into an employment relationship with a different employer. A determination of whether the employment by the employers is to be considered joint employment or separate and distinct employment for purposes of the act depends upon all the facts in the particular case. If all the relevant facts establish that two or more employers are acting entirely independently of each other and are completely disassociated with respect to the employment of a particular employee, who during the same workweek performs work for more than one employer, each employer may disregard all work performed by the employee for the other employer (or employers) in determining his own responsibilities under the Act.[4] On the other hand, if the facts establish that the employee is employed jointly by two or more employers, i.e., that employment by one employer is not completely disassociated from employment by the other employer(s), all of the employee's work for all of the joint employers during the workweek is considered as one employment for purposes of the Act. In this event, all joint employers are responsible, both individually and jointly, for compliance with all of the applicable provisions of the act, including the overtime provisions, with respect to the entire employment for the particular workweek.[5] In discharging the joint obligation each employer may, of course, take credit toward minimum wage and overtime requirements for all payments made to the employee by the other joint employer or employers.

(b) Where the employee performs work which simultaneously benefits two or more employers, or works for two or more employers at different times during the workweek, a joint employment relationship generally will be considered to exist in situations such as:

(1) Where there is an arrangement between the employers to share the employee's services, as, for example, to interchange employees;[6] or

(2) Where one employer is acting directly or indirectly in the interest of the other employer (or employers) in relation to the employee;[7] or

(3) Where the employers are not completely disassociated with respect to the employment of a particular employee and may be deemed to share control of the employee, directly or indirectly, by reason of the fact that one employer controls, is controlled by, or is under common control with the other employer.[8]

[23 FR 5905, Aug. 5, 1958, as amended at 26 FR 7732, Aug. 18, 1961]

PART 793—EXEMPTION OF CERTAIN RADIO AND TELEVISION STATION EMPLOYEES FROM OVERTIME PAY REQUIREMENTS UNDER SECTION 13(b)(9) OF THE FAIR LABOR STANDARDS ACT

INTRODUCTORY

Sec.

[4] *Walling* v. *Friend, et al.,* 156 F. 2d 429 (C. A. 8).

[5] Both the statutory language (section 3(d) defining ''employer'' to include anyone acting directly or indirectly in the interest or an employer in relation to an employee) and the Congressional purpose as expressed in section 2 of the Act, require that employees generally should be paid overtime for working more than the number of hours specified in section 7(a), irrespective of the number of employers they have. Of course, an employer should not be held responsible for an employee's action in seeking, independently, additional part-time employment. But where two or more employers stand in the position of ''joint employers'' and permit or require the employee to work more than the number of hours specified in section 7(a), both the letter and the spirit of the statute require payment of overtime.

[6] *Mid-Continent Pipeline Co., et al.* v. *Hargrave,* 129 F. 2d 655 (C.A. 10); *Slover* v. *Wathen,* 140 F. 2d 258 (C.A. 4); *Mitchell* v. *Bowman,* 131 F. Supp., 520 (M.D. Ala. 1954); *Mitchell* v. *Thompson Materials & Construction Co., et al.,* 27 Labor Cases Para. 68, 888; 12 WH Cases 367 (S.D. Calif. 1954).

[7] Section 3(d) of the Act; *Greenberg* v. *Arsenal Building Corp., et al.,* 144 F. 2d 292 (C.A. 2).

[8] *Dolan* v. *Day & Zimmerman, Inc., et al.,* 65 F. Supp. 923 (D. Mass. 1946); *McComb* v. *Midwest Rust Proof Co., et al.,* 16 Labor Cases Para. 64, 927; 8 WH Cases 460 (E.D. Mo. 1948); *Durkin* v. *Waldron., et al.,* 130 F. Supp., 501 (W.D. La. 1955). See also *Wabash Radio Corp.* v. *Walling,* 162 F. 2d 391 (C.A. 6).

REQUIREMENTS FOR EXEMPTION

WORKWEEK APPLICATION OF EXEMPTION

AUTHORITY: Secs. 1–19, 52 Stat. 1060, as amended; 75 Stat. 65; 29 U.S.C. 201–219.

SOURCE: 26 FR 10275, Nov. 2, 1961, unless otherwise noted.

INTRODUCTORY

§ 793.0 Purpose of interpretative bulletin.

This part 793 constitutes the official interpretative bulletin of the Department of Labor with respect to the meaning and application of section 13(b)(9) of the Fair Labor Standards Act of 1938, as amended. This section provides an exemption from the overtime pay provisions of the Act for certain employees employed by certain small market radio and television stations. This exemption was added to the Act by the 1961 amendments. It is the purpose of this bulletin to make available in one place the interpretations of the provisions in section 13(b) (9) which will guide the Secretary of Labor and the Administrator in the performance of their duties under the Act unless and until they are otherwise directed by authoritative decisions of the courts or conclude, upon re-examination of an interpretation, that it is incorrect.

§ 793.1 Reliance upon interpretations.

The interpretations of the law contained in this part are official interpretations which may be relied upon as provided in section 10 of the Portal-to-Portal Act of 1947. All prior opinions, rulings and interpretations which are inconsistent with the interpretations in this bulletin are rescinded and withdrawn.

§ 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