

Wage and Hour Division, Labor

§ 793.18

to be exempt. For a discussion of the effect on the exemption of nonexempt work see §§ 793.19 to 793.21.

§ 793.14 Employed by.

The application of the exemption is limited to employees "employed by" a radio or television station. The question whether a worker is employed "by" a radio or television station depends on the particular facts. (See *Rutherford Food Corporation v. McComb*, 331 U.S. 722; *U.S. v. Silk*, 331 U.S. 704.) In general, however, an employee is so employed where he is hired by the radio or television station, engages in its work, is paid by the radio or television station and is under its supervision and control. Employees of independent contractors and of others who work for a radio or television station but who are not "employed by" such station are not exempt under this exemption even if they engage in the named occupation. (*Mitchell v. Kroger*, 248, F. 2d 935.)

§ 793.15 Duties away from the station.

An employee who is "employed by" a radio or television station in one or more of the named occupations may perform his work at the station or away from the station so long as his activities meet the requirements for exemption.

§ 793.16 "Radio or television station."

The employee must be employed by a "radio or television station." A radio or television station is one which is designated and licensed as such by the Federal Communications Commission.

§ 793.17 "Major studio."

The exemption further depends on whether "the major studio" of the radio or television station which employs the employee is in a city or town as defined in section 13(b)(9). The location of secondary studios of the radio or television station is immaterial. It is the location of the "major" studio that determines the qualification of the employer for the exemption. A major studio for purposes of the exemption is the main studio of the radio or television station as designated on the station's license by the Federal Communications Commission. It is this

major studio which must be located in the city or town as defined in section 13(b)(9) of the Act.

§ 793.18 Location of "major studio."

Section (b)(9) specifies that the "major studio" must be 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." These tests may be summarized as follows:

(a) *A city or town with more than 100,000 population.* The exemption does not apply to any employee of a radio or television station the major studio of which is located in any city or town with a population in excess of 100,000.

(b) *A city or town with 100,000 population or less.* The exemption may apply if the major studio is located in a city or town of not more than 100,000 population: *Provided*, That the city or town is not within a standard metropolitan statistical area which has more than 100,000 population.

(c) *A city or town with 25,000 population or less.* The exemption may apply even if the major studio is located in a city or town that is within a standard metropolitan statistical area which has more than 100,000 population: *Provided*, That such city or town has a population or not more than 25,000 and the city or town is at least 40 airline miles from the principal city in such area.

(d) *Sources of information.* The Bureau of the Budget issues periodically a booklet entitled "Standard Metropolitan Statistical Areas", which lists and describes these areas in the United States and Puerto Rico. The booklet lists the standard metropolitan statistical areas by name and shows their population according to the latest available decennial census figures as compiled by the Bureau of the Census. The booklet also lists the major cities

§ 793.19

within each standard metropolitan statistical area and the population of these cities. From time to time, new areas are designated as "standard metropolitan statistical areas" and areas once designated as such are deleted from the area definitions. This booklet may be purchased, for 25 cents, from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

(e) *Principal city.* The term "principal city", as used in section 13(b)(9), means the "central city", or cities, of the standard metropolitan statistical area, which are defined and designated as such by the Bureau of the Census. The name of the "central city" is incorporated in the name of the standard metropolitan statistical area. Where two or more cities are designated by the Bureau of the Census as the "central cities", the names of such cities appear in the title of the standard metropolitan statistical area. For example, the "Duluth-Superior" standard metropolitan statistical area, has two "central" cities, namely Duluth and Superior; both appear in the title of the standard metropolitan statistical area, and both are regarded as "principal" cities for purposes of the section 13(b)(9) exemption. Where, as in the example, more than one city is designated as the "central" city airline mileage will be measured from that "central" city which is nearest to the city or town in which the major studio of the radio or television station is located.

(f) *Determining the population.* The population of a city or town, or of a standard metropolitan statistical area, will be determined by the latest available decennial census figures as compiled by the U.S. Bureau of the Census.

(g) *Measuring airline miles.* Airline miles for purposes of the section 13(b)(9) exemption are measured, with a straight edge on a map, from the zero milestone, or the city hall, of the "central" city, to the zero milestone, or city or town hall, of the city or town in which the major studio of the radio or television station is located.

29 CFR Ch. V (7-1-06 Edition)

WORKWEEK APPLICATION OF EXEMPTION

§ 793.19 Workweek is used in applying the exemption.

The unit of time to be used in determining the application of the exemption under section 13(b)(9) to an employee is the workweek. (See *Overnight Motor Transportation Co. v. Missel*, 316 U.S. 572; *McComb v. Puerto Rico Tobacco Marketing Co-op Ass'n.*, 80 F. Supp. 953, affirmed, 181 F. 2d 697.) A workweek is a fixed and regularly recurring period of 7 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. The workweek may not be changed for the purpose of evading the requirements of the Act.

§ 793.20 Exclusive engagement in exempt work.

An employee who engages exclusively in a workweek in work which is exempt under section 13(b)(9) is exempt from the Act's overtime requirements for the entire week.

§ 793.21 Exempt and nonexempt work.

Where an employee in the same workweek performs work which is exempt from the overtime requirements of the Act under section 13(b)(9), and also engages in work to which the overtime requirements apply, he is not exempt from overtime provisions of the Act in that week. (See *McComb v. Puerto Rico Tobacco Marketing Co-op Ass'n.*, 80 F. Supp. 953, affirmed, 181 F. 2d 697; *Mitchell v. Hunt*, 263 F. 2d 913; *Abram v. San Joaquin Cotton Oil Co.*, 46 F. Supp. 969; *McComb v. del Valle*, 80 F. Supp. 945; *Walling v. Peacock Corp.*, 58 F. Supp. 880.) As explained in § 793.13, work which does not come within the occupational duties of an announcer, news editor, or chief engineer, or which is not related and incidental thereto, is not exempt work under section 13(b)(9). The mere isolated or occasional performance of insubstantial amounts of such nonexempt work will not defeat the exemption for the employee. Where, however, an employee, in a particular workweek, performs a substantial amount of nonexempt work to