

§ 536.2 “Area of production” as used in section 13(a)(10) of the Fair Labor Standards Act.

(a) An individual shall be regarded as employed within the “area of production” within the meaning of section 13(a) (10) of the Fair Labor Standards Act in handling, packing, storing, compressing, pasteurizing, drying, preparing in their raw or natural state, or canning of agricultural or horticultural commodities for market, or in making cheese or butter or other dairy products:

(1) If the establishment where he is employed is located in the open country or in a rural community and 95 percent of the commodities on which such operations are performed by the establishment come from normal rural sources of supply located not more than the following air-line distances from the establishment:

- (i) With respect to operations on fresh fruit and vegetables—15 miles;
- (ii) With respect to the storing of cotton and any operations on commodities not otherwise specified in this subparagraph—20 miles;
- (iii) With respect to the compressing and compress-warehousing of cotton, and operations on tobacco, grain, soybeans, poultry or eggs—50 miles.

(b) For the purposes of this section:

(1) “Open 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 com-

modity 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 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. 12(a) (10), 52 Stat. 1067, 29 U.S.C. 213(a) (10))

§ 536.3 “Area of production” as used in section 13(a)(17) of the Fair Labor Standards Act.

(a) An employee employed by an establishment commonly recognized as a country elevator and having not more than five employees (including such an establishment which sells products and services used in the operation of a farm) shall be regarded as employed within the “area of production,” within the meaning of section 13(a)(17) of the Fair Labor Standards Act, if the establishment by which he is employed is located in the open country or in a rural community and 95 percent of the agricultural commodities received by the establishment for storage or for market come from normal rural sources of supply within the following air-line distances from the establishment:

- (1) With respect to grain and soybeans—50 miles;