

#### § 793.4

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”

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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 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