necessarily a part of" an enumerated operation are also exempt (Mitchell v. Trade Winds, Inc., 289 F. 2d 278). The "catching, taking, propagating, harvesting, cultivating, or farming" of the various forms of aquatic life includes not only the actual performance of the activities, but also the usual duties inherent in the occupations

of those who perform the activities. Thus, the fisherman who is engaged in "catching" and "taking" must see to it that his lines, nets, seines, traps, and other equipment are not fouled and are in working order. He may also have to mend or replace his lines or nets or repair or construct his traps. Such activities are an integral part of the operations of "catching" and "taking" of an aquatic product.

§ 784.123 Operations performed as an integrated part of fishing.

Certain other activities performed on a fishing vessel in connection with named operations are, functionally and as a practical matter, directly and necessarily a part of such operations. For example, maintenance work performed by members of the fishing crew during the course of the trip on the fishing boat would necessarily be a part of the fishing operation, since the boat itself is as much a fishing instrument as the fishing rods or nets. Similarly, work required on the vessel to keep in good operating condition any equipment used for processing, canning or packing the named aquatic products at sea is so necessary to the conduct of such operations that it must be considered a part of them and exempt.

§ 784.124 Operations performed on fishing equipment.

On the principle stated in § 784.122, the replacement, repair, mending, or construction of the fisherman's equipment performed at the place of the fishing operation would be exempt. Such activities performed in contemplation of the trip are also within the exemption if the work is so closely related both in point of time and function to the acquisition of the aquatic life that it is really a part of the fishing operation or of "going to * * * work." For example, under appropriate facts, the repair of the nets, or of the vessel, or the building of fish trap frames on the shore immediately prior to the opening of the fishing season would be within the exemption. Activities at the termination of a fishing trip which are similarly related in time and function to the actual conduct of fishing operations or "returning from work" may be within the exemption on like principles. Similarly, the fact that the exemption is intended generally for "offshore" activities does not mean that it may not apply to employment in other activities performed on shore which are so integrated with the conduct of actual fishing operations and functionally so necessary thereto that the employment is, in practical effect, directly and necessarily a part of the fishing operations for which the exemption is intended. In such circumstances the exemption will apply, for example, to an employee employed by a vessel owner to watch the fishing vessel, its equipment, and the catch when it comes to port, check the mooring lines, operate bilge pumps and heating and cooling systems on the vessel, and assist in the loading and unloading of the fishing equipment and the catch. Work of the kinds referred to may be exempt when performed by the fisherman himself or by some other employee of the fishing organization. However, the exemption would not apply to employees of a manufacturer of supplies or to employees of independent shops which repair boats and equipment (Dize v. Maddrix, 144 F. 2d 584 affirmed 324 U.S. 697).

§ 784.125 Going to and returning from work.

The phrase "including the going to and returning from work" relates to the preceding named operations which pertain to the procuring and appropriation of seafood and other forms of aquatic life from nature. The expression obviously includes the time spent by fishermen and others who go to and from the fishing grounds or other locations where the aquatic life is reduced to possession. If going to work requires fishermen to prepare and carry the equipment required for the fishing operation, this would be included within the exemption. In performing such travel the fishermen may be required to row, guide or sail the boat or otherwise assist in its operation. Similarly, if an employee were digging for clams or other shellfish or gathering seaweed on the sand or rocks it might be necessary to drive a truck or other vehicle to reach his destination. Such activities are exempt within the meaning of this language. However, the phrase does not apply to employees who are not employed in the activities involved in the acquisition of aquatic animal or vegetable life, such as those going to or returning from work at processing or refrigerator plants or wholesale establishments.

§ 784.126 Loading and unloading.

The term "loading and unloading" applies to activities connected with the removal of aquatic products from the fishing vessel and their initial movement to markets or processing plants. The term, however, is not without limitation. The statute by its clear language makes these activities exempt only when performed by any employee employed in the procurement activities enumerated in section 13(a)(5). This limitation is confirmed by the legislative history of the 1961 amendments which effectuated this change in the application of this term (S. Rep. 145, 87th Cong., 1st sess., p. 33). Consequently, members of the fishing crew engaged in loading and unloading the catch of the vessel to another vessel at sea or at the dockside would be engaging in exempt activities within the meaning of section 13(a)(5). On the other hand, dock workers performing the same kind of tasks would not be within the exemption.

§ 784.127 Operation of the fishing vessel.

In extending the minimum wage to seamen on American vessels by limiting the exemption from minimum wages and overtime provided by section 13(a)(14) of the Act to "any employee employed as a seaman on a vessel other than an American vessel," and at the same time extending the minimum wage to "onshore" but not "offshore" operations concerned with aquatic products, the Congress, in the 1961 amendments to the Act, did not indicate any intent to remove the crews of fishing vessels engaged in operations named in section 13(a)(5) from the exemption provided by that section. The exemption provided by section 13(a)(14), above noted, and the general exemption in section 13(b)(6) from overtime for "any employee employed as a seamen" (whether or not on an American vessel) apply, in general, to employees, working aboard vessels, whose services are rendered primarily as an aid to navigation. It appears, however, that it is not the custom or practice in the fishing industry for a fishing vessel to have two crews namely a fishing crew whose duty it is primarily to fish and to perform other duties incidental thereto and a navigational crew whose duty it is primarily to operate the boat. Where, as is the typical situation, there is but one crew which performs all these functions, the section 13(a)(5) exemption would apply to its members. For a further explanation of the seaman's exemption see Part 783 of this chapter.

§ 784.128 Office and clerical employees under section 13(a)(5).

Office and clerical employees, such as bookkeepers, stenographers, typists, and others who perform general office work of a firm engaged in operating fishing boats are not for that reason within the section 13(a)(5) exemption. Under the principles stated in § 784.106, their general office activities are not a part of any of the named operations even when they are selling, taking and putting up orders, or recording sales, taking cash or making telephone connections for customer or dealer calls. Employment in the specific activities enumerated in the preceding sentence would ordinarily, however, be exempt under section 13(b)(4) since such activities constitute "marketing" or "distributing" within the meaning of that exemption (see § 784.157). In certain circumstances, office or clerical employees may come within the section 13(a)(5) exemption. If, for example, it is necessary to the conduct of the fishing operations that such employees accompany a fishing expedition to the fishing grounds to perform certain work required there in connection with the catch, their employment under such circumstances may, as a practical matter, be directly and necessarily a part of the operations for which exemption was intended, in which event the exemption would apply to them.

FIRST PROCESSING, CANNING, OR PACKING OF MARINE PRODUCTS UNDER SECTION 13(a)(5)

§ 784.129 Requirements for exemption of first processing, etc., at sea.

A complete exemption from minimum and overtime wages is provided by section 13(a)(5) for employees employed in the operations of first processing, canning, or packing of marine products at sea as an incident to, or in conjunction with "such" fishing operations—that is, the fishing operations of the fishing vessel (S. Rep. 145, 87th Cong., 1st sess., p. 33). To qualify under this part of the exemption, there must be a showing that (1) the work of the employees is such that they are, within the meaning of the Act, employed in one or more of the named operations of first processing, canning or packing, (2) such operations

are performed as an incident to, or in conjuction with, fishing operations of the vessel, (3) such operations are performed at sea, and (4) such operations are performed on the marine products specified in the statute.

§ 784.130 "Marine products."

The marine products which form the basis of the exemption are the "fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life" mentioned in section 13(a)(5). The exemption contemplates aquatic products currently or recently acquired and in the form obtained from the sea, since the language of the exemption clearly indicates the named operations of first processing, canning, or packing must be performed "at sea" and "as an incident to, or in conjunction with", fishing operations. Also, such "marine products" are limited to aquatic forms of "life."

§ 784.131 "At sea."

The "at sea" requirement must be construed in context and in such manner as to accomplish the statutory objective. The section 13(a)(5) exemption is for the "catching, taking, propagating, harvesting," etc., of "aquatic forms of animal and vegetable life." There is no limitation as to where these activities must take place other than, as the legislative history indicates, that they are "offshore" activities. Since the purpose of the 1961 amendments is to exempt the "first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations," it would frustrate this objective to give the phrase "at sea" a technical or special meaning. For example, to define "at sea" to include only bodies of water subject to the ebb and flow of the tides or to saline waters would exclude the Great Lakes which obviously would not comport with the legislative intent. On the other hand, one performing the named activities of first processing, canning, or packing within the limits of a port or harbor is not performing them "at sea" within the meaning of the legislative intent although the situs of performance is subject to tidewaters. In any event it would not appear necessary to draw a precise line as to what constitutes "at sea" operations, for, as a practical matter, such first processing, canning, or packing operations are those closely connected with the physical catching of the fish and are performed on the fishing vessel shortly or immediately following the "catching" and "taking" of the fish.

§ 784.132 "As an incident to, or in conjunction with" fishing operations.

The statutory language makes clear that the "first processing, canning or packing," unlike the other named operations of "catching, taking, propagating, harvesting, cultivating, or farming" are not exempt operations in and of themselves. They are exempt only when performed "as an incident to, or in conjunction with such fishing operations" (see Farmers Reservoir Co. v. McComb, 337 U.S. 755). It is apparent from the context that the language "such fishing operations" refers to the principal named operations of "catching, taking, propagating, harvesting, cultivating, or farming" as performed by the fishermen or fishing vessel (compare Bowie v. Gonzalez, 117 F. 2d 11). Therefore to be "an incident to, or in conjunction with such fishing operations," the first processing, canning, or packing must take place upon the vessel that is engaged in the physical catching, taking, etc., of the fish. This is made abundantly clear by the legislative history. In Senate Report No. 145, 87th Congress, 1st session, at page 33, it pointed out:

> For the same reasons, there was included in section 13(a)(5) as amended by the bill an exemption for the "first processing, canning or packing" of marine products "at sea as an incident to, or in conjunction with such fishing operations." The purpose of this additional provision is to make certain that the Act will be uniformly applicable to all employees on the fishing vessel including those employees on the vessel who may be engaged in these activities at sea as an incident to the fishing operations conducted by the vessel.

In accordance with this purpose of the section, the exemption is available to an employee on a fishing vessel who is engaged in first processing fish caught by fishing employees of that same fishing vessel; it would not be available to such an employee if some or all of the fish being first processed were obtained from other fishing vessels, regardless of the relationship, financial or otherwise, between such vessels (cf. Mitchell v. Hunt, 263 F. 2d 913; Farmers Reservoir Co. v. McComb, 337 U.S. 755).

§ 784.133 The exempt operations.

The final requirement is that the employee on the fishing vessel must be employed in "the first processing, canning or packing" of the marine products. The meaning and scope of these operations when performed at sea as an incident to the fishing operations of the vessel are set forth in §§ 784.134 to 784.136. To be "employed in" such operations the employee must, as previously explained (see §§ 784.106 and 784.122), be engaged in work which is clearly part of the named activity.

§ 784.134 "First processing."

Processing connotes a change from the natural state of the marine product and first processing would constitute the first operation or series of continuous operations that effectuate this change. It appears that the first processing operations ordinarily performed on the fishing vessels at sea consist for the most part of eviscerating, removal of the gills, beheading certain fish that have large heads, and the removal of the scallop from its shell. Icing or freezing operations, which ordinarily immediately follow these operations, would also constitute an integral part of the first processing operations, as would such activities as filleting, cutting, scaling, or salting when performed as part of a continuous series of operations. Employment aboard the fishing vessel in freezing operations thus performed is within the exemption if the first processing of which it is a part otherwise meets the conditions of section 13(a)(5), notwithstanding the transfer by the 1961 amendments of "freezing," as such, from this exemption to the exemption from overtime only provided by section 13(b)(4). Such preliminary operations as cleaning, washing and grading of the marine products, though not exempt as first processing since they effect no change, would be exempt as part of first processing when done in preparation for the first processing operation described above including freezing. The same would be true with respect to the removal of the waste products resulting from the above described operations on board the fishing vessel.

§ 784.135 "Canning."

The term "canning" was defined in the legislative history of the 1949 amendments (House (Conference) Report No. 1453, 81st Cong., 1st sess.; 95 Cong. Rec. 14878, 14932–33). These amendments made the "canning" of marine products or byproducts exempt from overtime only under a separate exemption (section 13(b)(4)), and subject to the minimum wage requirements of the Act (see § 784.137 et seq.). The same meaning will be accorded to "canning" in section 13(a)(5) as in section 13(b)(4) (see § 784.143 et seq.) subject, of course, to the limitations necessarily imposed by the context in which it is found. In other words, although certain operations as described in § 784.143 et seq. qualify as canning, they are, nevertheless, not exempt under section 13(a)(5) unless they are performed on marine products by employees of the fishing vessel at sea as an incident to, or in conjunction with, the fishing operations of the vessel.

§ 784.136 "Packing."

The packing of the various named marine products at sea as an incident to, or in conjunction with, the fishing operations of the vessel is an exempt operation. The term "packing" refers to the placing of the named product in containers, such as boxes, crates, bags and barrels. Activities such as washing, grading, sizing and placing layers of crushed ice in the containers are deemed a part of packing when performed as an integral part of the packing operation. The packing operation may be a simple or complete and complex operation depending upon the nature of the marine product, the length of time out and the facilities aboard the vessel. Where the fishing trip is of short duration, the packing operation may amount to no more than the simple operation of packing the product in chipped or crushed ice in wooden boxes, as in the case of shrimp, or placing the product in wooden boxes and covering with seaweed as in the case of lobsters. Where the trips are of long duration, as for several weeks or more, the packing operations on fishing vessels with the proper equipment sometimes are integrated with first processing operations so that together these operations amount to readying the product in a marketable form. For example, in the case of shrimp, the combined operations may consist of the following series of operations—washing, grading, sizing, placing

in 5-pound boxes already labeled for direct marketing, placing in trays with other boxes, loading into a quick freezer locker, removing after freezing, emptying the box, glazing the contents with a spray of fresh water, replacing in box, putting them in 50-pound master cartons and finally stowing in refrigerated locker.

GENERAL CHARACTER AND SCOPE OF THE SECTION 13(b)(4) EXEMPTION

§ 784.137 "Shore" activities exempted under section 13(b)(4).

Section 13(b)(4) provides an exemption from the overtime but not from the minimum wage provisions of the Act for "any employee employed in the canning, processing, marketing, freezing, curing, storing, packing for shipment, or distributing" aquatic forms of animal and vegetable life or any byproducts thereof. Originally, all these operations were contained in the exemption provided by section 13(a)(5) but, as a result of amendments, first "canning," in 1949, and then the other operations in 1961, were transferred to section 13(b)(4). (See the discussion in §§ 784.102 to 784.105.) These activities are "shore" activities and in general have to do with the movement of the perishable aquatic products to a nonperishable state or to points of consumption (S. Rep. 145, 87th Cong., 1st sess., p. 33).

§ 784.138 Relationship of exemption to exemption for "offshore" activities.

The reasons advanced for exemption of employment in "shore" operations, now listed in section 13(b)(4), at the time of the adoption of the original exemption in 1938, had to do with the difficulty of regulating hours of work of those whose operations, like those of fishermen, were stated to be governed by the time, size, availability and perishability of the catch, all of which were considered to be affected by natural factors that the employer could not control (see 83 Cong. Rec. 7408, 7422, 7443). The intended limited scope of the exemption in this respect was not changed by transfer of the "shore" activities from section 13(a)(5) to section 13(b)(4). The exemption of employment in these "shore" operations may be considered, therefore, as intended to implement and supplement the exemption for employment in "offshore" operations provided by section 13(a)(5), by exempting from the hours provisions of the Act employees employd in those "shore" activities which are necessarily somewhat affected by the same natural factors. These "shore" activities are affected primarily, however, by fluctuations in the supply of the product or by the necessity for consumption or preservation of such products before spoilage occurs (see Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52; cf. McComb v. Consolidated Fisheries, 174 F. 2d 74).

§ 784.139 Perishable state of the aquatic product as affecting exemption.

(a) Activities performed after the conversion of an aquatic product to a nonperishable state cannot form the basis for application of the section 13(b)(4) exemption unless the subsequent operation is so integrated with the performance of exempt operations on the aquatic forms of animal and vegetable life mentioned in the section that functionally and as a practical matter it must be considered a part of the operations for which exemption was intended. The exemption is, consequently, not available for the handling or shipping of nonperishable products by an employer except where done as a part of named operations commenced on the product when it was in a perishable state. Thus, employees of dealers in or distributors of such nonperishable products as fish oil and fish meal, or canned seafood, are not within the exemption. Similarly, there is no basis for application of the exemption to employees employed in further processing of or manufacturing operations on products previously rendered nonperishable, such as refining fish oil or handling fish meal in connection with the manufacture of feeds. Further specific examples of application of the foregoing principle are given in the subsequent discussion of particular operations named in section 13(b)(4).

(b) In applying the principle stated in paragraph (a) of this section, the Department has not asserted that the exemption is inapplicable to the performance of the operations described in section 13(b)(4) on frozen, smoked, salted, or cured fish. The Department will continue to follow this policy until further clarification from the courts.

§ 784.140 Scope of exempt operations in general.

Exemption under section 13(b)(4), like exemption under section 13(a)(5), depends upon the employment in the actual activities named in the section, and an employee performing a function which is not necessary to the actual conduct of a named activity, as explained in § 784.106, is not within the exemption. It is also essential to exemption that the operations named in section 13(b)(4) be performed on the forms of aquatic life specified in the section and not on other commodities or on mixed commodities a substantial part of which consist of materials or products other than the named aquatic products. Application of these principles has been considered generally in the earlier discussion, and further applications will be noted in the following sections and in the subsequent discussion of particular operations mentioned in the section 13(b)(4) exemption.

§ 784.141 Fabrication and handling of supplies for use in named operations.

(a) As noted in § 784.109, the exemption for employees employed "in" the named operations does not extend to 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 (§ 784.138) 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 workweek 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).

§ 784.142 Examples of nonexempt employees.

An employer who engages 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 § 784.160, 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 § 784.159), 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"

§ 784.143 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 Act 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 the term "canning" (House (Conference) Report No. 1453, 81st Cong., 1st sess. 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 containers and the placing of the sealed containers in 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(b)(4) rather than section 13(a)(5).

§ 784.144 "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.

§ 784.145 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 steaming 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 a 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."

§ 784.146 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.

§ 784.147 Preservation of aquatic products for later canning.

The cooling, icing, or refrigeration of the acquatic products in the course of canning does not constitute such a break or discontinuance of the process as to bring the preparatory operations within other named operations in section 13(b)(4) instead of canning if the purpose of the refrigeration is to prevent spoilage for a short period, such as over the weekend, or during the transfer or shipment of the prepared products, or directly prior to the opening of the canning season. On the other hand, the freezing of aquatic products to be stored for a protracted or indefinite period for future canning is too remote from the actual canning to be considered as a part of that operation; it would, however, qualify as a "freezing" operation which is an exempt operation named in section 13(b)(4). This distinction is not without significance, for, as an exempt freezing operation, employees engaged therein are entitled to the minimum wage prescribed by section 6(b) of the Act for those to whom the minimum wage benefits are being extended for the first time as a result of the Fair Labor Standards Act amendments of 1961, rather than the minimum wage prescribed by section 6(a) of the Act for employees performing work which was

subject to the minimum wage prior to these amendments (§§ 784.23 to 784.25).

§ 784.148 Processing of aquatic products for canning and for other disposition.

Where canning and processing operations are intermingled, the former and not the latter exemption applies (see Mitchell v. Myrtle Grove Packing Company, 350 U.S. 891; Tobin v. Blue Channel Corporation, 198 F. 2d 245). Thus, where preparatory operations are performed on fish or seafood, some of which are to be canned and some of which are for processing, all the necessary preparatory operations are exempt as part of canning until that point in the operations where the commodity is channeled to accomplish the separate objectives, namely, canning or processing. Thereafter, the canning operations would be exempt as canning and the processing operations would be exempt as processing. For example, all the preparatory activities in a roe canning plant such as any unloading of the fish, cutting off the heads and tails, cleaning and scaling leading up to and including the extraction of the roe would qualify as canning operations, whereas the subsequent boning and filleting of the fish would come within processing operations when none of the filleted fish is to be canned. The minimum rates applicable in such a situation would be determined in accordance with the principles stated in §§ 784.23 to 784.25 of Subpart A of this Part 784.

§ 784.149 "Hermetically sealing and sterilizing or pasteurizing."

As previously indicated in § 784.143, hermetically sealing and sterilizing or pasteurizing are the operations which characterize the process of canning. Employment in such operations is clearly within the section 13(b)(4) exemption. Employees whose work does not relate to a process which includes these operations are not employed in canning. A process involving the placing of the aquatic products in cans or containers without hermetically sealing and sterilizing or pasteurizing is not canning, within the meaning of the exemption. Depending on the operations involved it may be "processing" or "packing for shipment" within the scope of the exemption, in which event the pay provisions for "new" rather than those for "old" coverage will be applicable, as explained in §§ 784.23 to 784.25, in Subpart A of this Part 784.

§ 784.150 "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 as a part of canning. The fact that such activities relate in part to products canned during 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. When, however, operations with respect to the aquatic products processed by the employer are performed as a part of his activities in "marketing * * * storing, packing for shipment, or distributing" such products rather than as a part of canning as above described (cf. Calaf v. Gonzalez, 127 F. 2d 934; Tobin v. Blue Channel Corp., 198 F. 2d 245; Mitchell v. Myrtle Grove Packing Co., 350 U.S. 891), these operations, while also exempt under section 13(b)(4), are subject to the minimum wage provisions of section 6(b) rather than section 6(a) of the Act and, if intermingled with those which are part of canning, will be subject to the rules stated previously in §§ 784.23 to 784.25, in Subpart A of this Part 784.

§ 784.151 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 reform 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 similiarly 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, 784.141, and 784.142.

PROCESSING, FREEZING, AND CURING

§ 784.152 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 (Fleming v. Hawkeye Pearl Button Co., 113 F. 2d 52).

§ 784.153 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 §§ 784.141 and 784.142.

§ 784.154 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 operations, another processor, or a wholesaler, as the case may be. As noted in § 784.139(b), the Department has not questioned the applicability of the foregoing rule where the operation is performed on frozen, salted, smoked, or cured fish.

§ 784.155 Operations performed after product is rendered nonperishable.

As indicated in § 784.139, 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.

§ 784.156 Operations performed on byproducts.

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 within the canning (not the processing) part of the exemption (see § 784.148). Fish-reduction operations performed on the inedible and still perishable portions of fish resulting from processing or canning operations, to produce fish oil or meal, would come within the processing part of the exemption. Subsequent operations on the oil to fortify it would not be exempt, however, since fish oil is nonperishable in the sense that it may be held for a substantial period of time without deterioration.

MARKETING, STORING, PACKING FOR SHIPMENT, AND DISTRIBUTING

§ 784.157 General scope of named operations.

The exemption from the overtime pay requirements provided by section 13(b)(4) of the Act extends to employees "employed in the * * * marketing * * * storing, packing for shipment, or distributing of any kind of" perishable aquatic product named in the section. An employee's work must be functionally so related to the named activity as to be, in practical effect, a part of it, and the named activity must be performed with respect to the perishable aquatic commodities listed in section 13(b)(4), in order for the exemption to apply to him. The named activities include the operations customarily performed in the marketing, storing, packing for shipment, or distributing of perishable marine products. For example, an employee engaged in placing perishable marine products in boxes, cartons, crates, bags, barrels, etc., preparatory to shipment and placing the loaded containers on conveyances for delivery to customers would be employed in the "packing for shipment" of such products. Salesmen taking orders for the perishable aquatic products named in the section would be employed in the "marketing" of them. Employees of a refrigerated warehouse who perform only duties involved in placing such perishable marine products in the refrigerated space, removing them from it, and operating the refrigerating equipment, would be employed in "storing" or "distributing" such products, depending on the facts. On the other hand, employees of a public warehouse handling aquatic products which have been canned or otherwise rendered nonperishable, or handling perishable products which contain a substantial amount of ingredients not named in section 13(b)(4), would not be within the exemption. Office, clerical, maintenance, and custodial employees are not exempt by reason of the fact that they are employed by employers engaged in marketing, storing, packing for shipment, or distributing seafood and other aquatic products. Such employees are exempt only when the facts of their employment establish that they are performing functions so necessary to the actual conduct of such operations by the employer that, as a practical matter, their employment is directly and necessarily a part of the operations intended to be exempted (see, for some examples, § 784.159).

§ 784.158 Relationship to other operations as affecting exemption.

Employment in marketing, storing, distributing, and packing for shipment of the aquatic commodities described in section 13(b)(4) is, as such, exempted from the overtime pay provisions of the Act. This means that the employees actually employed in such operations on the named commodities are within the exemption without regard to the intimacy or remoteness of the relationship between their work and processing operations also performed on the commodities, so long as any prior processing has not rendered the commodity nonperishable (as in the case of a canned product) and therefore removed it from the category of marine products referred to by section 13(b)(4). If the commodity has previously been rendered nonperishable, the marketing, storing, distributing, or packing for shipment of it by an employee can come within the exemption only if the activity is one performed by his employer as an integrated part of a series of the named operations which commenced with operations on the perishable marine products to which section 13(b)(4) refers. Some examples of this situation are given in §§ 784.150 and 784.155.

§ 784.159 Activities performed in wholesale establishments.

The section 13(b)(4) exemption for employment in "marketing * * * storing, or distributing" the named aquatic products or byproducts, as applied to the wholesaling of fish and seafood, affords exemption to such activities as unloading the aquatic product at the establishment, icing or refrigerating the product and storing it, placing the product into boxes, and loading the boxes on trucks or other transportation facilities for shipment to retailers or other receivers. Transportation to and from the establishment is also included (Johnson v. Johnson & Company, Inc., N.D. Ga., 47 F. Supp. 650). Office and clerical employees of a wholesaler who perform general office work such as posting to ledgers, sending bills and statements, preparing tax returns, and making up payrolls are not exempt unless these activities can be shown to be functionally necessary, in the particular fact situation, to the actual conduct of the operations named in section 13(b)(4). Such activities as selling, taking and putting up orders, recording sales, and taking cash are, however, included in employment in "marketing" or "distributing" within the exemption. Employees of a wholesaler engaged in the performance of any of the enumerated operations on fresh fish or fish products will be engaged in exempt work. However, any such operations which they perform on aquatic products which have been canned or otherwise rendered nonperishable are nonexempt in accordance with the principles stated in §§ 784.139 and 784.158.

APPLICATION OF SECTION 13(B)(4) IN CERTAIN ESTABLISHMENTS

§ 784.160 Establishments exclusively devoted to named operations.

As noted in § 784.106 and elsewhere in the previous discussion, the section 13(b)(4) exemption depends on employment of the employee in the operations named in that section and does not apply on an establishment basis. However, the fact that an establishment is exclusively devoted to operations specified in section 13(b)(4) is, in the absence of evidence to the contrary, an indication that the employees employed there are employed in the named operations either directly or through the performance of functions so necesasry to conducting the operations that the employment should in practical effect, be considered a part of the activity intended to be exempted. Where this is the case, it is consistent with the legislative intent to avoid segmentation and treat all employees of the establishment in the same manner (see Sen. Rep. No. 145, 87th Cong. 1st sess., p. 33). Accordingly, where it can be demonstrated that an establishment is, during a particular workweek, devoted exclusively to the performance of the operations named in section 13(b)(4), on the forms of aquatic life there specified, any employee of the establishment who is employed there during such workweek will be considered to be employed in such operations and to come within the exemption if there are no other facts pertinent to his employment that require a particular examination of the functions which he performs in connection with the conduct of the named operations. If, however, there are any facts (for example, the employment of the same employee at the establishment or the engagement by other employees in like duties there during periods when none of the named operations are being carried on) which raise questions as to whether he is actually engaged in the exempt activities, it will be necessary to scrutinize what he is actually doing during the conduct of the operations named in section 13(b)(4) in order to determine the applicability of the exemption to him. This is necessary because an employee who would not otherwise be within the exemption, such as a carpenter doing repair work during the dead season, does not become exempt as "employed in" one of the named activities merely because the establishment begins canning or processing fish.

Signed at Washington, D.C., this 2d day of February 1962.

CLARENCE T. LUNDQUIST,
Administrator.

Treasury Department

BUREAU OF CUSTOMS

GROUNDFISH FILLET IMPORT TARIFF-RATE QUOTA FOR 1962:

The reduced-tariff-rate import quota on fresh and frozen groundfish (cod, haddock, hake, pollock, cusk, and ocean perch) fillets and steaks for calendar year 1962 is 28,571,433 pounds, the Bureau of Customs announced in the February 10, 1961, Federal Register. Divided into quarterly quotas this means that 7,142,858 pounds of groundfish fillets and steaks during each quarter of 1962 may be imported at the 1-7/8 cents-per-pound rate of duty and any imports over the quarterly quota will be dutiable at the rate of 2-1/2 cents a pound. As of February 2, the U. S. Bureau of Customs reported that the first quarter 1962 quota of 7,142,858 at the 1-7/8-cents rate had been filled.

The reduced-rate import quota for 1962 is 12.4 percent less than the 1961 quota of 32,600,645 pounds. From 1951 to 1960 the quantity of fresh and frozen groundfish fillets permitted to enter the United States at the reduced rate of duty of 1-7/8 cents a pound had increased 24.7 percent, but in 1961 the trend was reversed significantly for the first time because in 1960 frozen fish fillet blocks with bits and pieces were no longer dutiable under the Tariff category of "frozen groundfish fillets." A further decline took place in 1962. In fact, the 1962 quota (the lowest since 1950) is 2.5 percent less than in 1951.

Reduced-Tariff-Rate Import Quota for Fresh and Frozen Groundfish Fillets, 1952-1962

Year	Quota
	1,000 Lbs.
1962	28,571
1961	32,601
1960	36,533
1959	36,920
1958	35,892
1957	37,376
1956	35,197
1955	35,433
1954	33,950
1953	33,866
1952	31,472

Average aggregate apparent annual consumption in the United States of fresh and frozen groundfish fillets and steaks (including the fillet blocks and slabs used in the manufacture of fish sticks, but excluding fish blocks since September 15, 1959, and blocks of fish bits) for the three years (1959-61) preceding 1962 was only 190,476,220 pounds, calculated in accordance with the proviso to item 717(b) of Part 1, Schedule XX, of the General Agreement on Tariff and Trade (T. D. 51802). This was less than the consumption of 217,337,633 pounds in 1958-60 and 243,554,480 pounds for 1957-59.

A decision by the United States Customs Court in 1959 held that fish blocks imported in bulk are dutiable at one cent a pound under Tariff paragraph 720(b). Prior to that decision, fish blocks were classified under paragraph 717(b), the same as fish fillets. The change became effective September 15, 1959, and fish blocks imported in bulk since that date have been classified under paragraph 720(b). Therefore, fish blocks imported since the effective date have not entered in the calculation of apparent annual consumption or the quota since only imports under 717(b) are considered in the calculation. In view of this, it is estimated that if fish blocks had remained under the 717(b) classification, apparent annual consumption for 1959-61 would have been greater than that for the previous three-year period, and also the quota for 1962 would have been greater than that for 1960 and 1961.

Note: See Commercial Fisheries Review, March 1961 p. 93.

Eighty-Seventh Congress

(Second Session)

Public bills and resolutions which may directly or indirectly affect the fisheries and allied industries are reported upon. Intro-

duction, referral to committees, pertinent legislative actions by the House and Senate, as well as signature into law or other final disposition are covered.

ANTIDUMPING ACT AMENDMENT: Introduced in House: Jan. 25, 1962, H.R. 9903 (Walter), to amend certain provisions of the Antidumping Act, 1921, to provide for greater certainty, speed, and efficiency in the enforcement thereof, and for other purposes; Jan. 31, H.R. 10021 (Walter), Feb. 7: H.R. 10057 (King), H.R. 10076 (Wharton), H.R. 10081 (Dent), and Feb. 8, H.R. 10118 (Daniel); all to the Committee on Ways and Means.

COMMERCE COMMITTEE INVESTIGATIONS IN SENATE: Investigations by the Senate Committee on Commerce, Senate Report No. 1158, Jan. 31, 1962, 10 pp., printed. Report establishes committee responsibilities, including fisheries and wildlife and marine sciences. The report delineates in broad terms the problems which confront the committee during this session of Congress. Under the Merchant Marine and Fisheries Subcommittee, the report points out: "Sports fishing and hunting continue to grow in popularity and millions of American families take advantage of these outdoor recreational pastimes--50 million Americans over 12 years of age went hunting or fishing or both in 1960. They spend over $4 billion and our businessmen and manufacturers are devoting a greater amount of effort to satisfy family needs in this recreational field. We will consider legislation to promote effectual planning, development, maintenance, and coordination of this natural resource.

"Our commercial fishery has problems. There are legislative proposals to step up fisheries research, to encourage the development of new fish products, to study the depredations of destructive predators, and to do what we can, in a legislative way, to aid and assist our state officials in conservation practices.

"In 1959 alien fleets moved into waters adjacent to Alaska. We must determine how we are to cope with this international threat to a common resource. For the committee's consideration are bills to improve and modernize our fishing fleets in order to meet our foreign competition. We must not permit the depletion of our natural resources.

"The protection of marine mammals, research and studies on effects of insecticides upon our wildlife, the preservation of bird species, and many and varied problems relating to game animals, wild fowl, and bird life demand our attention."

Under special subcommittees and studies, the report has this to say about marine sciences: "Oceanography has, and will continue to take a great deal of our time and energy. Two of our members attended the first session of the Intergovernmental Oceanographic Commission held in Paris last October. Thirty-nine nations participated. We must carefully watch the expanding oceanographic programs of other nations. We must maintain close contact with the National Academy of Sciences Committee on Oceanography, the Coordinating Committee on Oceanography, comprised of the ranking professional oceanographers of all Government agencies, with institutions and laboratories engaged in oceanographic or Great Lakes research, and with industries which recently have established laboratories for sophisticated marine studies, encouraged by the deep interest manifest by our committee and the Congress.

"The emergence of Soviet Russia as the most active of all nations in worldwide deepwater studies; the numerous resolutions adopted by the IOC at Paris relating to international ocean surveys, expeditions, communications, and weather observations; the recommendations of U. S. scientific bodies, including NASCO, and of Government departments and agencies, all present important problems within the province of this committee, many of which may require constructive legislation as well as constant vigilance."

The committee report also commented on its responsibilities as to foreign commerce, and packaging and labeling.

FEDERAL AID IN FISH RESTORATION: The Senate and House received on Feb. 19, 1962, a letter from the Secretary of the Interior, transmitting, pursuant to law, a report on activities of the Federal aid in fish restoration program, for the year ended June 30, 1961 (with an accompanying report); to the Committee on Commerce.

FISH AND WILDLIFE LEGISLATION: House Committee on Merchant Marine and Fisheries; Subcommittee on Fisheries and Wildlife Conservation on Feb. 6 and 7, 1962, held hearings on the following: H.R. 7336, to make loans to certain producers of oysters; H.R. 6529, to provide for the establishment of a new fish hatchery in the eastern part of the State of Tennessee; H.R. 8371, to construct, equip, operate, and maintain a fish hatchery in DeKalb County, Tenn.; and H.R. 2722, and identical bills, to establish a research program in order to determine means of improving the conservation of game and food fish in dam reservoirs. Heard testimony from three Congressmen on all the above bills; Department of the Interior officials reported on H.R. 7336.

FISH PROTEIN CONCENTRATE: Senator Douglas in the Senate on Feb. 6, 1962, made a statement on the U. S. Food and Drug Administration position on disapproving the sale of a fish protein concentrate made from whole fish. The statement by Senator Douglas, which appeared in the Congressional Record of Feb. 6, 1962 (p. 1664), describes fish protein concentrate or fish flour; how it is made; support of certain U. S. agencies; the Food and Drug Administration's disapproval of such a product made from whole fish; sale of other food items, and in conclusion states:

"Fish protein concentrate is important because it can help solve hunger and undernourishment in the world. People in many countries are undernourished and either cannot afford or do not have access to foods which contain sufficient proteins for their families. If we could ship fish protein concentrate to them, it could be added to their meager diets and they would thus receive the protein necessary for healthy lives.

"The low cost of the product makes it an ideal item in such programs as food for peace, United Nations food programs, and other projects designed to reduce hunger in the world. It is important because it also can be used in our own country to increase the food standards of many families at a very low cost.

"Under the restrictions by the Food and Drug Administration, the cost of this product would be so increased that those people who most need it could not afford it. The food is safe, it is pure, it is cheap, it is the best product we can offer to reduce hunger and increase world health."

Senator Proxmire endorsed Senator Douglas' statement and said in part: ". . . I recognize the very great value in using it, as the Senator has said, with rice and with bread. It is a marvelous product. It will make available to starving people all over the world food of very high nutritious value at a very low cost. . . ."

In the Senate on Feb. 8, 1962, Senator Gruening spoke on fish protein concentrate or fish flour and the Food and Drug Administration proposed standard of identity, which does not provide for manufacture of the concentrate from whole fish. He stated he had written to the Secretary of Health, Education and Welfare "protesting this proposed standard and requesting an objective hearing before a hearing examiner having no connection with that Department." The Senator's letter to the Secretary of Health, Education and Welfare was published in the Congressional Record of Feb. 8, 1962 (p. 1915).

Senator Smith on Feb. 19, 1962, presented to the Senate a preliminary report on a study on manufacturing methods of fish protein, also known as fish flour. The study, being made with a $50,000 grant given by Congress, is being conducted by Dr. E. R. Pariser of the U. S. Bureau of Commercial Fisheries.

Senator Smith pointed out that the Food and Drug Administration proposed standard of identity for fish protein makes the product expensive and lowers the nutritional value. In a letter of protest to the Secretary of Health, Education and Welfare he has asked for a proper hearing before an impartial examiner.

Dr. Pariser, in his report (which appears in the Congressional Record Feb. 19, 1962, pp. 2215-2218), stated that the over-all program set up for the 5-year research project will consist of 3 phases: (1) survey of processing methods, (2) assembly of a consulting group, and (3) laboratory developments.

The accomplishment thus far has been the completion of the first phase of the project. Plants in the United States, Canada, Central and South America were visited. The following observations were made: (1) in the United States considerable efforts have been made by a number of private industrial concerns. (2) In Canada studies are being conducted by the Technologi-

cal Station of the Canadian Fisheries Research Board in Halifax. Their program is directed toward the production of the best fish protein concentrate. (3) In South and Central America there is a most urgent need for a cheap nutritious protein supplement, suitable raw materials are available, no satisfactory process to manufacture fish protein concentrate exists, and interest in fish protein concentrate is alive in those countries.

Dr. Pariser, in conclusion, stated that once the large-scale extraction of proteins from the seas is successfully achieved it would be the beginning of a new fishing industry; it will develop as the population grows; it will rank foremost in importance with but a few other industries, capable of producing a cheap, high-quality food, available to everyone, everywhere.

HIGHWAYS AND FISH AND WILDLIFE PROTECTION: H.R. 10269 (Reuss) introduced in the House Feb. 19, 1962, to the Committee on Public Works. Would amend title 23 of the United States Code relating to highways in order to require the approval of the Secretary of the Interior to surveys, plans, specifications, and estimates for projects on the Federal-aid highway systems for the purpose of protecting fish and wildlife and recreation resources.

NORTH PACIFIC AND BERING SEA FISHERIES: On Feb. 15, 1962, the Senate received a resolution of the Senate of the State of Alaska (Alaska Senate Resolution 34) relating to the initiation of Federal studies and programs regarding the condition and exploitation of the North Pacific and Bering Sea Fisheries, referred to the Committee on Commerce. The resolution urges the Federal Government to take immediate steps to initiate projects for offshore fish and shellfish studies and the necessary oceanographic, processing, transportation, and marketing research essential to the proper implementation of the Nation's right to the beneficial exploitation of this natural resource in international waters.

NORTHWEST ATLANTIC FISHERIES CONVENTION: The Senate Committee on Foreign Relations, on Jan. 23, 1962, in open session, received testimony from Deputy Special Assistant for Fish and Wildlife, Department of State, on Ex. M (87th Cong., 1st Session) International Convention for Northwest Atlantic Fisheries (Mollusks). The Committee on the same day approved and reported to the Senate this amendment to the Convention.

The Senate, on Jan. 31, 1962, ratified the amendment. This amendment to the Convention provides for giving the Commission authority over mollusks, which were not included under the original Convention. Provides that the words "fish," "fishes," "fishery," "fisheries," and "fishing" as they appear in the original Convention include and apply to mollusks as well as finfish. This does not require House action.

OCEANOGRAPHIC RESEARCH PROGRAM: The Committee on Merchant Marine and Fisheries: Subcommittee on Oceanography met in executive session Jan. 24, 1962, on H.R. 4276, to expand and develop the aquatic resources of the United States; and S. 901, to advance the marine sciences and to establish a comprehensive 10-year program of oceanographic research. No final action was taken, and the subcommittee adjourned subject to call of the Chair.

RESEARCH: Federal Budgeting for Research and Development (Hearing before the Subcommittee on Reorganization and International Organizations of the Committee on Government Operations, United States Senate, 87th Congress, 1st Session, Agency Coordination Study Pursuant to S. Res. 26, 87th Cong., July 26 and 27, 1961, Part II), 444 pp., printed. It contains information from a Government-wide standpoint on problems of Federal budgeting for research and development, correspondence with Federal departments and agencies as regards problems unique to their particular research and development budgets, charts prepared by the subcommittee staff as part of the extensive review of Government scientific activities, and excerpts from other materials that have bearing upon Federal budgeting for research and development. One section deals directly with the U. S. Fish and Wildlife Service and presents information on the research and development programs of the Bureau of Commercial Fisheries and the Bureau of Sport Fisheries and Wildlife.

SCIENCE DEPARTMENT: S. 2771 (McClellan and others) introduced in Senate Jan. 31, 1962, to the Committee on Government Operations; for the establishment of a Commission on Science and Technology. Similar to other bills except that this bill would establish a commission whereas the others would establish a department. Would set up a Science Advisory Panel and special task forces to evaluate all Federal scientific and technological activities and related private industrial and institutional activities. Objective is for a joint legislative and executive study of Federal scientific and technical activities in order to evaluate the organization and administration of such activities and to recommend improvements in present operations, including minimizing duplication of effort, and effecting necessary reorganization.

SHELLFISH PROCESSING EXEMPTION FROM MINIMUM WAGE: Special Subcommittee on Labor of the House Committee of Education and Labor is scheduled to meet Feb. 16, 1962, on shellfish processing exemption from minimum wage.

SUBMERGED LANDS ACT: H.R. 10042 (Waggonner), introduced in House Feb. 1, 1962, to the Committee on the Judiciary, to amend the Submerged Lands Act to establish the seaward boundaries of the States of Alabama, Mississippi, and Louisiana as extending 3 marine leagues into the Gulf of Mexico and providing for the ownership and use of the submerged lands, improvements, minerals, and natural resources within said boundaries. Similar to other bills in the House and Senate during the first session of the 87th Congress.

TRADE EXPANSION ACT: Both House and Senate received message from the President (H. Doc. 314) on Jan. 25, 1962, on the Reciprocal Trade Agreements Program. Message indicated that the President was transmitting to Congress a new and modern instrument of trade negotiations--the Trade Expansion Act of 1962.

The President asked Congress for authority to "pool our resources and resourcefulness in an open trade partnership with Western Europe." He asked for broad authority to cut all tariffs up to 50 percent and to eliminate completely tariffs on products in which European-American trade amounts to 80 percent of the world total. Reductions would be spaced over the next decade. All trade concessions to the European market would be available to other free world associates, mainly Latin America and Japan. In return, the President hopes he can persuade the swiftly developing European Common Market to open up to American competition in return. The President said: "Let me emphasize that we mean

to see to it that all reductions and concessions are reciprocal--and that the access we gain is not limited by the use of quotas or other restrictive devices." The President minimized the adverse effects of increasing imports and emphasized the potential benefits from expanding exports. "Several hundred times as many workers owe their jobs directly or indirectly to exports," the President said, "as are in the small group--estimated to be less than one-half of 1 percent of all workers--who might be adversely affected by a sharp increase in imports."

The President indicated certain safeguards against injury to American industry. Escape clause relief would continue to be available with more up-to-date definitions. Temporary tariff relief will be granted where essential. And the four basic stages of the traditional peril point procedures and safeguards will be retained and improved.

Government should stand ready to aid farm and factory workers and companies temporarily hurt. He proposed these as "effective and relatively inexpensive" measures. For workers left idle--financial help for job retraining and relocation, along with Federal "readjustment allowances" for up to a full year at 65 percent of average weekly pay, plus an additional 13 weeks for those over 60. For business firms and farmers--Federal loans and loan guarantees, technical guidance, and "tax benefits" to help companies modernize plants and diversify products.

The President stated, "This cannot be and will not be a subsidy program of government paternalism. It is instead a program to afford time for American initiative, American adaptability, and American resiliency to assert themselves. It is consistent with that part of the proposed law which would stage tariff reductions over a 5-year period. Accordingly, trade adjustment assistance, like the other provisions of the Trade Expansion Act of 1962, is designed to strengthen the efficiency of our economy, not to protect inefficiencies. Authority to grant temporary tariff relief will remain available to assist those industries injured by a sudden influx of goods under revised tariffs. But the accent is on adjustment more than assistance. Through trade adjustment prompt and effective help can be given to those suffering genuine hardship in adjusting to import competition, moving men and resources out of uneconomic production into efficient production and competitive positions, and in the process preserving the employment relationships between firms and workers wherever possible. Unlike tariff relief, this assistance can be tailored to their individual needs without disrupting other policies. . . ."

H.R. 9900 (Mills) introduced in House Jan. 25, 1962, to the Committee on Ways and Means; to promote the general welfare, foreign policy, and security of the United States through international trade agreements and through adjustment assistance to domestic industry, agriculture, and labor, and for other purposes. This would implement the Administration's new trade policy and would be known as the Trade Expansion Act of 1962.

S. 2840 (Javits) introduced in Senate Feb. 15, 1962, to the Committee on Finance; to provide authority for the President, under the control and direction of the Congress, to make such necessary adjustments in the trade policies of the United States as may be necessary to meet the complex and rapidly changing economic and political conditions prevailing in the world, and to provide the means for assisting domestic enterprises, communities, and individuals to adjust their productive activities to change economic conditions resulting from the increased participation of the United States in world trade. Title of bill, "Trade Policy Act of 1962." Senator Javits in introducing the bill pointed out that it is an alternative to the President's program (H.R. 9900). The approach of the bill is that: (1) the new trade policy must be confined to the item-by-item or commodity concept of world trade; (2) Congress must participate in the broad direction of foreign trade policy and must be able to make its will effective; (3) would provide for congressional policy directions in the utilization of Presidential negotiating authority and for congressional veto power over the most important phases of the exercise of Presidential authority; (a) trade agreements, (b) national security proclamations, (c) escape clause actions, and (d) adjustment assistance administration. The Senator stated that the reason for introducing this alternative legislation is that the United States must take the leadership in forging a unified free world trading policy toward the Soviet bloc.

Foreign Economic Policy for the 1960's: Report of the Joint Economic Committee to the Congress of the United States with Minority and Other Views, 57 pp., printed, 1962. (For sale by the Superintendent of Documents, U. S. Government Printing Office, Washington 25, D. C., 20 cents a copy.) Contains a discussion of the United States trade policy, trade relations with third countries, East-West trade, objections of foreign policy in the 1960's, the need for a new kind of bargaining authority, safeguards and trade policy, and our economic policies. Also contains statements from several Senators.

VESSEL SUPPLIES EXEMPT FROM DUTIES: S. 2674 (Curtis), introduced in Senate Jan. 15, 1962, a bill to amend section 309 (a) (1) (B) of the Tariff Act of 1930, as amended, to the Committee on Finance. Proposes to exempt, from duties and internal revenue taxes, supplies (not including equipment) for vessels of the United States engaged in coastwise trade. This exemption applies to vessels engaged in fisheries.