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the balance so that the employee receives at least the minimum wage with the defined combination of wages and tips. With the exception of tips contributed to a valid tip pool as described in § 531.54, the tip credit provisions of section 3(m) also require employers to permit employees to retain all tips received by the employee.

[76 FR 18856, Apr. 5, 2011]

§ 531.60 Overtime payments.

When overtime is worked by a tipped employee who is subject to the overtime pay provisions of the Act, the employee's regular rate of pay is determined by dividing the employee's total remuneration for employment (except statutory exclusions) in any workweek by the total number of hours actually worked by the employee in that workweek for which such compensation was paid. (See part 778 of this chapter for a detailed discussion of overtime compensation under the Act.) In accordance with section 3(m), a tipped employee's regular rate of pay includes the amount of tip credit taken by the employer per hour (not in excess of the minimum wage required by section 6(a)(1) minus $2.13), the reasonable cost or fair value of any facilities furnished to the employee 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.

[32 FR 13575, Sept. 28, 1967, as amended at 76 FR 18856, Apr. 5, 2011]

PART 536—AREA OF PRODUCTION

Sec.

536.1–536.2 [Reserved]
536.3 ''Area of production'' as used in section 13(b)(14) of the Fair Labor Standards Act.

AUTHORITY: Sec. 13(a)(17), 52 Stat. 1067, as amended, sec. 9, 75 Stat. 71, as amended, sec. 204(b), 80 Stat. 835; 29 U.S.C. 213(b)(14).

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

§§ 536.1–536.2 [Reserved]

§ 536.3 "Area of production" as used in section 13(b)(14) 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(b)(14) 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;

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

(b) For the purpose 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 the city, town, or urban place with a population of 2,500 up to by 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 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. 13(a) (17), 52 Stat. 1067, as amended, sec. 9, 75 Stat. 71; 29 U.S.C. 213 (a) (17))

[27 FR 400, Jan. 13, 1962, as amended at 71 FR 16666, Apr. 3, 2006]

PART 541—DEFINING AND DELIMITING THE EXEMPTIONS FOR EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL, COMPUTER AND OUTSIDE SALES EMPLOYEES

Subpart A—General Regulations

Sec.
541.0 Introductory statement.
541.1 Terms used in regulations.
541.2 Job titles insufficient.
541.3 Scope of the section 13(a)(1) exemptions.
541.4 Other laws and collective bargaining agreements.

Subpart B—Executive Employees

541.100 General rule for executive employees.
541.101 Business owner.
541.102 Management.
541.103 Department or subdivision.
541.104 Two or more other employees.
541.105 Particular weight.
541.106 Concurrent duties.

Subpart C—Administrative Employees

541.200 General rule for administrative employees.
541.201 Directly related to management or general business operations.
541.202 Discretion and independent judgment.
541.203 Administrative exemption examples.
541.204 Educational establishments.

Subpart D—Professional Employees

541.300 General rule for professional employees.
541.301 Learned professionals.
541.302 Creative professionals.
541.303 Teachers.
541.304 Practice of law or medicine.

Subpart E—Computer Employees

541.400 General rule for computer employees.
541.401 Computer manufacture and repair.
541.402 Executive and administrative computer employees.

Subpart F—Outside Sales Employees

541.500 General rule for outside sales employees.
541.501 Making sales or obtaining orders.
541.502 Away from employer's place of business.
541.503 Promotion work.
541.504 Drivers who sell.

Subpart G—Salary Requirements

541.600 Amount of salary required.
541.601 Highly compensated employees.
541.602 Salary basis.
541.603 Effect of improper deductions from salary.
541.604 Minimum guarantee plus extras.
541.605 Fee basis.
541.606 Board, lodging or other facilities.

Subpart H—Definitions And Miscellaneous Provisions

541.700 Primary duty.
541.701 Customarily and regularly.
541.702 Exempt and nonexempt work.
541.703 Directly and closely related.
541.704 Use of manuals.
541.705 Trainees.
541.706 Emergencies.
541.707 Occasional tasks.
541.708 Combination exemptions.
541.709 Motion picture producing industry.
541.710 Employees of public agencies.

AUTHORITY: 29 U.S.C. 213; Public Law 101–583, 104 Stat. 2871; Reorganization Plan No. 6 of 1950 (3 CFR 1945–53 Comp. p. 1004); Secretary's Order No. 4–2001 (66 FR 29656).

SOURCE: 69 FR 22260, Apr. 23, 2004, unless otherwise noted.