

by the employer (not in excess of 50 percent of the applicable minimum wage), the reasonable cost or fair value of any facilities furnished him by the employer, as authorized under section 3(m) and this part 531, and the cash wages including commissions and certain bonuses paid by the employer. Any tips received by the employee in excess of the tip credit need not be included in the regular rate. Such tips are not payments made by the employer to the employee as remuneration for employment within the meaning of the Act.

#### PART 536—AREA OF PRODUCTION

- Sec.  
536.1 "Area of production" as used in section 7(c) of the Fair Labor Standards Act.  
536.2 "Area of production" as used in section 13(a)(10) of the Fair Labor Standards Act.  
536.3 "Area of production" as used in section 13(a)(17) of the Fair Labor Standards Act.  
536.4 Petition for amendment of regulations.

AUTHORITY: 52 Stat. 1060; 29 U.S.C. 201 *et seq.*, unless otherwise noted.

SOURCE: 27 FR 400, Jan. 13, 1962, unless otherwise noted.

##### § 536.1 "Area of production" as used in section 7(c) of the Fair Labor Standards Act.

(a) An employer shall be regarded as engaged in the first processing of any agricultural or horticultural commodity during seasonal operations within the "area of production" within the meaning of section 7(c) of the Fair Labor Standards Act if he is so engaged in an establishment which is located in the open country or in a rural community and in which such first processing is performed on commodities 95 percent of which come from normal rural sources of supply located not more than the following airline distances from the establishment:

(1) With respect to grain, soybeans, eggs, or tobacco—50 miles;

(2) With respect to any other agricultural or horticultural commodities—20 miles.

(b) For the purpose of this section:

(1) "Open the country or rural community" shall not include any city,

town, or urban place of 2,500 or greater population or any area within:

(i) One air-line mile of any city, town, or urban place with a population of 2,500 up to but not including 50,000, or

(ii) Three air-line miles of any city, town, or urban place with a population of 50,000 up to but not including 500,000, or

(iii) Five air-line miles of any city with a population of 500,000 or greater, according to the latest available United States Census.

(2) The commodities shall be considered to come from "normal rural sources of supply" within the specified distances from the establishment if they are received: (i) From farms within such specified distances, or (ii) from farm assemblers or other establishments through which the commodity customarily moves, which are within such specified distances and located in the open country or in a rural community, or (iii) from farm assemblers or other establishments not located in the open country or in a rural community provided it can be demonstrated that the commodities were produced on farms within such specified distances.

(3) The period for determining whether 95 percent of the agricultural or horticultural commodities are received from normal rural sources of supply shall be the last preceding calendar month in which operations were carried on for two workweeks or more, except that until such time as an establishment has operated for such a calendar month the period shall be the time during which it has been in operation.

(4) The percentage of commodities received from normal rural sources of supply within the specified distances shall be determined by weight, volume or other physical unit of measure, except that dollar value shall be used if different commodities received in the establishment are customarily measured in physical units that are not comparable.

(Sec. 7(c), 52 Stat. 1063, 29 U.S.C. 207 (c))