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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.

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(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

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to introduce programs, read news announcements, present commercial messages, give station identification and time signals, and present other similar routine on-the-air material. In small stations, an announcer may, in addition to these duties, operate the studio control board, give cues to the control room for switching programs, make recordings, make the necessary preparations for the day's programs, play records, or write advertising, promotional or similar type copy. An employee who is primarily engaged in the above described activities and in activities which are an integral part thereof will be considered to be employed as an announcer within the meaning of the exemption in section 13(b)(9).

§ 793.8 "News editor."

A news editor is an employee who gathers, edits and rewrites the news. He may also select and prepare news items for broadcast and present the news on the air. An employee who is primarily engaged in the above duties and in activities which are an integral part thereof will be considered to be employed as a news editor within the meaning of the exemption in section 13(b)(9).

§ 793.9 "Chief engineer."

A chief engineer is an employee who primarily supervises the operation maintenance and repair of all electronic equipment in the studio and at the transmitter and is licensed by the Federal Communications Commission as a Radio Telephone Operator First Class. In small stations, only one such engineer may be employed, and in some cases he may be assisted by part-time workers from other departments. The engineer in such cases will be regarded as employed as the "chief engineer" for purposes of the section 13(b)(9) exemption provided that he performs the duties described above and is properly licensed by the Federal Communications Commission. Where two or more engineers are employed by a station, only one may qualify as "chief engineer"—that one who, on the basis of the factual situation, is in charge of the engineering work.

§ 793.10 Primary employment in named occupation.

The legislative history of the exemption is explicit that the exemption applies only to an employee who is employed "primarily" as an announcer, news editor, or chief engineer. Thus the Senate Report states: "The exemption is specifically limited to those employees who are employed primarily in the named occupations * * *" (S. Rept. 145, 87th Cong., 1st sess., p. 37). No specific rule can be established for determining whether in any given case an employee is employed "primarily" in the named occupations. Generally, however, where an employee spends more than half of the hours he works in a workweek in a named occupation, he will be considered to be primarily employed in such occupation during that workweek. The answer will necessarily depend upon the facts in each case.

§ 793.11 Combination announcer, news editor and chief engineer.

The 13(b)(9) exemption, as was made clear during the debate on the amendment, is intended to apply to employees employed in the named occupations by small market radio and television stations. It is known at the time of such debate that these stations employ only a small number of employees and that, at times, an employee of such a station may perform a variety of duties in connection with the operation of the station. For example, an employee may perform work both as an announcer and as a news editor. In such cases, the primary employment test under the section 13(b)(9) exemption will be considered to be met by an employee who is employed primarily in any one or any combination of the named occupations. Thus an employee who works both as an announcer and news editor for the greater part of the workweek will be considered to be primarily employed in the named occupations during that week.

§ 793.12 Related and incidental work.

An employee who is employed primarily in one or more of the named occupations may also be engaged in other duties pertaining to the operation of the station by which he is employed.