



REGULATIONS: OREGON FARMER'S HANDBOOK

Welcome to the Agripedia section regarding agricultural regulation and program information. This section was previously published as the Oregon Farmer's Handbook. We hope you will appreciate having a snapshot of all Oregon agricultural information available in one handy publication.

An electronic version of this document can be found on the ODA Web site <http://oregon.gov/ODA> and will be updated as new information becomes available. If you have corrections or additions to the Agripedia, please send them to:

Katherine Kennedy LeaMaster
Editor and designer
Oregon Department of Agriculture
635 Capitol St. NE
Salem, Oregon 97301-2532
kleadmast@oda.state.or.us

AGRICULTURAL EMPLOYMENT

DISCRIMINATION LAWS

TITLE VII CIVIL RIGHTS ACT OF 1964

Title VII covers all employers with 15 or more employees in at least 20 calendar weeks of the current or preceding calendar year. Title VII applies to discriminatory employment practices affecting every aspect of employment, including recruitment, hiring, promotion, compensation, and termination of employment.

Employment discrimination based on race, color, religion, sex, or national origin is prohibited by this act. Title VII also prohibits retaliation. Under the law, women affected by pregnancy, childbirth, and related medical conditions must be treated the same as other persons not affected by pregnancy or related conditions, but otherwise similar in their ability or inability to work.

Under Title VII there are two kinds of discrimination: “disparate treatment” and “disparate or adverse impact.”

DISPARATE TREATMENT

The most common type of Title VII violation is intentional discrimination, known as disparate treatment. Disparate treatment occurs when an employer excludes or treats persons differently because of their race, sex, religion, color, or national origin. If such treatment were shown, the employer would have to give a legitimate nondiscriminatory reason for such action.

Title VII has a very narrow exception, called a “bona fide occupational qualification” (BFOQ) to what otherwise would be illegal discriminatory practices. The BFOQ exception permits the employment of a person of a particular religion, sex or national origin where that religion, sex or national origin, is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise. Race cannot be a BFOQ. The BFOQ exception is extremely narrow and has not been recognized as a legitimate defense in a number of circumstances. For example, customer preferences are not legitimate BFOQs. The fact that an employer’s customers do not like dealing with a woman, or a minority, or a person of a particular religion, is not a legitimate basis for discrimination.

EXAMPLE

An agricultural employer might believe that certain agricultural activities, such as handling heavy machinery or large animals, are particularly dangerous to women—especially pregnant women. However, the courts have not recognized a BFOQ exception on the basis that a job is dangerous to women. Instead, the employer would have to prove that the essence of the business would be undermined by hiring female workers because they would be unable to perform the job safely and efficiently—a highly doubtful proposition. This is especially true given the 1978 passage of the Pregnancy Discrimination Act amendment to Title VII, which states that discrimination on the “basis of sex” includes discrimination on the basis of pregnancy, childbirth or related medical conditions. Women cannot be excluded from dangerous occupations because of possible injuries to unborn children. Under Title VII the woman makes those choices for herself and her unborn child.

DISPARATE IMPACT

Disparate impact occurs when an employer uses practices that are neutral on the surface, but adversely affect a protected class of persons such as women or minorities. An employer’s imposition of minimum height and weight requirements upon prospective employees is a classic example of disparate impact.

EXAMPLE

Even though the height/weight requirements apply to both men and women, they tend to exclude a larger percentage of women from doing a job because, on an average, men are taller and heavier than women. An employer’s requirement that all employees weigh a minimum of 120 pounds and be at least 5 feet 2 inches tall effectively excludes over 40 percent of the female population, but less than 10 percent of the male population, and statistically establishes a prima facie case of sex discrimination. Such requirements also have a disparate impact on people of various national origins, such as Hispanics and Asians. If an employer imposes job requirements that have a disparate impact, the employer must prove that a business necessity justifies the hiring criteria. For example, if an employer did impose weight and height requirements for prospective employees, the employer would have to prove the requirements were necessary to do the job.

EXAMPLE

While physical size and strength can be legitimate criteria if a job requires extensive heavy lifting or involves extremely strenuous physical work, an employer cannot merely assume that women cannot do the job. The United States Supreme Court requires the use of tests that measure

strength directly. If an employer needs an employee to do a physically demanding job, such as loading and unloading large livestock, the employer can require applicants to be able to repeatedly lift certain heavy loads. While the employer might be able to find more men than women capable of lifting the loads, the employer could not legitimately refuse to hire a woman who was physically capable of doing the job. An employer's claim that his or her discriminatory hiring criteria arise from a business necessity will be closely scrutinized by the courts. The employer has the burden of proof showing that the discriminatory job requirement is job related for the position in question, and consistent with business necessity. In order for discriminatory criteria to qualify as a business necessity, the employer must show that

- the criteria are necessary to the safe and efficient operation of the [employer's] business.
- they effectively carry out the purpose they are supposed to serve.

Even if the employer shows business necessity, the criteria may still be unlawful if it is shown there are alternative policies or practices that would better or equally well serve the same purpose with less discriminatory impact.

PRE-EMPLOYMENT PRACTICES

Employers may unknowingly be conducting illegal interviews of prospective employees because some of the historically common inquiries contained in employment application forms are now unlawful.

In developing application forms or in seeking information from applicants, employers should consider

- whether the answer to a particular question, if used in making a decision, will have an impact on a protected group, or members of one sex (i.e., disqualify a significantly larger percentage of members of a particular group than another).
- whether the information is really needed to judge an applicant's competence or qualifications for the job in question.

Generally, pre-employment inquiries that directly or indirectly disclose the applicant's race, color, religion, sex, national origin, or age do not as such violate Title VII or the Age Discrimination in Employment Act (ADEA), as long as the inquiries are made of all applicants.

However, unless justified, such inquiries may be important evidence of discriminatory selection. Therefore, such inquiries are suspect and are strong evidence of discrimination unless the employer can show that the information was not used for discriminatory purposes and provided a valid criterion for employment.

Note: Refer to the "Americans with Disabilities Act" section of this chapter for more information.

Questions related to marital status, pregnancy and childcare are examples of pre-employment inquiries, which may indirectly screen out members of a protected group.

Questions related to these subjects would be discriminatory if asked only of women. Even if asked of all applicants, such questions may not be used to limit or deny employment opportunities only for women who are qualified to perform the job.

EXAMPLE

As a general rule, information that is not job related is likely to be illegal (have a disparate impact).

Employers can obtain necessary information in other ways to such questions:

- "Are you a US citizen?" Better to ask: "Do you have the legal right to work in this country?" Proof may be requested after hiring.
- "What is your age?" Better to ask: "If hired, can you give proof of age or a work permit?"
- "Are you married?" "With whom do you live?" Better to ask nothing. Minors may be asked parents' address.
- "Have you ever been arrested?" Better to ask: "Have you ever been convicted of a crime, and what are the circumstances?"

SEXUAL HARASSMENT

The consequences of sexual harassment or discrimination should be of increasing concern to employers. Employers should establish and widely circulate strict company policies against such behavior. Procedures to quickly and effectively deal with sexual harassment should be established as soon as possible and should be the basis for across-the-board employee training.

The US Equal Employment Opportunity Commission (EEOC) guidelines define two types of sexual harassment, both of which are illegal.

QUID PRO QUO

Quid pro quo (something given or received for something else) occurs when an employee is subjected to unwelcome sexual advances, and submission becomes the basis for employment decisions such as hiring, firing or advancement.

ENVIRONMENTAL

Environmental occurs when any type of unwelcome sexual behavior creates a hostile work environment.

Examples of sexual harassment

- unsolicited and unwelcome flirtations, advances or propositions
- display of sexually suggestive objects or pictures
- graphic or degrading comments about employee's appearance, dress, or anatomy
- ill-received dirty jokes and offensive gestures
- sexual or intrusive questions about employee's personal life
- explicit descriptions of the harasser's own sexual experiences
- unnecessary, unwanted physical contact such as touching, hugging, pinching, patting, kissing
- whistling, catcalls, leering
- exposing genitalia
- physical or sexual assault
- rape.

The above conduct violates Title VII if it is sufficiently severe or pervasive to create a hostile work environment. Generally isolated instances of verbal sexual conduct, unless particularly severe, would not rise to this level.

AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967

This act prohibits employers with 20 or more workers during at least 20 calendar weeks of the current or preceding year from discriminating against individuals aged 40 or older on the basis of age in any aspect of employment, including hiring, promotion, discharge, wages, and benefits. It also prohibits retaliation against a person who files a charge of age discrimination.

The law prohibits any statement in advertisements that indicates any preference, limitations, specifications, or discrimination on the basis of age. The phrase "state age" on an employment application is not, in itself, a violation of the act. However, since it is felt that such a phrase will tend to deter older applicants, its use will be carefully scrutinized to assure that such a request is for a lawful purpose. The act does not prohibit specification of a minimum age below 40 in advertisements, i.e. "must be 18 or over." There are permitted exceptions to the above rules. An exception is permitted where age is a bona fide occupational qualification (BFOQ) and is reasonably necessary to the normal operation of the particular business.

Employers may differentiate on reasonable factors other than age if they are applied equally, do not in any way include age, and are job related.

The Older Workers Benefit Protection Act of 1990 amended the ADEA, reaffirming that the act applies to benefits and benefit plans, and providing minimum standards for valid waivers of rights under the ADEA.

EQUAL PAY ACT (EPA)

The Equal Pay Act prohibits employers from discriminating between men and women on the basis of sex in the payment of wages where they perform substantially equal work (requiring equal skill, effort and responsibility) under similar working conditions, and in the same establishment. The law also prohibits employers from reducing the wages of either sex to comply with the law.

The law does not apply to pay differences based on factors other than sex, such as seniority, merit, or systems that determine wages based upon the quantity or quality of items produced or processed. Many EPA violations may be violations of Title VII as well, which also prohibits sex-based wage discrimination. Such charges may be filed under both statutes.

AMERICANS WITH DISABILITIES ACT (ADA)

WHO MUST COMPLY?

A covered entity includes any employer with 15 or more employees who work for 20 or more calendar weeks in the current or preceding calendar year. ADA prohibits employment discrimination against qualified individuals with disabilities and requires employers to make a "reasonable accommodation" to an applicant's or employee's known physical or mental limitations resulting from a disability, unless the employer can show that a specific accommodation causes undue hardship.

DEFINITIONS

The ADA protects persons with one or more disabilities. Under the ADA disability means

- a physical or mental impairment that substantially limits one or more of an individual's major life activities.
- a record of such impairment.
- being regarded as having such impairment.

The ADA may protect not only those with obvious mobility impairments, but also persons who are mentally retarded and those with such hidden disabilities as epilepsy, cancer, heart disease, or AIDS.

A qualified person with a disability is defined as "an individual with a disability who, with or without reasonable accommodations, can perform the essential functions of the employment position."

To avoid discriminating against a qualified person with a disability an employer may find it useful to define the

essential functions of a position. If challenged, an employer must be able to explain why any function is listed as essential. It is suggested that an employer itemize the priority of all duties of a particular position and write the job description in clear, concise, and accurate language.

The federal regulations describe essential functions as “primary job duties that are intrinsic to the employment position the individual holds or desires. The term “essential function” does not include the marginal or peripheral functions of the position that are incident to the performance of primary job function.”

Factors, which can be considered in determining whether a job function is essential:

- employer judgment
- time necessary to perform a function
- work experience of current and past employees in that position
- limited number of employees available to perform the function
- consequences of not requiring a certain function.

The above factors are just some that can be taken into consideration. Each case is decided on its own merits.

Once the employer has defined the essential functions of a job, the employer must design hiring and advancement procedures that are nondiscriminatory towards the disabled.

PRE-EMPLOYMENT INQUIRIES

The ADA prohibits any pre-offer inquiries about disability. Instead, the employer must first make a job offer which is conditional upon the satisfactory results of a post-offer medical examination. The medical examination is conducted before the applicant starts work and the employer may also at that time ask health-related questions. However, all applicants who receive a job offer in the same job category must be subjected to the same examination and questions.

Although the ADA limits some inquiries, the following information can still be obtained during a pre-offer interview:

- the applicant’s previous work history
- the applicant’s qualifications for the position
- the applicant’s abilities to perform the essential functions of the position with or without reasonable accommodation
- what the company has to offer as an employer
- the applicant’s interest in the company.

However, questions routinely asked on employment applications, and previously not violative of other civil rights legislation, are prohibited under the ADA.

Examples of such questions include the following:

- Have you ever had or been treated for any of the following conditions or diseases? (Followed by a checklist of various conditions and diseases.)
- Have you been treated for any conditions or diseases in the past three years?
- Have you ever been hospitalized? If so, for what condition?
- Have you ever been treated by a psychiatrist or psychologist? If so, for what condition?
- Have you ever been treated for any mental condition?
- Is there any health-related reason you may not be able to perform the job for which you are applying?
- Have you had a major illness in the last five years?
- How many days were you absent from work because of illness last year? Note: An employer may state its attendance requirement and inquire whether the applicant can satisfy that requirement.
- Do you have any physical defects that preclude you from performing certain kinds of work? If so, please describe the defects and specific work limitations.
- Do you have any disabilities or impairments that may affect your performance in the position you seek?
- Are you taking any prescribed drugs? (This inquiry is prohibited because the answer may reveal a disability).
- Have you ever been treated for drug addiction or alcoholism?
- Have you ever filed for workers’ compensation insurance?

REASONABLE ACCOMMODATION

To establish a prima facie case of discrimination, a qualified person with a disability need only show that he or she was discriminated against and that a reasonable accommodation could have been made by the employer to accommodate the complainant’s disability. “Reasonable accommodation” includes

- making existing facilities readily accessible and usable to disabled persons.
- restructuring jobs, such as modifying work schedules.
- modifying equipment or devices or even acquiring new equipment or devices.
- modifying examinations, training materials or policies.
- hiring qualified readers or interpreters.
- reassigning to a vacant position.

EMPLOYING MINORS

UNDUE HARDSHIP

To defend a prima facie case of discrimination under ADA, the employer must prove that a reasonable accommodation would be an "undue hardship." Undue hardship is determined on a case-by-case basis, but the following factors may be taken into consideration:

- the facility's financial resources
- number of persons employed
- the overall size of the operation
- the impact of the expense on the business
- the type of business, its structure and functions.
- Prohibitions and exemptions

Although the protection afforded under the ADA is extremely broad, there are a number of persons and activities that are not covered. The following is a list of those persons and activities:

The ADA specifically excludes from protection homosexuals, bisexuals, compulsive gamblers, kleptomaniacs, transvestites, transsexuals and pedophiles.

A person who would pose a direct threat to himself or others, if the threat cannot be eliminated by reasonable accommodation.

An employer may prohibit the illegal use of drugs and alcohol at the work place. Also, employers can require that employees not be under the influence of alcohol or illegal drugs while at work.

TECHNICAL ASSISTANCE

US EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

1801 L St. NW
Washington, DC 20507
Phone202-663-4900
TTY.....202-663-4494

EEOC Field Office

Phone800-669-4000
TTY.....800-669-6820
Web<http://eoc.gov>

OREGON BUREAU OF LABOR AND INDUSTRIES (BOLI)

800 NE Oregon St., #32, Suite 1070
Portland, OR 97232
Phone 971-673-0761, ext. 3
TDD971-673-0766
Spanish (voicemail)971-673-9199
Web<http://www.oregon.gov/BOLI>

Note: The EEOC has a working agreement with the Oregon Bureau of Labor and Industries, which provides that charges of discrimination filed with one agency are also filed with the other agency. Charges may be processed by either agency.

WHO MUST COMPLY?

All employers who employ minors, excepting children of farm owner/operators.

PERMITS AND LICENSES

Farm operators are not required to obtain validated employer certificates to employ minors in agriculture unless the minor will be operating, assisting in operating, or riding in or on power-driven machinery.

RECORDS

Records that growers employing minors must keep for each minor employee include, but are not limited to

- name in full
- address of the minor while employed and permanent address if different
- date of birth
- any written parental consent required
- any certificates of completion of training for operation of power-driven farm machinery.

INSURANCE

You must carry workers' compensation insurance for all workers who receive any remuneration, including wages, room and board, or other benefits.

Contact the Workers' Compensation Department, 350 Winter St. NE, P.O. Box 14480, Salem 97309-0405, Phone: 503-947-7814 or Toll-free: 1-800-452-0288, for more information regarding workers' compensation.

E-mail general questions to workcomp.questions@state.or.us

Note: See the section on "Workers' Compensation" in this handbook.

SAFETY TRAINING

Workers must be properly instructed and supervised in the safe operation of any machinery, tools, equipment, process, or practice they are authorized to use or apply. Contact extension safety specialists, Agricultural Engineering Department, OSU, 541-754-4021, for training program information.

OPERATING OR RIDING ON MACHINERY

Minors employed by a parent or person standing in place of a parent (sibling, uncle, aunt, or grandparent) do not need an employment certificate or certificate of training to operate or ride on farm machinery.

Other minors 14-18 years old may operate power-driven farm machinery ONLY if they have passed and received a

week may be worked unless a special permit is first obtained from the Wage and Hour Commission of BOLI.

Minors under age 16 employed to operate, assist in the operation of, or ride in or on power-driven farm machinery may work a maximum of eight hours per day on non-school days; and 18 hours per week during school weeks. During the summer months, a maximum of 10 hours per day and 60 hours per week may be worked. Outside of harvest season (summer months) a maximum of 44 hours per week is allowed without an emergency overtime permit.

There is no restriction on starting and quitting times for minors employed in agriculture, so long as the minor does not work when school is in session and does not exceed the hour limitations.

TECHNICAL ASSISTANCE

The Oregon Bureau of Labor and Industries provides technical assistance and information to employers about minors, wages and hours, and civil rights questions. All inquiries are handled confidentially.

OREGON BUREAU OF LABOR AND INDUSTRIES (BOLI)

800 NE Oregon St., Suite 1045
Portland, OR 97232
Phone971-673-0824
TDD971-673-0766
Web <http://oregon.gov/BOLI>

Wage and Hour Division

Phone 971-673-0761, ext. 2

US DEPARTMENT OF LABOR

Wage and Hour Division

620 SW Main St, Room 423
Portland, OR 97205
Phone503-326-3057
Fax503-326-5951
Web <http://www.wagehour.dol.gov>

WORKERS' COMPENSATION

OREGON DEPARTMENT OF CONSUMER AND BUSINESS SERVICES WORKERS' COMPENSATION DIVISION

350 Winter St. NE
P.O. Box 14480
Salem 97309-0405
Phone503-947-7814
Toll-free 1-800-452-0288
E-mail workcomp.questions@state.or.us

PUBLICATIONS

- Child Labor Requirements in Agriculture Under the Fair Labor Standards Act, Child Labor Bulletin No. 102.
- A Message to Young Workers About the Fair Labor Standards Act, as Amended in 1974, WH Publication 1236, 1976.

- Occupations in Agriculture Particularly Hazardous for the Employment of Children Below the Age of 16, WH Publication 1283, December 1972.
- Young Farm Workers and the Fair Labor Standards Act, WH Publication 1338, May 1971.

INSURANCE

OREGON DEPARTMENT OF CONSUMER AND BUSINESS SERVICES WORKERS' COMPENSATION DIVISION

Employer Compliance Unit: Employer Coverage

350 Winter St. NE
PO Box 14480
Salem 97309-0405
Phone503-947-7814
Toll-free 1-800-452-0288

SAFETY TRAINING

OREGON STATE UNIVERSITY

Agricultural Engineering, Extension Safety Specialists

Phone541-754-4021

Oregon 4-H Youth Development Education

105 Ballard Extension Hall, Oregon State University
Corvallis, OR 97331-3608
Phone541-737-2421
Fax541-737-1332
E-mail 4-h@orst.edu
Web oregon.4h.oregonstate.edu/index_w.html

EMPLOYMENT ELIGIBILITY VERIFICATION

WHO MUST COMPLY?

The Immigration Reform and Control Act of 1986 and the Immigration Act of 1990 placed the burden of employment eligibility verification upon US employers and provided for employer sanctions for hiring undocumented or illegal immigrants. It is unlawful for an agricultural association, agricultural employer, or farm labor contractor to hire, recruit, or refer for a fee, an individual for employment in the US without complying with the employment eligibility verification requirements.

REQUIREMENTS

The law requires employers, including agricultural employers, to

- ensure that all employees fill out section 1 of the Form I-9 at the time of hire.
- review documents establishing employee's identity and eligibility to work and complete section 2 of the Form I-9 within three business days.

- retain the Form I-9 for three years after the date the person begins work, or one year after the person's employment is terminated, whichever is later.
- make the Form I-9 available for inspection to an officer of Immigration and Customs Enforcement (ICE), the US Department of Labor (DOL), or the Office of Special Counsel (OSC).

The handbook for employers provides three lists of documents that can be used to establish identity and employment eligibility of workers. The lists are also reproduced on the back of the Form I-9. The handbook with I-9 forms can be obtained by writing the ICE, Investigations Division, 511 NW Broadway, Portland OR 97209, or by calling the automated forms line at 800-870-3676.

The following documents were removed from the list of acceptable identity and work authorization documents (listed on the 11/91 version of the Form I-9):

- Form I-151 (Note: The form I-551 is still acceptable)
- Certificate of US Citizenship (List A #2)
- Certificate of Naturalization (List A #3)
- Unexpired Reentry Permit (List A #8)
- Unexpired Refugee Travel Document (List A #9).

An employer cannot direct an employee to present a particular document from the list(s); the employee must choose which document(s) from the list he or she will provide. An employer cannot mandate that an employee provide more documents than are required by the law. An employer cannot refuse to honor documents that reasonably appear to be genuine and relate to the person presenting them. Employers must treat all employees the same when completing the Form I-9.

INSPECTIONS

Employers will be given at least three days advance notice for each inspection. Besides inspecting Form I-9s for all employees hired after November 6, 1986, the inspecting officers will also look for evidence of prohibited hiring practices, which include

- hiring and/or continuing to employ unauthorized workers.
- failing to comply with the law's record-keeping requirements.
- requiring the employee to self-insure for damage or loss.
- recruiting unauthorized seasonal agricultural workers outside the United States.
- engaging in a pattern or practice of knowingly hiring or continuing to employ unauthorized employees.
- engaging in fraud or false statements or otherwise misusing visas, immigration permits, and identity documents.

TECHNICAL ASSISTANCE

IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE)

Office of Investigations—Worksite Enforcement Unit

511 NW Broadway

Portland, OR 97209

Phone503-326-7487

Web<http://www.uscis.gov>

FAIR EMPLOYMENT PRACTICES ACT

WHO MUST COMPLY?

All Oregon employers, employment agencies, and labor organizations.

DEFINITIONS

EMPLOYER

An employer is any person who directly or through an agent, engages or uses the personal service of one or more employees reserving the right to control how the service is performed.

EMPLOYMENT AGENCY

Any person who procures employees or opportunities to work.

LABOR ORGANIZATION

Any organization constituted for the purpose, in whole or in part, of collective bargaining or dealing with employers concerning grievances, terms and conditions of employment.

COMPLIANCE

Employers must

- Refrain from any discriminatory unlawful employment practices based on race, color, religion, sex, national origin, age, sexual orientation, physical or mental handicap, or marital status, such as
 - » discharge or failure or refusal to hire.
 - » discrimination on compensation, terms, conditions or privileges of employment.
 - » limiting, segregating or classifying employees or applicants for employment.
 - » discrimination in apprenticeship or training programs.
 - » printing, or causing to be printed or published, any notice of employment which specifies a discriminatory preference.

- » discrimination against anyone who opposes discriminatory practices or assists, testifies or participates in any discrimination investigation.
- » discrimination in the sale, rental or financing of housing.
- Not require as a condition of employment or continuation of employment that an employee take a breathalyzer or lie detector test. Breathalyzer test may be administered only if employer has reasonable grounds to believe employee is under the influence of alcohol or the employee consents to such testing.
- Not subject, directly or indirectly, an employee or prospective employee to any polygraph examination, psychological stress test, genetic screening or brain wave test.
- Not blacklist employees discharged by the employer with intent of preventing employee from engaging or securing similar or other employment.

State laws prohibits age discrimination based on age if the person is over 18. This is broader protection than offered by the federal Age Discrimination in Employment Act. Additionally, many municipalities have passed other antidiscrimination laws (regarding sexual orientation, gender identity, source of income, etc.)

TECHNICAL ASSISTANCE

OREGON BUREAU OF LABOR AND INDUSTRIES
 800 NE Oregon, Suite 1045
 Portland, OR 97232
 Phone971-673-0824
 Eugene Office
 Phone503-687-7460

FAIR LABOR STANDARDS ACT (FLSA-MINIMUM WAGE): FEDERAL LAW

WHO MUST COMPLY?

Any farmer who employs workers is subject to the Federal Labor Standards Act unless the farmer falls within one of the exemptions below. The law also applies to employers who engage in interstate commerce directly or indirectly through a buyer or other agent.

EXEMPTIONS

If the employer did not employ more than 500 man-days of agricultural labor (see definition below) in any quarter of the preceding calendar year, his agricultural employees are exempt from the minimum wage provisions of the act for the entire following calendar year.

DEFINITION

MAN-DAY

A man-day is any day one worker works for at least one hour. Five workers working one hour on one day is equal to five man-days. To be exempt, all the employee's work in the work week must be an exempt activity. Any mixing of exempt and nonexempt (non agricultural) activities will cause all of the employee's time to be compensable at the minimum wage rate.

Note: Employees who are parents, spouses, children, or other members of an employer's immediate family are excluded from the minimum wage and overtime requirements of the law, as well as the 500 man-day test.

AGRICULTURAL LABOR

In general, under the primary definition of agriculture in the FLSA, if the employee is engaged in cultivating the soil or growing or harvesting of crops, or raising livestock, bees, fur-bearing animals, or poultry, he/she is engaged in agricultural labor. The definition does not include forestry or Christmas tree operations (including nurseries that produce seedlings for forestry or Christmas tree farms). This means that these operations are not exempt agricultural activities and are subject to the minimum wage and overtime requirements (unless the activity is secondary or incidental to a primary farming activity). There is a separate exemption from overtime for operations that employ eight or fewer workers in forestry or Christmas trees.

The following employees are also exempt from the minimum wage and overtime requirements of the law, but their man-days of work must be counted toward the 500 man-day test:

- Employees who are solely engaged in hand harvest work where the work is customarily paid on a piece-rate basis in the area, are paid solely on a piece-rate basis, the workers return to their permanent homes each night (non-migrants), and each worker has worked less than 13 weeks in agriculture in the preceding calendar year.
- An employee in agriculture whose employer did not, during any calendar quarter of the preceding calendar year, use more than 500 man-days of agricultural labor.
- Any agricultural employee sixteen years old or younger employed as a hand harvest laborer
 - » paid on a piece-rate basis in an operation which is customarily and generally recognized as paid for on a piece-rate basis in the region
 - » employed on the same farm as his/her parent or person standing in place of his/her parents, and
 - » is paid at the same piece-rate as employees over age sixteen on the same farm.

- Employees principally engaged in the range production of livestock who must be available at all hours to care for such livestock (this exemption does not include dairy workers).

WAGES AND HOURS

Employers are required to pay employees a minimum wage of \$5.85 per hour unless a higher wage is required by state law.

Note: The Federal minimum wage will increase to \$6.55 per hour, effective July 24, 2008, and \$7.25 per hour, effective July 24, 2009.

Although the minimum wage is stated on an hourly basis, employees can also be paid on salary commissions, piecework, biweekly, or under any other arrangement so long as the wages equal or exceed the minimum wage during each pay period. To determine whether the minimum wage is being paid, the hours worked per week should meet the minimum wage requirement ($\$290/40$ hours = \$7.25 per hour). If, however, the same worker were being asked to work 60 hours a week for \$300, then the FLSA would be violated by the employer ($\$300/60$ hours = \$5.00 per hour).

EMPLOYEE

The act uses a very broad definition of employee, including anyone the employer “suffers or permits” to work. As an example, if a worker’s spouse is helping the worker pick in an orchard, with the employer’s knowledge, and the employer does not stop the practice, the spouse will also be considered an employee. If subject to the FLSA, both workers will be entitled to receive minimum wage.

MINIMUM WORK WEEK

The FLSA also requires employers to limit the employee’s work week to no more than 40 hours per week, unless overtime is paid. Workers who are allowed to work more than 40 hours per week must be compensated for each hour worked in excess of 40 hours in a work week at a rate of not less than one-and-one-half times their regular rate of pay, unless the worker qualifies for one of the agriculture or forestry exemptions. Unless exempt, time-and-a-half is due to hourly-paid employees; extra halftime may be due piece-rate employees for overtime. Work week is defined by the Wage and Hour Division as “a fixed and regularly recurring period of 168 hours: seven consecutive 24-hour periods.”

OVERTIME

Employees working in agriculture, as defined by the Fair Labor Standards Act, are exempt from overtime. Under the secondary definition of agriculture, any practice performed, other than those listed under the primary definition, such as office work, shipping, warehouse, transporting, sales, etc.,

are exempt only if performed by employees of the farmer with respect to products grown by their employer or if performed on a farm as an incident to and in conjunction with products grown on the particular farm on which they are working. Because some employees of agriculture employers handle or otherwise work on products not grown by their employer, or do work not within the definition of agriculture as outlined above, the employer should seek professional legal counsel or advice from the local US Department of Labor, Wage and Hour office concerning specifics of the overtime exemption.

RECORD KEEPING

The FLSA requires employers to keep certain records concerning covered employees. The failure to keep accurate records creates a presumption in favor of the employee that a violation did occur.

Note: Also see the section on the “Migrant and Seasonal Agricultural Worker Protection Act” for record keeping requirements when using a farm labor contractor.

An employer must keep records of

- employee’s name in full including any identifying name or symbol used in place of the name on any other records.
- home address (with zip code).
- date of birth if employee is less than nineteen (19) years of age.
- employee’s sex, and the occupation in which employed.
- time of day and day of the week on which the employee’s work week begins.
- regular hourly rate of pay and the basis on which wages are paid.
- hours worked each workday and total hours worked each week.
- total daily or weekly straight-time earnings or wages.
- total weekly premium pay for overtime hours worked.
- total additions to or deductions from wages paid each pay period.
- total wages paid each pay period.
- date of payment and the pay period covered by payment.

Additionally, employers should

- have on file a statement from each exempt piece-rate employee showing the number of weeks employed in agriculture during the preceding year.
- have on file the date of birth and parent name for each exempt minor paid on a piece-rate basis.
- maintain a file showing the full name, present and permanent address, and date of birth of any minor under 18 who works when school is in session or works in a hazardous occupation.

- display the official US Department of Labor poster “Employee Rights” where employees can see it. This poster contains basic information on minimum wages.

Records on employees must normally be kept for a minimum period of three years.

PAYCHECK DEDUCTIONS

FLSA allows employers to deduct the cost of certain items from the wages of farm workers. However, Oregon law (ORS 652.610) requires the authorization of the employee in writing for all deductions other than required tax deductions. All deductions must be recorded on the books of the employer and must be primarily for the benefit of the employee or authorized by a collective bargaining agreement.

Deductions that may lawfully reduce the wage level below the minimum wage:

- Taxes required by law (Social Security, Medicare and withholding tax).
- Third party deductions authorized by the employee—union dues, savings bonds, merchant accounts, insurance premiums, church and charitable organizations—so long as the employer receives no profit or benefit directly or indirectly.
- Salary advances exclusive of interest charges. Signed receipts for cash advances must be obtained and retained.
- Housing and meals, provided it does not exceed the lesser of actual costs or fair market value and meets a number of specified conditions dealing with profit and rate of return on investment. Housing facilities must be maintained for the benefit of employees, occupancy must not be mandatory, and costs cannot include depreciation when the facilities have been fully depreciated. Recent rulings by the DOL indicate that some migrant housing may have no fair rental value. If you provide and charge farm workers for housing that can only be used by migrant workers and thus has no fair rental value, this rental charge cannot reduce their wages below the current minimum wage of \$5.85 per hour.

Deductions that may not lawfully reduce the wage level below the current minimum wage:

- Transportation advances. This policy applies where agricultural employers provide daily transportation to assure a sufficient number of workers. It also applies for long distance travel to arrive in Oregon if it brings the wage below the minimum. However, when the following three factors are all present, agricultural employers may deduct from workers’ wages the lesser of reasonable costs or fair value of such transportation regardless of whether such deductions will decrease workers’ wages below the minimum wage:
 - » The workers must know the location of their work site.
 - » Alternative transportation sources (i.e., personal automobile or carpool arrangements) must be readily available.
 - » The workers are not required to use the employer’s transportation.
- Charges for contractors’ (crew leaders’) services.
- Charges for tools of the trade and other materials incidental to carrying on the employer’s business.

ADDITIONAL INFORMATION

- Exemptions Applicable to Agriculture, Processing of Agricultural Commodities, and Related Subjects, Under the FLSA of 1938, as amended WH Pub. 1042, April 1974.
- Interpretative Bulletin, Part 791: Joint Employment Relationship Under the Fair Labor Standards Act, WH Pub. 1057, January, 1977.
- Wage Payments under the Fair Labor Standards Act of 1938, WH Pub. 1210 Ref., May 1974.
- Records To Be Kept by Employers Under the Fair Labor Standards Act of 1938, as amended, WH Pub. 1261, September 1984.
- Handy Reference Guide to the Fair Labor Standards Act, WH Pub. 1282, October 1978.
- Agricultural employment Under the Fair Labor Standards Act, WH Pub. 1288, August 1979.
- Employment relationships Under the Fair Labor Standards Act, WH Pub. 1297, March 1979.
- Hours Worked Under the Fair Labor Standards Act, WH Pub. 1344, March 1976.

TECHNICAL ASSISTANCE

US DEPARTMENT OF LABOR

Wage and Hour Division

620 SW Main St, Room 423

Portland, OR 97205

Phone503-326-3057

Fax503-326-5951

Web <http://www.wagehour.dol.gov>

FAMILY AND MEDICAL LEAVE ACT: FEDERAL

WHO MUST COMPLY?

All employers who are engaged in commerce or industry who employ 50 or more employees for each working day during each of 20 or more calendar work weeks in the current or preceding calendar year. Farm businesses are engaged in commerce and affect commerce. An employee is considered to have been employed for each working day of a work week if the employee remains on the payroll throughout the week, even if the employee does not actually work on each workday.

ELIGIBLE EMPLOYEES

An eligible employee is one employed for a total of 12 months. These 12 months need not be consecutive. The employee must have worked for the employer for at least 1,250 hours of service during the 12 consecutive month period immediately preceding the commencement of the leave. (This averages about 105 hours a month or 25 hours a week.)

WHICH HOURS TO COUNT

Federal law requires that when a worker is employed by one employer, the employee must total all hours worked (even though two or more unrelated job assignments may have been performed). In the case of an employee working for two or more employers, each employer must add all hours worked by the employee in all employment.

EXCLUDED ELIGIBLE EMPLOYEES

An employee is not entitled to leave under the act if the employer does not employ 50 or more employees who work at locations within a 75 mile radius of the employee's work site. Even though an employer may not be exempt, highly compensated employees may be exempt from portions of the act. For example, key employees, or the highest paid 10 percent, may not request restoration to the same or equivalent position upon their return. To exempt these employees an employer must demonstrate a leave would cause substantial and grievous economic injury to the employer's operations.

COMPLIANCE

EMPLOYERS MUST

Allow an eligible employee up to a total of 12 work weeks leave during any 12-month period for one or more of the following:

- birth of a son or daughter of the employee and for care of the infant

- placement of a son or daughter with an employee for foster care
- care for son, daughter, spouse, or parent that has a serious health condition
- employee's serious health condition making it impossible to perform functions of employee's position.

Note: A serious health condition is an illness, injury, impairment, or physical or mental condition involving

- inpatient care in a hospital, hospice, or residential care facility.
- continuing treatment by a health care provider.

An employee may elect or an employer require the employee to substitute any accrued vacation leave, personal leave, or family leave of the employee for the leave provided under this act.

EMPLOYERS MUST ALSO

- restore employee to the position of employment the employee held when leave commenced or an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.
- not reduce or cancel any of the employee's benefits accrued prior to the date leave commenced.
- maintain coverage of employee under any group health plan for the duration of the leave at the level and under the conditions coverage would have been provided if employee had continued employment.
- notify employees in writing that leave is designated as accruing under the Family and Medical Leave Act (FMLA).

FORESEEABLE LEAVE

When leave is for child birth or foster child placement, an employee shall give the employer 30 days notice before leave is to begin. When leave is with regard to serious health condition and is foreseeable due to a planned medical treatment, the employee shall

- schedule treatment so as not to unduly disrupt employer's operations, subject to the approval of the health care provider.
- provide employer with not less than 30 days notice before leave is to begin.

CERTIFICATION

An employer may require leave for serious medical condition to be accompanied by a certification by a health care provider. If there is reason to doubt the validity of a certification, the employer may request a second one at the employer's expense.

FAILURE TO RETURN FROM LEAVE

The employer may recover the premiums that employer paid for maintaining coverage for the employee under a group health plan during a period of leave when the employee fails to return to work, unless failure to return is due to recurrence of condition of serious medical condition or circumstances beyond employee's control.

TECHNICAL ASSISTANCE

US DEPARTMENT OF LABOR

Wage and Hour Division

620 SW Main St, Room 423

Portland, OR 97205

Phone503-326-3057

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Web <http://www.wagehour.dol.gov>

FAMILY MEDICAL LEAVE: OREGON

WHO MUST COMPLY?

All businesses that employ 25 or more employees in Oregon during each working day of 20 or more calendar work weeks, either in the calendar year in which the leave is taken or in the preceding calendar year.

ELIGIBLE EMPLOYEES

Workers must be employed at least 180 days in order to take leave to care for a newborn, newly adopted child, or newly placed foster child.

For all other leave benefits, workers must be employed at least 180 days and also work at least an average of 25 hours a week.

COMPLIANCE

An employer must

- grant an employee's request for family leave for up to 12 weeks within a one year period to care for
- a family member with a serious health condition.
- the employee's own serious health condition.
- a newborn or newly adopted or newly placed foster child.
- a sick child who requires home care.
- not fire or discipline an employee or in any way retaliate against an employee for taking family leave.

- restore the worker to the same position held by the employee regardless of whether the job has been reclassified or renamed—even if the employer hired someone else to fill in—without loss of seniority, service credits under a pension plan, or any other benefit or right that had been earned at a time before the leave started.
- restore employee to an available position that is the same as the former job in as many aspects as possible, if the employee's former position has been eliminated.

Note: When a serious health condition is unanticipated, a verbal request confirmed in writing to the employer within three days after the employee's return to work can serve as a written request.

An employer is not required to discharge another employee to reinstate employee who took leave.

An employee must

- make a reasonable effort to schedule medical treatment so as to minimize disruption of the employer's operations.
- give the employer 30 days notice before taking leave when the serious health condition is anticipated.

DEFINITIONS

SERIOUS HEALTH CONDITION

- an injury, disease, or condition that is chronic and/or requires inpatient or constant care
- a condition in which death is imminent or probable in the near future
- a condition that involves a period of incapacity or treatment for a condition that, if not treated, would likely result in incapacity
- a period of disability due to pregnancy or childbirth or prenatal care.

FAMILY MEMBER

Includes employee, employee's spouse, same sex domestic partner, parents, parents-in-law, children, grandparents, and grandchildren.

TECHNICAL ASSISTANCE

OREGON BUREAU OF LABOR AND INDUSTRIES

800 NE Oregon St., #1045

Portland, OR 97232

Phone971-673-0824

The bureau's Technical Assistance for Employers Program handles all employer requests for information confidentially. Employers with questions concerning Oregon Family Leave should call 971-673-0824, in Portland.

FARM LABOR CONTRACTING

WHO MUST COMPLY?

All farm and reforestation labor contractors must be licensed by Oregon Bureau of Labor and Industries (BOLI). Most labor contractors will be required to register with both state and federal agencies.

REGISTRATION WITH THE STATE OF OREGON

The following require a farm labor contractors license from the State of Oregon:

- Any person who, for agreed remuneration
 - » recruits, solicits, supplies, or employs workers to perform labor for another to work in reforestation or the production or harvesting of farm products.
 - » recruits, solicits, supplies, or employs workers to gather evergreen boughs, yew bark, bear grass, salal or ferns from public lands for sale or market prior to processing or manufacture.
 - » is employed to recruit, solicit, supply, or employ workers in reforestation or the production or harvesting of farm products.
 - » supplies board or lodging in connection with the recruitment or employment of workers in agriculture or reforestation.
 - » bids or submits prices on contract offer for those activities, or subcontracts with another for any of those activities is required to obtain a license from BOLI unless otherwise exempt.

EXEMPTIONS

A farmer who obtains workers solely for the farmer's own operation does not qualify as a labor contractor. A farmer who operates a farm-worker camp and permits workers living in the camp to be employed by other farmers on no more than an incidental basis and receives no remuneration by virtue of such incidental employment is exempt. Farmers, including owners or lessees of land intended to be used for the production of timber, their permanent employees, advertising media, platoon leaders, or individuals engaged in the solicitation or recruitment of persons for dayhaul work in connection with growing, production or harvesting of farm products are also exempt from registration.

REGISTRATION WITH THE US DEPARTMENT OF LABOR

Any person who recruits, solicits, hires, employs, furnishes, or transports migrant or seasonal agricultural workers for someone else for a fee must obtain a Federal Farm Labor Contractor Certificate of Registration, unless otherwise exempt. The exemptions are the same as those that apply under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA).

DEFINITIONS

FARM LABOR CONTRACTOR

Farm labor contractor means any person who, for an agreed remuneration or rate of pay, recruits, solicits, supplies or employs workers to perform labor for another to work in the production or harvesting of farm products; or who recruits, solicits, supplies or employs workers on behalf of an employer engaged in these activities.

FARM LABOR CONTRACTING

Farm labor contracting means recruiting, soliciting, hiring, employing, or furnishing any seasonal or migrant agricultural worker.

AGRICULTURAL WORKER

Agricultural worker means an individual employed in field work related to planting, cultivating, or harvesting operations; or employed in canning, packing, ginning, seed conditioning, or related research, or processing operations; or employed in reforestation activities, Christmas tree production and harvesting, gathering evergreen boughs, yew bark, bear grass, salal or ferns from public lands for sale or market prior to processing, or nursery production.

CERTIFICATION FEE

The State of Oregon requires one of two different certifications:

- farm labor contractor, which costs \$100.00
- farm and forest labor contractor, which costs \$250.00.

Note: There is only one federal certification for which there is no fee.

BUSINESS REGISTRATION

All assumed business names and corporations must be registered with the Secretary of State's Office. Forms to register names may be obtained from

SECRETARY OF STATE

Corporation Division

Public Service Building

255 Capitol St. NE

Salem, OR 97310

Phone503-986-2200

APPLICATION PROCESS: STATE

BOLI issues licenses to individuals, partnerships, and limited liability partnerships, corporations and their major shareholders, limited liability companies, publicly traded corporations, nonprofit corporations, agricultural associations, and cooperative corporations.

Each application must include

- application Form WH-37 and appropriate fee.
- \$10,000 Farm Labor Contractor Corporate Surety Bond for up to 20 employees, or \$30,000 for 21 or more employees.
- proof of financial responsibility (If you are applying as an employee of a farm/forest labor contractor, you do not need to submit proof of financial responsibility, Certificate of Insurance for Vehicle, or Certificate of Insurance for Workers' Compensation).
- Certificate of Compliance (Form WH-87).
- Certificate of Insurance, issued by your auto insurance carrier which lists the Oregon Bureau of Labor and Industries as certificate holder and provides a 30-day cancellation notice, for all vehicles used in the operation of this business and to transport workers.
- Certificate of Workers' Compensation Insurance which lists the Oregon Bureau of Labor and Industries as certificate holder and provides a 30-day cancellation notice.
- three color passport photos, 2" x 2".
- IRS tax compliance certification.
- Oregon Department of Revenue tax compliance certification.
- Oregon Employment Department Tax Compliance Certificate and sponsorship statement, if applicable.

Note: In lieu of the Farm Labor Contractor Corporate Surety Bond (second bullet point above), which may be purchased through an insurance company, a contractor may choose to establish a savings account or deposit the equivalent of cash in the name of the Commissioner of the Oregon Bureau of Labor and Industries. The completed application is mailed to BOLI at the address shown below. The Rights of Workers Form WH-151 and Contractor/Worker Agreement Form WH-153 or their equivalents are required for renewal applications and must be given to employees at time of hire for each project.

APPLICATION PROCESS: FEDERAL

The US Department of Labor Employment Standards Administration (ESA) issues certifications to individuals, partnerships, and corporations to act as farm labor contractors. ESA also requires certification of employees of farm labor contractors who engage in labor contracting activity.

Each application must include

- Form WH-510, application.
- Form FD-258, finger print.
- Form WH-512, employee application, if necessary.
- Forms WH-515 and WH-514a when the contractor intends to transport workers.
- Certificate of Vehicular Insurance for all vehicles used to transport workers.
- Certificate of Workers' Compensation Insurance.
- three color passport photos.

The completed application is then mailed to the US Department of Labor at the address shown. Additional forms and information may be obtained by contacting either of the following agencies.

TECHNICAL ASSISTANCE**SECRETARY OF STATE****Corporation Division**

Public Service Building

255 Capitol St. NE

Salem, OR 97310

Phone503-986-2200

STATE APPLICATION**OREGON BUREAU OF LABOR AND INDUSTRIES****Licensing Unit**

3865 Wolverine St. NE, E-1

Salem, OR 97305-1268

Phone503-373-1463

FEDERAL APPLICATION**US DEPARTMENT OF LABOR****Farm labor contracting licenses**

455 Golden Gate Avenue

San Francisco, CA 94102

Phone415-703-4854

Wage and Hour Division

90 7th St., Suite 13-100

San Francisco, CA 94103-6714

Phone415-625-7700

MIGRANT AND SEASONAL AGRICULTURAL WORKER PROTECTION ACT (MSPA)

WHO MUST COMPLY?

All agricultural employers, agricultural associations, and farm labor contractors who recruit, solicit, hire, employ, furnish or transport any person who meets the definition of a “migrant” or “seasonal” agricultural worker are covered by MSPA. Anyone engaged in farm labor contracting activity for a fee or other valuable consideration must register and obtain a certification of registration (a farmer or employee of the farmer who is engaged in these activities solely for the farmer’s own operation are not required to register).

DEFINITIONS

AGRICULTURAL EMPLOYER

An agricultural employer is defined as any person, agricultural association, or cooperative, which owns or operates a farm, ranch, processing establishment, cannery, gin, packing shed or nursery, forestry or Christmas tree operation, or a producer or conditioner of seed who recruits, solicits, hires, employs, furnishes or transports any migrant or seasonal agricultural worker. The definition also includes farm labor contractors who furnish employees for agricultural employment.

MIGRANT AGRICULTURAL WORKER

A migrant agricultural worker is someone who works in agricultural employment in a seasonal or other temporary nature, and who is required to be absent overnight from his permanent place of residence (a labor camp is not regarded as a permanent place or residence, even if the worker lives there on a year round basis). Seasonal refers to the particular task being performed, not the length of employment of the worker. A worker engaged year round on a series of seasonal tasks may be a migrant or seasonal worker under MSPA.

SEASONAL AGRICULTURAL WORKER

A seasonal agricultural worker is an individual who is employed in agricultural employment of a seasonal or other temporary nature and is not required to be absent overnight from his permanent place of residence.

AGRICULTURAL EMPLOYMENT

Agricultural employment under MSPA includes any activity which is agriculture under FICA or the Fair Labor Standards Act, plus the handling, planting, drying, packing, packaging, processing, freezing, or grading prior to delivery for storage of any agricultural or horticultural commodity in its unmanufactured state. This language has

been interpreted to include forestry and Christmas tree production.

EXEMPTIONS

Several groups are exempt from the provisions of the MSPA. Persons not subject to the provisions of the act

- Family business. This exemption only applies if the individual recruits solely for the family business, and only members of the immediate family engage in recruiting, soliciting, hiring, employing, or transporting migrant or seasonal agricultural workers.
- Small business. The same rules apply to this exemption as used in determining the minimum wage exemptions, i.e., currently the limit for exemption is 500 man-days of agricultural labor used during any calendar quarter of the preceding calendar year. See the “Fair Labor Standards Act (Minimum Wage)” section of this handbook.
- Common carrier. Any common carrier that would be a farm labor contractor solely because the carrier is transporting migrant and seasonal agricultural workers.
- Labor organizations. Any labor organization as defined in the Labor Management Relations Act, or as defined by state law.
- Nonprofit charitable organizations.
- Local, short-term contractors. Any person who engages in any farm labor contracting activities solely within a twenty-five mile intrastate radius of such person’s permanent place of residence and not for more than thirteen weeks per year. This exemption is void if the person uses the US mail, telephone, or advertising to recruit, solicit, hire or furnish workers from more than twenty-five miles or across a state line.
- Employees of exempt employers. Any employee of an exempt employer when performing farm labor contracting activities exclusively for such person. This rule does not apply to anyone utilizing a family business or small business exemption.
- Other exemptions. Other exemptions include some custom combine operations, custom poultry operations, and seed production operations.

CONDITIONS OF EMPLOYMENT

- A written statement of the conditions of employment (Form WH 516 or similar document containing required information below) must be provided to seasonal workers recruited through a day haul operation and to migrant workers. Any workers, including other seasonal workers, are entitled to the disclosure statement upon request. The disclosure should describe
 - » place of employment.
 - » wage rates (including piece-rates) to be paid.

- » crops and kinds of work.
 - » period of employment.
 - » transportation, housing, and any other benefits or items provided, and their costs to the worker.
 - » workers' compensation and unemployment insurance.
 - » whether a strike or work stoppage is in progress.
 - » any commission (kickback) arrangement between the employer and any local merchant selling to employees.
- All required disclosures under the act shall be in English, or Spanish, or another language common to the migrant and seasonal agricultural worker. The US Department of Labor will make forms available in English, Spanish, Haitian, Creole, or other languages as necessary.
 - Seasonal workers in processing operations are only covered under MSPA if recruited through a day haul operation. At the time of such recruitment the employer shall disclose in writing the conditions of employment listed above.

Note: Workers doing cultivation and harvesting activities indoors (greenhouse, mushroom plants, etc.) are regarded as field workers, not processing workers.

POSTING

At the place of employment of migrant and seasonal agricultural workers, a labor contractor, agricultural employer or agricultural association, must post in a conspicuous place the MSPA poster (form WH 1376) outlining the workers' rights and protections. In joint employment situations each employer is equally responsible for displaying this poster.

Anyone who provides housing facilities for migrant farm workers shall post the housing permit and, in addition, shall post in a conspicuous place in such housing, for the entire period of occupancy, and provide a written statement to the worker at the time of recruitment, information on the terms and conditions of occupancy.

Note: For details of this statement, see the sections on "Housing Safety and Health" and "Agricultural labor camps" in this handbook.

WAGES AND PAYROLL

Each labor contractor, agricultural employer and agricultural association must keep the following payroll records for migrant and seasonal agricultural workers:

- name
- permanent address
- Social Security number
- basis on which wages are paid
- number of piecework units earned if paid on piecework basis
- number of hours worked
- total pay period earnings
- sums withheld and purpose of each withholding
- net pay.

Note: Employers must preserve payroll records for three years.

A labor contractor must furnish the person who contracts for his services with a copy of all payroll records. The person who receives such records must maintain them for three years.

Farm labor contractors, agricultural employers, and agricultural associations must provide each migrant and seasonal agricultural worker with an itemized written statement of the payroll information shown above at the time of payment. Pay periods cannot be less than every two weeks or semimonthly.

The employee payroll statement (form WH-501 or equivalent document) must also include

- employer's name
- employer's address
- employer's IRS identification number.

In a joint employment situation, both parties are equally responsible for payroll records.

Wages owed migrant and seasonal agricultural workers must be paid when due.

MOTOR VEHICLE SAFETY

Each farm labor contractor, agricultural employer and agricultural association that uses or causes to be used any vehicle to transport migrant and seasonal agricultural workers, both on and off farm, must ensure that such vehicle conforms to safety standards prescribed by the US Department of Labor or the US Department of Transportation.

Note: See the section on "Motor Carrier Safety Law" in this handbook.

EXCLUSIONS TO VEHICLE SAFETY STANDARDS

- Vehicle safety standards and insurance requirements do not apply to the transportation of migrant and seasonal agricultural workers on a tractor, combine, harvester, picker, or similar vehicle while engaged in on-farm agricultural work.
- Vehicle safety standards and insurance requirements do not apply to an individual migrant or seasonal agricultural worker when the only other occupants of that individual's vehicle consist of his immediate family.
- Vehicle safety standards and insurance requirements do not apply to carpooling arrangements made by the workers themselves, using one of the workers' own vehicles, and the employer has no participation or direction in such arrangements.

VEHICLE INSURANCE

Anyone transporting migrant or seasonal agricultural workers must have workers' compensation, a liability bond, or insurance covering the workers. If the workers' compensation does not cover all circumstances under which the workers are to be transported, then insurance must be secured to cover such transportation.

Except in those instances where a liability bond is in effect or where workers' compensation insurance is applicable, a farm labor contractor, agricultural employer or agricultural association is required to have vehicle liability insurance in at least the amounts shown below:

- \$100,000 per seat up to a maximum of \$5,000,000 per vehicle for bodily injuries to, or death of, all persons injured or killed in any single accident
- limit for loss or damage in any one accident to property of others (excluding cargo), \$50,000.

In those instances where the employer of migrant or seasonal agricultural workers is satisfying the insurance requirements by covering his workers with state workers' compensation insurance, the MSPA regulations also require that he provide insurance of at least \$50,000 for loss or damage to property of others.

Note: Workers' compensation does not provide coverage for family members of workers being transported with workers. Nor does workers' compensation cover non-work travel, such as rides to town for shopping or banking. Adequate coverage for such occurrences may be the responsibility of the employer.

Agricultural employers and agricultural associations are required to provide evidence of liability insurance coverage only upon request by the US Department of Labor. Farm labor contractors, however, must provide evidence of insurance when applying for authorization to transport migrant or seasonal agricultural workers and the policy must include a clause which provides for cancellation only after 30 days notice to the US Department of Labor, Wage and Hour Division.

Persons who will be transporting migrant and seasonal agricultural workers may provide financial responsibility in lieu of insurance by providing a liability bond of at least \$500,000 for damages to persons and property.

HOUSING SAFETY AND HEALTH

MSPA has four fundamental housing requirements related to migrant agricultural workers:

- to assure that the housing complies with any applicable federal, state, or local code pertaining to safety and health

- to obtain a preoccupancy inspection of the housing prior to occupancy
- to post the Certificate of Occupancy provided by the inspecting agency
- to post terms and conditions of occupancy.

Note: See the section on "Agricultural labor camps" for more information.

Providers of housing for any migrant agricultural worker must post in a conspicuous place at the housing site, for the entire period of occupancy, or present a written statement to the worker at the time of recruitment, the following information on the terms and conditions of occupancy (WH-521):

- name and address of the employer(s) providing housing
- name and address of person in charge of the housing
- mailing address and phone number where housing occupants can be reached
- who may live in the housing
- the charge (rent) to be made for the housing
- meals to be provided and the cost to workers
- charges for utilities
- any other charges or conditions of occupancy.

EXEMPTIONS TO HOUSING STANDARDS

MSPA housing standards do not apply to any person who, in the ordinary course of business, regularly provides housing to the general public and who provides housing to any migrant agricultural worker on the same or comparable terms and conditions.

HIRING FARM LABOR CONTRACTORS

Producers should verify the following prior to engaging such labor contractor:

- That the labor contractor holds a valid Certificate of Registration as a farm labor contractor at the time he/she is hired. A copy of an application is not sufficient.
- That the labor contractor holds a valid certificate to perform the services for which he/she is engaged, i.e., transporting, housing, etc.
- That each vehicle to be used to transport workers is certified and that the insurance on such vehicle is current.
- That each driver of a properly certified vehicle used to transport farm workers is properly registered as a farm labor contractor employee authorized to transport farm workers, possess a commercial driver's license with a passenger transport endorsement, and has a satisfactory doctor's certificate (form 415) less than three years old.

JOINT EMPLOYMENT

An employer/grower is mutually responsible for the actions of the farm labor contractor if joint employment conditions exist. The term joint employment means a condition in which a single employee is employed by two or more employers at the same time. The factors considered significant by the courts in determining joint employment and to be used to determine joint employment under the provisions of the MSPA and the FLSA (minimum wage) include, but are not limited to

- the nature and degree of control of the workers.
- the degree of supervision, direct or indirect, of the work.
- the power to determine the pay rates or the methods of payment of the workers.
- the rights, directly or indirectly, to hire, fire, or modify the employment conditions of the workers.
- preparation of payroll and the payment of wages.

Note: Joint employment means a farmer may be held jointly liable for violations of MSPA by the labor contractor.

The following is from the American Farm Bureau Grower's Handbook, 1991...

In a typical situation, the grower owns the land, makes the significant decisions about planting, cultivating, and harvesting, has significant investment in equipment, and tells the contractor what to do, in which fields, and when; and migrant and seasonal workers who are employed to harvest crops are unskilled. So, even in a situation where the labor contractor handles all employee matters, such as payroll, records, and direct supervision, the grower's control of the whole operation probably will be enough for him to be a joint employer with a labor contractor.

As precautionary practice, employers should pay attention to complaints and address any problems, ensure that labor contractors are keeping accurate records and paying workers in a timely manner, and treat all workers fairly and equally.

DISCRIMINATION

It is a violation of the MSPA for any person to intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any migrant or seasonal agricultural worker because such worker has, with just cause

- filed a complaint with the US Department of Labor.
- brought any proceeding under the Act.
- testified or is about to testify in any proceedings.
- exercised or asserted on behalf of himself or others any rights or protection under the Act.

According to Oregon Legal Services, the most common cause of litigation is responding to legitimate complaints of workers with the equivalent of "If you don't like it, you don't have to work here anymore. Just leave." Workers often reasonably perceive this to be a retaliatory discharge.

Migrant and seasonal agricultural workers who believe they have been discriminated against may, no later than 180 days after such violation occurs, file a complaint with the US Department of Labor.

TECHNICAL ASSISTANCE

US DEPARTMENT OF LABOR

Wage and Hour Division

620 SW Main St, Room 423
Portland, OR 97205

Phone503-326-3057

Fax503-326-5951

Web <http://www.wagehour.dol.gov>

MINIMUM WAGE: OREGON LAW

WHO MUST COMPLY?

Employees of agricultural employers must be paid at least the minimum wage of \$7.95 per hour (for 2008) unless exempted.

EXEMPTIONS

Among the categories of employees who are not included in the state coverage are

- members of the employer's immediate family.
- hand harvest or pruning workers who are paid at piece-rate, in a job that is traditionally paid by piece-rate in the area, who commute daily from their permanent residence to the farm on which they are employed, and have been employed in agriculture less than 13 weeks in the preceding calendar year.
- hand harvest or pruning workers who are paid at piece-rate in a job that is traditionally paid by piece-rate in the area, who are 16 years of age or under and paid the same piece-rate as workers over 16 years of age.
- workers mainly engaged in the range production of livestock (but only if they are being paid a salary that is equivalent to 40 times the minimum wage per week).
- hand harvest and pruning workers who are paid at a piece-rate, in a job that is traditionally paid by piece-rate in the area, who work on farms which used less than 500 worker-days of piece-rate labor in every calendar quarter of the preceding calendar year (piece-rate-work-day means any day when an employee—other than an immediate family member—does any hand harvest or pruning labor on a piece-rate basis for at least one hour).

OVERTIME

While the Oregon law provides for overtime pay calculated at one and one-half times the regular rate of pay for a work week longer than 40 hours, this provision specifically excludes most agricultural employees. However, employees in forestry and Christmas tree harvesting do not fall in the overtime exemption and are therefore entitled to overtime. Oregon cannery and packing workers are entitled to time-and-a-half pay after ten hours per day, unless the cannery or packing plant is located on a farm and is primarily processing products produced on that farm.

RECORDS

Every employer required to pay minimum wage, shall make and keep for two years, a record containing name, address, occupation of each employee, and actual hours worked each week and each pay period by each employee.

REST AND MEAL PERIODS

Oregon agricultural employers must provide employees with at least a 30-minute unpaid meal period when the work period is six hours or greater. The law requires an uninterrupted period in which the employee is relieved of all duties. No meal period is required if the work period is less than six hours. Employers must also provide workers with a paid, uninterrupted 10-minute rest break for every four-hour segment or major portion thereof in the work period. OAR 839-020-0050(1)(b). To understand meal and rest period requirements for work days longer than eight hours please consult our Web site http://oregon.gov/BOLI/TA/T_FAQ_Taagricrestmeals.shtml.

DEDUCTIONS FROM PAYCHECK

No employer may withhold, deduct, or divert any portion of an employee's wages unless

- required to do so by law (i.e., withholding tax, garnishment).
- deductions are authorized in writing by the employee, are for employee's benefit, and are recorded in employer's books.
- the employee voluntarily signs an authorization for deduction for any other item provided the ultimate recipient of the money is not the employer, and the deduction is recorded in employer's books.
- authorized by a collective bargaining agreement.

Employers must also provide each employee with an itemized statement of amounts and purposes of deductions.

POSTING REQUIREMENTS

All agricultural employers must post the BOLI State Minimum Wage Poster (see the section on "Employee Health and Safety" in this handbook for more information). Every producer who employs a labor contractor for harvest of perishable agricultural commodities or who offers a bonus to those who harvest such produce must conspicuously post a notice stating

- terms and conditions of any bonus offered and the manner of determining if one is earned.
- that portion of the labor contractor's compensation that is based on the amount of work done by each employee of the contractor.

TIMELY PAYMENT OF WAGES

Every employer shall establish and maintain regular paydays at which date all employees shall be paid the wages due and owing to them. Paydays must not extend beyond a period of 35 days from the time employees began work or from the date of the last regular payday.

Seasonal farm workers are entitled to be paid in full for all wages due and owing immediately upon termination of employment.

Seasonal farm workers who quit without giving an employer 48 hours notice must be paid in full within 48 hours or the next scheduled payday, whichever is sooner. If a worker fails to return for payment, an employer should mail payment to the employee's last known address.

TECHNICAL ASSISTANCE

OREGON BUREAU OF LABOR AND INDUSTRIES
800 NE Oregon St., #32
Portland, OR 97232
Phone971-673-0824
Eugene.....541-686-7654
Medford.....541-776-6270
Salem.....503-378-3292

RECRUITING WORKERS USING WORKSOURCE OREGON EMPLOYMENT DEPARTMENT

WHO CAN USE WORKSOURCE OREGON EMPLOYMENT DEPARTMENT (WSOED) SERVICES?

Any employer in Oregon can list job openings for recruiting workers (including for agricultural workers) and use a range of other workforce services at no charge.

WHAT CAN WORKSOURCE OREGON EMPLOYMENT DEPARTMENT DO?

The agency provides labor recruitment and referral services for Oregon businesses, identifying qualified job seekers from among the 300,000+ Oregonians who are actively seeking work and registered for job seeker services.

Employers can list jobs by calling their local WSOED office, going online to iMatchSkills® at www.iMatchSkills.org, or faxing the information to their local office. A job listing will state the skills, experience, and educational requirements, if any, that the employer is seeking. It will also include the duties, pay and other key information of the job.

Staff members review listings for legal sufficiency. A listing in the computer system is typically matched against registered job seekers and, as needed, made available for job seekers to see for potential referral. Job listings are also accessible in all WSOED offices throughout the state on the agency's Web site at www.WorkingInOregon.org (English) and www.EmpleoEnOregon.org (Spanish) and on the award-winning job matching site iMatchSkills® at www.iMatchSkills.org.

By publicizing listings in both English and Spanish, a wider range of job seekers can learn about available work opportunities. Special outreach efforts can also publicize seasonal agricultural jobs locally, throughout Oregon and outside of Oregon. WSOED labor exchange and job finding services are at no charge to employers and job seekers.

SEASONAL AGRICULTURAL WORK RECRUITING WITHIN COMMUTING DISTANCE OF THE JOB

To use agency services for recruiting workers living within commuting distance of the job, an employer can offer the wage and terms and conditions of employment of his/her choosing, subject to state and federal wage and hour law. The WSOED office closest to the work will take the

information for a job listing and can begin recruitment immediately.

AGRICULTURAL RECRUITMENT SYSTEM (ARS): RECRUITING DOMESTIC WORKERS BEYOND COMMUTING DISTANCE OF THE JOB

An employer can use the agency's services for recruiting seasonal agricultural workers from beyond the local area of the job under the Agricultural Recruitment System (ARS). This can mean recruiting and referring workers from around Oregon (ARS intrastate job listing) or from other states in cooperation with their workforce agencies (ARS interstate job listing). Employers using the ARS are required by federal law to offer wages, benefits, and working conditions which at least meet the prevailing wages, benefits, and practices for that occupation in the local area, as determined by WSOED employer surveys. The job also must provide no-cost or public housing for hired workers whose permanent residence is beyond regular commuting distance of the job. Housing must meet applicable federal and state standards and have passed a recent housing inspection before ARS out of area recruitment can begin. WSOED local office staff or the ARS coordinator at 503-947-1659 can provide information and guidance to interested employers.

H-2A PROGRAM: SEEKING PERMISSION TO HIRE FOREIGN WORKERS

If an employer is concerned that sufficient domestic workers may not be available or recruited on time through the ARS process, the employer as an alternative can ask for recruitment help through the H-2A program. This US Department of Labor program is administered in partnership with WSOED and other states' workforce agencies. It provides the option of hiring foreign workers for seasonal agricultural work if the employer and state workforce agencies cannot find sufficient domestic workers for the job. The terms and conditions of the job, the benefits offered all workers in the job, the recruitment process for domestic workers and the oversight process, however, must meet requirements beyond those of ARS job listings. Information on H-2A program requirements is available from the WSOED H-2A program specialist at 503-947-1659 or on the web at www.foreignlaborcert.doleta.gov/h-2a.cfm

An authorized agent may apply for recruitment assistance through the ARS or H-2A program on behalf of an employer. If an employer uses an authorized agent/staffing service/farm labor contractor, the employer should make sure the agent has the proper federal and/or state registration certificate(s) and can legally do business in Oregon.

Note: See the sections on “Farm Labor Contracting” and “Agricultural Labor Housing” in this handbook.

TIME CONSTRAINTS

The more time before labor is needed that an employer contacts WSOED, the better the opportunity the workforce system has to recruit workers locally, elsewhere in Oregon, or with partner agencies in other states to meet the labor need. For ARS recruitment efforts to recruit workers in other states, eight weeks advance notice to WSOED before the date of need is encouraged. If that can't be done, give as much notice as possible. For the H-2A program, the application must be filed at least 45 days prior to the intended start of work. The terms and conditions of the job must be approved and domestic worker recruitment must occur to assess the need for foreign workers.

Any agricultural employer using the Employment Department to recruit seasonal agricultural workers under local, ARS, or H-2A job listings must also comply with the federal Migrant and Seasonal Agricultural Worker Protection Act. An employer may be an individual, association, partnership or corporation.

Note: See the section on (section on MSPA) for more information.

YEAR-ROUND AGRICULTURAL WORK

For year-round agricultural jobs, the agency will be able to match job requirements against job seekers and refer interested workers from throughout the state for consideration. Workers could also self-screen themselves and apply directly to the employer if the job listing is for a year-round job, using the “self-refer” listing option. Besides being displayed in English and Spanish on the department's websites, year round agricultural positions can also be displayed at JobCentral (www.jobcentral.com) for wider recruitment.

OTHER DEPARTMENT SERVICES FOR EMPLOYERS

The Employment Department's workforce and economic research Web site www.QualityInfo.org, includes information and analysis of census data and population, wages and income, education and training providers, and articles relating to agricultural employment and activities. In addition, the department can help you with your specific questions on a one-on-one basis. To find help, click on the “contacts” button on the www.QualityInfo.org home page, then select “regional analysis” in the topic area box.

Oregon Employer Council is a 30 year-old nonprofit organization dedicated to encouraging business leaders to have influence on the workforce system. Employer members learn about services provided by the Oregon

Employment Department and many other workforce partners and comment on how these services are delivered to business. There are 20 chapters throughout the state that produce high-quality low-cost seminars on human resource issues, job fairs and scholarship programs. For information about an Employer Council in your area, contact your local Employment Department office, the agency's OEC coordinator at 503-947-1305, or go to www.WorkingInOregon.org/OEC.

The agency also operates the state's Unemployment Insurance Program. An Employer Handbook describes an employer's rights and responsibilities and options for action when a former employee files a claim for unemployment benefits. The handbook is available on line at www.employment.oregon.gov/EMPLOY/TAX/docs/EDPub117.pdf or at any local Employment Department office without cost.

Unemployment insurance claims involving your employer account are now handled through the Employment Department's three regional Unemployment Insurance Centers rather than at local offices. Please direct all questions about the unemployment insurance claims process or claims involving your employer account to UI staff at the regional center for your area. To locate the center for your area and its toll free number, please go to: <http://findit.emp.state.or.us/ocs/ui-center-lookup>. Other information about the Unemployment Insurance claims process is also available at www.oregon.gov/EMPLOY/UI/index.shtml. The local Employment Department offices no longer provide information about the Unemployment Insurance claims process or the status of individual claims.

Note: For information on paying and reporting employee wages, refer to the “Unemployment Tax” sections in this Farmer's Handbook or online at www.employment.oregon.gov/EMPLOY/TAX/index.shtml.

Agricultural employers can learn about the state's child care assistance program for migrant families by calling the Child Care Division at 800-556-6616. To learn about Oregon's employer child care tax credits, available when an employer helps employees with their child care needs, call the Oregon Child Care Resource and Referral Network at 800-342-6712 or get information at www.WorkLifeOregon.org and select “Oregon Tax Credits.”

TECHNICAL ASSISTANCE

WORKSOURCE OREGON EMPLOYMENT
DEPARTMENT**Business & Employment Services Programs**

875 Union St. NE Room 201

Salem, OR 97311

Phone503-947-1659

Webwww.WorkingInOregon.org

Staff at WorkSource Oregon Employment Department locations will assist agricultural employers with employment recruiting and other workforce services:

Albany

139 SE Fourth Ave.....541-967-2171

Astoria

450 Marine Drive503-325-4821

Baker City

1575 Dewey Ave541-523-6331

Bend

1645 NE Forbes Road.....541-388-6070

Brookings/Harbor

16399 Lower Harbor Rd.....541-469-9836

Burns

90 W Washington541-573-5251

Canyon City

120 S Washington.....541-575-0744

Corvallis

545 SW 2nd St. Suite C.....541-757-4261

Coos Bay/North Bend

2075 Sheridan Ave541-756-8459

Dallas

580 Main St., Ste B.....503-831-1950

Enterprise

104 Litch St.541-426-4972

Eugene

2510 Oakmont Way541-686-7601

Grants Pass

1545 Harbeck Road541-476-1187

Gresham

19421 SE Stark503-669-7112

Hermiston

950 SE Columbia Dr., Suite B541-567-3381

Hillsboro

265 Oak St., Suite A503-681-0219

Hood River

1106 Twelfth St.....541-386-6020

Klamath Falls

801 Oak Ave541-883-5630

La Grande

1901 Adams Ave541-963-7111

Lincoln City

801 SW Highway 101, Ste 102.....541-994-6992

Madras

243 SW Third.....541-475-2382

McMinnville

370 NE Norton Ln.....503-472-5118

Medford

119 N Oakdale St.541-776-6060

Newport

120 NE Avery St.....541-265-8891

Ontario

375 SW Second Ave.....541-889-5394

Oregon City

506 High St.971-673-6400

Pendleton

408 SE Seventh St.....541-276-9050

Portland

30 N. Webster.....503-280-6046

Prineville

2321 N 3rd St.....541-447-8076

Redmond

2158 SE College Lp541-548-8196

Roseburg

846 SE Pine St.541-440-3344

St. Helens

500 N Hwy 30.....503-397-4995

Salem

605 Cottage St. NE.....503-378-4846

The Dalles

700 Union St.541-296-5435

Tillamook

3600 E Third St.503-842-4488

Tualatin

7995 SW Mohawk St, Bldg A.....503-644-1229

Woodburn

120 East Lincoln.....503-982-2817

SOCIAL SECURITY: NO-MATCH

The Department of Homeland Security published a new regulation in the Federal Register on Wednesday, August 15, 2007, addressing the impact of Social Security Number “no-match” letters that employers have been receiving for years.

Note: On October 10, 2007, the U.S. District Court for the Northern District of California issued a preliminary injunction in AFL-CIO, et al. v. Chertoff, et al. (N.D. Cal. Case No. 07-CV-4472 CRB). The preliminary injunction enjoins and restrains the Department of Homeland Security and the Social Security Administration from implementing the Final Rule entitled “Safe-Harbor Procedures for Employers Who Receive a No-Match Letter.” Immigration and Customs Enforcement (ICE) has developed a comprehensive interactive Safe Harbor Information Center which will answer no-match related questions, or inquiries may be directed to ICE at 800-421-7105.

SSN NO-MATCH LETTER

No-match letters are the correspondence that employers receive from the Social Security Administration (SSA) stating that the SSA is unable to match the name and social security number (SSN) provided for a specific employee to its records.

PROCESS TO FOLLOW

It is important for employers to follow a specific procedure when receiving a no-match letter. Following the procedure outlined by the US Department of Homeland Security gives employers safe-harbor. Safe-harbor status may protect employers from being found to have “constructive knowledge” of hiring an unauthorized worker.

1. The employer must check its records promptly upon receipt of a SSN no-match letter to determine if the no-match was the result of a clerical error. If the letter is the result of a clerical error, the employer should correct its records, inform the relevant agencies of the error and verify that the name and number, as corrected, match the Agency’s records. Immigration and Customs Enforcement (ICE) considers employers to have acted reasonably if they resolve the discrepancy with the relevant agency within 30 days of receipt of a SSN no-match letter. Employers should keep a record that such verification has occurred. If by checking its records, the employer determines the discrepancy is not due to an error in its records, it must contact the employee and request confirmation that the employee provided information is correct. If the employer, after contacting the employee, discovers its information is incorrect, the

employer must correct the employee’s information in its records, inform the relevant agencies of the correction and verify the corrected information with the agency’s records. The employer is required to keep the date and time of verification.

2. If the employer’s records are correct according to the employee, then the employer must inform the employee of the date it received the no-match letter and direct the employee to pursue the matter him/herself with the SSA and to return with proof of correction within 90 days of the receipt of the no-match letter. Once again, ICE considers employers who take these corrective actions within 30 days of receipt of a SSN no-match letter to have acted reasonably and are within the “safe harbor” provision.

If the employee is not able to fix the SSN no-match issue within 90 days of receipt of the SSN no-match letter, the regulation describes the next step of the procedure that the employer must follow. The regulation allows for a person’s identity and work eligibility to be verified in an effort to thwart identity theft, document fraud and similar crimes perpetrated on employers. At this time, DHS requires that the employer and employee to complete a new Form I-9, as if the employee were a new hire, with certain restrictions. These restrictions include the following:

1. Require the employee section 1 of the new I-9 by the 93rd day of receipt of the SSN no-match letter. The employer must complete section 2 of the new I-9 in the same timeframe.
2. Exclude any document that was the cause of the SSN no-match letter from being used to establish employment eligibility.
3. Exclude any document without a photograph of the employee from being used to establish identity. While the requirements focus on documentation, employers are reminded not to over-document the completion of the new Form I-9s or request more information than the form requires, as that could subject them to liability for discrimination. Employers may not verify in advance the authenticity of documents presented to complete an I-9 form.

When the procedure described above is completed and it is determined that the employee is work authorized in the U.S., DHS may not consider the employer to have constructive knowledge of an unauthorized worker’s status. However, it is important to note that there is no safe harbor from actual knowledge of a worker’s unauthorized status.

After exhausting the process outlined above, if an employer is still unable to confirm an employee’s authorization to work in the United States, the employer must terminate that employee. Not terminating the employee puts the

employer at risk for violating the law by knowingly continuing to employ unauthorized persons. The penalties may include both heavy fines and prison time.

CONSTRUCTIVE KNOWLEDGE

Not following the concrete steps of the new DHS regulation allows the federal government to deem that an employer may be in violation of federal regulations because the employer had constructive knowledge that an employee was an unauthorized worker. An employer may be deemed to have constructive knowledge for any of the following:

1. If a reasonable person would infer from the facts that the employee is unauthorized.
2. The employer has learned from other individuals, media reports, or any other source of information available to the employer, that the alien is unauthorized to work in the U.S.
3. The employer acts with reckless and wanton disregard for the legal consequences of permitting another individual to introduce an unauthorized alien into the employer's work force.
4. The I-9 employment eligibility form has not been properly completed, including supporting documentation.
5. A request by an alien to their employer to file an alien labor certification or an employment based immigrant visa petition;
6. Written notice from the SSA that the combination of name and SSN submitted for an employee do not match agency records; and,
7. Written notice from Department of Homeland Security (DHS) that the immigration status document, or employment authorization document presented or referenced by the employee in completing Form I-9 was assigned to another person, or that there is no agency record that the document was assigned to anyone.

SAFE HARBOR

Following the procedure outlined by the US Department of Homeland Security provides employers with safe-harbor. Safe-harbor status provides employers with protection from liability for having unknowingly hired unauthorized workers.

The steps outlined in the regulation (listed above) state that an employer should take as a reasonable response to receiving a SSN no-match letter are very similar to what was included in the proposed regulation. The "safe harbor" provision says if an employer follows the suggested steps, then DHS will not make a finding that the employer had constructive knowledge. The "safe harbor" provisions protect employers from DHS imposing severe fines

and possible prison time for each employee that is not authorized to work in the US.

Immigration and Customs Enforcement (ICE) will consider the discrepancy resolved only if the employer verifies with the SSA or DHS that the employee's information matches the SSA's records and number assigned to that name, and that the number is valid for work with or without with DHS authorization.

TECHNICAL ASSISTANCE

1. Employers should retain all correspondence with regard to employment verification.
2. Employers should not use discriminatory methods in verifying employment eligibility or verifying employees' identities. Employers should institute the same practices for every person hired. Resorting to "citizen only" hiring policies to avoid SSA inquiries is illegal. Immigration status or citizenship may not be inferred by a person's accent or appearance or country of origin.
3. For a copy of the final rule and additional information, please visit www.ice.gov.
4. The above recommendations should not be construed as legal advice. Consult your attorney for legal advice to make sure the rule is being properly implemented on your operation.

Source: Oregon Farm Bureau and Department of Homeland Security

IMMIGRATION AND CUSTOMS ENFORCEMENT

Phone800-421-7105

Web <http://www.ice.gov/partners/safeharbor/index.htm>

WORKERS' COMPENSATION

WHO MUST COMPLY?

Under Oregon law, every employer employing one or more subject workers in Oregon must maintain workers' compensation insurance so that subject workers of the employer and their beneficiaries will receive compensation as required by the workers' compensation laws in the event of a work related injury, disease, or death. If you pay someone to work for you (even someone with a family relationship), and you are in charge of the way the job is done, that worker is probably your employee. Employers provide workers' compensation coverage by qualifying a) as a carrier-insured employer or (b) as a self-insured employer as provided by ORS 656.407 which requires posting of a surety deposit with the director of the Department of Consumer and Business Services. The surety deposit must be sufficient to cover future claim costs. Commonly, agricultural employers comply with the law by becoming a carrier-insured employer, much like purchasing car

insurance or home-owners insurance. Having private health insurance does not replace the obligation to carry workers' compensation insurance. In most cases, workers' compensation insurance is required of all employers for their workers. To discuss exceptions, contact the Workers' Compensation Division, 503-947-7815. For a list of insurers you may access this link http://www.oregon.gov/DCBS/SBO/short_list.shtml. In addition you may access this link for a list of insurance carriers and their respective pricing tiers.

http://www4.cbs.state.or.us/ex/ins/rates_and_forms/WCRateFactorLog/display_log/index.cfm?fuseaction=sort_by_company_name or contact the Small Business Ombudsman for Workers' Compensation, 503-378-4209.

Workers' compensation coverage provides all medical expenses as well as disability and vocational benefits to workers who become occupationally injured or diseased and are temporarily or permanently disabled. Payments are made to dependents if the worker dies as a result of occupational injury or disease. Workers' compensation coverage is insurance designed to compensate workers injured on the job, and at the same time protect the employer from liability as long as that employer is in compliance with the law. In most cases, when an employer has workers' compensation insurance, an injured worker must look for indemnification only from the insurer.

WHAT IF I DON'T COMPLY?

When the Workers' Compensation Division (WCD) discovers you should have coverage but don't, it sends an order to you, stating the period of noncompliance and assessing a fine. The initial penalty for the first offense is two times the amount of the premium you should have paid for insurance, with a minimum fine of \$1,000.00.

If you continue to employ without coverage, the penalty goes to \$250.00 per day with no limit on the total fine. In addition, WCD will request a permanent court injunction to force you to stay in compliance. If you disobey an injunction you're in contempt of court, and subject to other types of sanction, including jail time. The expenses that result when a worker is injured could cost you even more than penalties. By law, a noncomplying employer is financially responsible for the same benefits insured workers receive. The total bill can (and often does) amount to hundreds of thousands of dollars. By law, there is no shield from personal liability for owners, officers, directors, members etc. under a corporate veil or through bankruptcy.

INSURANCE PREMIUM

This is a payment made by an employer to an insurer for workers' compensation insurance coverage. The state does not collect premiums, and premiums do not fund state programs or services.

PREMIUM

Workers' Compensation premium is based upon \$100 of estimated annual workers' compensation payroll.

Four factors influence the premium for each farm employer:

- **Type of farm operation (dairy, orchard, ranch, etc.).** Farm operations are categorized into National Council on Compensation Insurance (NCCI) classification codes based upon the business of the employer. In turn, the NCCI class code determines the initial risk pool or loss cost. The statewide risk (injuries) associated with each NCCI class code determines the loss costs, i.e., the higher the injury costs in each NCCI category, the higher the loss cost rate. For example, the 2008 the loss cost rate for a dairy operation is \$5.44 per \$100 of annual payroll; for a cattle operation/ranch, the loss cost is \$14.86 per \$100; \$3.97 for orchard operations; and \$2.45 for berry picking by hand.
 - **Experience modification factor (mod) reflects the injuries occurred by the individual farm operation.** The mod is determined by the number of injuries and limited cost of these injuries at the individual farm, averaged over a three-year period. In other words, once an injury occurs it remains a factor in determining the farm's premium for the next three policy years. Farm operators can significantly reduce premiums over time by implementing a well-managed worker safety program, thereby reducing the number of on-the-job injuries.
- Note: See the section on "Worker Health and Safety" in this handbook.*
- **Expense loading factor or loss cost multiplier.** Each insurance carrier determines its individual costs of operational expenses, taxes, and handling injuries since only medical and wage-loss costs are included in the loss cost, and adds these expenses to the loss cost. As of 9/18/07 loss cost multipliers range from 1.06 to 1.715. Farm operators may want to shop around with various carriers to determine which has the most competitive rate.

- **Exemptions.** Payroll not used in calculating workers' compensation premium includes vacation pay, bonuses the employee is unaware of in advance of payment, tips and gratuities, overtime in excess of straight time hourly rate, profit sharing pay when the payment is made under a written agreement, the value of special rewards for invention or discovery, group health plan contributions, and bonus payments which are part of a written plan to reward workers for safe working practices. Holiday pay, sick pay and bonuses which are anticipated by the employee, and those unrelated to safety bonuses, should be identified on payroll reports, but are not subject to premium. For more information contact your insurer.

ASSESSMENTS

There are two types of assessments paid to the Department of Consumer and Business Services: premium assessment and workers' benefit fund (WBF) "cents-per-hour" assessment. The premium assessment is a flat rate assessed to all insurers which is included in the insurance premium. This assessment funds administrative costs of the workers' compensation system, non-complying employer claims, a portion of OR-OSHA administrative costs, and other related programs. The workers' benefit fund "cents-per-hour" assessment is a payroll assessment calculated on the basis of covered workers' hours worked. The employer collects half the assessment from the worker and the employer contributes the other half of the assessment. The assessment is reported and paid by the employer directly to the state with other payroll taxes each calendar quarter through the combined quarterly payroll tax reporting system. Employers report by using a Form OQ or Form OQ-WBF, and pay accompanied by a Form OTC (payment coupon). This assessment funds programs for direct benefits to injured workers and the employers who help make it possible for them to return to the workforce.

PERMITS AND LICENSES

The Workers' Compensation Division will issue a notice of compliance upon receipt of a guaranty contract by an insurer. This notice must be posted in locations accessible to inform workers of the coverage. A new notice is required should the insurance carrier change.

REPORTING INJURIES

Injuries should be reported using Form 801, Form 801W, Report of Occupational Injury or Disease, or Form 801S in Spanish, all of which are available from the insurer.

To assure prompt and accurate filing of reports, instruct employees to report all accidents immediately. Verify all facts concerning an accident before completing the report. If an injured worker required only first aid and did not lose

time from work, a report is not filed with the insurer, unless the worker wants to file a claim. In all circumstances, it is the worker's choice whether to file a claim, and an employer may be penalized if they induce a worker to not file.

RECORD KEEPING

A record of the date, nature, and treatment of every injury, including minor ones requiring only first aid, should be kept. These records may be useful in case the worker later seeks medical treatment. Any sufficient form may be used to document minor injuries. Form 801 must be completed for all cases involving lost time from work or treatment by a physician.

COMPENSABLE INJURY

A compensable injury is an accidental injury or disease occurring in the course of employment that requires medical services or results in disability or death. The following points are particularly important for agricultural employers:

- A previous injury or physical condition, if aggravated by current employment, could result in a compensable claim.
- The absence of witnesses does not prevent an injury from being compensable.
- If a worker does not follow company rules, the claim could still be compensable.
- Your insurer determines compensability.
- As employer, you are considered to have knowledge of an accident when any one of the following occurs:
 - » You or your authorized representative, such as a farm manager or supervisor, see an accident and know that a worker was injured as a result of that accident.
 - » The worker or someone on the worker's behalf advises you or your representative, orally or in writing, that an on-the-job injury has occurred.
 - » The worker notifies you that he or she intends to file a claim for a condition previously not considered work-related.
 - » Your insurer receives a First Medical Report (Form 827) filled out by the doctor and signed by the worker.
 - » The worker or his or her representative tells your insurer, orally or in writing, that an on-the-job injury has occurred.

The Report of Injury (form 801) must be filed with your insurer within five days after knowledge of an injury.

TECHNICAL ASSISTANCE

OREGON DEPARTMENT OF CONSUMER AND
BUSINESS SERVICES
WORKERS' COMPENSATION DIVISION

Benefits & Certifications Unit

Phone503-947-7840
Toll-free: 1-800-452-0288
Fax503-947-7612
E-mailworkcomp.questions@state.or.us
Web <http://cbs.state.or.us/wcd>

Small Business Ombudsman for Workers' Compensation

Labor and Industries Building, Room 330
350 Winter Street NE
Salem, OR 97310-1321
Phone503-378-4209
TTY.....503-378-3200

**COLLECTION AND REPORTING OF WORKERS'
BENEFIT FUND ASSESSMENT**

Fiscal and Business Services

350 Winter St. NE, Room 300
P.O. Box 14480
Salem OR 97309-0405
Phone503-947-7977
Fax503-378-3134
Email mailacct.bad@state.or.us

WORKER SAFETY

AGRICULTURAL LABOR HOUSING AND RELATED FACILITIES

FEDERAL

WHO MUST COMPLY?

Section 203(a) of Migrant and Seasonal Agricultural Worker Protection Act (MSPA) requires each person who owns or controls a facility or real property which is used for housing migrant agricultural workers to ensure that the facility or real property complies with substantive federal and state safety and health standards. (Person for purposes of housing means anyone, not just a farm labor contractor or farm labor contractor employee, who owns or controls the facility or real property where migrant agricultural workers are housed.)

The US Department of Labor (USDOL) Wage and Hour Division will conduct safety and health inspections using the applicable federal standard. The federal standard to be used is either 29 CFR 1910.142 (Occupational Safety and Health Administration, OSHA) or 20 CFR 654 (Employment and Training Administration, ETA). Camps constructed prior to April 3, 1980, or which were under contract for construction prior to March 4, 1980, may be inspected under either the ETA or the OSHA standard; camps constructed on or after April 3, 1980 must be inspected under the OSHA standard.

INSPECTIONS

OR-OSHA usually inspects occupied agricultural labor housing. These inspections result from complaints, referrals, or accidents, or happen randomly from the inspection list.

The US Department of Labor, Wage and Hour Division, routinely inspects housing facilities as part of MSPA audits, using the two safety and health standards mentioned above. The Wage and Hour Division may coordinate with OR-OSHA if serious violations are apparent. The standards used by these agencies (USDOL or OR-OSHA) will depend on when the housing was constructed or whether it has been substantially modified.

Employers must meet minimum federal, state and local housing standards. ETA and OR-OSHA standards specify requirements for

- housing site.
- shelter and housing.
- water supply.
- toilet facilities.
- sewage disposal.
- laundry, hand washing and bathing facilities.
- electrical safety and lighting.
- refuse and garbage disposal.
- cooking and eating facilities.
- screening, insect and rodent control.
- fire, safety and first aid procedures, equipment, and supplies.
- reporting of communicable diseases.

Check with the appropriate agency for details on these requirements. Wage and Hour Division may require refunds of rent for substandard housing.

If the Oregon Employment Department is coordinating an Agricultural Recruitment System (Clearance) order with an employer, the agency will require a preoccupancy housing inspection. That will be accomplished as part of the process of writing and approving the order and will be done by a representative of OR-OSHA. An exception to this requirement would be allowed if the employer can show the housing has previously been inspected and the results of that inspection are still valid.

STATE

WHO MUST COMPLY?

Anyone who operates a farm worker camp must comply with state and federal standards. A farm worker camp is an area of land where sleeping places, mobile home sites, or other types of housing are provided by a farmer, farm labor contractor, employer, or other person in connection with recruitment or employment of workers in the production and harvesting of farm crops or reforestation of lands.

Prerequisites to operating a farm worker camp:

- be a registered farm labor contractor with an endorsement to operate a farm workers camp or have a substantial ownership interest in real estate, subject to special farm assessment, on which the camp is located
- have any form of ownership in a business that operates a farm worker camp and files a Schedule F with the preceding year's income tax return
- be related by blood or marriage to anyone who satisfies the two preceding elements.

Farm worker camp operators must

- register the farm worker camp with Oregon OSHA. Failure to register can result in a penalty of \$250 to \$7,000.
- Exempt from registration:
- » a single isolated dwelling occupied solely by members of the same family; or by five or fewer unrelated persons
 - » hotel or motel that provides housing with the same characteristics on a commercial basis to the general public on the same terms as provided to workers.
- pass a farm worker camp preoccupancy consultation by OR-OSHA.
 - post the “Farm Worker Camp Registration Certificate” in a conspicuous place in the camp that is open to all employees and easily visible to occupants and visitors.
 - post “farm worker camp endorsement” in a conspicuous place in the camp that is open to all employees and easily visible to occupants and visitors.
 - provide lodging, without charge, which meets health and safety standards to all occupants of a agriculture labor housing ordered vacated by any code enforcement agency based on a decision that it is not habitable. Substitute housing must be provided for seven days or until the camp is made habitable, whichever comes first. Exempt if the cause of the closure was beyond the control of the camp operator.
 - post and maintain a bond in the amount of \$15,000 payable to the Oregon Bureau of Labor and Industries, if the camp operator is required to be a licensed farm labor contractor with a camp operator’s endorsement.

A farm worker camp operator must not

- operate an unregistered farm worker camp.
- make a false statement or willfully conceal facts in an application for a farm worker camp endorsement or registration.
- make a false or misleading statement or knowingly publish such a statement concerning terms and conditions of occupancy of the camp.
- assist a person not entitled to operate a camp to violate the farm worker camp statute.
- induce a farm worker camp occupant to give up any compensation to which the occupant is entitled.
- restrain any person who wishes to leave the camp from doing so.
- restrict access by authorized persons or invited persons to any housing owned, rented, or in any way controlled by employer where employees are residing.

- discharge, evict or discriminate against a person because that person made a claim against the operator or employer for compensation, instituted any proceedings to enforce the agriculture labor housing statutes, has testified or is about to testify in proceedings to enforce agriculture labor housing statutes.
- adopt rules concerning the use of housing unless the rules
 - » promote safety and welfare.
 - » preserve housing from abusive use.
 - » are reasonably related to the purpose for which they are adopted.
 - » apply to all those on the premises equally.
 - » are clearly stated to fully inform employees what must be done to comply.
- expel or evict from housing, discharge, demote, or suspend from employment, discriminate or retaliate against an employee for employee’s report of a violation with respect to employer controlled housing.

TECHNICAL ASSISTANCE

US DEPARTMENT OF LABOR

Wage and Hour Division

620 SW Main St, Room 423

Portland, OR 97205

Phone503-326-3057

Fax503-326-5951

Web <http://www.wagehour.dol.gov>

OREGON BUREAU OF LABOR AND INDUSTRIES

Licensing Unit

3865 Wolverine St. NE, E-1

Salem, OR 97305

Phone503-373-1463

Web <http://oregon.gov/BOLI>

OREGON OCCUPATIONAL SAFETY AND HEALTH DIVISION

305 Winter St. NE, Rm. 430

PO Box 14480

Salem, OR 97309-0405

Phone503-378-3272 or 800-922-2689

Fax503-947-7461

Web <http://www.orosha.org>

FIELD SANITATION STANDARD

WHO MUST COMPLY?

Employers who employ or have employed one or more employees engaged in hand-labor operations in the field during the past twelve months, must provide toilets, hand washing facilities, and drinking water to such employees at no cost to the employee.

EXEMPTIONS

Activities such as logging, the care and feeding of livestock, or hand-labor operations in permanent structures (e.g., canning facilities or packing houses) are not included in hand labor operations.

DEFINITIONS

HAND WASHING FACILITY

Hand washing facility means a facility providing either a basin, container, or outlet with an adequate supply of potable water, soap, and single-use towels.

POTABLE WATER

Potable water is water that meets standards for drinking water set by OAR Chapter, 333, DIV 61, Public Water Systems.

TOILET FACILITY

Toilet facility means a fixed or portable facility designed for the purpose of adequate collection and containment of the products of both defecation and urination, supplied with toilet paper adequate to employee needs. Toilet facility includes biological, chemical, flush and combustion toilets, and sanitary privies.

COMPLIANCE

Employers must

- Provide toilets and hand washing facilities as follows:
 - » One toilet facility and one hand washing facility for every 20 employees or fraction thereof.
 - » Toilet facilities shall be adequately ventilated and screened, having self-closing doors that can be closed and latched from the inside and constructed to insure privacy.
 - » Toilet and hand washing facilities must be accessible to employees and in close proximity to each other. Facilities must be located within a 1/4 mile of each hand laborer's place of work in the field.
 - » Where, because of terrain problems, it is not feasible to locate facilities within the 1/4 mile distance, the facilities can be located at the closest vehicular access to the field.

- Provide potable drinking water which is readily accessible to all employees as follows:
 - » Suitably cool water in sufficient amounts, taking into account the air temperature, humidity, and the nature of the work performed, to meet the needs of all employees.
 - » Water dispensed in single-use drinking cups or by fountains. Shared drinking cups or dippers are prohibited.
- Maintain potable drinking water, toilets, and hand washing facilities in accordance with appropriate public health sanitation practices as follows:
 - » Drinking water containers shall be constructed of materials that maintain water quality, shall be refilled daily or more often as necessary, shall be kept covered and shall be regularly cleaned.
 - » Toilet facilities shall be operational and maintained in a clean and sanitary condition.
 - » Hand washing facilities shall be refilled with potable water as necessary to ensure an adequate supply and shall be maintained in a clean and sanitary condition.
 - » Disposal of waste from facilities shall not cause unsanitary conditions.
 - » The employer must notify each employee of the location of drinking water and sanitation facilities and provide employees with reasonable opportunities during the work day to use them.
- It is the employer's responsibility to inform each employee of the importance of each of the following good hygiene practices to minimize exposure to the hazards of heat, communicable diseases, retention of urine, and agricultural residues:
 - » Use the water and facilities provided for drinking, hand washing, and elimination.
 - » Drink water frequently, especially on hot days.
 - » Wash hands both before and after using the toilet.
 - » Urinate as frequently as necessary.
 - » Wash hands before eating and smoking.

TECHNICAL ASSISTANCE

OREGON OCCUPATIONAL SAFETY AND HEALTH DIVISION

305 Winter St. NE, Rm. 430

PO Box 14480

Salem, OR 97309-0405

Phone 503-378-3272 or 800-922-2689

Fax 503-947-7461

Web <http://www.orosha.org>

OR-OSHA HAZARD COMMUNICATION STANDARD

WHO MUST COMPLY?

Employers who manufacture, import, distribute, store, or use hazardous chemicals in the workplace must inform their employees of such hazards by means of

- a written Hazard Communication Program.
- labels and other forms of warning.
- Material Safety Data Sheets (MSDS).
- information and training.

HAZARD COMMUNICATION PROGRAM

Each employer must develop and implement a written Hazard Communication Program for the workplace that specifies how the requirements for labeling and other forms of warning, Material Safety Data Sheets (MSDS), and employee information and training will be met. The Hazard Communication Program must also include the following:

- a list of hazardous chemicals in the workplace that uses the chemical names on the MSDS
- the methods the employer will use to inform employees of the hazards of nonroutine tasks
- the methods the employer will use to inform contractor employers of the hazards employees may be exposed to in the workplace.

LABELS AND OTHER FORMS OF WARNING

Chemical manufacturers, importers, and distributors must ensure that each container of hazardous chemicals leaving the workplace is labeled, tagged, or marked with the following information:

- identity of the hazardous chemical(s)
- appropriate hazard warnings
- name and address of the chemical manufacturer, importer, or other responsible party.

The employer is not required to label portable containers into which hazardous chemicals are transferred from labeled containers when the portable containers are intended for the immediate use of the employee who performs the transfer. The employer must ensure that labels or other forms of warning are legible, in English, and prominently displayed. Employers who employ non-English-speaking workers must label this material in the worker's language as well as English. Pesticides with labels required by the Federal Insecticide, Fungicide, and Rodenticide Act need no additional labeling under the hazard communication rule.

MATERIAL SAFETY DATA SHEETS

A Material Safety Data Sheet (MSDS) is a document, written in English, containing standardized information about the properties and the hazards of toxic substances. Manufacturers and importers of toxic chemicals must prepare, update, and furnish MSDS to their distributors and employers. If an MSDS is not furnished with a chemical shipment that has been labeled hazardous, the purchaser (employer) must obtain an MSDS from the chemical manufacturer, importer, or distributor. Employers must have an MSDS on file for each hazardous substance in the workplace and ensure that MSDS are readily accessible to employees when they are in the work area(s).

EXEMPTION

This does not apply to consumer products if they are used in a typical intended consumer manner and the duration and frequency of exposure is within exposures recommended by manufacturers of the products.

EMPLOYEE TRAINING AND INFORMATION

Employers must provide employees with information and training on hazardous chemicals in the work area at the time of their initial assignment and whenever a new hazard is introduced into their work area. Training for hazard communication is in addition to that required under the federal worker protection standard. Licensed applicators are not exempt from hazard communication rules. Required hazard communication training must be done before work begins. For hand labor activities in agriculture, the OR-OSHA brochure can be used for part of this training. Workers must be told which chemicals have been applied and where to find additional information.

Note: See additional information under "Worker Protection Standard (WPS) for Pesticide Applications"

Employees must be informed regarding

- information and training requirements of the law.
- any operations in their work area where hazardous chemicals are present.
- the location and availability of the written Hazard Communication Program, including the required list(s) of hazardous chemicals and required MSDS.

Employee training must include at least

- methods and observations that may be used to detect the presence or release of a hazardous chemical in the work area.
- the physical and health hazards of the chemicals in the work area.

- the measures employees can take to protect themselves from these hazards, including specific procedures the employer has implemented to protect employees from exposure to hazardous chemicals, such as appropriate work practices, emergency procedures, and personal protective equipment to be used.
- the details of the Hazard Communication Program developed by the employer, including an explanation of the labeling system and the MSDS, and how employees can obtain and use the appropriate hazard information.

TECHNICAL ASSISTANCE

OREGON OCCUPATIONAL SAFETY AND HEALTH DIVISION

305 Winter St. NE, Rm. 430

PO Box 14480

Salem, OR 97309-0405

Phone503-378-3272 or 800-922-2689

Fax503-947-7461

Web <http://www.orosha.org>

OR-OSHA SAFETY CHECKLIST

The following is a brief hazard checklist assembled by Oregon OSHA to help employers and employees evaluate their work place. Not all hazards are covered.

A more extensive checklist is provided (at no charge) in OR-OSHA's publication, *Cultivating a Safe Environment*, available online <http://orosha.org>, or from the OR-OSHA Resource Center, 800-922-2689.

GENERAL SAFETY AND HEALTH

Do your procedures ensure that quarterly inspections of the job site, materials, and equipment are conducted to identify hazards?

MEDICAL REQUIREMENTS

- Is there an emergency medical plan to ensure prompt treatment of an injured worker?
- Are the minimum first-aid supplies kept near all employees?
- Are the medical-emergency numbers posted (name and telephone numbers of ambulance service and hospital or 911)?
- Are all employees aware of the identity of the first-aid trained person, if any, or provider and the elements of the emergency medical plan?

SAFETY TRAINING AND EDUCATION

- Have all employees been trained to recognize and avoid unsafe conditions and hazards in their work environment?

- Has a training program been provided for all employees who use ladders and stairways?

POSTING

- Is the OR-OSHA Safety and Health Protection on the Job poster displayed where all employees are likely to see it?
- Are emergency numbers posted where they can be readily used in case of emergency?
- Are other applicable Oregon and federal posters or notices properly displayed, such as
 - » safety committee meeting records, if required (keep on file for three years)
 - » field sanitation notice
 - » Migrant and Seasonal Agricultural Worker Protection poster
 - » the EPA Worker Protection Standard for Agricultural Pesticides Safety poster.

RECORD KEEPING

- Are all occupational injuries and illnesses, except minor injuries requiring only first aid, being recorded as required on the OR-OSHA Form 300?
- Are copies of OR-OSHA Form 300 and First Report Injury Form 801, kept for five years?

TECHNICAL ASSISTANCE

CONSULTATIVE SERVICES

Phone503-378-3272 or 800-922-2689
Trained safety and health professionals provide consultative services to help employers and workers identify and correct occupational safety and health hazards. All consultative services are free. The training section offers a variety of workshops and training classes.

PUBLICATIONS AND POSTERS

OREGON DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

OREGON OCCUPATIONAL SAFETY AND HEALTH DIVISION

OR-OSHA Resource Center

Phone503-947-7447 or 800-922-2689

US ENVIRONMENTAL PROTECTION AGENCY (EPA)

Superintendent of documents

PO Box 371954

Pittsburgh, PA 15250-9974

Phone800-283-8473

Contact your local OSU Extension Office for a composite laminated poster that includes all agricultural postings (\$10.00).

WORKER HEALTH AND SAFETY (OREGON OSHA)

WHO MUST COMPLY?

Any employer with one or more employees. The Oregon Legislature passed the Oregon Safe Employment Act (OSEAct) in 1973 to ensure the occupational safety and health of Oregon's workforce. The Oregon Department of Consumer and Business Services, Oregon OSHA, takes the lead in administering the various aspects of farm worker health and safety in Oregon.

REGULATED ACTIVITIES

Many aspects of agricultural practices are subject to worker safety regulation including farmstead machinery and equipment, toxic and hazardous substance handling (pesticides and fertilizers), occupational noise, storage and handling of anhydrous ammonia, protective apparel and equipment, and temporary labor housing.

REQUIRED PERMITS

OR-OSHA does not issue permits or licenses to individuals working in agriculture. However, other agencies do require and issue permits or licenses for the agricultural industry. Among other documents, the Oregon Department of Agriculture, Pesticides Division (503-986-4635), issues licenses for the application of restricted use pesticides; the Oregon Bureau of Labor and Industries (503-731-4073) issues permits for employing minors and agriculture labor housing operator's endorsements. (Camps must also be registered with OR-OSHA, 503-378-3274).

Some agricultural employers must have a safety committee. If you have more than 10 nonseasonal workers, you are one of these employers.

All agricultural employers must provide initial safety orientation for seasonal workers in addition to training required by specific OR-OSHA rules. Contact OR-OSHA for more information on this topic.

Employers must also keep certain records, including worker exposure to toxic materials and medical records related to work related injuries or illnesses.

POSTINGS

Employers are also required to post several posters related to employee safety and health, pesticide safety, civil rights, minimum wages, equal employment opportunity laws, and the Workers' Compensation Insurance Certificate, among others. Contact your local OSU Extension Office for a composite laminated poster that includes all agricultural postings (\$10.00).

HAZARD COMMUNICATION RULES

You must also have a written Hazard Communication Program that lists all hazardous materials. You must also have a Material Safety Data Sheet (MSDS) for each hazardous material. Material Safety Data Sheets are available at all retail or wholesale distribution points. They should be used in safety training programs to familiarize workers with the hazards of various products. The MSDS must be immediately accessible to employees in the event of an emergency. A written hazard communication plan is also required.

Note: See the section on "OR-OSHA Hazard Communication" for more information.

SAFETY TRAINING

Employers must ensure that every worker can safely perform any process or practice in which he/she will be involved and safely operate any machinery, tools, or equipment. The location of first-aid supplies, telephone numbers of local ambulance and hospital services (or 911), and names and other pertinent information about who, if anybody, on the premises is trained in CPR and first-aid, must be posted where employees can easily find them. The training section of OR-OSHA (503-378-3272 or 800-922-2689) offers a variety of workshops or training classes on safety and record keeping.

INSPECTIONS AND ENFORCEMENT

An employer may not risk an employee's safety and health. In the event of an accident or incident, OR-OSHA may conduct an inspection to determine occupational hazards. Employers must inform OR-OSHA of all fatalities or catastrophes within eight hours of occurrence and all accidents resulting in hospitalization within 24 hours. OR-OSHA conducts unannounced enforcement inspections based on injury records, complaints from an employee or nonemployee, and referrals from public entities or the media. During an inspection, records and written safety programs are reviewed, facilities inspected, and employee exposure to hazards documented through field notes, interviews, and photographs. The inspector checks to see that the OSHA safety poster is prominently displayed where employees can see it. Employers who correct violations before a compliance officer concludes the inspection may receive penalty reductions. First instance violation penalties range from \$0 to \$5000 or more per violation, depending on the probability and severity of an accident or illness occurring. Employers have the right to appeal any citation and do not need to be represented by a lawyer in an appeal.

The most frequent citations in farm-related enterprises include

- PTO (power take off) guarding not in place
- unrailed/open floor sides in overhead work areas
- machine guarding not in place
- electrical wiring exposed
- PVC air lines
- oxygen/acetylene equipment not properly contained
- grinder wheel guardings not in place
- first aid kits without adequate materials
- fire extinguishers not available in work areas
- MSDS not readily available to employees
- NO SMOKING signs not posted as required around hazardous materials
- lack of Hazard Communication Program and hazardous chemical information training.

WORKER PROTECTION STANDARD (WPS) FOR PESTICIDE APPLICATIONS

WHO MUST COMPLY?

The federal worker protection standard (WPS) requirements apply to employers of workers on farms and forests, nurseries and in greenhouses where pesticides are used. Agricultural employers are strongly encouraged to obtain a copy of Worker Protection Standard for Agricultural Pesticides—How to Comply: What Employers Need to Know, a manual produced by the US Environmental Protection Agency. Contact any of the enforcement agencies listed at the end of this section for information on how to obtain the manual.

COMPLIANCE

Employers who hire or contract for workers to perform activities related to the production of agricultural plants must ensure that any pesticide used is used in a manner consistent with its labeling, including requirements (such as WPS) referenced by the label.

EXCEPTIONS AND EXEMPTIONS

For both workers and handlers, certain exemptions from the Protection Standard apply. The Standard does not apply when any pesticide is applied or handled for use on an agricultural establishment in the following circumstances:

- for mosquito abatement, Mediterranean fruit fly eradication, or similar wide-area public-pest-control programs sponsored by governmental entities
- on livestock or other animals, or in or about animal premises

- on plants grown for other than commercial or research purposes, which may include plants in habitations, home fruit and vegetable gardens, and home greenhouses
- on plants that are in ornamental gardens, parks, and public or private lawns and grounds and that are intended only for aesthetic purposes or climatic modification
- in a manner not directly related to the production of agricultural plants, including, but not limited to, structural pest control, control of vegetation along rights-of-way and in other noncrop areas, and pasture and rangeland use
- for control of vertebrate pests
- as attractants or repellents in traps
- on the harvested portions of agricultural plants or harvested timber
- for research uses of unregistered pesticides.

Immediate family members of farm operators are exempt from the training requirements; however, such training is prudent and recommended for owner/operators and family members.

PERSONAL PROTECTIVE EQUIPMENT (PPE)

Employers must ensure that pesticide handlers (including family members) use PPE as required on the pesticide label. The employer must make sure the PPE is worn and used correctly for the entire handling task. Employers are to inspect all PPE before each day of use and must ensure proper cleaning and storage procedures are followed. PPE requirements in OR-OSHA regulations (Division 4 or Division 7) which are more stringent than those in the WPS or on the product label, apply in Oregon. Goggles, not glasses, must be worn when handling hazardous liquids.

ENTRY RESTRICTIONS FOR WORKERS

During application of any pesticide, the agricultural employer must not allow any person other than appropriately trained and equipped handlers to enter or remain in treated areas. Entry into a treated area is not allowed before expiration of the restricted-entry interval (REI) specified on the pesticide labeling. The REI varies depending on the toxicity of the pesticide, but generally falls within the range of four to 72 hours. Entry into a treated area before expiration of the REI is permitted only for specified workers and under specified conditions (call OR-OSHA or ODA for details).

NOTICE TO WORKERS

The employer must notify workers of any applications of pesticides either by oral notification or postings of signs, or both, if required by the pesticide labeling. Notice is not required if workers will not enter, work in, remain in or

pass through treated areas, or within ¼ mile of a treated area.

- If notice is required by posting signs, specific criteria for the signs must be met including a background color that contrasts with red, and the words “DANGER” and “PELIGRO,” plus “PESTICIDES” and “PESTICIDAS,” and “KEEP OUT” and “NO ENTRE.”
- The posted warning signs must be visible from all usual points of entry to the treated areas and must be posted 24 hours before the scheduled application and remain posted throughout the REI. Signs must be removed within three days following the expiration of the REI or prior to employees entering after the REI. Sign specifications are in the WPS, but special signs may be used in greenhouses and nurseries in Oregon. Contact the Oregon Association of Nurseries or OR-OSHA for details.

RECORD OF APPLICATION

When workers are at an agricultural establishment where a pesticide application has been made within 30 days after the expiration of the REI, the agricultural employer must display specific information about the pesticide. The information must include

- the location and description of the treated area.
- the product name, EPA registration number and active ingredient(s) of the pesticide.
- the time and date the pesticide was applied.
- the restricted-entry interval for the pesticide.

This information shall be posted at the central posting location.

POSTERS

An EPA/WPS or equivalent safety poster must be displayed to convey the basic pesticide safety concepts of the EPA poster. (See the “OR-OSHA Safety Checklist” section of this handbook for information on ordering posters). The information is to be displayed in a central location on the farm or in the nursery or greenhouse where it can be readily seen and read by workers. The name, address, and telephone number of the nearest emergency medical care facility must be on the safety poster or displayed close to the safety poster.

SAFETY TRAINING

All workers entering a treated area during the REI must be trained prior to entry, see 40 CFR 170.112 (c) (5). All other workers entering a treated area within 30 days of a pesticide application must be given basic training at the time of hire and complete training by the fifth day of employment.

Additional OR-OSHA requirements include the following:

- Workers must be given the Safe Practices When Working Around Hazardous Agricultural Chemicals brochure.
- Workers must be notified who to contact with concerns about materials that may have been sprayed in the field.

A worker certified as an applicator of restricted-use pesticides need not be trained further. General pesticide safety information must be presented to workers either orally, in written material, or audio-visually. The information must be presented in a manner that the workers can understand (such as through a translator) using nontechnical terms. The presenter must be able to respond to workers’ questions. The trainer must meet at least one of the following criteria:

- be currently certified as an applicator of restricted-use pesticides
- be currently designated as a trainer of certified applicators or pesticide handlers by a state, federal, or tribal agency having jurisdiction
- having completed a pesticide safety train-the-trainer program approved by a state, federal, or tribal jurisdiction, satisfy other required training requirements.

In addition to WPS training, OR-OSHA’s hazard communication training requirements must also be met. At the time of initial assignment, the employer must provide effective training and information to employees exposed to hazardous chemicals in their work area, for example handlers and mechanics. Employers must provide training whenever a new hazard is introduced. Training must include, but is not limited to

- physical and health hazards of the chemicals.
- protective measures to be taken when using the chemicals.
- proper work practices, personal protective equipment, and emergency procedure.
- the employer’s Hazard Communication Program.

MATERIAL SAFETY DATA SHEETS (MSDS)

Employers must provide employees performing hand labor activity, OR-OSHA’s brochure Safe Practices When Working Around Hazardous Agricultural Chemicals. Employees are to be informed who to contact for information and availability of MSDS.

CROP ADVISORS

Certified or licensed crop advisors and those under the direct supervision of crop advisors are exempt from WPS provisions except those for pesticide safety training. Crop advisors overseeing pesticide applications must convey the following information to employees: pesticide(s) applied, method and time of application, REI, tasks to undertake, and how to contact the crop advisor.

DECONTAMINATION

The agricultural employer must provide a decontamination site for washing off pesticide residues. If any worker on an agricultural establishment performs any activity in an area where, within the past 30 days, a pesticide has been applied or a restricted-entry interval has been in effect, and if the worker contacts anything that has been treated with a pesticide, including, but not limited to, soil, water, or surfaces of plants, the agricultural employer must provide workers with enough water for routine washing and emergency eye flushing and sufficient quantities of soap and single use towels. The employer must ensure that water is of a quality and temperature that will not cause illness or injury when it contacts the skin or eyes or if it is swallowed.

For emergency eye flushing, there must be at least one pint of water immediately available to each worker who is performing early-entry activities and for which the pesticide labeling requires protective eye wear. The eye flush water must be carried by the early-entry worker, or be on the vehicle the early-entry worker is using, or be otherwise immediately accessible.

The decontamination site must be reasonably accessible and not more than ¼ mile from where workers are working. For worker activities performed more than ¼ mile from the nearest place of vehicular access

- the soap, single-use towels, and water may be at the nearest place of vehicular access.
- the agricultural employer may permit workers to use clean water from springs, streams, lakes, or other sources for decontamination at the remote work site, if such water is more accessible than the water at the decontamination site located at the nearest place of vehicular access. The decontamination site cannot be in an area being treated with pesticides.

For handlers, the decontamination site must be at the mixing/loading site, as well as not more than ¼ mile from each handling activity, and have in addition to soap, water, paper towels, a clean set of coveralls.

OR-OSHA requires an emergency eyewash capable of a 15 minute water supply for handlers when mixing or loading any product with "Danger. Poison" or "Danger. May cause irreversible eye damage," appearing on the label.

Subdivision K, Medical/First Aid, OAR 437-004-1305(5) Emergency eyewash and shower facilities, require eyewashes to be used where the pesticide label specifies an emergency eyewash be provided when handling the pesticide concentrate, as in mixing and loading activities.

Subdivision W, Worker Protection Standard, §170.250 Decontamination, note states: OAR 437-004-1305(5)(b), (d), and (e) applies for all mixing or loading work for

chemicals whose key alert word on the product label is danger or danger poison.

TOP 10 WPS VIOLATIONS CITED BY OR-OSHA

170.122(A)	Areas of pesticide use must be posted
170.122(C)	General requirements for posting pesticide use
170.130(D)(1)	Requirements for pesticide safety training
170.122(C)(2)	Name and EPA number of active ingredient must be posted
170.240(F)(1)	Personal protective equipment to be cleaned per instructions
170.135(A)	Posting pesticide safety information to workers
170.222(A)	Pesticide information - readable/accessible
170.230(C)(1)	Pesticide training for handlers
170.240(A)	Personal protective equipment requirements for pesticide handling
170.240(F)(7)(III)	Requirements - respirator replacement

TECHNICAL ASSISTANCE

US ENVIRONMENTAL PROTECTION AGENCY

Pesticide Section

Allan Welch
Seattle, WA 98102
Phone503-553-1980 or 800-424-4372

REGULATORY QUESTIONS

OREGON DEPARTMENT OF AGRICULTURE

Pesticides Division

635 Capitol St. NE
Salem OR 97301-2532
Phone503-986-4635
Oregon Department of Agriculture enforces compliance with label directions, including application, REI and PPE.

WORKER PROTECTION STANDARDS AND HAZARD COMMUNICATION

OREGON OCCUPATIONAL SAFETY AND HEALTH DIVISION

305 Winter St. NE, Rm. 430
PO Box 14480
Salem, OR 97309-0405
Phone503-378-3272 or 800-922-2689
Fax503-947-7461
Web <http://www.orosha.org>

TOXICOLOGY INFORMATION

NATIONAL PESTICIDE INFORMATION CENTER

Phone800-858-7378
Web <http://npic.orst.edu>

OREGON EMERGENCY RESPONSE SYSTEM (OERS)

Phone800-452-0311
Outside of Oregon call.....503-378-4124

TAXES

INCOME TAX WITHHOLDING: FEDERAL

Note: Be sure to also refer to the corresponding section in this handbook for Oregon income tax withholding information.

WHO MUST COMPLY?

Agricultural employers must withhold federal income tax from wages paid to farm workers. The rules governing Social Security tax (FICA) withholdings now apply to federal income tax withholdings as well. As an agricultural employer, you may have to withhold federal income taxes if you have one or more agricultural employees (including your parents, your spouse, or children 18 years of age or older) who meet either of these two tests:

- You paid the employee \$150 or more in cash wages during the year.
- You paid (or expect to pay) cash and noncash wages of \$2,500 or more during the year to all your employees.

Each employee subject to federal income tax withholding must supply you with a completed Form W-4, Employee's Withholding Allowance Certificate.

SEASONAL FARM WORKER

Each seasonal farm worker you employ who meets the following condition is exempt from Social Security taxes if he/she

- works on a piece-rate basis, in jobs that are normally paid on a piece-rate basis.
 - is paid less than \$150 per year in cash wages.
 - commutes daily from his or her permanent residence.
 - has worked fewer than 13 weeks performing agricultural labor in the previous calendar year.
 - is employed in agriculture as a hand harvest laborer.
- Wages paid to exempt employees still contribute to your total wages paid in determining whether you paid cash wages of \$2,500 or more during the year.

DEFINITIONS

- Wages include salaries, commissions, bonuses, wages, fees, or any item of value paid to an individual for services as an employee.
- Taxable items include merchandise, stocks, bonds, room, board, or other considerations in payment for services.
- The value of meals and lodging furnished for the convenience of the employer is not taxable.

CALCULATING TAX WITHHOLDING

There are a number of ways to calculate income tax withholding, including the percentage method, wage bracket tables, combined income tax and employee Social Security tax tables, and approved alternative methods. For specific details, refer to Circular E, Employer's Tax Guide, or Publication 493, Alternative Tax Withholding Methods and Tables. These publications describe the methods you should follow to figure withholdings. When you figure them, use the number of exemptions claimed by the employees on Form W-4.

DEPOSITING TAXES

Mail or deliver payments to an authorized financial institution or Federal Reserve Bank or branch in your area. Form 8109, Federal Tax Deposit Coupon, must accompany your payment. You may order coupon books by calling the Internal Revenue Service at 800-829-3676. The IRS automatically sends you a coupon book when you apply for an employer identification number. The amount of your combined Social Security and Medicare taxes and withheld income tax determines the frequency of your deposits.

HOW TO DEPOSIT

ELECTRONIC DEPOSIT REQUIREMENT

You must make electronic deposits of all depository taxes (such as employment, excise and corporate income taxes) using the Electronic Federal Tax Payment System (EFTPS) in 2006 if

- the total deposits of such taxes in 2004 were more than \$200,000, or
- you were required to use EFTPS in 2005.

The Electronic Federal Tax Payment System (EFTPS) must be used to make electronic deposits. If you are required to make deposits by electronic funds transfer and fail to do so, you may be subject to a 10 percent penalty.

Taxpayers who are not required to make electronic deposits may voluntarily participate in EFTPS. To enroll in EFTPS, call 800-945-8400 or 800-555-4477. For general information about EFTPS, call 800-829-1040.

DEPOSIT PENALTIES

Penalties may apply if you do not make required deposits on time, you make deposits at an unauthorized financial institution, you pay directly to the IRS, or you pay with your return (amounts that may be paid with a return are limited). The penalties do not apply if any failure to make a proper and timely deposit was due to reasonable cause and not to willful neglect. For amounts not properly or timely deposited, the penalty rates are

- 2 percent: Deposits made one to five days late.

- 5 percent: Deposits made six to 15 days late.
- 10 percent: Deposits made 16 or more days late. This also applies to amounts paid within ten days of the date of the first notice the IRS sent you asking for the tax due.
- 10 percent: Deposits made at an unauthorized financial institution, paid directly to the IRS, or paid with your tax return.
- 10 percent: Amounts subject to electronic deposit requirements but not deposited using EFTPS.
- 15 percent: Amounts still unpaid more than 10 days after the date of the first notice the IRS sent you asking for the tax due, or the day on which you receive notice and demand for immediate payment, whichever is earlier.

PAYMENT WITH RETURN

You may make a payment with Form 941 instead of depositing it if

- you can accumulate less than a \$2,500 tax liability (reduced by any advanced earned income credit) during the quarter. However, if you are unsure that you will accumulate less than \$2,500, deposit under the appropriate rules so that you will not be subject to failure to deposit penalties.
- you are a monthly schedule depositor and make a payment in accordance with the accuracy of deposits rule. This payment may be \$2,500 or more.

Note: Only monthly schedule depositors are allowed to make this payment with the return.

DEPOSITING WITHOUT AN EIN

If you have applied for an EIN but have not yet received it, make the deposit with the IRS. Do not make the deposit at an authorized depository. Make the check payable to “United States Treasury,” and show on it your name, address, kind of tax, period covered, and date applied for an EIN. Include an explanation with the deposit. Do not use Form 8109-B in this situation.

REPORTING AGENT

Use of a reporting agent or third-party payroll service provider does not relieve an employer of the responsibility to ensure that tax returns are filed and all taxes are paid and deposited correctly and on time.

DEPOSIT RULES

If your accumulated undeposited taxes do not exceed \$100,000 on any day during the year, your tax liability in your lookback period will determine the deposit dates for the entire year. You are either a monthly depositor or a semiweekly depositor, or the IRS will send you a notice

each November to confirm, based on your lookback period, which deposit schedule you must follow.

LOOKBACK PERIOD

Your deposit schedule for a calendar year is determined from the total taxes (that is, not reduced by any advance EIC payments) reported on line 8 of your Form 941 in a four-quarter lookback period. (Refer to line 11 on pre-2005 versions of Form 941.) The lookback period begins July 1 and ends June 30, as shown in Table 1 below. If you reported \$50,000 or less of taxes for the lookback period, you are a monthly schedule depositor; if you reported more than \$50,000, you are a semiweekly schedule depositor.

MONTHLY DEPOSITOR

You are a monthly depositor for a calendar year if the total amount of reported taxes for the lookback period is not more than \$50,000. You should deposit the taxes accumulated on paydays during each month by the 15th day of the following month.

SEMIWEEKLY DEPOSITOR

You are a semiweekly depositor for a calendar year if the total amount of accumulated taxes for the lookback period is more than \$50,000. Deposit taxes accumulated Wednesday, Thursday, and/or Friday paydays during each week by the following Wednesday. Deposit taxes accumulated for Saturday, Sunday, Monday and/or Tuesday paydays during each week by the following Friday.

DE MINIMIS RULE

If the amount of accumulated taxes during the year is less than \$500, you are not required to make deposits. You may pay the taxes to the IRS with Form 943.

Report farm workers' income and Social Security taxes withheld on Form 943, Employer's Annual Tax Return for Agricultural Employees. Send Form 943, with payment of any taxes due that are not required to be deposited, to the IRS by January 31 following the year for which the return is filed (or February 10 if the tax was deposited in full and on time). Non-farm workers wages are reported on Form 941 and deposits are made according to Form 941 rules.

ADVANCE PAYMENT OF EARNED INCOME CREDIT (EIC)

An eligible employee who has a qualifying child is entitled to receive earned income credit (EIC) payments with his or her pay during the year. To get these payments, the employee must give the employer a properly completed Form W-5 Earned Income Credit Advance Payment Certificate. (Agricultural workers paid on a daily basis do not qualify for EIC payments.)

REQUIRED NOTICE

Employers must notify employees who have no income tax withheld due to claimed exemptions that they may be able to claim a tax refund under EIC. Although the employer does not have to notify employees who claim exemption on Form W-4, notification of the following employees is encouraged:

- employees with one qualifying child and wages less than \$30,338
- employees with two or more qualifying children and wages less than \$34,458
- employees without qualifying children and wages less than \$11,490.

The amounts listed above are correct for the year 2004. Please check with the Internal Revenue Service at 800-829-1040 in order to ascertain the correct dollar amounts for the current year.

Note: The dollar amounts of wages for persons claiming the earned income credit change annually.

You can notify your employees by giving them one of the following:

- the IRS Form W-2, which has a required statement about EIC on the back of Copy B
- a substitute Form W-2, with the same EIC statement on the back of the employee's copy as that on IRS Form W-2 Copy B
- Notice 797, Possible Federal Tax Refund Due to the earned income credit (EIC)
- a written statement generated by your business with the same wording as in Notice 797.

If you are required to give Form W-2 and do so on time, no further notice is necessary (EIC statement on back of Copy B). If a substitute W-2 is given on time but doesn't have the required statement, you must notify the employee within one week of the date the substitute Form W-2 is given. If Form W-2 is required but isn't given on time, you must give the employee Notice 797 or a written statement by the date Form W-2 is required to be provided. If Form W-2 is not required, you must notify the employee by February 7. For more information about notification requirements, see Notice 1015 (formerly Pub. 1325), *Employers, Have You Told Your Employees About the Earned Income Credit (EIC)?*

TECHNICAL ASSISTANCE

INTERNAL REVENUE SERVICE

Forms Distribution Center

Rancho Cordova, CA 95743-0001

Phone 800-TAX-FORM (800-829-3676)

Fax on demand 703-368-9694

Web <http://www.irs.ustreas.gov/formspubs>

- Publication 51, Circular A Agricultural Employer's Tax Guide
- Publication 15, Circular E Employer's Tax Guide
- Publication 493, Alternative Tax Withholding Methods and Tables
- Form 8109, Federal Tax Deposit Coupons

INCOME TAX WITHHOLDING: OREGON

WHO MUST COMPLY?

You must withhold tax for employees who plant, cultivate, or harvest seasonal agricultural crops once they earn \$300 in a calendar year from you. When the amount exceeds \$300, the entire amount is subject to withholding tax.

All Oregon employers (including farmers and ranchers) must withhold tax from employee wages at the same time employees are paid.

DEFINITION

EMPLOYEE

An employee is defined as anyone who performs services for another person, business, or organization. The key criterion used in deciding whether a person is an employee is the employer's authority to direct the way the services are performed. Individuals recognized by the federal government as independent contractors may be regarded by the state as employees. Please visit <http://www.oregonindependentcontractors.com> for more information.

WAGES SUBJECT TO WITHHOLDING

Wages subject to Oregon withholding tax include salaries, commissions, bonuses, wages, fees, or any item of value paid to an individual for services as an employee. Taxable items include merchandise (such as a freezer of beef), stocks, room, board, or other considerations given in payment for the employee's services. An employer must withhold tax on wages paid when an employer-employee relationship exists between a husband and wife, and on wages paid to minors for bona fide personal services rendered to their parents. The value of meals or lodging furnished for the convenience of the employer is not taxable.

You must withhold tax on all wages of regular farm employees, even though part of their work may involve planting, cultivating, or harvesting. You must withhold tax on all wages paid for seasonal activities, such as canning or other food processing, logging, and sheep shearing. Those activities are not connected with planting, cultivating, or harvesting seasonal agricultural crops.

EXEMPT WAGES

Certain wages are exempt from Oregon withholding law. The most significant agricultural exemption relates to seasonal employees. Wages paid to a seasonal farm laborer whose total annual income from a single employer is less than \$300 are exempted from withholding law.

This exemption is only for planting, cultivating, or harvesting seasonal agricultural crops. When the annual income from one employer exceeds \$300, the entire amount, including the first \$300, is subject to withholding tax. A seasonal agricultural crop requires an annual or less-than-annual season to mature.

Seasonal crops include

- Field and forage crops.
- Grass, cereal grain, vegetable crop, and flower.
- Bulbs and tubers of vegetable crops.
- Any vegetable or fruit used for food or feed.
- Holly cuttings harvested annually for Christmas sale.

Note: Christmas trees are not considered seasonal agricultural crops.

Labor connected with the following is not exempt from withholding tax:

- forest products
- landscaping
- nursery stock as defined in ORS 571.005 unless planted, cultivated, and harvested within an annual period
- raising, shearing, feeding, caring for, training, or managing livestock, bees, poultry, fur-bearing animals, or wildlife
- Christmas trees.

Employers must register with the Oregon Department of Revenue using Form 150-211-055, Combined Employer's Registration. You should register before you issue your first paychecks. For more information, visit <http://oregon.gov/DOR>.

FIGURING WITHHOLDING TAXES

For a seasonal farm employee, you may choose to withhold 2 percent of the total wages without considering any withholding exemptions, or use the withholding tables in the "Oregon Withholding Tax Tables" booklet to find out how much state income tax to withhold from the employee's pay. If you need a copy of the Oregon withholding tax tables, visit <http://oregon.gov/DOR> or call 503-945-8091. You should use the number of exemptions claimed by employees on Internal Revenue Service Form W-4, Employee's Withholding Allowance Certificate. If an employee has not filed a Form W-4, use 0 (zero) exemptions.

The percentage formula that is used in computer payroll systems can also be used.

PAYMENT DUE DATES

Due dates for paying Oregon withholding tax are the same as due dates for paying federal withholding tax.

QUARTERLY FILING

All employers, except agricultural employers who qualify for annual filing, must file withholding returns quarterly using Form OQ, Oregon Quarterly Combined Report.

Quarter	Ending	Due Date
1st: Jan-Mar	Mar 31	Apr 30
2nd: Apr-Jun	Jun 30	Jul 31
3rd: Jul-Sep	Sep 30	Oct 31
4th: Oct-Dec	Dec 31	Jan 31

ANNUAL FILING

Agricultural employers who file IRS Form 943, Employer's Annual Tax Return for Agricultural Employees, can also file Oregon withholding annually using Form WA, Oregon Annual Withholding Tax Return for Agricultural Employees. It is due by January 31. Tax payments are due the same day as you make your FICA or federal tax payment.

ANNUAL REPORT

All employers must file Form WR, Oregon Annual Withholding Reconciliation Report, by February 28. Forms are regularly mailed by the Department of Revenue to registered employers.

TECHNICAL ASSISTANCE

Call or write for the materials below; single copies are available at no charge, or you may download them from the DOR Web site.

- Information for Oregon Employers
- Oregon Withholding Tax Tables
- Form 150-211-055, Combined Employer's Registration Report.

OREGON DEPARTMENT OF REVENUE

PO Box 14725
Salem OR 97309
Phone503-945-8091
Toll free.....800-356-4222
Web<http://oregon.gov/DOR>

PROPERTY TAX SPECIAL ASSESSMENT

EXCLUSIVE FARM USE (EFU) ZONES AND NONEXCLUSIVE FARM USE (NON-EFU) ZONES

Oregon law recognizes that agriculture and related land uses are important to Oregon's character and economy. The legislature finds that providing the means for agriculture to continue and prosper is in the interest of all Oregonians who benefit directly or indirectly from agricultural production, and stewardship of farmlands and ranchlands. Land that qualifies for farm use special assessment is assessed at its farm-use value exclusive of values related to urban influences or speculative purposes. County assessors are responsible for the valuation and assessment of land and homesites qualifying for farm use special assessment.

DEFINITIONS

EXCLUSIVE FARM USE (EFU) ZONE

Land in areas zoned EFU is specially assessed at farm-use value upon discovery that the land is used exclusively for farm use.

NONEXCLUSIVE FARM USE (NON-EFU) ZONE

Nonexclusive farm-use zoned farmland is land that is not within an EFU zone but qualifies by application for farm use special assessment. To maintain the special assessment, the land must be used for farm use and meet minimum gross income requirements. The required minimum gross income is \$650. If the land is more than 6.5 acres, the required minimum gross income is \$100 per acre (or fraction of acre) up to a maximum of \$3,000 gross income.

HOMESITE

Homesite refers to the land, including all tangible land improvements that are customarily provided in conjunction with a dwelling. Land improvements necessary to establish a homesite include but are not limited to items such as grading, fill, drainage, wells, water supply systems, septic systems, utility connections, extension of utilities to any structure(s), retaining walls, landscaping, graveled driveway area.

FARM USE (ORS 308A.056)

Farm use means that the current use of land is for the primary purpose of obtaining a profit by raising, harvesting, and selling crops; feeding, breeding, managing, or selling livestock, poultry, fur-bearing animals or honeybees; dairying and selling dairy products; stabling or training horses; and raising, cultivating, maintaining, or harvesting

aquatic birds and animals allowed by the state Fish and Wildlife Commission. Farm use includes land growing cultured Christmas trees and certain hybrid cottonwood or hardwood timber for paper pulp production. Farm use also includes the preparing, storing, or disposing of, by marketing or otherwise, of the products or by-products raised on farmland for human or animal use.

Farm use includes land currently

- subject to any farm-related government program.
- crop-free for one year as a normal and regular requirement of sound agricultural practice, lying idle for no more than one year because of an injury to or illness of a farmer or farmer's immediate family member.
- planted in orchards or other perennials prior to maturity.
- dry or water-covered wasteland in or adjacent to EFU land.
- land under buildings supporting farm practices, including qualifying farm-processing facilities.
- in farm-water impoundments lying in or adjacent to and in common ownership with farm use land; a woodlot up to 20 acres of land contiguous to and owned by the owner of land specially valued for farm use.
- land used for obtaining a profit by breeding, raising, kenneling, or training greyhounds for racing.

The activity needs to be an accepted farming practice, which means the farming is conducted in a "mode of operation that is common to farms of a similar nature, necessary for the operation of these similar farms to obtain a profit in money, and customarily utilized in conjunction with farm use."

DISQUALIFICATION

Disqualification of farm use special assessment is determined by whether the land is in an EFU zone or a non-EFU zone.

In an EFU zone, the land will be disqualified from special assessment if

- the land is no longer used as farmland.
- the land is removed from an EFU zone.
- the permit approval is given for a non-farm dwelling or parcel under ORS 215.236.

In a non-EFU zone, the land will be disqualified from special assessment if

- the owner notifies the assessor in writing to remove the land from special assessment.
- the owner sells or transfers the land to an ownership making the land exempt from property tax.
- land is no longer used as farmland, or it does not meet the required income test.
- land is platted for a subdivision (the land may re-qualify after payment of an additional tax).

SELF-EMPLOYMENT TAX

Upon disqualification, land may qualify for a different special assessment and, in some cases, avoid additional taxes. Check with your county assessor for information about changing special assessments.

ADDITIONAL TAXES LEVIED AGAINST DISQUALIFIED FARMLAND

If your farmland loses its special assessment and does not change to another special assessment, it will be assessed at market value (or its maximum assessed value) and you may be charged additional tax.

The additional tax is based on the difference between the tax you paid and the tax you would have been paying if your land had not received the farm use special assessment. This tax difference is based on the number of years the land received farm use special assessment up to a maximum of five years (10 years in EFU zones that are outside of an urban growth boundary).

You will be charged additional tax if you change the use of the property so that it is incompatible with its return to farm use. These additional taxes are added to the next tax roll if you choose not to prepay them.

Note: These additional taxes will be deferred and will not be collectable at this time if the land becomes idle or is used in such a way that is compatible with returning the land to farm use. However, if the land is used for residential development, or commercial, industrial, or other uses so that it is no longer being used for farmland then the deferred additional taxes will become collectable at that time.

ADDITIONAL TAXES WAIVER

Additional taxes may be waived (abated) on disqualified non-EFU properties that have difficulty meeting the minimum gross income requirements if the land continues to be farmed after being disqualified. For each year the land continues limited farming, the oldest year of additional taxes is waived until there are no years of potential additional taxes remaining.

TECHNICAL ASSISTANCE

To find out in which zone your farmland is located, contact the planning office or county assessor's office in which the land is located.

OREGON DEPARTMENT OF REVENUE

Phone 503-378-4988 (Salem)
 Toll free..... 800-356-4222
 TTY..... 503-945-8617 (Salem)
 Toll free..... 800-886-7204
 TTY is for hearing or speech impaired only. These numbers are answered by machine and returned by a DOR representative.
 Web <http://oregon.gov/DOR>

WHO MUST COMPLY?

Social Security self-employment tax is part of a system that provides farmers and other self-employed individuals with Social Security and Medicare insurance coverage. Social Security benefits are available to self-employed farmers, and payments of self-employment tax contribute to coverage under the Social Security system.

If you engage in farming or ranching as a business, you probably have to pay self-employment tax. A business is generally an activity that is carried on for a livelihood, or in good faith to make a profit. You do not have to carry on regular full-time activities to be self-employed. Part-time work, including work you do on the side in addition to your regular job, may also be self-employment.

TAX RATE

The self-employment tax rate is 15.30 percent for 2005. This rate is a total of 12.4 percent for Social Security and 2.9 percent for Medicare. This tax applies to net earnings of \$400 or more from self-employment. The maximum amount subject to the Social Security part for 2005 is \$90,000. (Note: these rates will change periodically.) There is no maximum amount subject to the Medicare portion.

There are three steps to figure the amount of self-employment tax you owe:

1. Determine your net earnings from self-employment.
2. Determine how much of those net earnings are subject to the tax (adjust for wages on which Social Security tax has already been paid).
3. Multiply that amount by the tax rate.

Net earnings from self-employment may be figured using the regular method, the farm optional method, or the non-farm optional method. Schedule SE, Social Security Self-Employment Tax, is used to figure the tax. Form 1040 is used to report self-employment tax.

The regular method is used most often. The optional methods allow continued coverage for self-employment tax purposes when your net profit for the year is small or you sustain a loss. The optional methods are used only to figure self-employment tax.

EMPLOYING FAMILY MEMBERS

You and your spouse cannot file a joint Schedule SE, even if you file a joint income tax return. Each spouse's income is independently subject to self-employment tax. Joint ownership of farm property does not qualify a spouse for self-employment tax. Wages paid to a spouse as an employee are not subject to self-employment tax, but are subject to Social Security tax. If you and your spouse operate a farm

as partners you must report the income on a partnership return, Form 1065, and attach separate Schedules K-1 to show each partner's share of the net income. Each partner also files a separate Schedule SE.

Your child may be required to file a self-employment tax return and pay the tax if he or she has net earnings from 4-H or FFA projects of \$400 or more. Income from these projects is self-employment income.

ITEMS INCLUDED IN NET EARNINGS

Net earnings from self-employment normally include all of the items of business income and take into account deductions allowed for income tax purposes. Some specific items included in determining net income from self-employment are

- taxable patronage dividends from cooperatives.
- government program payments.
- taxable commodity credit loans.
- crop damage payments.
- crop shares received as rent if you materially participate in management.

ITEMS NOT INCLUDED IN NET EARNINGS

Some kinds of income and deductions are not included in your net earnings from self-employment, even though they are included in figuring your income tax. Examples include

- rent from real estate and personal property leased with real estate.
- interest, unless you receive it in your business, such as interest on accounts receivable.
- dividends on securities.
- capital gains and losses.
- wages received as an employee and covered by Social Security tax.

REQUESTING BENEFIT STATEMENTS

The Social Security Administration provides free statements that detail your past Social Security earnings, Social Security taxes paid, and estimated Social Security benefits. Obtain the Request for Earnings and Benefit Estimate Statement form from your local Social Security Administration Office.

PAYING THE TAX

Self-employment taxes must be included in your estimated tax payments. However, if at least two-thirds of your income is from farming and if you file your return and pay the tax by the first day of the third month after the end of your tax year, no estimated tax payments are required.

TECHNICAL ASSISTANCE

SOCIAL SECURITY ADMINISTRATION

Web <http://www.ssa.gov/pubs/10022.html>

PUBLICATIONS

INTERNAL REVENUE SERVICE

Forms Distribution Center

Rancho Cordova, CA 95743-0001

Phone 800-TAX-FORM (800-829-3676)

Fax on demand 703-368-9694

Web <http://www.irs.ustreas.gov/formspubs>

- Publication 533, Self-Employment Tax
- Publication 225, Farmer's Tax Guide
- Publication 505, Tax Withholding and Estimated Tax

SOCIAL SECURITY TAX

WHO MUST COMPLY?

The Federal Insurance Contributions Act (FICA) provides for a federal system of old age, survivors, disability, and medical insurance. This system is financed through Social Security taxes, also known as FICA taxes. As an agricultural employer, you may have to pay Social Security and Medicare taxes if you have one or more agricultural employees (including your parents, your children 18 years of age or older, or your spouse) who meet either of these two tests:

- You expect to pay the employee \$150 or more in cash wages during the year.
- You expect to pay cash and noncash wages of \$2,500 or more during the year to all your employees.

If one of these two tests is met you are required to withhold Social Security and Medicare taxes from the cash wages paid to the employee beginning with the first dollar of cash wages paid.

EXEMPT LABOR

Hand-harvest laborers you employ who meet the following conditions are exempt from Social Security taxes:

- They work on a piece-rate basis, in jobs that are normally paid on a piece-rate basis.
- You paid them less than \$150 per year in cash wages.
- They commute daily from their permanent residence.
- They worked fewer than 13 weeks performing agricultural labor in the previous calendar year.
- They are employed in agriculture as hand harvest laborers.
- Wages paid to exempt employees still contribute to your total wages paid in determining whether you paid cash wages of \$2,500 or more during the year.

TAX RATES

Social Security and Medicare taxes include contributions from employees and employers. You, as an employer, must collect and pay the employee's part of the tax, and you must pay a matching amount. For 2005, the tax rate is 7.65 percent for both the employer and the employee, consisting of 6.2 percent for Social Security and 1.45 percent for Medicare. The first \$90,000 of wages is subject to Social Security taxes. (Note: these rates change periodically.) There is no maximum amount subject to Medicare tax.

DEPOSITING TAXES

Mail or deliver payments to an authorized financial institution or the Federal Reserve Bank. Your payment should be accompanied by Form 8109, Federal Tax Deposit Coupon. You may order coupon books by calling the Internal Revenue Service at 800-829-3676. IRS automatically sends you a coupon book when you apply for an employer identification number. The amount of your combined Social Security tax, Medicare tax, and withheld income tax determines the frequency of your deposits.

HOW TO DEPOSIT

Electronic deposit requirement

You must make electronic deposits of all depository tax liabilities that occur after 1998 if

- you were required to deposit taxes by electronic funds transfer in prior years.
- you deposited more than \$50,000 in Social Security, Medicare, railroad retirement, and withheld federal income taxes in 1997. For this determination, combine deposits of only the following tax returns you filed: Forms 941, 941-M, 941-PR, 941-SS, 943, 945, and CT-1.
- you did not deposit Social Security, Medicare, railroad retirement, or withheld federal income taxes in 1997, but you deposited more than \$50,000 in other taxes under section 6302 (such as corporate income tax) in 1997.

The Electronic Federal Tax Payment System (EFTPS) must be used to make electronic deposits. If you are required to make deposits by electronic funds transfer after 1998 and fail to do so, you may be subject to a 10 percent penalty.

Note: A penalty for failure to use EFTPS will not be imposed for tax liabilities that occur before July 1999, if you were first required to use EFTPS on or after July 1, 1997.

Taxpayers who are not required to make electronic deposits may voluntarily participate in EFTPS. To enroll in EFTPS, call 800-945-8400 or 800-555-4477. For general information about EFTPS, call 800-829-1040.

DEPOSIT PENALTIES

Penalties may apply if you do not make required deposits on time, you make deposits at an unauthorized financial institution, you pay directly to the IRS, or you pay with your return (amounts that may be paid with a return are limited). The penalties do not apply if any failure to make a proper and timely deposit was due to reasonable cause and not to willful neglect. For amounts not properly or timely deposited, the penalty rates are

- 2 percent: Deposits made one to five days late.
- 5 percent: Deposits made six to 15 days late.
- 10 percent: Deposits made 16 or more days late. This also applies to amounts paid within 10 days of the date of the first notice the IRS sent you asking for the tax due.
- 10 percent: Deposits made at an unauthorized financial institution, paid directly to the IRS, or paid with your tax return (see "Depositing without an EIN" and "Exception to deposit requirement," earlier).
- 10 percent: Amounts subject to electronic deposit requirements but not deposited using EFTPS.
- 15 percent: Amounts still unpaid more than 10 days after the date of the first notice the IRS sent you asking for the tax due or the day on which you receive notice and demand for immediate payment, whichever is earlier.

REPORTING AGENT

Use of a reporting agent or third-party payroll service provider does not relieve an employer of the responsibility to ensure that tax returns are filed and all taxes are paid and deposited correctly and on time.

DEPOSIT RULES

If your accumulated undeposited taxes do not exceed \$100,000 on any day during the year, your tax liability in your lookback period will determine the deposit dates for the entire year. You are either a monthly depositor or a semiweekly depositor, or the IRS will send you a notice each November to confirm, based on your lookback period, which deposit schedule you must follow.

LOOKBACK PERIOD

To find your deposit requirements for a calendar year, look back to your employment tax liabilities during the calendar year preceding the calendar year just ended (for 2005, the lookback period is January 1, 2003 to December 31, 2003). If you are a new employer, you are treated as having no tax liabilities during the period you had no employees. (If you also have non-farm employees, you must figure your deposit requirements separately based on the most recent 12-month period ending June 30.)

MONTHLY DEPOSITOR

You are a monthly depositor for a calendar year if the total amount of reported taxes for the lookback period is not more than \$50,000. You should deposit the taxes accumulated on paydays during each month by the 15th day of the following month.

SEMIWEEKLY DEPOSITOR

You are a semiweekly depositor for a calendar year if the total amount of accumulated taxes for the lookback period is more than \$50,000. Deposit taxes accumulated Wednesday, Thursday, and/or Friday paydays during each week by the following Wednesday. Deposit taxes accumulated for Saturday, Sunday, Monday and/or Tuesday paydays during each week by the following Friday.

DE MINIMIS RULE

If the amount of accumulated taxes during the year is less than \$500, you are not required to make deposits. You may pay the taxes to the IRS with Form 943 (see below).

REPORTING

Report farm workers' income and Social Security taxes withheld on Form 943, Employer's Annual Tax Return for Agricultural Employees. Send Form 943, with payment of any taxes due that are not required to be deposited, to the IRS by January 31 following the year for which the return is filed (or February 10 if the tax was deposited in full and on time). Social Security earnings and withholdings are also reported on W-2 forms. Non-farm workers' wages are reported on Form 941, and deposits are made according to Form 941 rules.

TECHNICAL ASSISTANCE

SOCIAL SECURITY ADMINISTRATION

Webhttp://www.ssa.gov/SSA_Home.html

PUBLICATIONS

INTERNAL REVENUE SERVICE

Forms Distribution Center

Rancho Cordova, CA 95743-0001

Phone 800-TAX-FORM (800-829-3676)

Fax on demand 703-368-9694

Web <http://www.irs.ustreas.gov/formspubs>

- Publication 51, Circular A Agricultural Employer's Tax Guide
- Publication 15, Circular E Employer's Tax Guide
- Form 8109, Federal Tax Coupons
- Publication 937, Employment Taxes

UNEMPLOYMENT TAX: FEDERAL

Note: Be sure to also refer to the corresponding section in this handbook for Oregon information.

WHO MUST COMPLY?

Most employers are required to pay federal unemployment taxes (FUTA) in addition to income and Social Security taxes. Agricultural employers must pay FUTA if they

1. paid cash wages of \$20,000 or more to farm workers in any calendar quarter of the current or preceding year, or
2. employed 10 or more farm workers during some part of a day (whether or not at the same time) for at least one day during any 20 different weeks during the current or preceding year.

To determine if you meet condition (2) above, include as farm workers, aliens legally admitted to the United States on a temporary basis to do farm work under H2-A visas. Wages paid to these aliens are exempt from FUTA, according to federal regulations, but they are still included to determine if you meet condition (1) above.

TAX RATE

The gross FUTA tax rate is 6.2 percent of taxable payroll. Generally, you can take a credit against your FUTA tax for amounts you paid into state unemployment funds. This credit is limited to 5.4 percent of taxable wages. Net FUTA tax rate is 0.8 percent (.008).

COMPLIANCE

Mail or deliver payments to an authorized financial institution or Federal Reserve Bank or branch in your area. Form 8109, Federal Tax Deposit Coupon, must accompany your payment. You may order coupon books by calling the Internal Revenue Service at 800-829-3676.

FUTA payments are calculated on a quarterly basis:

- During each of the first three quarters of the year, multiply the first \$7,000 of each employee's wages paid during the quarter by 0.008.
- Total the values estimated in the first bullet point (above).
- If the total FUTA tax for any quarter (plus any undeposited FUTA tax for earlier quarters in the year) is more than \$100, you must make a deposit during the first month following the quarter. If the total is less than \$100, carry it over to the next quarter.

FILING ANNUAL FUTA TAX RETURNS

Employers must file Form 940, Employer's Annual Federal Unemployment (FUTA) Tax Return, by January 31. If the FUTA tax reported on Form 940 minus the amounts deposited for the first three quarters of the year is more

than \$100, deposit the whole amount by January 31. If the amount is less than \$100, either deposit the tax or include your payment with Form 940 by January 31. If you deposited all FUTA taxes when due during the first three quarters, you have up to 10 additional days (or until February 10) to file Form 940.

FAMILY EMPLOYEES

Family employees are exempt from FUTA if the employer's parent, spouse, or sons or daughters under the age of 21 perform services.

TECHNICAL ASSISTANCE

INTERNAL REVENUE SERVICE

Forms Distribution Center

Rancho Cordova, CA 95743-0001

Phone 800-TAX-FORM (800-829-3676)

Fax on demand 703-368-9694

Web <http://www.irs.ustreas.gov/formspubs>

Publication 51, Circular A, Agricultural Employer's Tax Guide

Publication 15, Circular E, Employer's Tax Guide

Form 940, Employer's Annual Federal Unemployment

Form 8109, Federal Tax Deposit Coupon

Publication 225, Farmer's Tax Guide

Publication 583, Starting a Business and Keeping Records

Publication 15-A, Employers Supplemental Tax Guide

TELEPHONE HELP

You can call the IRS with your tax questions 24 hours a day, seven days a week. Check your telephone book for the local number or call 800-829-1040.

HELP FOR PEOPLE WITH DISABILITIES

Telephone help is available using TTY equipment. You may call 800-829-4059 with your tax question or to order forms and publications.

CALENDAR FOR FILING AND PAYING FUTA

January: file Form 940

March: calculate first quarter FUTA

April: pay first quarter FUTA

June: calculate second quarter FUTA

July: pay second quarter FUTA

September: calculate third quarter FUTA

October: pay third quarter FUTA

December: calculate total FUTA.

UNEMPLOYMENT TAX: OREGON

Note: Refer to the corresponding section in this handbook for federal information.

WHO MUST COMPLY?

Agricultural employers are subject to unemployment taxes if they meet one of the following thresholds:

- pay \$20,000 or more cash payroll in a calendar quarter, in the current or preceding year
- employ 10 or more employees working on 20 days, each day being in a separate calendar week during the current or preceding calendar year.

Non-cash remuneration, such as room and board, is not included in the payroll calculations to determine subjectivity. However, wages paid in other states for the same entity, and corporate officer wages, even if excluded under the family officer provision, are included.

Once an agricultural employer has met the threshold to be subject to unemployment taxes, all cash payroll paid during that calendar year and the subsequent year is taxable. Employers are responsible for registering with the Employment Department by completing and filing a copy of the Combined Employer's Registration Report, Form 150-211-055 available at <http://www.oregon.gov/DOR/BUS/docs/211-055.pdf>.

DEFINITION

EMPLOYEE

Includes any person employed for pay under any contract for hire unless the services are specifically excluded from coverage under the law. You should check with your local Employment Department Tax Office to determine whether the services performed by your workers are excluded from coverage.

FAMILY EMPLOYEES

Family employees are exempt from unemployment tax for services performed by the employer's (as a sole proprietor) parent, spouse, or sons or daughters under the age of 18.

FARM WORKERS SUPPLIED BY CONTRACTORS

Farm workers supplied by farm labor contractors are considered employees of the farm operator unless

- the contractor holds a valid federal Certificate of Registration under the Federal Migrant and Seasonal Agricultural Worker Protection Act, or
- substantially all the workers supplied by the contractor operate or maintain tractors, harvesting or crop-dusting machines, or other machines provided by the contractor, and the contractor meets standards set for independent contractors under other sections of Employment Department law.

TAX CALCULATION

The maximum wages for each employee and the new employer tax rate ranges for any one year are not distributed until November 15 of the prior year. This rate is paid for a prescribed period of time, until the employer is assigned a rate under the state experience rating provision. Employers

may help keep their rate down by providing information about the cause for separation of former employees who file claims for unemployment benefits and by appearing at hearings on disputed claims.

The new employer rate is paid until the employer has established enough experience for an assigned “experience” rate – usually taking two to three years. Assigned tax rates for 2007 range from 0.9 percent to 5.4 percent. Rate ranges for a year are not distributed until November 15 of the previous year. Employers may keep their rates low by providing information when former employees file for unemployment insurance and by appearing at hearings on disputed claims.

FILING

Employers must pay their unemployment taxes and file a combined tax report with the Oregon Department of Revenue on a quarterly basis. The forms are mailed to employers at the beginning of each year.

Report quarter	Ending	Due date
1st: Jan-Mar	Mar 31	Apr 30
2nd: Apr-Jun	Jun 30	Jul 31
3rd: Jul-Sep	Sep 30	Oct 31
4th: Oct-Dec	Dec 31	Jan 31

Once you are subject to Oregon unemployment tax, you remain subject for the remainder of the current year and all of the next calendar year, as long as employment exists. This is true even if the payroll is less than \$20,000 in those quarters.

Information required on reports includes

- number of workers at mid-month in each month of the quarter.
- mid-month employment for each month of the quarter.
- gross and taxable payroll.
- taxes due.
- each employee’s Social Security number, name, number of hours in the quarter in which service was performed, and wages paid in the quarter.

As long as employment exists, you are subject to Oregon unemployment tax for the entire calendar year you became subject and the following calendar year, regardless of the amount of payroll. However, an agricultural employer may request that the account be closed when the following conditions are met:

- The employer notifies the Oregon Employment Department that they have not met the subjectivity thresholds listed above in the preceding calendar year
- The employer does not anticipate meeting the thresholds in the current calendar year.

The notification must be made in writing to

OREGON EMPLOYMENT DEPARTMENT
875 Union St. NE, Room 107
Salem, OR 97311

The employer’s account will cease to be subject to the tax, beginning the first day of the calendar quarter in which the request is filed. This cannot be retroactive.

TECHNICAL ASSISTANCE

OREGON EMPLOYMENT DEPARTMENT

Phone503-947-1488
E-mail taxinfo@emp.state.or.us
Webhttp://www.oregon.gov/EMPLOY/TAX

Business Information Center

Public Services Building, Suite 151,
255 Capitol St. NE
Salem, OR 97310-1327

Phone503-986-2222
Web http://filinginoregon.com

ADDITIONAL INFORMATION

- How to Start a Business in Oregon and the Employer’s Guide for Doing Business in Oregon
<http://www.filinginoregon.com/forms/index.htm>.
- For information about taxable payrolls and reporting, contact the Oregon Employment Department Tax Office. Information is also available on the Tax Section Web page at <http://www.oregon.gov/EMPLOY/TAX>.

Employment Department local tax offices

For information about taxable payrolls and reporting, contact your nearest Oregon Employment Department Tax Office. Information is also available on the agency’s Web page at <http://www.oregon.gov/EMPLOY>.

Albany	541-967-2171
Astoria	503-325-4821
Beaverton.....	503-626-2151
Bend	541-388-6086
Coos Bay.....	541-756-8469
Corvallis.....	541-757-4261
Eugene.....	541-686-7797
Grants Pass.....	541-474-3151
Gresham	503-666-1985
Hillsboro.....	503-681-0222
Hood River	541-386-6020
Klamath Falls	541-883-5628
La Grande.....	541-963-7111
McMinnville	503-434-7574
Medford.....	541-776-6067
Milwaukie.....	503-451-2500
Newport	541-574-2303
Ontario	541-889-2710
Pendleton.....	541-276-9050
Portland, downtown.....	503-731-4276
Redmond.....	541-548-8196
Roseburg.....	541-440-3344
Salem	503-378-3352
Salem (central office).....	503-947-1488
Woodburn	503-980-6657

FARMING ISSUES AND BUSINESS RESOURCES

ATTORNEYS

A listing of Oregon attorneys who specialize in agricultural issues can be obtained from the Oregon State Bar, Agricultural Law Section or from one of the Web sites listed below. The Oregon State Bar also has a Referral and Information Services Program. Referral and Information Services (RIS) comprise several public and member services that link people seeking legal assistance with lawyers and programs able to assist them. Other RIS programs include the Modest Means Program, Lawyer to Lawyer, and Problem Solvers. Legal Referral Service (LRS) clerks refer calls from members of the public to participating attorneys based on location, area of law, and special services offered. On average, 250 calls are received every day, slightly less than half are treated as LRS referrals to legal aid programs, government agencies, tel-law, and other sources of law-related advice. Approximately 1,500 attorneys in private practice participate in the LRS program.

The Oregon Farm Bureau offers a Farm Employer Education and Legal Defense Service (FEELDS). FEELDS assists members with farm labor law compliance and then provides legal representation should a legal proceeding be initiated against the member. For details on this member-service program call 503-399-1701, ext. 316, or visit <http://oregonfb.org/programs/feelds.shtml>.

TECHNICAL ASSISTANCE

OREGON STATE BAR

Referral and Information Services

Phone 503-684-3763 or 800-452-7636

Web <http://lawyers.findlaw.com> or <http://osbar.org>

BIOSECURITY ON THE FARM OR RANCH

Biosecurity has always been an important component of animal and crop disease control programs. The program is designed by the owner with the help and guidance of the owner's veterinarian or other animal and crop health care professionals.

The goals of a biosecurity program are to prevent the introduction of disease onto the farm from outside sources, as well as prevent the transfer of disease within the farm environment. Biosecurity is not about building fences with razor wire, guarded gates, or water filled moats. It is about how you can protect your operation from profit robbing diseases. The costs of a biosecurity program are minimal while the benefits are great. Biosecurity is a way of thinking and it should be a top priority when planning and making important management decisions.

DEVELOP A PLAN

Biosecurity requires a plan. The concept of avoiding or preventing the introduction of disease requires some thinking and planning in order for the results to be successful. No two biosecurity plans are exactly the same since no two properties or production units are exactly alike. Keep in mind that biosecurity is basically an economic decision. That is, there is a cost related to getting a certain disease in your animals or crops, and there is a cost to preventing it. A good plan will be useful and allow an operation to continue being profitable while the biosecurity plan is being implemented. It is important to consult with your veterinarian or crop health professional so that your efforts will be effective.

IDENTIFY RISKS

What factors constitute disease exposure (or biosecurity risks)?

- risks related to animals
- risks related to seed and other plant material
- risks related to mechanical traffic and/or human traffic
- risks related to feeds from off-site sources.
- Some fundamental points common to all biosecurity programs
- observe your animals and crops daily for signs of disease
- be aware of unusual events or behavior changes in your animals
- minimize contact with animals belonging to others
- know the health status and disease control programs of any herd or flock from which you buy animals
- screen visitors who are in contact with your animals and crops.

TECHNICAL ASSISTANCE

OREGON DEPARTMENT OF AGRICULTURE

State veterinarian

635 Capitol St. NE
Salem, OR 97301-2532

Phone503-986-4680

Web <http://oregon.gov/ODA/AHID>

Plant Pest and Disease Programs

Phone503-986-4636

Web<http://oregon.gov/ODA/PLANT>

US DEPARTMENT OF AGRICULTURE

Area veterinarian in charge

Phone503-399-5871

Plant Protection and Quarantine Program

Phone503-326-2814

BIRD, PREDATOR, AND RODENT DAMAGE CONTROL

WHO MUST COMPLY?

Persons experiencing agricultural damage by migratory birds need to obtain a federal depredation permit from the US Fish and Wildlife Service (USFWS) if birds are going to be killed. No federal or state permit is required to scare (haze) migratory birds, per OAR 635-043-00. The hazing of bald eagles, which are also protected by the Eagle Protection Act and the Endangered Species Act, will require permits from the USFWS. If fireworks are to be used to haze birds from crops, a permit is required from the Office of the State Fire Marshal.

The use of certain methods and techniques to take predatory animals may require permits.

PERMITS

An aerial hunting permit is required prior to a livestock owner or land owner taking coyotes or feral swine from an aircraft. This permit is issued by the Oregon Department of Agriculture (ODA), Animal Health and Identification Division, 503-986-4681.

A pesticide applicator license may also be required if a farmer or rancher intends to use certain EPA/ODA registered pesticides. Contact the Oregon Department of Agriculture Pesticides Division, 503-986-4635.

Hazing any wildlife using agricultural fireworks requires a permit from the Office of the State Fire Marshal, Bureau of Hazardous Materials, 503-378-2885.

Permits to take game animals causing damage to agricultural crops and property are issued by the Oregon

Department of Fish and Wildlife, 503-229-5454, ext. 467 or ext. 478.

RESOURCES

The US Department of Agriculture Animal and Plant Health Inspection Service (APHIS), Wildlife Services (USDA/WS) provides recommendations to the US Fish and Wildlife Service for federal permits to take (kill) protected migratory birds which are damaging agricultural crops or property.

USDA/WS provides demonstrations, loan or sale of supplies and equipment to haze (scare) migratory birds, and makes recommendations to the Office of the State Fire Marshal regarding issuance of permits for agricultural use of fireworks.

Additionally, USDA/WS provides recommendations to farmers or ranchers and residential property owners regarding wildlife damage management. USDA/WS provides direct control activities in some counties. USDA/WS also provides recommendations to farmers or ranchers; property owners; and federal, state and municipal land managing agencies regarding field rodent damage control. The program may provide control or technical assistance (extension/education) activities to those having property loss by field rodents (ground squirrels, gophers, moles, beaver, nutria, etc.) depending on county funding. USDA/WS also conducts control activities (e.g., bird control, predator control, etc.).

COMPLIANCE

Contact USDA/WS and request assistance before taking control measures. USDA/WS will respond to the request and make recommendations based on demonstrated need. Special permits may be needed in some circumstances. The landowner is responsible for complying with all applicable state and federal laws or regulations and conditions of the permit. USDA/WS is available to explain these laws to agricultural producers.

RECORD KEEPING

Licenses issued by the respective agencies outline the required record keeping requirements.

SAFETY AND TRAINING

The Office of the State Fire Marshal has specific responsibilities regarding storage and use of fireworks for protection of agricultural crops. USDA/WS provides assistance and training in the safe and proper use of all wildlife damage control methods and techniques, including fireworks.

The Oregon Department of Agriculture has regulatory authority for all pesticides registered and used for wildlife damage management. Several other sources of information for safety and training are available as well, including the OSU County Extension Offices and ODA Pesticides Division.

TECHNICAL ASSISTANCE

US DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service (APHIS), Wildlife Services (USDA/WS)

David E. Williams
6135 NE 80th, Suite A-8
Portland, OR 97218
Phone503-326-2346
Web<http://www.aphis.usda.gov/ws>

PESTICIDE REGISTRATION

OREGON DEPARTMENT OF AGRICULTURE

Pesticides Division

635 Capitol St. NE
Salem, OR 97301-2532
Phone503-986-4635
Web <http://oregon.gov/ODA/PEST>

FIREWORKS PERMITS

OREGON OFFICE OF THE STATE FIRE MARSHAL

Bureau of Hazardous Materials

Phone503-378-2885

PERMITS TO TAKE GAME ANIMALS CAUSING AGRICULTURAL DAMAGE

OREGON DEPARTMENT OF FISH AND WILDLIFE

3406 Cherry Ave. NE
Salem, OR 97303
Phone503-947-6000
Fax503-947-6009
E-mail.....odfw.Info@state.or.us
Web <http://www.dfw.state.or.us>

ENERGY AND AGRICULTURE

Oregon farms both consume energy and create many potential feed stocks to generate energy and fuels. The concept of renewable fuels made from biomass and farm or forest-based feedstocks is not necessarily new, but technologies are improving and new opportunities are developing.

State and federal programs can assist growers with on-farm projects, as well as with larger efforts that may involve creation of processing facilities for alternative fuels or other specialty products. The 2002 Farm Bill represents many new opportunities for Oregon agriculture and renewable energy interests.

See the department's Web site for many of these resources:
<http://oregon.gov/ODA/energy.shtml>

25X'25

A group of volunteer farm leaders first envisioned the goal of 25x'25, and it quickly gained the support of a broad cross-section of the agriculture and forestry communities. Now leaders from business, labor, conservation and religious groups are joining this alliance as well. 25x'25 is supported financially by the Energy Future Coalition, a non-partisan public policy initiative funded by foundations.

25X'25 VISION

The Oregon Department of Agriculture supports and shares the vision of the national 25x'25 effort.

By 2025, America's farms, forests, and ranches will provide 25 percent of the total energy consumed in the United States, while continuing to produce safe, abundant, and affordable food, feed and fiber.

To find out more: <http://www.25x25.org>

BIOFUEL

The 2007 Oregon Legislature has passed landmark incentives for production of biofuels in Oregon. The bills provide tax credits for: 1) feedstock production on farms and forests; 2) infrastructure, processing equipment and buildings; and 3) a renewable fuel standard when in-state production of biofuels reaches production milestones, requiring certain percentage blends of biofuels into gasoline and diesel.

The two key bills are House Bill 2210 and 2211.

Note: The tax incentives for grain crops noted in section 5 of HB 2210 were amended in a separate bill to exclude corn and postpone wheat incentives until 2009. HB 2211 was incorporated into HB 3201-A.

Growers can access tax credit production assistance in two ways:

1. Through production and delivery of feedstock to a biorefinery as outlined in section 5 of House Bill 2210 (biomass tax credit), or
2. through the business energy tax credit.

BIOMAS TAX CREDIT

Section 5. To be eligible for the tax credit under section 2 of this 2007 Act, the biomass must be produced or collected in Oregon as a feedstock for bioenergy or biofuel production in Oregon. The credit rates for biomass are:

- 1) For oil seed crops, \$0.05 per pound.
- 2) For grain crops, including but not limited to barley and triticale, \$0.90 per bushel (inclusive of oats and other grains; excludes corn and wheat).
- 3) For virgin oil or alcohol delivered for production in Oregon from Oregon-based feedstock, \$0.10 per gallon.
- 4) For used cooking oil or waste grease, \$0.10 per gallon.
- 5) For wastewater biosolids, \$10.00 per wet ton.
- 6) For woody biomass collected from nursery, orchard, agricultural, forest or rangeland property in Oregon, including but not limited to prunings, thinning, plantation rotations, log landing or slash resulting from harvest or forest health stewardship, \$10.00 per green ton.
- 7) For grass, wheat, straw or other vegetative biomass from agricultural crops, \$10.00 per green ton.
- 8) For yard debris and municipally generated food waste, \$5.00 per wet ton.
- 9) For animal manure or rendering offal, \$5.00 per wet ton.

These biomass tax credits are based on production, gathering of the feedstock and delivering it to a production facility, or utilizing it on farm in production of biofuels or renewable energy.

The amount of the credit shall be calculated as follows:

- Determine the quantity of biomass transferred to a biofuel producer during the tax year.
- Categorize the biomass into appropriate categories.
- Multiply the quantity of biomass in a particular category by the appropriate credit rate for that category, expressed in dollars and cents.

The amount of the credit claimed under this section for any tax year may not exceed the tax liability of the taxpayer.

BUSINESS ENERGY TAX CREDIT

Oregon farmers who grow crops that are processed into transportation fuel may be eligible for a business energy tax credit. The tax credit is a dollar-for-dollar credit against State of Oregon income taxes owed. The 50 percent tax credit is based on the eligible capital costs. It is claimed over five years: 10 percent per year for two years and 5 percent for three years. A special "pass-through" provision allows a crop grower to transfer the project's tax credit eligibility to a third party in exchange for a one-time discounted, present value payment. Maximum eligible project costs are \$20 million per project per year. There is a review cost equal to 0.75 percent of the eligible project costs that must accompany the preliminary application.

WHAT COSTS ARE ELIGIBLE FOR A TAX CREDIT?

Eligible costs are the capital costs necessary to plant, grow, harvest, store, crush or concentrate and transport crops that are directed to production of ethanol or biodiesel. Costs for tractors, crop handling, silo storage, combines, trucks for transport, blowers, crushers and seed or fertilizer are eligible to the extent that they produce biofuel crops. Equipment maintenance costs are not eligible for the tax credit. Biofuel crop farmers may claim initial capital investments for equipment only once as a tax credit eligible cost.

WHAT IS THE ELIGIBLE COST FOR NEW EQUIPMENT?

The entire cost of new equipment that is dedicated solely to production of biofuel crops is eligible for the tax credit. The cost for new equipment used only a portion of the time on biofuel crop production will be prorated. For example, if a new tractor is used solely for biofuel crop production, 100 percent of the cost is considered eligible for the tax credit. If the tractor will be used 50 percent of the time on biofuel crops and 50 percent of the time on other crop production, then only 50 percent of the capital cost of the tractor would be considered an eligible project cost for the tax credit.

IS EXISTING EQUIPMENT ELIGIBLE?

The current appraised value of equipment re-dedicated to produce a biofuel crop may be eligible for the tax credit. Under Oregon statute, you must provide proof of the capital cost or expense to be eligible for tax credits. The remaining appraised value of equipment, newly dedicated to biofuel crop production, can be transferred to a limited liability corporation or transferred from one farm business entity to another for purposes of defining and proving eligible cost under Oregon tax law.

All the remaining appraised value of the equipment may be eligible for the tax credit if the equipment is fully dedicated

to biofuel crop production. The cost would have to be pro-rated, as shown above, if the equipment is expected to be used only a portion of the time for biofuel crops and the remainder of the time for other crops.

IS THE ANNUAL CAPITAL COST OF SEED, FERTILIZER AND OTHER MATERIALS ELIGIBLE?

The credit may be claimed annually for the capital cost of seed and materials necessary for production during the biofuel crop growth season. When applying for a tax credit for qualifying equipment, the cost of that year's seed and other materials for crop treatment may be included on the application.

HOW DO I APPLY FOR THE TAX CREDIT?

Biofuel crop farmers must apply for a tax credit pre-certification before starting the project, buying equipment and supplies, or planting crops. Applicants should use the application for preliminary certification for alternative fuels (04/06 ODOE CF-034) which can be found on the Web at <http://oregon.gov/ENERGY/CONS/BUS/BETC.shtml> or by calling 1-800-221-8035.

Once the completed application for preliminary certificate is submitted, a biofuel crop farmer may proceed with purchasing equipment, seed and fertilizer; construction of any permanent eligible equipment; and planting and harvesting the crop.

When the transaction for the capital investment is complete the farmer may apply for their final tax certification. If eligible costs are less than \$50,000, you must include copies of all receipts, invoices, and contracts for capital costs incurred in the production of the biofuel crop. If eligible costs are \$50,000 or more, an independent certified public accountant not in your employment must conduct a compilation of your actual expenses.

For a first-time project, all expenses for the equipment, construction and first-year seed and fertilizer may be included. For capital cost for seed, fertilizer or other costs in second or subsequent years, a separate application is recommended.

A farmer files the energy tax credit against Oregon income tax liability. Unused portions of the tax credit may be carried forward for up to eight years.

HOW DO I APPLY FOR THE PASS-THROUGH OPTION?

Biofuel crop growers who want to pass their 50 percent business energy tax credit through to a business or resident with an Oregon tax liability should complete the preliminary application form and check the box for pass-through option. You are responsible for finding a pass-through partner. You can find a partner at any time.

The Oregon Department of Energy will assist you if you complete your project without a partner. The Oregon Department of Energy can not guarantee a partner for any project.

Once a project is completed (final application submitted) and your partner is identified, the Oregon Department of Energy will notify both parties of the final certified amount of the project. The pass-through partner will present the project owner with a check for the present value of the tax credit as calculated by the department. The Oregon Department of Energy will issue the tax credit to the pass-through partner. We advise both parties to consult with their tax preparers concerning use of the pass-through option program.

TECHNICAL ASSISTANCE

OREGON DEPARTMENT OF ENERGY

Phone 1-800-221-8035 or 503-378-4040
Web .. <http://oregon.gov/ENERGY/CONS/BUS/BETC.shtml>

Business energy tax credits

<http://oregon.gov/ENERGY/CONS/BUS/BETC.shtml>

Federal tax credits

<http://oregon.gov/ENERGY/CONS/Federal.shtml>

State incentives for renewable energy projects

<http://www.dsireusa.org>

OREGON DEPARTMENT OF AGRICULTURE

Energy and agriculture

Stephanie Page

635 Capitol St. NE

Salem, OR 97301-2532

Phone 503-986-4565

Web <http://oregon.gov/ODA/energy.shtml>

25 X '25

For inquiries regarding agricultural, forestry and conservation sector involvement, please contact

Ernie Shea

Email eshea@25x25.org

Web <http://www.25x25.org>

EXCLUSIVE FARM USE (EFU) ZONES AND PERMITTED NON-FARM USES

Oregon law establishes the following statewide policy for use of agricultural land (ORS 215.243):

- Open land used for agriculture is a vital natural and economic asset for all the people of the state.
- Preservation of a maximum amount of agricultural land, in large blocks, is necessary to maintain the agricultural economy of the state and for the assurance of adequate, healthful and nutritious food.
- Expansion of urban development in rural areas is a public concern because of the conflicts between farm and urban activities.
- Incentives and privileges are justified to owners of land in exclusive farm use zones because such zoning substantially limits alternatives to the use of rural lands.

Statewide Planning Goal 3, “Agricultural Lands” requires all agricultural lands to be inventoried and preserved by adopting exclusive farm use zones. Local counties are responsible for planning and zoning, subject to approval by the Oregon Department of Land Conservation and Development (DLCD). Allowable non-farm uses are incorporated into local zoning regulations.

DEFINITION FARM USE (ORS 215.203)

Farm use means the current employment of land primarily for obtaining a monetary profit by raising, harvesting, and selling crops; feeding, breeding, managing and selling livestock, poultry, fur-bearing animals, and honeybees; dairying; or any other agricultural or horticultural use. Farm use also includes the preparation, storage, and disposal by marketing or otherwise of the products or by-products raised on such land for human or animal use. The definition includes land lying fallow for one year as a normal and regular requirement of good agricultural husbandry; land planted in orchards or other perennials prior to maturity; any land constituting a woodlot of less than 20 acres contiguous to and owned by the owner of land classified for farm use; dry or water covered wasteland in or adjacent to land in farm use; land under dwellings or buildings supporting farm practices; or land used for processing crops from the farm into biofuels to be used on the farm or neighboring farms. Farm use also includes the stabling or training of equines (horses, mules, etc.) along with riding lessons and training clinics; the propagation, cultivation, maintenance and harvesting of aquatic, bird or animal species as allowed by the state Fish and Wildlife Commission. Farm use does not include land subject to timber assessment under ORS Chapter 321, except for Christmas trees and poplar farms.

ELIGIBILITY FOR SPECIAL TAX USE ZONING

To be eligible for preferential farm value, the land must be employed in a farm use as described in ORS 308A.056. For lands located outside an exclusive farm use zone, the landowner must file an application with the county assessor by April 1 of the first year in which such assessment is desired. Applications for farm use special assessment are only necessary in non-EFU zones.

Note: Refer to the “Property Tax Special Assessment” section of this handbook for more information.

LIMITATION ON RESTRICTIONS BY GOVERNING BODIES

No state agency, city, county, or political subdivision may enact local laws or ordinances, restrictions or regulations that would restrict or regulate farm structures or accepted farming practices because of noise, dust, odor, or other materials carried in the air, arising from farm operations in farm use zones, that do not extend into an adopted urban growth boundary, unless the practice affects the health, safety and welfare of the citizens of the state. (ORS 215.253)

NUISANCE COMPLAINTS

State law requires a county governing body or its designate to apply a condition of approval of a single-family dwelling, that the landowner of the dwelling sign a statement declaring that the landowner will not complain about accepted farming or forest practices on nearby lands devoted to farm or forest use (ORS 215.293). Farm operators may want to contact their county planning department regarding this requirement if nuisance complaints are increasing as a result of new single-family dwellings near exclusive-use farm land. Additionally, the 1993 Oregon Legislature passed “right-to-farm” provisions (see Chapter 792, Oregon Laws 1993. ORS 30.930-30.947), which protect acceptable farming practices from nuisance suits. Contact the Oregon Department of Agriculture (Jim Johnson, 503-986-4706) for information on the right-to-farm law.

Another option for resolving nuisance complaints is mediation. Contact the Oregon Department of Agriculture Farm Mediation Program (800-347-7028) to discuss this alternative. Mediation is a voluntary process involving a third-party mediator who facilitates discussions and seeks potential resolutions to the disputes of the parties.

Note: For more information see the “Farm Mediation Program” section of this handbook.

PERMITTED NON-FARM USES ON EFU LAND (ORS CHAPTER 215)

All rural landowners should contact their county planning department prior to siting or building any structure or starting any non-farm use activity. Non-farm uses require prior approval by the respective county. Fines may be levied by the county if prior approval is not obtained.

Certain non-farm uses may be allowed, and their approval standards are incorporated into local zoning regulations; additional approval standards may apply to non-farm use on high value farmland.

Technical variations exist between counties, so contact your county planning department or Department of Land Conservation and Development (DLCD), 503-373-0050, for details. The following types of non-farm uses are generally allowed in exclusive farm use zones except that some uses (*) are not allowed on “high value” farmland (ORS 215.710):

- public or private schools*
- forest product propagation and harvesting
- dwelling for farm use
- farm buildings
- farm stands
- mineral exploration and mining
- farm-worker housing
- land based application of reclaimed water for farm use
- winery
- private playgrounds or campgrounds*
- dog kennels*
- Room and board services (five guest limit) in existing residences
- home occupations including bed and breakfasts
- commercial activities in conjunction with farm use including biofuels
- churches and cemeteries*
- utility service
- geothermal exploration or production
- community centers for rural communities
- replacement of an existing dwelling
- landscaping business in conjunction with a nursery
- guest ranches in Eastern Oregon
- siting for solid waste disposal*
- creation or restoration of wetlands
- private hunting and fishing preserves*
- golf courses*
- small scale crop processing facility including biofuels.

TECHNICAL ASSISTANCE

OREGON DEPARTMENT OF LAND CONSERVATION AND DEVELOPMENT

635 Capitol St. NE, Suite 150

Salem, OR 97301-2540

Phone503-373-0050

Fax503-378-6033

Web <http://www.lcd.state.or.us>

DLCD REGIONAL REPRESENTATIVES

Clackamas, Columbia, Marion, Multnomah, Polk, Washington and Yamhill Counties

Gary Fish 503-373-0050 ext. 254

Benton, Lane, and Linn Counties

Vacant, contact Ron Eber 503-373-0050, ext. 247

South Coast

Dave Perry541-563-2056

North Coast

Laren Wooley.....541-563-3745

Central and Eastern Oregon

Jon Jinings541-388-6424

Southern Oregon

Jon Renz541-858-3189

Farm and forest land specialist

Ronald Eber..... 503-373-0050 ext. 247

FARM MEDIATION PROGRAM

WHAT IS MEDIATION?

Farming and ranching are getting more complicated. Many of the challenges facing producers involve issues that affect other parties.

Mediation offers a way to bring people together to resolve differences outside the courtroom. This is one of the most beneficial things about mediation—bringing all interested parties to the table at the same time—saving everyone time and money. Mediation is conducted by trained, professional mediators who know how to help people resolve problems.

WHEN TO CONSIDER MEDIATION

If you are having problems with any of the following types of disputes, mediation may be a way to resolve the situation:

- nuisance complaints
- boundary disputes
- trespass situations
- labor or wage disputes
- sales agreements
- landlord or tenant issues
- contracts
- multiple party agreements
- partnership dissolution
- family farm transfers.

WHAT DOES IT COST?

The Oregon Farm Mediation Program provides professional mediators for agricultural and rural disputes at \$30 per hour, per party.

TECHNICAL ASSISTANCE

OREGON DEPARTMENT OF AGRICULTURE

Farm Mediation Program

Brent Searle

635 Capitol St. NE

Salem, OR 97301-2532

Phone800-347-7028

Web <http://oregon.gov/ODA/mediation.shtml>

- » platform scales.
- » ring scales.
- truck scales
 - » short (24-foot) wagon scales.
 - » 2-5 section (25-60 feet) truck scales.
 - » 5+ section (61-120 feet) truck scales.
 - » specialty scales.
 - » meat beam or monorail scales.
 - » bagging scales.
 - » prepackaging scales.
 - » continuous weighing systems.

FARM SCALES

WHO MUST COMPLY?

Owners or operators of farm scales used for commercial purposes (buying, selling, or processing commodities by weight, and using those weights to determine charges or payments), in Oregon, must obtain an annual scale license from the Oregon Department of Agriculture’s Measurement Standards Division, as provided for by ORS 618.121. In basic terms, whenever money, credit, or something of value changes hands based on the reading of a farm or ranch scale, that scale is being used commercially in Oregon.

This applies to the sale of commodities, supplies, produce, livestock, etc., or to the custom cleaning or processing by weight of any such items.

TYPES OF FARM SCALES COVERED

The licensing requirement applies to any and all types of weighing devices or scales used on a farm for commercial purposes. Types of scales include (but are not limited to)

- roadside stand produce scales, ranging from
 - » retail price computing electronic scales.
 - » hanging platter/bin dial or digital scales.
 - » bench dial.
 - » mechanical drum computing scales.
 - » portable platform beam or dial scales.
 - » fan, dial or digital candy-type scales.
 - » electronic bar code scanner scales.
- feed, seed, or fertilizer scales
 - » portable platform scales.
 - » platform or dormant scales.
 - » hopper scales.
 - » tank or truck mounted scales.
 - » crane hook or hanging scales.
 - » lift truck mounted scales.
- livestock and animal scales
 - » single animal scales.

EXEMPTIONS

Scales that are located on a farm or ranch but are not used for any commercial purpose are not covered by licensing requirements.

LICENSING PERIOD

The annual license period for scales and weighing devices in Oregon is July 1 through June 30 of the following year. Scales are to be licensed prior to use. Annual renewal notices are mailed out each year in mid-May, preceding their June 30 expiration date. Farm or ranch scales licensed for use beginning other than July 1, pay the full annual license fee. There is no prorating of fees for scales licensed midyear, since the cost of official field certification remains the same.

PENALTY FEE FOR DELINQUENT RENEWALS

ORS 561.300 provides for the Oregon Department of Agriculture to collect a delinquent renewal penalty fee if the licensee fails to renew the license before the 60th day after the license expiration date. Renewals cannot be processed until delinquent fees are paid.

SCALE LICENSE FEE AMOUNTS

Annual scale license fees are based on the scale manufacturer’s rated weighing capacity of the system, not a lesser “used” amount.

Weighing device capacity	License fee
0 to 400 pounds capacity	\$37
401 to 1,160 pounds capacity	\$76
1,161 to 7,500 pounds capacity	\$153
7,501 to 60,000 pounds capacity	\$230
over 60,000 pounds capacity	\$230
under 10 tons per hour*	\$290
10 to 150 tons per hour*	\$450
151 to 1,000 tons per hour*	\$900
over 1,000 tons per hour*	\$2,000

* continuous weighing systems

OFFICIAL CERTIFICATION

Currently licensed farm and ranch scales are audited and certified by the department's inspectors on a periodic basis. For most scales, that is normally within a 12–18 month interval. Seasonally used scales are normally audited and certified just prior to the season when they are used. Scales that are suitable or their intended use, correctly installed, properly maintained, and accurate, will be certified and receive an examination seal when inspected and tested by a department inspector.

All scales approved for commercial use in Oregon must meet National Institute of Standards and Technology Handbook 44 requirements for commercial weighing and must have an active National Type Evaluation Program (NTEP) Certificate of Conformance unless otherwise exempted. In addition, any device put into commercial use must be licensed and must have a "Placed in Service" report filed with the Measurement Standards Division. "Not-legal-for-trade" weighing devices are not intended by their manufacturers to be used commercially and cannot be accepted in Oregon.

The necessary test equipment and standards to perform adequate performance tests of all scales are not continuously available in all parts of Oregon all months of the year. Scales that cannot be certified when the appropriate agency equipment is in the area may have to wait until the next visit. If a scale test is required on a more frequent basis, such as to satisfy USDA Grain Inspection Service or Packers and Stockyards Administration requirements, the testing may be done by a qualified scale company, at the scale owner/operator's expense.

REPAIR OR REPLACEMENT

If a farm or ranch scale is tagged with a "repair notice order" or "stop use order" following an agency inspection, it will need to be corrected within the time specified. If it cannot be corrected within the time specified, or if it is not able to be repaired, it must be replaced or permanently taken out of service. Current scale licenses can be transferred to replacement devices.

TECHNICAL ASSISTANCE

OREGON DEPARTMENT OF AGRICULTURE

Measurement Standards Division

635 Capitol St. NE

Salem, OR 97301-2532

Phone503-986-4670

Fax503-986-4784

Web<http://oregon.gov/ODA/MSD>

FEDERAL MOTOR CARRIER SAFETY REGULATIONS (FMCSR)

WHO MUST COMPLY?

The federal motor carrier safety regulations apply to farm operations if a commercial motor vehicle is used to transport property or passengers in interstate commerce. FMCSR also apply to anyone transporting migrant farm workers in interstate commerce.

DEFINITIONS

A commercial motor vehicle means

- a truck and/or trailer combination with a gross weight, GVWR or GCWR of 10,001 pounds or more.
- a vehicle of any size that is used to transport a hazardous material requiring placarding.
- a bus designed to transport more than 15 persons, including the driver.

Interstate commerce means

- to operate across state lines, including international boundaries.
- to operate wholly within a state as part of a through-movement that originates or terminates in another state or country.

The first requirement is to obtain a USDOT number, one per legal entity, and mark that on the vehicle(s) used in interstate commerce. You may obtain a USDOT number for free on the Internet at <http://www.fmcsa.dot.gov/registration-licensing>.

The FMCSR has several parts, each covering a separate subject, including qualification of drivers, working and driving limitations for drivers, parts and accessories

necessary for safe operation of vehicles, inspection of vehicles, repair and maintenance requirements for vehicles, specific rules for transporting migrant farm workers (additional equipment and inspections are required for vehicles used to transport migrant farm workers (see the section on “Migrant and Seasonal Agricultural Worker Protection Act,” and finally, driving and parking rules while transporting hazardous materials.

Additionally, under some circumstances a commercial drivers license (CDL) and drug and alcohol testing may be required. Anyone who operates a CMV over 10,000 pounds in interstate commerce must have a valid medical card in his/her possession that meets USDOT requirements.

TECHNICAL ASSISTANCE

US DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

530 Center St. NE, Suite 100

Salem, OR 97301

Phone503 399-5775

Fax503 399-5838

Web<http://www.fmcsa.dot.gov>

USDOT number registration

Web <http://www.fmcsa.dot.gov/registration-licensing>

Safety status by USDOT number

Web<http://www.safer.fmcsa.dot.gov/>

Education and technical assistance

Web ..<http://www.fmcsa.dot.gov/safety-security/eta/index.htm>

FIELD BURNING

WHO MUST COMPLY?

In the Willamette Valley of Western Oregon, permission to field/stack/propane burn grass seed and cereal grain crop residue must be obtained from the Oregon Department of Agriculture (ODA). Each grower is required to preregister all acreage to be burned with the Oregon Department of Agriculture, Smoke Management Program through a designated permit agent for his/her area. A permit to burn must be obtained from the same permit agent. If a grower is new to the program, he/she may call the registration and permitting coordinator for the Smoke Management Program (503-986-4701) to receive the name of his/her permit agent. It is the responsibility of the grower to notify his/her local fire department of any burning desired to be done.

ODA issues the daily burn advisories between June 16 and September 30; during other times of the year the burn advisories are issued by the Oregon Department of Forestry. The Oregon Legislature has historically recognized open burning as one viable way for the grass

seed industry to ensure a healthy crop. In recent years, the burning of grass seed and cereal grain crop residues has been regulated under a smoke management program to control burning according to prevailing meteorological dispersion conditions to accommodate a maximum amount of burning with minimal impact on the public. Changes in the law reduced the acreage allowed for burning and emphasized alternatives to this practice.

Current law regulating field burning can be found in ORS 468, and administrative rules 603-077-0101 through 603-077-0195.

COMPLIANCE

Grass seed growers must

- register each field and pay appropriate fees.
- obtain burn permits from their local permit agent.
- notify their local fire district of intent to burn.
- monitor the smoke management radio network for authorization or prohibition of burning.
- burn only specific fields and at specific times as identified by ODA.
- do any special preparation required for the burn.
- have proper fire fighting equipment on site prior to burning.
- execute burning in a timely manner.
- extinguish fires when directed by ODA.

RECORD KEEPING

ODA keeps records of registration, mapping of registered acreage, issuance of burn permits, weekly burn reports, receipt and processing of fees, meteorological conditions and authorizations or prohibitions. Growers are required to present burn permit validation numbers upon request by ODA.

SAFETY AND TRAINING

Each grower must prepare proper firebreaks prior to burning and have required fire-fighting equipment on site. Growers should be familiar with smoke management rules and regulations, and state fire marshal rules and regulations on open field, propane flaming, and stack burning. Sinage and flaggers, warning motorists of possible smoke on roadways, may be required.

INSPECTIONS

ODA carries out field inspections to detect illegal burning. ODA conducts enforcement through seasonal inspectors using on-site visits, document review, and investigating complaints. Violations may involve verbal or written warning or civil penalties with a range from \$25 to \$100,000 depending on the severity of the violation.

FEES**Registration fee schedule**

\$2.00 per acre for open field burning

\$1.00 per acre for propane flaming

No fee to register stack burning

Burn fee schedule

\$8.00 per acre for open field burning

\$2.00 per acre for propane flaming

\$10.00 per acre for stack burning

TECHNICAL ASSISTANCE

Questions regarding rule interpretation, fire safety buffer zone inspections, problem resolution, and information on tax credits available for field burning alternatives can be directed to the Smoke Management Program, Oregon Department of Agriculture.

OREGON DEPARTMENT OF AGRICULTURE**Smoke Management Program**

635 Capitol St. NE

Salem, OR 97301-2532

Phone503-986-4701

OREGON SEED COUNCIL

1193 Royvonne S, Suite 11

Salem, OR 97302-1932

Phone503-585-1157

OFFICE OF THE STATE FIRE MARSHAL

4760 Portland Road NE

Salem, OR 97305-1540

Phone503-378-3473

OREGON STATE UNIVERSITY**Crop and Soil Science Department**

Crop Science Building, Room 107

Corvallis, OR 97331-3002

Phone541-737-2821

GRANTS AND FINANCIAL RESOURCES FOR PRODUCERS AND AGRIBUSINESS

Grants are highly competitive and require a well-planned and researched concept. Grants for general agricultural production do not exist. Most grants or financial programs provide incentives for specific types of production activities (field testing new technologies or conservation related practices, for example). Grants may fund development of new products and markets or employment of new technologies (energy conservation or renewable energy generation tax credits, for example). Many grants require matching funds.

Grants are cyclical; they come and go in funding cycles.

The Oregon Department of Agriculture (ODA) grant Web

page lists several agriculture-related grants and financial resources.

Pay attention to the funding cycle of the grant. Grant notices may stay on the Web site even though the application period may have expired. This will allow you to learn of the grant, see the requirements and specific criteria, and prepare for the next round of competition if it is something that fits your situation. Please note that ODA does not administer most of these grants.

TECHNICAL ASSISTANCE

Information on grants, tax credits, and business assistance

Web <http://oregon.gov/ODA/grants.shtml>

OREGON CENTURY FARM & RANCH PROGRAM

BACKGROUND

The Century Farm & Ranch Program started in 1958, on the eve of the Statehood Centennial Celebration, to honor farm and ranch families who have century-long connections to the land and to recognize Oregon's rich agricultural heritage.

The program is a project of the Oregon Agricultural Education Foundation and partially funded through a partnership with the Oregon Farm Bureau, the Oregon Department of Parks and Recreation, and the Oregon Historical Society, with additional support from the Oregon Department of Agriculture, various county farm bureaus, agricultural associations, agri-businesses and individuals. All applications are added to the Oregon Historical Society Library and are available to researchers and others by appointment. Successful applicants receive a special certificate, acknowledged by the governor and signed by the director of the Oregon Department of Agriculture. A colorful roadside sign, identifying the family century farm or century ranch is also available. In 2007, the program introduced a sesquicentennial award, to honor families who have sustained their family farms or ranches for 150 years or more. The first sesquicentennial awards will be given to families on Oregon's Statehood Day, February 14, 2008. For further information or an application for the sesquicentennial award, please contact the Century Farm & Ranch program coordinator.

QUALIFICATIONS FOR CENTURY FARM OR RANCH

1. Only the legal owner(s) of the property may apply for the Century Farm or Century Ranch honor.
2. Your farm or ranch must have been operated continuously in the same family for 100 years or more. A farm or ranch settled any time 100 years ago or earlier will be eligible if it meets other requirements.
3. The farm or ranch must have a gross income from farming or ranching activities of not less than \$1,000 per year for three out of the five years immediately preceding the application.
4. You must live on the farm or ranch, or if you live off the property, you must actively manage and direct the farming or ranching activity on the land. If the entire farm or ranch has ever been rented or leased, it may not qualify.
5. The line of ownership from the original settler or buyer may be through children, siblings, or nephews and nieces. Adopted children will be recognized equally with other descendants.
6. Applications must be submitted on official forms provided by the Century Farm & Ranch Program with all questions completed. Applicants must submit additional descriptive information on other family history details not specifically requested in the application (two or three pages of narrative). Copies of historical photographs are encouraged. All information, including photos, will be deposited in the OHS Library for future reference.
7. Applications must include verification of continuous ownership for 100 years. Acceptable forms of proof include a document (either original or photocopy) showing date of earliest ownership. This may be provided through a donation land claim, deed of sale, or homestead certificate. Other records, subject to review, include family Bible, diary entry, or correspondence.
8. Applications must be signed and certified by a notary public.
9. Deadline for returning applications is June 1 of the current year. All applications postmarked by midnight of that date will be considered.

FEEES FOR CENTURY FARM OR RANCH

A \$65 non-refundable fee is required with each application. This fee covers administrative costs and includes one certificate. Additional certificates may be ordered at the time of application @\$20 each. Make checks payable to Oregon Agricultural Education Foundation or OAEF.

TECHNICAL ASSISTANCE

CENTURY FARM & RANCH PROGRAM

Glenn Mason, program coordinator

8890 NW Ash St.

Portland, OR 97229

Phone503-297-5892

E-mail orcentury@juno.com

Web <http://oregon.gov/ODA/cfr.shtml>

OREGON AGRICULTURAL EDUCATION FOUNDATION

Janice Reed, director

Phone503-399-1701

E-mail janice@oregonfb.org

RIGHT-TO-FARM

OVERVIEW

1993 legislation, updated in 1995 and 2001, declares farm and forest practices as critical to the welfare of the Oregon economy, and establishes a right-to-farm law. This law limits the rights of individuals, local governments, and special districts from bringing court actions or administratively declaring certain farm and forest products to be nuisances or trespass (ORS 30.930).

PROTECTED LAND

No farming or forest practice on lands zoned for farm or forest use shall give rise to any private right of action or claim for relief based upon nuisance or trespass. "Pre-existing nonconforming (farm or forest) uses" are also afforded this protection provided that the farming or forest use existed before the conflicting non-farm or non-forest use of the real property that gave rise to the claim and provided that the pre-existing nonconforming farming or forest practice has "not significantly increased in size or intensity from November 4, 1993."

Right-to-farm protection is not afforded claims based on

- damage to commercial agricultural products.
- death or serious injury.

PROTECTED PRACTICES

Protected practices include farming or forest practices that

- are or may be used on a farm or forestland of similar nature.
- are generally accepted reasonable and prudent methods for the operation to obtain profit in money.
- comply with applicable law.
- are performed in a reasonable manner.

The lawful and proper use of pesticides is considered a protected farming or forest practice.

The law also provides protection for the movement of farm vehicles and livestock on public roads.

In the case of forest land activities, the following are covered (other acceptable practices may be included as well):

- site preparation
- timber harvest
- slash disposal
- road construction and maintenance
- tree planting
- thinning
- release
- fertilization
- annual damage control
- insect disease control
- pesticide use.

Local government and special district ordinances and regulations now in effect or subsequently adopted which are contrary to this law are invalid. In any legal action alleging nuisance or trespass arising from a practice alleged by either side as a farm or forest practice, the prevailing party is awarded attorney fees and costs at the trial and on appeal.

Complainants may want to consider the Oregon Department of Agriculture's Farm Mediation Program before filing any legal action. Call 503-986-4558 or 800-347-7028 for information about the mediation program. Parties are encouraged to talk with legal counsel on the interpretation of the statute.

TECHNICAL ASSISTANCE

OREGON DEPARTMENT OF AGRICULTURE

Land use

Jim Johnson 503-986-4706

Farm Mediation Program

Brent Searle 503-986-4558 or 800-347-7028

STATE OPERATOR LICENSE AND FARM VEHICLE REGISTRATION

WHO MUST COMPLY?

An operator license or driver license is required by anyone operating a motorized vehicle on a public highway. An operator license is not required to temporarily operate a farm tractor or an implement of husbandry.

LICENSE

Farmers who operate vehicles designed to carry 16 or more passengers, including the driver, must have a CDL. A commercial driver license (CDL) or farm endorsement (FE) is required for farmers driving vehicles that exceed

26,000 pounds or vehicles carrying hazardous materials. These requirements also apply to combinations of vehicles that exceed 26,000 pounds (Gross Combination Weight Rating), if the trailer has a Gross Vehicle Weight Rating over 10,000 pounds. An FE permits a person to drive a vehicle exceeding 26,000 pounds or to haul hazardous materials without a CDL, provided the vehicle:

- is used to transport agricultural products, farm machinery, or farm supplies to or from a farm;
- is controlled or operated by the farmer;
- is operated in Oregon or Idaho and within 150 miles of the farm; and.
- is not used in the operation of a common carrier.

A safety certification course must be completed by minors between 16 and 18 years of age before operating farm machinery. (See the section on "Employing minors" for more information.) A driver of a farm vehicle over 80,000 pounds must obtain a CDL and comply with all the requirements of the federal motor carrier safety regulations as applicable.

Contact customer assistance, Oregon Department of Transportation, Driver and Motor Vehicle Services, 503-945-5000, regarding farm endorsements on driver licenses.

VEHICLE REGISTRATION

Farmers may choose to register vehicles over 10,000 pounds with truck registration, with farm registration, or register on a proportional basis, if the farm registered vehicle is going to be operated in more than one state. Farm registered vehicles are exempt from Oregon weight-mile tax when the vehicle is used for farm or personal purposes. Hauling for hire, with few exceptions, requires a 1A permit. For-hire operations over 26,000 pounds require payment of weight-mile tax. For more information regarding farm vehicle registration, contact the ODOT farm registration desk at 503-378-5203, or visit <http://oregon.gov/ODOT/MCT/FARM.shtml>.

INSPECTIONS

Farm vehicles up to 80,000 pounds are exempt from ODOT, MCTD safety requirements. Farm trucks over 20,000 pounds are required to stop at weigh stations.

HAULING HAZARDOUS MATERIALS

Many farms use and transport hazardous materials. The federal hazardous materials table specifies which materials, and quantities of materials, are deemed hazardous. Contact the US Department of Transportation, Federal Motor Carrier Safety Administration, 503-399-5775, for a listing of hazardous materials. Vehicles hauling hazardous

materials, and operated by a farmer within 150 air miles his or her farm, must be properly placarded with warning signs on the container labels and the vehicle. No endorsement is required. Vehicle operators hauling hazardous materials more than 150 air miles from the farm of origin are required to have a CDL and proper endorsement.

The person who loads the vehicle must place the placards on the front, rear, and both sides of the vehicle. Hazardous materials drivers also must know which products they can load together and which products must be loaded separately.

TECHNICAL ASSISTANCE

OREGON DEPARTMENT OF TRANSPORTATION

Motor Carrier Transportation Division

550 Capitol St. NE

Salem OR 97301-2530

Phone503-378-5849

Web <http://www.oregon.gov/ODOT>

FARM ENDORSEMENTS ON DRIVER LICENSES

OREGON DEPARTMENT OF TRANSPORTATION

Driver and Motor Vehicle Services

Phone503-945-5000

MARKETING AND CERTIFICATION

DIRECT MARKETING, ROADSIDE STANDS, AND FARMERS' MARKETS

Farmers' markets and roadside stands are becoming increasingly popular in Oregon. Market participants need to stay aware of guidelines or requirements regarding food safety and measuring.

TECHNICAL ASSISTANCE

CURRENT INFORMATION RELATED TO FOOD SAFETY

OREGON DEPARTMENT OF AGRICULTURE

Food Safety Division

635 Capitol St. NE
Salem, OR 97301-2532

Phone503-986-4720

Fax503-986-4729

Web <http://oregon.gov/ODA/FSD>

GUIDELINES RELATED TO WEIGHING AND MEASURING

OREGON DEPARTMENT OF AGRICULTURE

Measurement Standards Division

635 Capitol St. NE
Salem, OR 97301-2532

Phone503-986-4670

Fax503-986-4784

Web <http://oregon.gov/ODA/MSD>

MARKETING ASSISTANCE

OREGON DEPARTMENT OF AGRICULTURE

Agricultural Development and Marketing Division

1207 NW Naito Parkway, Suite 104
Portland, OR 97209-2832

Phone503-872-6600

Fax503-872-6601

Web <http://oregon.gov/ODA/ADMD>

ON SITE PREPARED FOODS INSPECTION

LOCAL COUNTY HEALTH DEPARTMENT

Web <http://oregon.gov/DHS/ph/lhd/lhd.shtml>

FIELD INSPECTIONS FOR EXPORT SEED CERTIFICATION

WHO MUST COMPLY?

Many states and foreign countries require a Phytosanitary Certificate for the importation of seed crops. Often, regulations require a growing season inspection by an official certifying agency in the country of origin, and the results of the inspection must be recorded on the Phytosanitary Certificate. Inspectors at the Oregon Department of Agriculture, Commodity Inspection Division, are qualified to carry out these inspections.

APPLICATION

Growers or companies producing seed for export who require Phytosanitary Certificates for their crops, should contact the Oregon Department of Agriculture, Commodity Inspection Division, 503-986-4620, to request an application for field inspection of seed for export or visit http://oregon.gov/ODA/CID/PLANT_HEALTH/applications.shtml. The application should be submitted as soon as possible after planting (in the case of bean seed in Malheur County, no later than May 20.)

FEES

Inspection charges are currently \$5.00 per acre with a \$40.00 per field minimum. Contact the Commodity Inspection Division for more details.

REPORTS

Inspection reports are currently issued at the request of the grower or company. Reports can generally be issued within 48 hours of request.

TECHNICAL ASSISTANCE

OREGON DEPARTMENT OF AGRICULTURE

Seed Field Inspection Program

Dr. Shawn Meng503-986-4661

Web http://oregon.gov/ODA/CID/PLANT_HEALTH/applications.shtml

US DEPARTMENT OF AGRICULTURE

Federal Phytosanitary Certificates

Portland, OR

Phone503-326-2814

FOOD PROCESSING

DEFINITION

Food processing means the cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, freezing, or otherwise manufacturing a food or changing the physical characteristics of a food. Food processing also means the packaging, canning, or otherwise enclosing of such food in a container, but does not mean the sorting, cleaning, or water-rinsing of a food.

WHO MUST COMPLY?

If your activity is making a food product and offering it for sale, for your personal profit, then you must be licensed. Licenses are issued for bakeries, food processors, domestic kitchen, etc.

TECHNICAL ASSISTANCE

Contact the Oregon Department of Agriculture Food Safety Division if you would like to operate as a food processor in Oregon.

OREGON DEPARTMENT OF AGRICULTURE

Food Safety Division

635 Capitol St. NE

Salem, OR 97301-2532

Phone503-986-4720

Fax503-986-4729

Web <http://oregon.gov/ODA/FSD>

GOOD AGRICULTURAL PRACTICES AND GOOD HANDLING PRACTICES (GAP/GHP)

USDA FEDERAL-STATE AUDIT PROGRAM

Oregon Department of Agriculture continues to offer GAP/GHP audits under the USDA, Federal-State Audit Program. These audits, based on the Food and Drug Administration's "Guidelines to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables," is a nationally recognized cooperative partnership between USDA, the state of Oregon and other federal/state inspection services. These auditing services are performed on a voluntary basis. This service gives the consumers of Oregon's produce confidence that they have not only purchased the best quality produce and tree nuts available, but they were cared for and handled in a manner to reduce the potential of contamination.

Producers and handlers that have completed the GAP/GHP program are listed on the Federal/State National Auditing Alliance Web site for their customers and future customers to review. Producers or handlers wanting more information about the program should contact the Oregon Department of Agriculture.

TECHNICAL ASSISTANCE

OREGON DEPARTMENT OF AGRICULTURE

Commodity Inspection Division

635 Capitol St. NE

Salem, OR 97301-2532

Phone503-986-4620

Web http://oregon.gov/ODA/CID/ghp_gap.shtml

GRAIN INSPECTION

WHO MUST COMPLY?

The US Grain Standards Act was passed by Congress on August 11, 1916 for the purpose of establishing a third-party, uniform inspection system for use in marketing grain. Although no actions are required of the farmer pertinent to the official inspection or weighing of farmers' grain under the FGIS standards, it is against the law to deliberately adulterate grain, e.g., add fumigant or insecticide for the purpose of masking musty or sour or commercially objectionable foreign odor.

Further, it is against the law to deceptively load a truck or trailer with inferior quality grain on the bottom so as to prevent the inferior grain from being included in the probe sample obtained by official inspection personnel. There are other prohibited grain handling practices too numerous to include, but which can be explained by FGIS or Oregon Department of Agriculture officials. Other Environmental Protection Agency (EPA), Food and Drug Administration (FDA), or Occupational Safety and Health Administration (OSHA) laws must be adhered to when pertinent. Offenses are subject to general penal statutes and could result in fines and/or imprisonment.

Some states are officially delegated to perform export inspection and weighing services, but at this time Oregon is not operating in this capacity. The Federal Grain Inspection Service (FGIS) operates in export locations where state delegated agencies are absent. The US Grain Standards Act establishes and maintains official US standards for barley, wheat, corn, canola, flaxseed, oats, rye, sorghum, soybeans, sunflower seed, triticale, and mixed grain.

TECHNICAL ASSISTANCE

For information regarding the Grain Standards Act, regulations, and grading standards, contact FGIS, Portland Field Office, 503-326-7887. Groups of farmers (12 minimum to 20 maximum), county elevator operators, and other interested parties may request grain grading seminars to be conducted by FGIS field office personnel at the Albers Mill location.

US DEPARTMENT OF AGRICULTURE, GIPSA

FGIS Portland Field Office

1100 NW Naito Pkwy.

Portland, OR 97209-2818

Phone503-326-7887

Fax503-326-7896

TECHNICAL ASSISTANCE

Growers wishing to participate in the program should contact the Oregon Department of Agriculture, Commodity Inspection Division, 503-986-4620 or our Web page below.

CERTIFICATION STANDARDS AND GENERAL INFORMATION

OREGON DEPARTMENT OF AGRICULTURE

Commodity Inspection Division

Phone503-986-4620

Web<http://oregon.gov/ODA/PLANT/WEEDS/weedfreeforageprogram.shtml>

NORTH AMERICAN WEED MANAGEMENT ASSOCIATION

Web<http://www.nawma.org>

ORGANIC FOOD PRODUCTION

BACKGROUND

The US Department of Agriculture (USDA) National Organic Program (NOP) requires that all products labeled “organic” must be certified by a USDA accredited certifier. Producers whose organic gross sales are \$5,000 or less, are exempted from organic certification, but must still follow USDA NOP standards. Contact the USDA for further information, including a list of accredited certifiers.

TECHNICAL ASSISTANCE

US DEPARTMENT OF AGRICULTURE

National Organic Program

1400 Independence Ave. SW, Rm. 4008-S, Ag Stop 0268

Washington DC 20250

Phone202-720-3252

Fax202-205-7808

Web<http://www.ams.usda.gov/nop/indexIE.htm>

WEED-FREE FORAGE PROGRAM

There is increasing demand in Oregon, and throughout the West, for certified weed-free hay, straw, and mulch. This voluntary, fee based program will provide industry the ability to certify products free from weeds listed on Oregon and North American Weed Management Association lists of noxious weeds. The certification standards are designed to limit or reduce the spread of noxious weeds.

Effective January 1, 2007 all Region 6 (Pacific Northwest Region) US Forest Service Wilderness areas required that only weed-free forage and mulch be used for outfitter guide, recreation, and fire rehabilitation. Effective January 1, 2009, all of Region 6 administered lands will require weed-free forage, mulch, and rehabilitation products.

COMPOSTING, WASTE DISPOSAL, AND HAZARDOUS MATERIALS

COMPOSTING

Note: As of this handbook's printing, the Oregon Department of Environmental Quality (DEQ) is involved in a rulemaking process that could change composting regulations. For more information on the proposed rules, visit DEQ's Web site: <http://deq.state.or.us/lq/sw/compost/rulemaking.htm>. The definitions and regulations listed below are current, until DEQ rulemaking is finalized.

About 30 percent of municipal solid waste disposed in Oregon in 2002 was yard debris, food waste and other organics—much of which could have been composted instead of disposed. Regulations for composting facilities were developed by the Oregon Department of Environmental Quality (DEQ) in response to odor and water quality problems. Many agricultural composting operations are exempted (see “exemptions” below).

DEFINITIONS

COMPOSTING FACILITY

A composting facility is a site or facility that uses organic solid waste or mixed solid waste to produce a useful product through a managed process of controlled biological decomposition. Composting may include amendments beneficial to the composting process. Vermiculture (worm farming) is an agricultural activity. Vermicomposting and agricultural composting operations are considered composting facilities. Worm castings offered for sale with a guarantee of plant nutrients, or with any claim to be a fertilizer or soil amendment, are subject to regulation by the Oregon Department of Agriculture, under ORS 633.

AGRICULTURAL COMPOSTING

Agricultural composting refers to composting as an agricultural operation conducted on lands employed for farm use.

GREEN FEEDSTOCKS

Green feedstocks are materials

- low in substances that pose a present or future hazard to human health or the environment, and
- unlikely to support human pathogens.

Green feedstocks include but are not limited to yard debris, animal manures, wood waste, vegetative restaurant waste, vegetative food processor by-products and crop residue.

NONGREEN FEEDSTOCKS

Nongreen feedstocks are materials

- high in substances that pose a present or future hazard to human health or the environment, and
- likely to support human pathogens.

Nongreen feedstocks include but are not limited to animal parts and by-products, mixed materials containing animal parts or by-products, dead animals, and municipal solid waste.

EXEMPTIONS

The following are exempted from the requirements to obtain a DEQ composting registration or permit:

- composting facilities or agricultural composting operations using less than or equal to 20 tons of green or nongreen feedstocks for composting in a calendar year
- agricultural operations composting green feedstocks generated and composted at the same agricultural operation, with all the compost used at the same agricultural operation at an agronomic rate
- other agricultural composting operations that are following a compost management plan approved by the Oregon Department of Agriculture (503-986-4700)
- production of silage on a farm for animal feed
- home composting
- institutional composting
- reload facilities
- composting facilities using sewage sludge or biosolids under a valid DEQ water quality permit.

WHO MUST COMPLY?

Regulations are minimal for small composting facilities. Anyone operating a composting facility, as defined above, must comply.

TYPES OF REGULATIONS

COMPOSTING REGISTRATION (MUST COMPLY WITH BOX A)

For facilities using as feedstocks for composting

- more than 20 tons of green feedstocks in a calendar year, or

- more than 20 tons and less than or equal to 5,000 tons of feedstocks which are exclusively yard debris and wood waste in a calendar year.

COMPOSTING GENERAL PERMIT

(Must comply with boxes A and B)

For facilities using as feedstocks for composting

- more than 2,000 tons of green feedstocks in a calendar year, or
- more than 5,000 tons of feedstocks that are exclusively yard debris and wood waste in a calendar year.

COMPOSTING FULL PERMIT

(must comply with boxes A, B and C)

For facilities, using more than 20 tons of feedstocks or composting during a calendar year, that include any amount of nongreen feedstocks.

Box A

Odor minimization plan, mass balance calculation, water quality protections, operations and maintenance manual, and records of incoming feedstocks.

Box B

...design of physical features of the site, plan for utilization of processed compost, facility closure plan, scale drawings, all-weather access road, fire protections, control of access to the site, control of and methods to minimize noise vectors, dust and litter and proper storage of feedstocks and residues.

Box C

...protective layer underneath compost processing, as well as feedstock areas, pathogen reduction, proper techniques for salvaging non-compostable materials.

TECHNICAL ASSISTANCE

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

North coast, Portland area

Phone503-229-5049

North Willamette Valley, central coast area

Phone 503-378-8240, ext. 227

Bend, Klamath Falls area

Phone 541-388-6146, ext. 228

Pendleton, northeast Oregon area

Phone541-278-4612

South Willamette Valley, south coast area

Phone 541-686-7838, ext. 245

The Dalles, Hood River area

Phone 541-298-7255, ext. 40

OREGON DEPARTMENT OF AGRICULTURE

Natural Resources Division

635 Capitol St. NE

Salem, OR 97301-2532

Phone503-986-4700

Web<http://oregon.gov/ODA/NRD>

Pesticides Division

635 Capitol St. NE

Salem, OR 97301-2532

Phone503-986-4635

Web <http://oregon.gov/ODA/PEST>

DISPOSAL OF SOLID WASTES

Both federal and state law prohibit disposal of solid waste, including garbage, demolition waste, land clearing debris, or sludge, except at a site holding a solid waste disposal permit from the Oregon Department of Environmental Quality (DEQ).

PERMITS

A solid waste permit must be obtained before disposing of solid waste. The application for a permit must include completed application forms; a land use compatibility statement signed by the local government where the facility is to be located; evidence of need for the proposed disposal site; appropriate application fees; and appropriate design, operations, and monitoring plans. Solid waste must be disposed of at a permitted solid waste disposal site, unless the material fits the exemptions stated below. Solid waste includes septic tank and cesspool pumpings, manure, vegetable or animal solid and semisolid wastes, and dead animals.

EXEMPTIONS

The following are exempt from the requirement to obtain a permit:

- materials used for fertilizer (see the “Confined Animal Feeding Operation” section of this handbook regarding manure) or other productive purposes on land in agricultural operations and for the growing or harvesting of crops and the raising of animals
- household composting operations
- inert, noncombustible materials such as soil, rock, concrete, brick, building block, tile, or asphalt paving.

SAFETY ISSUES

Agricultural wastes should be stored so as not to produce or sustain vectors (“hot spots” for environmental or health problems), transmit diseases to persons or animals, or create water or air pollution. Such wastes must be stored in a

manner that will reduce and minimize the objectionable odors, unsightliness, and other nuisance conditions.

RECORD KEEPING

The holder of a solid waste disposal permit must keep records of amounts and types of waste accepted, materials received for recycling, ground water monitoring results, and other information as specified in the permit.

FINES

Violation of statute, rule, or permit may be subject to civil penalty of up to \$10,000 per day for each day of violation.

DISPOSAL OF OTHER MATERIALS

If a farmer or rancher needs to dispose of inert, noncombustible materials (which may be done without a DEQ solid waste permit), he/she may need to obtain a permit from the Division of State Lands (503-378-3805) or the US Army Corps of Engineers (503-808-4376) if the materials are to be deposited in or near a wetland, or along or into any waterway.

RECOVERY AND DISPOSAL OF DEAD ANIMALS

Note: For specific information on requirements for disposing dead animals, refer to the chapter in this handbook titled, "Disposing of Dead Animals."

For information about the recovery and disposal of dead animals, farmers and ranchers can view DEQ's survey results on "Disposal and Recovery of Animal Mortality and Byproducts" at <http://www.deq.state.or.us/wmc/solwaste/animalmortality.html>. To receive a copy of this survey by mail, call the DEQ technical assistance staff closest to you.

TECHNICAL ASSISTANCE

Solid waste staff at DEQ <http://www.deq.state.or.us> can provide technical assistance concerning solid waste disposal options and requirements. Contact the appropriate regional staff for answers to specific questions about solid waste disposal.

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

Web <http://www.deq.state.or.us>

Western Region Office, Salem

Phone 503-378-8240, ext. 5047

NW Region Office

Portland 503-229-5263

Gresham 503-667-8414

Eastern Region Office, The Dalles

Phone 541-298-7255, ext. 21

FEDERAL HAZARDOUS MATERIALS REGULATIONS (HMR)

WHO MUST COMPLY?

Hazardous materials regulations apply to all farming operations, with some limited exceptions. If you operate a motor vehicle of any size to transport a commodity classified as a hazardous material, hazardous waste, or hazardous substance wholly within one state or in interstate commerce, you are subject to HMR.

HMR contain a list of hazardous materials and hazardous wastes (section 172.101). The hazardous substances are listed in an appendix to the table in section 172.101. Some examples of hazardous materials or substances are; gasoline, diesel fuel, parathion, diazinon, dursban, captan, 2,4-D and anhydrous ammonia. A hazardous material safety permit is required for some types of poison or inhalation hazards. For example, 3,500 gallons or more of anhydrous ammonia requires a permit.

HMR have several parts:

- creation of shipping papers to describe what is being transported on board each vehicle
- information about specific package type that must be used to enclose the material
- specific words/symbols that must go on the shipping papers, packages, or vehicle(s)
- specialized training for the people involved in every aspect of transporting or handling the hazardous material; as well as, security planning and training.

TECHNICAL ASSISTANCE

US DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration (FMCSA)

530 Center St. NE, Suite 100

Salem, OR 97301

Phone 503-399-5775

Fax 503-399-5838

Web <http://www.fmcsa.dot.gov>

Hazardous materials specialist

Phone 503-692-3768

FMCSA HM safety permit

Web <http://www.fmcsa.dot.gov/safety-security/hazmat/hm-permitting.htm>

Education and technical assistance

Web ... <http://www.fmcsa.dot.gov/safety-security/hazmat/hm.htm>

PESTICIDE USE, DISTRIBUTION, TRANSPORTATION, AND STORAGE

BACKGROUND

Federal law known as FIFRA (Federal Insecticide, Fungicide, and Rodenticide Act) regulates the manufacture, registration, distribution, and use of pesticides. The worker protection standard (WPS) also establishes guidelines for agricultural workers who handle pesticides or who may come into contact with pesticide-treated crops. Oregon state law governs most pesticide-related activities including the licensing and certification of pesticide applicators, consultants and pesticide dealers; implementation of the WPS; and the state registration of pesticide products.

Note: See the "Worker Protection Standard (WPS) for Pesticide Applications" section of this handbook for detailed information about this regulation for workers and pesticide handlers of pesticides in farms, forests, nurseries and greenhouses.

PRIVATE PESTICIDE APPLICATOR

Private pesticide applicators (farmers, ranchers, orchardists, etc.) are persons who purchase, use or supervise the use of restricted-use pesticides in producing an agricultural commodity on property owned or rented by themselves or their employer. Private pesticide applicators must obtain initial certification by successfully completing a written examination. Once certification has been obtained, the applicator is required to obtain a private pesticide applicator's license and pay the accompanying fee. The license is valid for five years and recertification is required every five years. Recertification may be accomplished by attending 16 hours of ODA accredited continuing education or by retaking the certification examination. Contact Oregon Department of Agriculture (ODA), Pesticides Division, 503-986-4635, or visit the Web site <http://oregon.gov/ODA/PEST>, for information on private pesticide applicator certification and licensing.

CUSTOM APPLICATIONS

If you hire a business to make pesticide applications for your agricultural operation, the business you hire must be licensed as a commercial pesticide operator and the person actually conducting the application must be licensed as a commercial pesticide applicator or commercial pesticide trainee. These licenses are issued by ODA Pesticides Division annually. Each license must reflect the category of work being done (e.g., ag-herbicide, ag-insecticide, fungicide, etc.). Commercial pesticide applicator licenses require 40 hours of ODA accredited continuing education

every five years or retaking of the certification examinations in each category of work. Commercial pesticide trainees are not certified applicators. Certain restrictions and specific conditions of supervision are required of trainees.

PESTICIDE DEALERS

Persons who offer for sale or distribution any restricted use pesticide (RUP) are required to obtain a pesticide dealer license from ODA Pesticides Division. This is an annual license for each dealer location. Record keeping related to the sales or distribution of RUPs is required of each pesticide dealer.

PESTICIDE USE REPORTING

The 1999 Oregon Legislature adopted statutes establishing a comprehensive, statewide pesticide use reporting system (PURS). The 2005 Oregon Legislature provided funding to make the system operational. The only pesticide products exempted from the reporting system are those classified as antimicrobials. The use of all other pesticide products in producing or preserving an agricultural or forestry crop must be reported into PURS, through a specific Internet site. This site became operational in January 2007. For current status and requirements, please contact the Oregon Department of Agriculture Pesticides Division at 503-986-4635 or online at <http://oregon.gov/ODA/PEST>.

ENDANGERED SPECIES ACT

Meeting federal Endangered Species Act (ESA) requirements essentially requires a farmer to apply pesticides in concert with the pesticide label and any county-specific bulletins available. ESA could also affect farming and forestry practices which alter the habitat of listed endangered species. Applying a pesticide in accordance with the approved label does not protect the applicator from liability if there is a "take" of ESA listed species. Reference to CFR and law DOI-50 CFR 402, ESA 7 [16 USC 1536] and 9 [16 USC 1538]. To obtain a copy of Protecting Endangered Species from Pesticides (EPA-735-F-9 4-014) or any other bulletins or fact sheets, call the EPA Hotline at 800-424-9346 or 800-535-0202.

CLEAN WATER ACT

Making pesticide applications which affect waterbodies or waterways may require the issuance of a National Pollutant Discharge Elimination System (NPDES) permit to be in compliance with the federal Clean Water Act. Always read and follow the pesticide label completely. Contact DEQ at 503-229-5657 for more information on the need for a NPDES permit for pesticide applications in Oregon.

SAFETY AND TRAINING

All pesticides must be used only as directed on the label. Minors under the age of 18 cannot apply pesticides as a licensed pesticide applicator. As described above, private pesticide applicators and commercial pesticide applicators have different pesticide license requirements for initial certification and subsequent recertification. Persons who are not required to be licensed pesticide applicators and may conduct pesticide applications are still required to have all appropriate training necessary to conduct the pesticide application correctly. This may require additional worker training in WPS compliance, respirator fit testing and maintenance of respirators, reading and understanding material safety data sheets (MSDS), recognition of pesticide poisoning, field or structure posting requirements, etc. ODA Pesticides Division investigates allegations of pesticide misuse. Training records of pesticide applicators help substantiate adequate knowledge by the applicator. Employee training records are required by OR-OSHA. ODA Pesticides Division and OR-OSHA may work together to address employer-employee pesticide related issues including the WPS.

The law requires investigation by Oregon OSHA regarding employee complaints that may be related to pesticide use, re-entry into areas treated with pesticides, or accidents. A record must be kept by the employer of all pesticide worker training provided and any injury that results in medical treatment, loss of consciousness, restriction of work or motion, or transfer to another job.

Note: See the section on "Worker Health and Safety" in this handbook or contact OR-OSHA at 503-378-3272 for further information.

PESTICIDE STORAGE

Pesticides should be stored in a cool, dry, well-ventilated and well-lit room or building, insulated to prevent freezing or overheating. The area should be fireproof with a sealed cement floor. The area should be locked to prevent entry by children or unauthorized persons. Warning signs should be posted on doors and windows. All pesticides should be stored in the original containers, away from food, feed, seed, or animals. For more information about the storage of pesticides, contact the Oregon state fire marshal at 503-373-1540 or OR-OSHA at 503-378-3272.

HOW TO MANAGE EMPTY PESTICIDE CONTAINERS

Contaminated, empty containers (unrinsed containers) are "hazardous wastes" unless they are accepted by a pesticide distributor or manufacturer for refill or are decontaminated. If discarded, contaminated containers must be disposed of as hazardous waste. This expensive practice can be avoided by decontaminating them. At the time of emptying, decontaminate rigid containers such as plastic pails or drums, metal pails or drums, and, fiber containers by:

1. Pressure or multiple rinsing (multiple rinse with the appropriate diluent at least three times, or as often as necessary to make the container clean; if possible, multiple rinse nonrigid containers such as paper containers lined with plastic or foil). Always use this rinsate for your next batch of pesticide spray mix.
2. Visually verifying that the residues have been removed from the inside and outside of the containers.
3. Drying (the container's interior surfaces should be dried before crushing).
4. Crushing or physically altering, such as puncturing, the containers.

Note: One- and five-gallon metal containers are to be punctured with at least three one inch holes in the top and bottom before crushing. Thirty- and 55-gallon containers are required to have both the tops and bottoms cut out and then flattened. Plastic containers do not need to be crushed.

Decontaminated containers can and should be recycled. For more information on the collection and recycling of decontaminated metal or plastic pesticide containers contact the Oregon Agricultural Chemicals and Fertilizers Association (OACFA) at 503-370-7024.

If you reuse your rinsates and avoid generating excess spray mixtures and purchase only the amount of pesticide you need, then you have no wastes to dispose of.

However, if you have unusable pesticide-containing materials, and they cannot be reused, then disposal is your only option. Consult DEQ for the factsheet, "How to dispose of unusable or unwanted pesticide spray solutions, pesticide-contaminated rinsewaters and pesticide-containing absorbent." The fact sheet is available on DEQ's Web site, <http://www.deq.state.or.us/lq/hw/pesticide.htm>.

OTHER USES

In addition to pesticide regulations administered by ODA, the Oregon Department of Forestry (ODF) also regulates application of chemicals, including pesticides, to private and state-owned timber lands through the Forest Practices Act (FPA). Pre-notification to ODF of pesticide applications is required, and in some instances, a site management plan will need to be approved prior to application. Questions relating to use of chemicals or pesticides in the forest environment should be directed to ODF at 503-945-7200.

TRANSPORTING PESTICIDES

The Oregon Department of Transportation (ODOT), Motor Carrier Transportation Division, regulates the transportation of hazardous materials in the state by adopting federal hazardous materials regulations, Title 49, Code of Federal Regulations for both carriers and shippers. In addition, farmers who ship or transport hazardous materials (including fertilizers, pesticides, and fuels) in amounts that require the shipment to be placarded, must develop and implement security plans. Questions concerning required shipping documents, placarding of vehicles, specifications for containers, and marking and labeling requirements for packages, should be directed to ODOT, 550 Capitol St. NE, Salem, OR 97301-2530, 503-378-3667. For information about transport security plans, call US Department of Transportation at 503-399-5775.

PESTICIDE SPILLS

Pesticide spills can cause serious environmental and health damage. The Oregon Emergency Response System (OERS), set up by the Oregon Executive Department, acts as a clearinghouse to handle emergency calls. To report spills or accidents involving pesticides, call 800-452-0311.

The Pesticide Analytical and Response Center (PARC) combines agencies with common interests regarding adverse pesticide effects on humans, animals, and the environment. PARC may also be involved in spills or accidents relating to health problems or environmental damage. For further information on PARC, 503-986-6470, or visit the Web site, <http://oregon.gov/ODA/PEST>.

SPECIFIC PESTICIDE USE RESTRICTIONS

CHEMICAL CONTROL AREAS

Umatilla and Morrow counties have restrictions on the use of certain herbicides during specific times of the year. Permits for the use of such products are required. For more information contact the Oregon Department of Agriculture at 541-938-6466.

CLOPYRALID

Pesticide products containing the active ingredient clopyralid are prohibited from use on residential or commercial turf and ornamental sites in Oregon. Uses of clopyralid products are limited to golf courses, agricultural, cemetery, and forestry sites. Vegetative material which has been treated with a clopyralid product must not be provided for compost. For more information, contact Oregon Department of Agriculture at 503-986-4635 or <http://oregon.gov/ODA/PEST>.

TECHNICAL ASSISTANCE

OREGON DEPARTMENT OF AGRICULTURE

Pesticides Division

635 Capitol St. NE

Salem, OR 97301-2532

Phone503-986-4635

Web <http://oregon.gov/ODA/PEST>

UNDERGROUND STORAGE TANKS

Concern about contaminated ground water and the threat of fire or explosion from spills or leaking underground storage tanks (USTs) led to passage of state and federal legislation (RCRA-Subtitle I; ORS 466.706-466.835) which requires the installation of corrosion control, leak detection and spill/overflow prevention equipment on USTs, as well as reporting and cleanup of contamination.

PERMITS

A General Permit Registration Certificate from the Oregon Department of Environmental Quality (DEQ), Underground Storage Tank Program, is required to operate an underground storage tank holding any regulated substance. Fuel distributors are prohibited by law from depositing fuel in an unpermitted tank or a permitted tank that does not meet compliance.

COMPLIANCE

In order to receive a General Permit Registration Certificate to operate, a person's tank must meet the 1998 technical standards for corrosion control and spill and overflow prevention. In addition, all UST owners/operators must perform leak detection and demonstrate financial responsibility (typically by purchasing environmental insurance for accidental spills or releases of petroleum products into the environment) and employ a trained UST system operator for their facility. Tanks that do not meet these standards must be decommissioned by removal or closure in place. Notification to DEQ is required.

EXEMPTIONS

The following USTs are exempt from federal and state laws and regulations. A General Permit Registration Certificate to Operate is not required to obtain fuel deliveries for

- any tank under 110 gallons in capacity
- any tank holding motor fuel for farm or residential use under 1,100 gallons in capacity
- any tank holding fuel for heating purposes on-site
- any tank not used after Jan. 1, 1974, as long as all product was removed at the time.

TECHNICAL ASSISTANCE

The DEQ UST Help line is available for technical assistance in the interpretation of rules. Fact sheets about specific compliance requirements are also available.

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

UST helpline

Phone 800-742-7878 or 503-229-5733

Web <http://www.deq.state.or.us/wmc/tank/ust-lust.htm>

WASTE TIRE USAGE

WHO MUST COMPLY?

With certain industrial exceptions, a waste tire storage site permit is required for storage of more than 100 waste tires. A waste tire carrier permit is required of all persons hauling waste tires for hire. A waste tire storage site beneficial use exemption is required for persons using 100 or more tires for a beneficial purpose (either above ground or underground). OAR Chapter 340, Division 64, regulates the storage, transportation, usage and disposal of waste tires.

PERMITS

Contact the Oregon Department of Environmental Quality (DEQ) to obtain an application for a waste tire permit or beneficial use exemption. For both, the completed application must include maps, management and contingency plans, a land use compatibility statement signed by the local government where the tire storage is to be located, and appropriate fees. DEQ will base its exemption determination on the legitimacy of the use and the potential risk to public health or the environment.

EXEMPT USES

Use of waste tires as a ballast to maintain covers on agricultural materials or at a construction site is an exempt use provided no environmental risk is created. Otherwise, if 100 or more tires are involved, a waste tire storage site permit will be required.

RECORDS

Holders of a beneficial use exemption must keep records of the number of tires used and how they are maintained. DEQ may conduct field inspections to verify compliance with permits. Permitted waste tire carriers are also required to submit to DEQ an annual report of the numbers of waste tires picked up and disposed of. Anyone handling more than 100 waste tires per year must keep a log of the tires and how they were disposed, even if a permit is not required. Records must be kept for a period of two years following disposal of tires.

FINES

Violation of statute, rule, or permit is subject to civil penalty of up to \$10,000 per occurrence.

TECHNICAL ASSISTANCE

OREGON DEPARTMENT OF ENVIRONMENTAL QUALITY

Web <http://www.deq.state.or.us>

DEQ Headquarters, Portland

Mary Fritzmann Smith

Phone 503-229-5409

WATER

ACTIVITIES IN WATERS AND WETLANDS

WHO MUST COMPLY?

All landowners and operators and USDA program participants must comply. Permits for fill, excavation, or similar alterations in waterways and wetlands are issued by the Corps of Engineers (Corps) under section 404 of the Clean Water Act, and by the Division of State Lands (DSL) under the state removal-fill law. The NRCS (formerly the Soil Conservation Service) administers the Swampbuster provisions of the 1985 Food Security Act, as amended in 1990, 1996, and 2002. All landowners and operators are responsible for obtaining any necessary federal and state permits or clearances for Swampbuster provisions.

REGULATED ACTIVITIES

Placement of fill material, excavation, alteration of stream banks or stream course, ditching, draining, stump removal (large clearing projects), and plowing or discing wetlands not previously farmed (conversion to agricultural use) are all regulated activities in the areas described below.

AREAS REGULATED

Regulated areas where alteration permits are required include rivers, streams, lakes, ponds, wetlands, and some categories of agriculturally managed wetlands. These are “waters of the US” and “waters of the state” under federal and state law.

The Swampbuster provisions established several categories of wetlands that are used for various agricultural purposes:

- Streams and creeks include all perennial and some intermittent creeks, including ones that have been ditched.
- Lakes include the permanent water area and any seasonally saturated wetlands that surround the permanent water body.
- Natural wetlands include areas known as swamps, sloughs, shallow ponds, and wet meadows. They may be forested, shrubby, or prairie-like. Most wetlands are seasonal, very wet in the winter and spring but dry by early-to-mid summer. Wetlands subject to regulation are identified in the field, based upon soils, vegetation, and hydrology.

- Agricultural wetlands—upon request, NRCS identifies, determines, certifies, and delineates wetlands. Certain activities in some of the wetland categories may result in loss of USDA benefits. Primary categories of agricultural lands that are subject to restrictions under Swampbuster and may also be subject to state and federal permit requirements
 - » wetland areas meet soil, vegetation, and hydrology criteria under natural conditions and typically have not been manipulated by altering hydrology or removing woody vegetation.
 - » farmed wetland areas that are cropped, have hydric soils, hydrology has been manipulated but meets hydrology criteria, and areas flood or pond in spring months.
 - » farmed wetland/pasture wetland areas that are grazed or hayed, have hydric soils, hydrology has been manipulated but meets hydrology criteria and areas flood, pond, or are saturated in spring months.

EXEMPTIONS

Some wetland types and some activities are exempt from permit requirements and from Swampbuster. However, there is not an exact correspondence between Swampbuster and the Clean Water Act, or the state removal-fill law. If you are planning to conduct any of the activities listed above (regulated activities), you should first contact NRCS for a certified determination and information regarding any restrictions or regulations that may apply. The information in this handbook is intended only as a guide.

Prior-converted cropland is exempt from regulation. NRCS makes the determination of whether or not a field meets the criteria for prior-converted cropland. The NRCS determination is accepted by the Corps and generally by DSL.

Exempt activities include established ongoing farming activities, such as plowing, seeding, and cultivation; routine maintenance of ditches (to original capacity); replacement of malfunctioning drainage systems or water control structures (to original capacity); and some minor projects involving small amounts of fill or excavation. You may not perform maintenance activities that increase the original scope and design of the drainage system without a permit.

TECHNICAL ASSISTANCE

PROGRAMS AND PERMITS

The first point of contact for wetland determinations on agricultural lands is NRCS. There is a field office in most counties. The local Soil and Water Conservation District (SWCD) can help you locate the nearest office, or you may phone the state office in Portland. In addition to

administering Swampbuster, NRCS provides landowner assistance with conservation practices and programs, including the Wetland Reserve Program.

US DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service (NRCS)

101 SW Main St., Suite 1300
Portland, OR 97204-3221
Phone503-414-3200
Web<http://www.or.nrcs.usda.gov>

Ag Service Center

Jeremy Maestas, State Habitat Biologist
625 SE Salmon Ave., Suite 4
Redmond, OR 97756
Phone 541-923-4358 ext. 109

US ARMY CORPS OF ENGINEERS

Regulatory and Resource Branch

Jim Goudzwaard, wetlands specialist
PO Box 2946
Portland, OR 97208-2946
Phone503-808-4376
The Corps and DSL have a joint permit application and procedure for alteration of waterways and wetlands. The landowner will generally need to have a wetland determination from NRCS or from a private consultant (determination subject to review and approval) prior to applying for a permit to alter a wetland area. Permits may be approved (usually with conditions) or denied. The Corps and DSL also provide assistance to landowners regarding wetlands and permits.

OREGON DIVISION OF STATE LANDS (DSL)

Earle Johnson, Western region manager
775 Summer St. NE
Salem, OR 97310-1337
Phone503-378-3805
Nancy Pustis, Eastern region manager
20310 Empire Ave., #B-1
Bend, OR 97701
Phone541-388-6112

OREGON DEPARTMENT OF FISH AND WILDLIFE

Habitat Conservation Division

3406 Cherry Ave. NE
Salem, OR 97303-4924
Phone503-947-6000
Web <http://www.dfw.state.or.us>
ODFW provides technical and financial assistance to landowners who want to improve conservation practices (wetland or upland) on their lands. They also provide information to the regulatory agencies (through the permit process) and to landowners on the best timing of in-stream work to minimize effects on fish.

US FISH AND WILDLIFE SERVICE

Portland Field Office

2600 SE 98th St., Suite 100
Portland, OR 97266
Phone503-231-6179
Web<http://www.fws.gov>

The agency provides financial and technical assistance through such programs as Partners for Wildlife

FISH PASSAGE AT ARTIFICIAL IN-CHANNEL OBSTRUCTIONS AND DAMS

WHO MUST COMPLY?

Owners/operators that construct, abandon, enlarge, or replace major parts of an in-channel artificial obstruction (i.e., dam) to the upstream and downstream movement of native migratory fish must provide adequate fish passage at the obstruction unless granted a waiver or exemption [ORS 509.580 through 509.645, and OAR 635-412-0020 and -0025]. Waivers are for situations where passage at the artificial obstruction would benefit fish, and mitigation is required that provides a net benefit for fish. Exemptions are generally for situations where passage would provide no appreciable benefit to fish. Passage plans, waivers, or exemptions must be approved by the Oregon Department of Fish and Wildlife (ODFW) prior to construction, abandonment, enlargement, or major replacement of the artificial obstruction.

Fish passage facilities must be operated and maintained by the owner or operator of the artificial obstruction to provide adequate passage of native migratory fish at all times.

DEFINITIONS

Fish passage facilities at dams usually involve a fishway of some type for upstream passage and other measures for downstream passage.

ARTIFICIAL OBSTRUCTION

An artificial obstruction is any dam, diversion, dike, berm, levee, tide or flood gate, road, culvert or other human-made device placed in the waters of this state that precludes or prevents the migration of native migratory fish.

FISHWAY

A fishway is the set of human-built and/or operated facilities, structures, devices, and measures that together constitute, are critical to the success of, and were created for the sole purpose of providing upstream fish passage at artificial or natural obstructions which create a discontinuity between upstream and downstream water or bed surface elevations. A fishway generally takes the form of a series of stair-stepped pools (fish ladder) through which fish can migrate upstream.

NATIVE MIGRATORY FISH

Those native fish that migrate during their life cycle. A fish species list can be obtained from the ODFW statewide fish passage coordinator.

NET BENEFIT

An increase in the overall, proximate habitat quality or quantity, as determined by ODFW, that is biologically likely to lead to an increased number of native migratory fish after a development action and any subsequent mitigation measure have been completed.

WAIVER

An owner/operator with an artificial obstruction may apply for a waiver of the requirement to provide fish passage if mitigation will be provided that creates a net benefit to fish [ORS 509.585(7)(a)].

EXEMPTION

An owner/operator with an artificial obstruction may apply for an exemption to the requirement to provide fish passage if

- a lack of fish passage was mitigated.
- a waiver was granted for the artificial obstruction.
- no appreciable benefit exists for providing fish passage [ORS 509.585(9)(a)].

COST SHARING PROGRAM

ODFW administers a cost share program that provides assistance to owners/operators for fishway construction. If an owner/operator is selected for the program, the State of Oregon covers 60 percent of the costs of each fish passage device (not to exceed \$75,000) and the owner/operator covers 40 percent. An ODFW cost share grant application may be obtained on the Web at http://www.dfw.state.or.us/ODFWhtml/InfoCntrFish/screen_passage_grants.htm. In most cases, owners/operators are also eligible for a tax credit.

TAX CREDIT

An owner/operator may be eligible for a state income tax or corporate excise tax credit of 50 percent, not to exceed \$5,000, per fishway. The owner/operator must apply for preliminary certification from ODFW prior to construction [ORS 315.138].

TECHNICAL ASSISTANCE

Technical assistance for providing fish passage may be obtained from ODFW's field coordinators (listed in the application), local field offices, the statewide fish passage coordinator, or <http://www.dfw.state.or.us/fish/passage>.

OREGON DEPARTMENT OF FISH AND WILDLIFE

Tom Stahl
3406 Cherry Ave. NE
Salem, OR 97303
Phone503-947-6228
E-mailThomas.Stahl@state.or.us

FISH SCREENING AND BY-PASS DEVICES AT WATER DIVERSIONS AND DAMS

WHO MUST COMPLY?

Fish screening or by-pass devices prevent the loss of game or non-game fish, especially those that are listed as sensitive, threatened or endangered species by the Oregon Fish and Wildlife Commission or the US Government. Fish screens are necessary at gravity and pumped water diversions.

Fish screening or by-pass devices are often required as a condition for a water right permit or transfer.

At water diversions greater than 30 cubic feet per second (13,470 gallons per minute), fish screening and by-pass devices are mandatory [ORS 498.311 and 509.615].

Installation and maintenance of these devices are entirely the responsibility of the water user.

At water diversions less than 30 cubic feet per second (cfs), fish screening may be required due to the presence of state or federal listed fish. Day-to-day or minor maintenance of these devices is the responsibility of the water user. Major maintenance is the responsibility of the Department of Fish and Wildlife (ODFW) [ORS 498.306].

Fish screening plans must be approved by ODFW prior to construction and installation of the fish screening or by-pass devices.

DEFINITIONS

FISH SCREEN

A fish screen is a screen, bar, rack or other physical barrier, including related improvements necessary to ensure its effective operation, and to provide adequate protection for fish populations present at a water diversion.

BY-PASS

A by-pass is a pipe, flume, open channel or other means of conveyance that transports fish back to the body of water from which the fish were diverted, but does not include fishways or other passages around a dam.

MINOR MAINTENANCE

Minor maintenance means periodic inspection, cleaning and servicing of fish screening or by-pass devices at such times and in such manner as to ensure proper operation.

MAJOR MAINTENANCE

Major maintenance means all maintenance work done on fish screening or by-pass devices other than minor maintenance.

EXEMPTION

Fish screening or by-pass devices are not required in water diversions for which the Oregon Fish and Wildlife Commission has a contract or other form of agreement with the person diverting water (water user) who has made such other provision deemed adequate for the protection of game fish [ORS 498.316].

COST SHARING PROGRAM

ODFW encourages the installation of fish screening or by-pass devices in water diversions of any size. The water user or ODFW can construct and install the devices. If a water user is selected for the program, the State of Oregon covers 60 percent of the costs of each device not to exceed \$75,000 and the water user covers 40 percent. The cost share cap of \$75,000 may be exceeded under certain circumstances. An ODFW cost share grant application may be obtained on the Web at http://www.dfw.state.or.us/ODFWhtml/InfoCntrFish/screen_passage_grants.htm. In most cases, water users are also eligible for a tax credit.

TAX CREDIT

A water user may be eligible for a state income tax or corporate excise tax credit of 50 percent not to exceed \$5,000 per fish screening or by-pass device. The water user must apply for preliminary certification from ODFW prior to construction [ORS 315.138].

TECHNICAL ASSISTANCE

Technical assistance for providing fish screening may be obtained from ODFW's field coordinators (listed in the application), local field offices, or the statewide fish screening coordinator.

OREGON DEPARTMENT OF FISH AND WILDLIFE

Bernie Kepshire, Fish screening state coordinator
3406 Cherry Ave. NE
Salem, OR 97303
Phone503-947-6229
E-mail..... Bernard.M.Kepshire@state.or.us

GROUND WATER**BACKGROUND**

The 1989 Oregon Legislature established a law intended to prevent contamination of Oregon's ground water resource. The Oregon Department of Environmental Quality (DEQ) has lead responsibility to evaluate and implement strategies for preventing and correcting contamination of ground water. Contamination sources might include residential, commercial or farm sources such as fertilizers, pesticides, or other farm wastes.

WELL WATER

If a farm residence is served by a well, Oregon law requires that the well be tested for nitrates and total coliform bacteria before any sale or exchange of the property. The seller must submit the test results to the Oregon Health Division. The division may also require additional tests for specific contaminants in an area of ground water concern or ground water management. For more information on well water testing, contact Oregon Health Division, Drinking Water Section, State Office Building, Suite 608, Portland 97332, 503-731-4010.

WELL CONSTRUCTION

To secure a ground water supply, you will need to estimate your water needs, locate a ground water source, obtain a water right (in some cases), select and contract with a licensed and bonded well constructor or get the needed Water Resources Department (WRD) authorization to drill the well yourself. The WRD recommends against drilling your own well. Standards on well depth, casing, sealing, development and yield testing, and developing a well log require specialized knowledge and equipment. Names of local well constructors are available from the WRD Web page <http://www.wrd.state.or.us/OWRD/GW/index.shtml>, the classified section of the local telephone directory, the Oregon Ground Water Association, or at any WRD office. If you decide to drill a well yourself on your own property, you must

1. obtain a landowner's well construction permit and file a \$5,000 bond with the WRD.
2. construct the well in accordance with state law, general standards and regulations.
3. before beginning work, submit a well construction "start card" to both the Salem office and the appropriate WRD regional office and complete a written water well report within 30 days of completing the well.

ESTIMATING WATER NEEDS

To estimate peak daily water demand, add the appropriate quantities of water for all uses that would likely occur on the day of the year in which water needs would be highest.

Type of use	Gallons per day (GPD)
Family use (per person)	50-75 GPD
Lawn and garden	50-1,000 GPD
Livestock and cattle (per head)	12 GPD
Dairy (plus maintenance per head)	35 GPD
Goat or sheep	2 GPD
Hog	4 GPD
Horse or mule	12 GPD
Poultry-chickens (per 100)	5-10 GPD

In contrast to domestic wells, an irrigation well must be able to produce water at steady high rates for extended periods of time. Irrigation systems must be carefully designed to minimize pumping costs and to prevent excessive drawdown of the well's water level.

FINDING GROUND WATER

You can learn about the quantity and quality of well water in your area from local water well constructors and neighbors. Water well reports are required by Oregon water law and are a basic tool used in checking for ground water availability. You may examine water well reports in your local watermaster's office or at the Water Resources Department's central office in Salem. You can also review water well logs through the department's Web page at <http://www.wrd.state.or.us/OWRD/GW/index.shtml>.

The US Geological Survey and National Water Well Association advise against employing a waterwitch to search for ground water.

WATER RIGHTS RELATED TO GROUND WATER

With some exceptions, a water right is needed for use of ground water. The following uses of ground water do not require that the user obtain a water right: stock watering; watering a maximum ½ acre non-commercial lawn or domestic garden; watering up to 10 acres lawn, grounds, and fields of schools within a critical ground water area; up to 15,000 gallons per day for single or group domestic use; up to 5,000 gallons per day for any single industrial or commercial use; and down-hole heat exchange.

TECHNICAL ASSISTANCE

OREGON WATER RESOURCES DEPARTMENT

725 NE Summer St., Suite A
Salem, OR 97301-2430
Phone503-986-0900
Web <http://www.wrd.state.or.us>

WATER QUALITY MANAGEMENT AREA PLANS

BACKGROUND

In 1993, the State Legislature approved the Agriculture Water Quality Management (AgWQM) Act, which requires the Oregon Department of Agriculture (ODA) to prevent and control water pollution and soil erosion from agricultural activities. The AgWQM Act directs ODA to work with farmers and ranchers to develop and implement AgWQM area plans for when a plan is required by state or federal law. AgWQM area plans and rules have been adopted for all 39 management areas in Oregon.

WHO MUST COMPLY?

Landowners who conduct agricultural activities, within areas where AgWQM area plans and rules are in place, are required to comply with the rules designed to ensure the plans are successful. The goal of a plan is to achieve water quality standards designed to protect beneficial uses. Specific practices will not be prescribed to landowners as long as they are in compliance with area rules. However, landowners who are not in compliance, and who will not voluntarily take steps to address problems, may be subject to specific compliance orders and/or enforcement action.

COST SHARING ASSISTANCE

Federal or state cost sharing assistance may be available for landowner installation of conservation and water quality protection measures. Contact your local Soil and Water Conservation District, the USDA Farm Service Agency <http://www.fsa.usda.gov/pas>, the USDA Natural Resources Conservation Service <http://www.nrcs.usda.gov/programs>, or the Oregon Watershed Enhancement Board (OWEB, Bonnie Ashford at 503-986-0178) for information.

TECHNICAL ASSISTANCE

OREGON DEPARTMENT OF AGRICULTURE

Natural Resources Division

Phone503-986-4700
Fax503-986-4730
Web. http://oregon.gov/ODA/NRD/water_quality_front.shtml

Soil and Water Conservation Districts (SWCD)

Baker Valley 541-523-7121, ext. 100
Benton541-753-7208
Burnt River 541-523-7121, ext. 100
Clackamas County503-656-3499
Clatsop503-325-4571
Columbia 503-397-4555, ext. 3
Coos541-396-6879
Crook County541-447-3548
Curry County541-247-2755
Deschutes541-923-2204

Douglas.....	541-957-5061
Eagle Valley.....	541-523-7121, ext. 100
East Lane.....	541-465-6436, ext. 3
East Multnomah.....	503-222-7645
Ft. Rock/Silver Lake.....	541-947-5855
Gilliam County.....	541-384-2672
Grant.....	541-575-0135
Harney.....	541-573-5010
Hood River.....	541-386-4588
Illinois Valley.....	541-592-3731
Jackson.....	541-734-3143
Jefferson.....	541-923-4358, ext. 101
Josephine.....	541-474-6840
Keating.....	541-523-7121, ext. 100
Klamath.....	541-883-6932, ext. 101
Lakeview.....	541-947-5855
Lincoln.....	541-265-2631
Linn.....	541-926-2483
Malheur County.....	541-889-2588
Marion.....	503-391-5741
Monument.....	541-934-2141
Morrow.....	541-676-5452
Polk.....	503-623-9680 ext. 101
Sherman County.....	541-565-3216, ext. 3
Siuslaw.....	541-997-1272
Tillamook County.....	503-842-2240, ext. 114
Tualatin.....	503-648-3174, ext. 4
Umatilla County.....	541-276-8131
Umpqua.....	541-271-2611
Union.....	541-963-0724, ext. 109
Wallowa.....	541-426-4588, ext. 3
Wasco County.....	541-296-6178, ext. 3
West Multnomah.....	503-238-4775
Wheeler.....	541-468-2990
Yamhill.....	503-472-6403, ext. 3

ODA regional water quality planners

635 Capitol St. NE

Salem OR 97301-2532

Phone.....503-986-4700

WATER RIGHTS

WHO MUST COMPLY?

Under Oregon law, all water is publicly owned. With some exceptions, water users must first obtain authorization, or a water right, from the Oregon Water Resources Department (WRD) before using water from any source—the ground, lakes or streams. A water right is a type of property right and is attached to the land where it was established. As a general matter, if the land is sold, the water right goes with the land to the new owner. Landowners with water flowing through or past their property do not automatically have the right to divert the water without state permission.

Currently, surface water in the state is generally not available for new appropriations during summer months.

Additionally, many areas of the state have restrictions on further ground water appropriation. Some areas of the state may have restriction on future appropriation through legislative action or administrative order of the Water Resources Commission. Check with the Oregon Water Resources Department for restrictions in your area.

EXEMPTIONS

Exempt uses of water are those that do not require water rights. Exempt uses of surface water include the landowner's use of a spring which, under natural conditions, does not form a natural channel and flow off the property where it originates. Stock watering is an exempt use if stock either drink directly from a surface source or from an enclosed diversion that satisfies certain conditions. The forest management water uses for mixing pesticides and slash burning are also exempt. Ground water exempt uses (see section on ground water) include stock watering and lawn or noncommercial garden watering not more than one-half acre in area. Be sure to consult with WRD before assuming any water use is exempt.

PERMITS AND APPLICATIONS

Applicants should check with the WRD, 503-986-0900, to determine if water is available before submitting an application. There are three steps required before a water right may be granted. First, the applicant must apply to WRD for a permit to use the water. Second, the department conducts a thorough review of the requested use to determine whether there is enough water to serve the use without injuring other water right holders or being detrimental to the public interest. If the department grants a permit, the applicant must then construct a water system to convey and use the water. Finally, after the water is applied, the permit holder must hire a Certified Water Rights Examiner (CWRE) to complete a survey of the water use. The survey map detailing applied water is then submitted to the department. (To obtain a list of CWREs, call WRD, your local watermaster, or the Board of Engineering Examiners, 503-378-4180). If water is used according to the provisions of the permit, a final Water Right Certificate is issued. The water right document will list the allowed use, specific locations of use, source, maximum rate at which the water may be diverted, period of time when water may be diverted and other conditions of the use. Except under certain circumstances, a water right is forfeited if it is not used at least once every five years.

CONSTRUCTION OF A RESERVOIR OR POND

Construction of any new pond or reservoir requires a permit to store water. An additional permit is required to divert, for use, stored water from the reservoir. Contact WRD, 503-986-0900, for information regarding stored water construction and use permits.

INSTREAM USE

The Water Resources Commission is authorized to issue instream water rights for fish protection, to minimize the effects of pollution, or for maintaining recreational uses. Instream water rights have a priority date and are regulated in the same way as other water rights. Water users with junior priority dates may be required to stop diverting water to protect senior water rights including senior instream water rights. However, water users with a senior priority date would not be affected by junior instream rights. Private water right holders are allowed to sell, lease, or donate water rights to be converted into instream uses, provided there is no injury to other water rights.

CRITICAL GROUND WATER AREAS

Oregon law states that when the pumping of ground water exceeds the long-term natural replenishment of the underground water reservoir, the Water Resources Commission may act to declare the source a critical ground water area (CGWA) and restrict water use. Once a CGWA proceeding is initiated by the commission, no new well permits are issued during the course of the investigative proceedings. The order setting the limits of the CGWA may provide for certain users of water to have preference over other users, regardless of established water right priority dates. CGWAs can also be declared if there is interference between wells and senior surface water users or deterioration of ground water quality or temperature. Current CGWAs include Cow Valley near Vale; The Dalles in Wasco County; Cooper Mountain-Bull Mountain southwest of Beaverton and Tigard; and Butter Creek, Stage Gulch, and Ordinance areas in Morrow and Umatilla counties.

TRANSFERRING WATER RIGHTS

A water right exists only for the amount of water, type of use, and place of use described in the water right. If an appropriator establishes the right to irrigate a particular tract of land, the water cannot later be diverted to other land or used for another purpose unless a transfer is authorized by WRD. A water right transfer application must be filed with WRD to change a point of diversion, the type of use, the place of use, or a combination of these. When a transfer of water right is completed, the date of priority is not changed. The water user is required to

have a report and map prepared by a certified water right examiner after a successful transfer and use. When the use is confirmed, WRD will issue a new certificate. Temporary transfers are also available, allowing the transfer of the place of use for a period not to exceed five years. A temporary point of diversion transfer is allowed if it is necessary to convey water to the temporary place of use. The water right automatically goes back to the original place of use when the term of the temporary transfer expires. A water right holder may, under certain conditions, transfer the point of diversion from a surface water source to a ground water source.

FEES

Check with the Water Resources Department for correct fees. <http://www.wrd.state.or.us>

TECHNICAL ASSISTANCE

OREGON WATER RESOURCES DEPARTMENT

725 NE Summer St., Suite A
Salem, OR 97301-2430

Phone503-986-0900

Web <http://www.wrd.state.or.us>

PLANTS

IMPORTATION OF PLANTS

WHO MUST COMPLY?

Imported plants, fruits, vegetables and some other products must be accompanied by a phytosanitary certificate issued by the country of origin. All agricultural products must be declared to the US Customs Service on arrival. Importers and/or their brokers must arrange for an agricultural inspection. Any necessary treatments, such as fumigation, must be accomplished at the importers expense and conducted under the supervision of a USDA inspector.

PERMITS

For import permits contact the USDA APHIS Plant Protection and Quarantine Division 503-326-2814.

QUARANTINES

Quarantines regulating plant shipment into and within Oregon are available online at http://oregon.gov/ODA/PLANT/quarantines_index.shtml.

RECORD KEEPING

All imported plants and plant products must be identified as to species and country of origin.

TECHNICAL ASSISTANCE

US DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service (APHIS)

Phone503-326-2814

OREGON DEPARTMENT OF AGRICULTURE

Plant Division

Phone503-986-4636

Web<http://oregon.gov/ODA/PLANT>

INVASIVE SPECIES

Harmful, non-native plants and animals threaten Oregon's environment and agricultural, horticultural, and forestry industries. They displace desirable species and cost Oregonians millions of dollars annually in control treatments and lost productivity. The Oregon Invasive Species Council was created in 2002 to: 1) create and publicize a system for reporting sightings of invasive species, 2) undertake educational activities to increase awareness of invasive species issues, 3) develop a statewide plan for dealing with invasive species, and 4) administer a trust account for funding eradication and education projects. More information on the council and its activities is available at: <http://www.oregon.gov/OISC>.

TECHNICAL ASSISTANCE

REPORT POTENTIAL NEW SIGHTINGS

Invasive Species hotline 1-866-INVADER

Web <http://www.oregon.gov/OISC>

NURSERY AND CHRISTMAS TREE GROWER LICENSING

WHO MUST COMPLY?

Any person who grows or sells nursery stock, rootstock, fruit trees or ornamental plants in Oregon must obtain a nursery license from the Oregon Department of Agriculture (ORS 571.055). Any person who grows Christmas trees in Oregon must obtain a Christmas tree grower's license from the Oregon Department of Agriculture, Plant Division (ORS 571.525).

The Oregon Department of Agriculture provides nursery licensing and inspection services to the wholesale and retail nursery industry statewide, including rootstock for fruit and ornamental plants. These services ensure that nursery stock grown and sold in Oregon is free from pests and diseases. The department also inspects Christmas trees to ensure freedom from quarantine pests and diseases. Certificates and permits required for the movement of nursery stock and Christmas trees from growing location to marketplace are issued by the department.

To participate in the fruit tree virus certification program, or to find out more about soil fumigation requirements and other disease-free certification practices, contact the Oregon Department of Agriculture, Fruit Tree Virus Certification Program at 503-986-4664.

TECHNICAL ASSISTANCE

The Oregon Department of Agriculture provides shipping information for intrastate, interstate, and international shipments of nursery stock and Christmas trees, and issues certificates and permits appropriate for such shipments. Information regarding changes in shipping requirements, pest and disease control information and quarantines are made available to licensees via direct mailings and industry publications.

The department also provides pest and disease diagnostic services to assist in the prevention and elimination of plant pests and diseases for nursery stock and Christmas tree producers.

OREGON DEPARTMENT OF AGRICULTURE

Plant Division

635 Capitol St. NE

Salem, OR 97301-2532

Web<http://oregon.gov/ODA/PLANT>

Nursery and Christmas tree licensing

Gary McAninch503-986-4644

Plant health programs

Dr. Nancy Osterbauer503-986-4666

Insect pest programs

Dr. Kathleen Johnson.....503-986-4662

OREGON NOXIOUS WEED CONTROL PROGRAM

The Oregon Department of Agriculture Noxious Weed Control Program provides leadership and technical expertise for integrated noxious weed control projects throughout the state (ORS 570.500). This involves coordinating the noxious weed control efforts of federal, state, and county organizations as well as private landowners. The program also works on the identification of high priority invasive noxious weeds and makes recommendations to the Oregon State Weed Board (ORS 561.650) for listing. Weeds are designated by the board as; "A," "B," or "T," which sets the priority for control. The department also maintains a state noxious weed quarantine list (OAR 603-052-1200), which prohibits all listed plants from entry into the state, transport within the state, sale or offering for sale or propagation within the state.

DEFINITION

Noxious weeds are defined, by the Oregon State Weed Board, as exotic, non-indigenous species that are injurious to public health, agriculture, recreation, wildlife, or any public or private property.

TECHNICAL ASSISTANCE

The Oregon Department of Agriculture Noxious Weed Control Program provides technical assistance to the public on integrated weed management practices, weed identification, and prioritizes weed species for control in various regions of the state. The Oregon Department of Agriculture, through the Oregon State Weed Board, offers noxious weed control grants that protect or enhance fish and wildlife habitat or overall watershed health.

OREGON DEPARTMENT OF AGRICULTURE

Noxious Weed Control Program

Tim Butler503-986-4625

Fax503-986-4786

Web http://oregon.gov/ODA/PLANT/weed_index.shtml

Invasive Species Hotline

Phone 1-866-INVADER

PROTECTED NATIVE PLANTS

WHO MUST COMPLY?

Native plants listed as threatened or endangered by the State of Oregon are protected by law on nonfederal public lands (ORS 564). There are no provisions to conserve state-listed plant species, or their habitat, on private property. Nevertheless, ODA encourages voluntary conservation of native plants on private lands, and has historically served an advisory role in such projects upon request by private landowners. The only application of state threatened and endangered plant laws to private lands involves nursery activities where growers are engaged in commercial trade of state-listed plants. Commercial trade of state-listed species is prohibited in Oregon, unless cultivated stock originated prior to the date of species' listing and the grower receives a Commercial Use Permit from ODA. Scientists, or others, wishing to engage in noncommercial activities with, or affecting, protected species must apply for a research permit. An overview of the Native Plant Conservation Program can be accessed from the ODA Web site <http://oregon.gov/ODA/PLANT/CONSERVATION>.

TECHNICAL ASSISTANCE

For questions about rules interpretation, the status of specific native plants, advice for voluntary conservation activities, and requests for commercial use or research permits, or additional program information, contact

OREGON DEPARTMENT OF AGRICULTURE

Native Plant Conservation Program

Dr. Robert Meinke

Department of Botany and Plant Pathology

Oregon State University

Corvallis, OR 97331-2902

Phone541-737-2317

E-mail meinker@science.oregonstate.edu

Web<http://oregon.gov/ODA/PLANT/CONSERVATION>

ANIMALS

BRANDS

WHO MUST COMPLY?

Although brands are not required in Oregon, the law does mandate an inspection of all cattle and horses, both branded and unbranded, before being hauled out of state; before being sold at an auction; and before being taken to a slaughter house. A change of ownership inspection is required on cattle 30 days and older. The responsibility for recording brands and inspecting livestock belongs to the Oregon Department of Agriculture, Animal Health and Identification Division. While branding is not mandatory in Oregon, the department recommends that livestock owners use brands because they serve as a deterrent to theft. Brands also help inspectors trace stray livestock. If you elect to brand your livestock, you must record the brand with the department. It is unlawful to brand livestock with an unrecorded brand.

RECORDING A BRAND

There are two ways to submit new brands for approval:

1. Send a letter with drawings of your designs to:
Oregon Department of Agriculture
State brand recorder
635 Capitol St. NE
Salem OR 97301-2532
2. Submit a completed livestock brand request form, available online http://oregon.gov/ODA/AHID/livestock_id/br_app.pdf, or from your local brand inspector or auction yard.

Note: The fee to record a brand is \$25, plus a prorated share of the renewal fee, per brand location for cattle, sheep, and horses. Livestock owners must renew, or rerecord brands every four years. Renewal notices are mailed in September. Renewing a brand costs \$100 per location for cattle and horse brands and \$40 per location for sheep brands.

INSPECTIONS

During an ownership inspection, a livestock inspector will note the breed and sex of your animal, as well as any ear and flesh marks and brands. The inspector will also check ownership documents such as bills of sale, registration papers, out-of-state brand papers and affidavits. Inspection Certificates are valid for eight days, or more in some cases. Anyone transporting cattle within Oregon must have an Oregon transportation certificate, available from

brand inspectors, auction markets, the Animal Health and Identification Division, or local printers in some areas.

EXEMPTIONS

Any change of ownership of cattle also requires a physical inspection unless the seller obtains an exemption certificate, called an E-certificate. Use of the E-certificate is limited to the sale of 15 or fewer head sold to the same buyer in eight consecutive days and does not allow for out of state shipment. E-certificates are available from brand inspectors, some county agents and sheriffs, and the Animal Health and Identification Division. One certificate must be completed for each animal.

FINES

Violation of Oregon's brand law is a class B misdemeanor that can result in a fine of up to \$2,500 and/or six months in jail.

MISSING LIVESTOCK

When livestock are missing, notify your local sheriff, the state police and your local brand inspector or the Animal Health and Identification Division, 503-986-4681.

FOUND ANIMALS

If you find livestock, notify the ODA State Brand Office, 503-986-4681, or the local brand inspector, within five days. You may wish to notify local law enforcement as well.

TECHNICAL ASSISTANCE

OREGON DEPARTMENT OF AGRICULTURE

State brand recorder

635 Capitol St. NE

Salem OR 97301-2532

Phone503-986-4681

Web <http://oregon.gov/ODA/AHID>

CONFINED ANIMAL FEEDING OPERATIONS (CAFO)

In 2001, the Oregon Legislature passed House Bill 2156. The legislation directed the Oregon Department of Agriculture (ODA) to regulate all livestock operations to satisfy both state water quality laws and the federal Clean Water Act. Oregon law now defines CAFO to include state and federally defined livestock operations including certain Animal Feeding Operations (AFOs). The Oregon CAFO General Permit meets the requirements of the federal National Pollutant Discharge Elimination Program, EPA's current CAFO rule requirements and revised Oregon state statute. Facilities that operate in a highly environmentally sensitive area, use experimental technology or have

compliance issues that will take more than two years to rectify may need to apply for an individual CAFO permit.

ENDANGERED SPECIES ACT

The federal CAFO rule (40CFR parts 9, 122, 123, and 412, 2-12-03) was developed in consultation with other federal agencies to be in compliance with Endangered Species Act (ESA). The permit requires all facilities to develop and implement an Animal Waste Management Plan (AWMP). The AWMP lists the Best Management Practices (BMPs) that the facility operator will employ to achieve permit conditions. The BMPs are developed at the federal and state level and are checked against ESA requirements through consultation with National Marine Fisheries Service (NMFS).

WHO MUST COMPLY?

Pursuant to ORS 468B.050, a permit from the Natural Resources Division of the Oregon Department of Agriculture is required to construct, install, modify, or operate a CAFO. ODA registers CAFO facilities to three (3) permit categories based on size, time of confinement and type of manure system. The smallest CAFOs that confine for less than four months (cumulative) during any 12-month period and have dry manure systems are typically exempt from permitting. Those animal feeding operations that are subject to federal regulation (40 CFR 122) are the medium and larger facilities that confine for 45 days or more. ODA offers on site educational reviews to assist operators with determining if their facility is a CAFO requiring permit registration.

PERMITS: GENERAL, INDIVIDUAL

CAFOs that are required to be permitted must apply for coverage under a general permit or an individual permit. Permits are distributed through the Natural Resources Division of the Oregon Department of Agriculture, 503-986-4700. CAFO permits are issued for a five-year term. The current permit was issued on August 15, 2003 with an expiration date of July 31, 2008. Most CAFOs will qualify for general permit coverage. The fee for general permit coverage is \$75, which includes a \$50 permit registration fee and a \$25 annual renewal fee. The renewal fee of \$25 is billed on an ongoing basis for the period beginning July 1 and ending June 30. Depending on size, type, and location, some CAFOs may require individual permits, which have higher fees and more stringent conditions for water quality protection. Potential developers of new CAFOs should contact the CAFO Program at the Oregon Department of Agriculture (503-986-4700) as early as possible in the planning process to determine permit requirements.

MANURE, LITTER AND PROCESS WASTEWATER CONTAINMENT SYSTEMS

Adequate wastewater storage shall be provided which is sufficient to store all manure, litter, and process wastewater during periods it cannot be safely applied to cropland without contaminating waters of the state by runoff, drainage, leaching, etc. All manure, silage pit drainage, wash down waters, contaminated precipitation and other wastewater shall be contained during winter months and distributed on land for utilization at agronomic application rates during crop growing months. Prior to constructing any wastewater control facilities, detailed plans and specifications must be approved in writing by the Oregon Department of Agriculture.

FINES

Oregon law (ORS 468.140) enables ODA to assess civil penalties for violation of the terms or conditions of a permit. A penalty of \$500 can be assessed any owner or operator of a CAFO who does not apply for a permit as required by law.

TECHNICAL ASSISTANCE

OREGON DEPARTMENT OF AGRICULTURE

Natural Resources Division

635 Capitol St. NE

Salem, OR 97301-2532

Phone503-986-4700

Webhttp://oregon.gov/ODA/NRD/cafo_front.shtml

Consultation and design of CAFO facilities, including dairy waste systems, feedlot systems, poultry sheds, AWMP preparation, and other operations, are available through local Soil and Water Conservation District offices, the USDA Natural Resources Conservation Service, and the OSU Cooperative Extension Service. These agencies, and the Oregon Dairy Farmers Association, also provide animal waste management planning services.

IMPORTANT INFORMATION

If wastewater management plans require construction of a pond with a dam or dike over 10 feet high, or with the holding capacity of more than 9.2 acre feet of water, the Oregon Water Resources Department (503-378-3739) must review and approve the plan before construction.

OTHER RESOURCES

The USDA Farm Services Agency offers cost sharing programs for construction of farm wastewater containment systems. For information about the cost sharing requirements, contact the state FSA Office, 503-692-6830, ext. 22.

DAIRY PRODUCTION

WHO MUST COMPLY?

ORS 621 (OAR 603-24-605 to 603-24-651) requires the Oregon Department of Agriculture to license and inspect grade A fluid milk production facilities to ensure food safety and consumer protection. The department requires submission of construction plans to meet specified standards and licensing of the facilities.

PERMITS AND LICENSES

A prospective milk producer must submit a construction plan for the milking facility to the Oregon Department of Agriculture, Food Safety Division, 635 Capitol St. NE, Salem OR 97301-2532 (503-986-4720), for approval. An inspection is required before production can begin. A license is also required for each facility (see fee schedule below).

INSPECTIONS

Dairy production or distribution facilities may be inspected from two to four times annually by ODA sanitarians. The sanitarian will not notify the producer before the visit. Inspections consist of a visual inspection of facilities and may include sampling of the milk and/or water. Repeat conditions which present health concerns may result in suspension of grade privileges. Adulterated product will be embargoed.

FEES

License fees relating to fluid milk are based on annual gross dollar volume of sales or services as follows:

Gross sales volume	Annual fee
\$0 - \$50,000	\$131
\$50,001 - \$500,000	\$183
\$500,001 - \$1,000,000	\$312
\$1,000,001 - \$5,000,000	\$468
\$5,000,001 - \$10,000,000	\$624
\$10,000,000+	\$780

TECHNICAL ASSISTANCE

OREGON DEPARTMENT OF AGRICULTURE

Food Safety Division

635 Capitol St. NE

Salem, OR 97301-2532

Phone503-986-4720

Web <http://oregon.gov/ODA/FSD>

OREGON STATE UNIVERSITY

Animal Science Department

Phone541-737-4926 or 541-737-3316

Food Science and Technology Department

Phone541-737-3463 or 541-737-6520

DISPOSING OF DEAD ANIMALS

Note: Also see the "Disposal of Solid Waste" section of this handbook.

Any dead domestic animal within ½ mile of any dwelling, or within ¼ mile of any running stream of water, must be disposed of within 15 hours. The owner may choose to bury it, burn it, move it farther from the dwelling or stream, or have it hauled away by a commercial rendering company or commercial carcass pickup service.

If buried, no part of the body shall be nearer than four feet to the natural surface of the ground and every part of such body shall be covered with quicklime (ORS 601.090(7)).

EXEMPTIONS

If the carcass is more than ¼ mile from a running stream of water or more than ½ mile from any dwelling, and on the owner's property, the owner is not required to take any action.

COMMERCIAL RENDERING COMPANIES

Any company that renders the remains of animals must be licensed by the Oregon Department of Agriculture (ORS 601.030). The department must inspect both the facility and all conveyances used by the company to haul carcasses. All are covered by the single \$50.00 annual fee. The license period runs from July 1 to June 30.

COMMERCIAL CARCASS PICKUP

Individuals who pick up dead animals to be hauled elsewhere for disposal must license each conveying vehicle used for hauling carcasses (ORS 601.080). The license period runs from July 1 to June 30; the fee is \$10.00 annually.

TECHNICAL ASSISTANCE

OREGON DEPARTMENT OF AGRICULTURE

Animal Health and Identification Division

635 Capitol St. NE

Salem, OR 97301-2532

Phone503-986-4680

EMERGENCY ANIMAL DISEASE PREPAREDNESS

An emergency animal disease (EAD), introduced accidentally by a traveler or intentionally by a terrorist, could have a devastating impact on our country's economy. Government agencies, livestock owners and veterinarians are increasing their preparedness in case of an EAD outbreak. Early detection to prevent spread of these very contagious diseases is critical to homeland security. Livestock owners and managers will see the signs of disease first. Recognizing those signs and making a quick decision to call for help can prevent catastrophe.

Signs of emergency animal diseases:

- sudden unexplained death, high fevers, or abortions
- blisters or sores in the mouth, or on the tongue, nose, teats, and feet
- slobbering and lameness
- staggering, falling, circling or other brain disorder type behaviors
- unusual ticks, maggots, or parasites.

TECHNICAL ASSISTANCE

If you notice any of these signs, call your veterinarian.

OREGON DEPARTMENT OF AGRICULTURE

State veterinarian

635 Capitol St. NE

Salem, OR 97301-2532

Phone503-986-4680

Web <http://oregon.gov/ODA/AHID>

US DEPARTMENT OF AGRICULTURE

Area veterinarian in charge

Phone503-399-5871

EXOTIC ANIMAL PERMIT

For purposes of public safety, state law defines exotic animals as any lion, tiger, leopard, cheetah, ocelot or any other cat not indigenous to Oregon (except domestic cats); nonhuman primates; any wolf or any canine not indigenous to Oregon (except domestic dogs); and any bear except the black bear.

Anyone wishing to hold one of these “exotic” animals must obtain an Exotic Animal Permit from the Oregon Department of Agriculture before obtaining the animal. Owners must also comply with any city or county ordinances, holding/facility requirements, testing, and inspections. Call ODA for exotic animal permits (503-986-4680).

The Oregon Department of Fish and Wildlife is involved with the oversight and regulation of some of these and other types of nonnative animals.

TECHNICAL ASSISTANCE

OREGON DEPARTMENT OF FISH AND WILDLIFE (ODFW)

3406 Cherry Ave. NE
Salem, OR 97303

Phone503-947-6000

Fax503-947-6009

E-mail.....odfw.Info@state.or.us

Web <http://www.dfw.state.or.us>

OREGON DEPARTMENT OF AGRICULTURE

State veterinarian

635 Capitol St. NE
Salem, OR 97301-2532

Phone503-986-4680

Web <http://oregon.gov/ODA/AHID>

IMPORTATION OF ANIMALS

WHO MUST COMPLY?

The importer is responsible for ensuring Oregon’s disease control requirements are met, including tests, vaccinations, and permits.

GENERAL IMPORT REQUIREMENTS

Oregon requires a certificate of veterinary inspection (CVI, ie. “health certificate”) issued less than 30 days prior to entry and an import permit for most mammals and most birds.

Dogs, cats, and most pet birds are exempt from the permit requirement. Pet birds shipped for commercial sale must have a CVI and an import permit.

All birds from any state with any area under quarantine for Exotic Newcastle Disease (END) must have a CVI issued no more than 24 hours prior to entry and an import permit. Poultry from within an END quarantine zone may not enter Oregon.

Tests and/or vaccinations may also be required. If testing is required, the CVI must include official ID for each animal tested, lab name and location, date sample was taken, accession number, and test results. Tests with results “pending” are not acceptable.

EXHIBITION ANIMALS

Livestock brought into the state of Oregon for shows, fairs, and competitions must meet regular requirements as a minimum. Call 503-986-4680 for details.

FAMILY PETS

- Cats and dogs
 - » Cats and dogs four months or older must have current rabies vaccination.
- Pet birds (psittacines, raptors, etc.)
 - » See “birds” section below. Pet poultry must meet poultry requirements.
- Pet pigs, project pigs, 4-H pigs, and show pigs
 - » All swine must meet the swine requirements (see below).
- Reptiles, amphibians, and fish
 - » Turtles imported for sale must be at least four inches across the carapace. ODA has no other requirements for importation of reptiles, amphibians, or fish. Check with local and county government agencies and the Oregon Department of Fish and Wildlife (503-872-5260) for their requirements for importing or holding these animals.

CATTLE OF US ORIGIN

BRUCELLOSIS VACCINATION

All female cattle (not bison) four months or older must have been officially vaccinated against brucellosis. Nonvaccinated females over vaccination age may only go directly to slaughter or to a registered dry feedlot for feeding and slaughter. Importer may apply for an exemption for nonvaccinated females over 12 months of age for breeding purposes, if they are of proven genetic advantage.

BRUCELLOSIS TEST

Brucellosis test is not required for cattle imported from “Brucellosis Class Free” states. One negative test less than 30 days prior to entry is required for cattle imported from “Class A” states.

TUBERCULOSIS TEST

Tuberculosis test is required for all female dairy cattle over six months of age. Tuberculosis test is not required for beef cattle imported from "TB accredited free" states. Call for details for cattle from states with less than "TB accredited free" status.

CATTLE FROM OUTSIDE THE US

Note: Call 503-986-4679 for requirements for cattle from outside the US.

Any cattle originating in Mexico or Canada must meet specific requirements based on the purpose of the shipment (e.g., feeding, breeding, or rodeo and recreation use). Call 503-986-4680 for details.

OTHER BOVINE

American bison are not required to have a brucellosis vaccination, but must have a negative test for brucellosis if eight months or older. Vaccinated females under 24 months of age are exempt from this test requirement. A negative TB test may be required for bison. Call 503-986-4680 for details.

Yak, water buffalo, cape buffalo, and other bovine species must have a negative test for brucellosis within 30 days prior to entry and a negative test for TB within 60 days prior to entry. Since current brucellosis vaccines are licensed only for cattle, vaccination against brucellosis is not recommended for these species.

HORSES, MULES, ASSES AND OTHER EQUINE

All equidae entering Oregon must have a certificate of veterinary inspection, an import permit number, and a negative test for equine infectious anemia (EIA) no more than six months prior to entry.

Exemption for

- nursing foals under six months of age which are traveling with negative tested dam.
- all Washington-resident horses.

SWINE

All porcine species (including "project" pigs, pet pigs, hunting boars, etc.) are included in the regulations for swine. The CVI must be issued less than 15 days prior to entry into Oregon and must state the swine have not been fed raw garbage and have not been vaccinated against pseudorabies. All breeder swine must have been vaccinated for erysipelas and leptospirosis according to vaccine manufacturer's directions. Feral swine may not be imported. Brucellosis testing requirements are based on official status of state or herd of origin. Call 503-986-4679 for details.

ODA follows United States Department of Agriculture, Uniform Methods and Rules for eradication of these diseases.

SHEEP AND GOATS

Statement on CVI from issuing veterinarian must state, "These animals have no known exposure to scrapie."

EXOTICS, WILDLIFE, AND NONTRADITIONAL LIVESTOCK

BISON

- Brucellosis vaccination is not required.
- Brucellosis test is required, regardless of status of state of origin, less than 30 days prior to entry for nonvaccinated bison (male or female) eight months or older and for vaccinated females over 24 months.
- Tuberculosis test is not required if from "TB accredited free" state. One negative test for TB required less than 60 days prior to entry if from less-than "TB accredited free" state.

CAMELIDS - INDIVIDUAL IDENTIFICATION IS REQUIRED.

- Llama, alpaca, vicuna, and guanaco
 - » No testing is required.
- Camels, bactrian or dromedary
 - » Brucellosis test is required less than 30 days prior to entry.
 - » Tuberculosis test is required less than 60 days prior to entry.

CERVIDAE

Importation of cervidae is prohibited by the Oregon Department of Fish and Wildlife. For further information call 503-872-5260.

OTHER (WATER BUFFALO, YAK, ANTELOPE, ETC.)

- Brucellosis vaccination is not required.
- Brucellosis test is required less than 30 days prior to entry.
- Tuberculosis test is required less than 60 days prior to entry.

BIRDS ORIGINATING FROM STATES WITH NO AREA UNDER QUARANTINE FOR EXOTIC NEWCASTLE DISEASE

PET BIRDS

- No CVI or permit is required for family pet birds. Pet poultry must meet poultry requirements.
- Pet birds imported for sale must have CVI and import permit.

POULTRY

- Avian species eligible for the National Poultry Improvement Plan (NPIP) (except ratites) must have a CVI, permit, and a negative test for pullorum disease.
- Poultry (except ratites) from NPIP flocks may be shipped direct from farm of origin on USDA Form VS 9-3 with no other requirements.

RATITES

- Ratites must have a CVI, permit, and negative tests for pullorum disease and avian influenza.
- Each bird must have permanent identification (leg band, wing band, or microchip) that must be listed on the CVI.
- Isolate and observe for disease for 14 days after arrival.
- Ratites from NPIP flocks are exempt from the pullorum test but must meet all other requirements.

BIRDS ORIGINATING FROM ANY STATE WITH ANY AREA UNDER QUARANTINE FOR EXOTIC NEWCASTLE DISEASE

FROM AREAS UNDER QUARANTINE

- Poultry from areas under quarantine may not enter Oregon. No exceptions.
- Nonpoultry from areas under quarantine: Call 503-986-4679 for requirements.

FROM AREAS OUTSIDE THE QUARANTINE

- Poultry from outside the quarantined areas must have
 - » a CVI issued no more than 24 hours prior to entry.
 - » a negative test for pullorum disease completed no more than 30 days prior to entry. (Poultry from NPIP flocks are exempt from the pullorum test but must meet other requirements.)
 - » The veterinarian issuing the CVI must call the Office of the State Veterinarian (503-986-4679) for an import permit. Additional requirements apply to ratites.
- Nonpoultry from outside the quarantined areas must have a CVI issued no more than 24 hours prior to entry.
 - » The veterinarian issuing the CVI must call Office of the State Veterinarian (503-986-4679) for an import permit.

INTERNATIONAL IMPORTS

Contact the USDA Animal and Plant Health and Inspection Service in Maryland at 301-734-8364, for information on importing animals from outside the US.

TECHNICAL ASSISTANCE

OREGON DEPARTMENT OF AGRICULTURE

State veterinarian

635 Capitol St. NE

Salem, OR 97301-2532

Phone503-986-4680

Web.http://oregon.gov/ODA/AHID/animal_health/main.shtml

INTERSTATE MOVEMENT OF CATTLE AND PASTURE TO PASTURE PERMITS

WHO MUST COMPLY?

Anyone shipping cattle across state lines must ensure those cattle meet both state and federal requirements. This usually includes obtaining a certificate of veterinary inspection (CVI, ie. "health certificate") and may include brucellosis testing for test-eligible cattle. Contact state of destination for details of tests or other requirements.

PASTURE TO PASTURE PERMIT OPTION

A special Pasture to Pasture Program exists for shipping cattle interstate for grazing purposes without a change of ownership. All cattle on the pasture to pasture permit must be returned to the state of origin after the grazing season.

The requirements for brucellosis testing, certificate of veterinary inspection, and import permit number may be waived if the owner applies for and receives a pasture to pasture permit before movement across state lines. This would apply whether the cattle are moving from Oregon to another state for pasture and returning to Oregon, or moving from another state to Oregon for pasture and returning to that state at the end of the grazing season. Cattle moved on a pasture to pasture permit may not commingle with other cattle while out of state.

APPLICATION PROCESS

The owner must apply for pasture to pasture permit to the department of agriculture in the state of origin at least two weeks before the proposed movement. The application is checked for completeness and approved by the department. After approval by the state of origin, the application is forwarded to the state of destination for approval. After approval by both states, a copy is forwarded to the owner and the animals may be shipped.

RECORD KEEPING

A copy of the approved pasture to pasture permit must accompany each shipment of cattle. The department keeps

records of previous years' pasture permits for comparison with current applications.

RESTRICTIONS

The pasture to pasture permit is valid for a maximum of eight months, this period of time may vary depending on the state of destination. Check with the department of agriculture in the destination state for details. Any deviation from the permit must have prior approval from the respective state department of agriculture.

TECHNICAL ASSISTANCE

OREGON DEPARTMENT OF AGRICULTURE

Animal Health and Identification Division

635 Capitol St. NE

Salem, OR 97301-2532

Phone503-986-4680

E-mail..... ahid-office-manager@oda.state.or.us

Web .http://oregon.gov/ODA/AHID/livestock_id/main.shtml

