

U.S. DEPARTMENT OF LABOR  
EMPLOYMENT STANDARDS ADMINISTRATION  
WASHINGTON, D.C. 20210



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This is in response to your letter of June 29, 1972, concerning the application of sections 7(c) and 7(d) of the Fair Labor Standards Act to a food processor and canner.

The 20% rule for foreign ingredients to which you refer applies to both the 7(c) and 7(d) exemptions. The Department's position with regard to the addition of foreign ingredients in a canning operation is set forth on pages 14 and 15 of the guidelines for the fresh fruit and vegetable industry.

You cite a canning operation for the manufacture of red clam spaghetti sauce where 68% of the final product consists of raw tomatoes, 28% of clams and 4% other foreign ingredients. The exemptions would not apply in such a situation, as indicated in the opinion you cite. As you will note in the guidelines, the exemptions are applicable up to the point at which the foreign ingredients are added. Thus, employees cutting and preparing fresh raw tomatoes prior to the addition of the foreign ingredients are within the exemptions.

Also, an employee who works exclusively on exempt products during a workweek would not lose the exemptions by reason of the fact that other employees on another line are performing nonexempt work. However, it should be pointed out that the performance by an employee of any nonexempt work during a workweek would defeat the exemptions for that employee in that workweek.

Sincerely,

Horace E. Menasco

Horace E. Menasco  
Deputy Assistant Secretary

Enclosure

WH-170