

§ 793.2

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§ 793.2 General explanatory statement.

Some employees of radio and television stations perform work which may be exempt from the minimum wage and overtime requirements under section 13(a)(1) of the Act. This 13(a)(1) exemption applies to employees employed in a bona fide executive, administrative or professional capacity, or in the capacity of outside salesman, as these terms are defined and delimited by regulations of the Secretary. This exemption continues to be available for employees of radio and television stations who meet the requirements for exemption specified in part 541 of this chapter. The section 13(b) (9) exemption, which is an exemption from the overtime provisions of the Act, but not from the minimum wage requirements, applies to a limited classification of employees employed by small market radio and television stations whose employment meets the requirements for the exemption. These requirements and their meaning and application are discussed in this bulletin.

REQUIREMENTS FOR EXEMPTION

§ 793.3 Statutory provision.

Section 13(b) (9) of the Act exempts from the overtime requirements of section 7, but not from the minimum wage provisions of section 6, of the Act:

any employee employed as an announcer, news editor, or chief engineer by a radio or television station the major studio of which is located (A) in a city or town of one hundred thousand population or less, according to the latest available decennial census figures as compiled by the Bureau of the Census except where such city or town is part of a standard metropolitan statistical area, as defined and designated by the Bureau of the Budget, which has a total population in excess of one hundred thousand, or (B) in a city or town of twenty-five thousand population or less, which is part of such an area but is at least 40 airline miles from the principal city in such area.

§ 793.4 General requirements for exemption.

All of the following requirements must be met in order that an employee may be exempt under section 13(b) (9):

(a) The employee must be “employed as” an announcer, or a news editor, or a chief engineer.

(b) The employee must be employed “by” a radio or television station.

(c) The major studio of such radio or television station must be located in a city or town which meets the prescribed population and locality tests.

§ 793.5 What determines application of the exemption.

The exemption applies only to an employee who is “employed as” an announcer, news editor, or chief engineer under the conditions specified in section 13(b) (9). Although the nature of the employer’s business is important in applying the exemption to a particular employee in one of the named occupations, employment in the named occupation is an essential prerequisite for exemption. Whether an employee is exempt therefore depends upon an examination of his duties as well as the nature of the employer’s activities. Some employees of the employer may be exempt and others may not.

§ 793.6 Exemption limited to employees in named occupations.

The legislative history of section 13(b)(9) makes it clear that the exemption is specifically limited to employees employed in the specified occupations (S. Rept. 145, 87th Cong. 1st sess., p. 37). To be exempt, therefore, an employee must be employed in the named occupations of announcer, a news editor, or a chief engineer. In applying this test to an employee, his title or job description is not determinative. His aggregate duties, as evidenced by the work which he actually performs in his everyday activities, determines the nature of his occupation. The employee’s duties, taken as a whole, must characterize the occupation of the employee as that of announcer, news editor, or chief engineer, if the statutory requirement that he be “employed as” such an employee is to be satisfied (see *Walling v. Haden*, 153 F. 2d 196, cert. denied 328 U.S. 866). This exemption does not apply to employees who are employed in occupations other than those of announcer, news editor, or chief engineer.

§ 793.7 “Announcer.”

An announcer is an employee who appears before the microphone or camera