

AG PLAN & YOU



2020 EDITION

Acknowledgements

The Alabama Farmers Federation is proud to offer you a revised electronic version of *Ag Law and You*. Previous editions proved to be a widely used and welcomed reference for Alabama farmers. The production of an agriculture law book was requested by many in farming as a guide to help prevent them, as users, from violating the laws of the State of Alabama as they went about their daily course as farmers. Please note that *Ag Law & You* is not comprehensive but is intended as a helpful guide.

Mr. John Allen Nichols served as an intern with the Alabama Farmers Federation from Jones School of Law and was the coordinator for the electronic publication, working in conjunction with the Federation's Department of Governmental and Agricultural Programs. We hope the addition of charts and hyperlinks, as well as new information, will make this a source of quick reference to legal questions you may encounter on your farms.

We also join the farmers of Alabama in expressing a word of appreciation to the many state agencies, including the Alabama Department of Agriculture and Industries, Alabama Department of Conservation & Natural Resources, Alabama Department of Economics & Community Affairs, Alabama Department of Environmental Management, Alabama Department of Labor, Alabama Department of Public Safety, Alabama Department of Revenue, and the Office of Water Resources. It is the hope of everyone involved in this project that this resource can serve as an educational tool to help the agricultural community comply with the laws by referencing *Ag Law and You*.

Jimmy Parnell, President
Alabama Farmers Federation
January, 2018

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Recompiled in 2018 by John Allen Nichols.

A Guide to Using Ag Law and You: Frequently Asked Questions

This book is compiled in chapters resulting from questionnaires and inquiries received from active members of the Alabama Farmers Federation. The chapter topics include agricultural labor, animal liability & livestock, environmental law, estate planning, licenses and sales taxes for sales of farm products, operation of vehicles and equipment, property, and hunting & wildlife.

This book was originally the product of an idea developed at the annual meeting of the Alabama Farmers Federation in Mobile in December 1999, when the membership approved the following resolution: “It is recommended that we publish a handbook to help farmers stay abreast of current laws and regulations...but not be limited to requirements for operating ‘slow moving vehicles’... a brief summary of livestock laws... regulations for hauling oversized loads... child labor pertaining to farmers.” This publication is an outgrowth of that resolution.

Selected agricultural law topics of greatest interest to farmers or legal questions that come up most often in the day-to-day operation of farms are listed herein. The questions are listed in eight chapters for a quick reference by general subject matter. Responses to these Frequently Asked Questions (FAQs) are contained within this handbook and are searchable within this electronic document.

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Chapter One

Agricultural Labor Law

Federation Staff: Hunter McBrayer

What type of liability insurance do I need on farm workers?

Under Federal law, a farm labor contractor, agricultural employer, or agricultural association shall not transport any migrant or seasonal agricultural worker or his property in any vehicle the contractor, employer, or association owns, operates, controls, or causes to be operated unless he has an insurance policy or liability bond in effect which insures against liability for damage to persons or property arising from ownership, operation, or causing to be operated of such vehicle 29 CFR 500.120.

While other types of insurance may not be required, farmers may want to consider additional types of insurance to limit their exposure to possible losses.

Generally, the owner or lessor of the vehicle will be responsible for providing the required insurance. The insurance requirements do not apply to vehicles involved in carpooling arrangements made by the workers themselves, using one of the workers' own vehicles and not specifically directed nor requested by an agricultural employer or agricultural association. However, carpooling does not include any transportation arrangement in which a farm labor contractor participates. Activities exempt from transportation safety standards are also exempt from insurance requirements 29 CFR § 500.103.

Am I required to have workers' compensation insurance for farm workers?

Pursuant to Ala. Code § 25-5-50(a), employers of farm labor are not required to carry worker's compensation insurance.

Am I required to have unemployment compensation for farm workers?

Under federal and state law, agricultural labor is considered "exempt" from the requirement of unemployment compensation. 26 U.S.C.A. § 501.

What is the H-2A Certification for temporary or seasonal agricultural work?

[H-2A Program Overview](#)

According to 8 U.S.C. 1188 & 20 C.F.R. 655.100-.199, the H-2A program establishes a means for agricultural employers anticipating a shortage of domestic workers to bring nonimmigrant foreign workers to the U.S. to perform agricultural labor or services of a temporary or seasonal nature. Employment is of a seasonal nature where it is tied to a certain time of year by an event or pattern, such as a short annual growing cycle or a specific aspect of a longer cycle, and requires labor levels far above those necessary for ongoing operations. Employment is of a temporary nature where the employer's need to fill the position with a temporary worker will, except in extraordinary circumstances, last no longer than one year.

Recruitment: The employer must agree to engage in independent positive recruitment of U.S. workers. This means active effort, including newspaper and radio advertising in areas of expected labor supply. Such recruitment must be at least equivalent to that conducted by non-H-2A agricultural employers in the same or similar crops and area to secure U.S. workers. This must be an effort independent of and in addition to the efforts of the Office of Workforce Development. In establishing worker qualifications and/or job specifications, the employer must designate only those qualifications and specifications which are essential to carrying out the job and which are normally required by other employers who do not hire foreign workers.

Wages: The wage or rate of pay must be the same for U.S. workers and H-2A workers. The hourly rate must also be at least as high as the applicable Adverse Effect Wage Rate (AEWR), federal or state minimum wage, or the applicable prevailing hourly wage rate, whichever is higher. The AEWR is established every year by the U.S. Department of Labor. Employers should consult with the [Alabama Department of Labor](#) or the [U.S. Department of Labor's](#) regional office to determine the rate.

If a worker will be paid on a piece-rate basis, the worker must be paid the prevailing piece-rate as determined by the Alabama Department of Labor. If the piece rate does not result in average hourly piece-rate earnings during the pay period at least equal to the amount the worker would have earned had the worker been paid at the hourly rate, then the worker's pay must be supplemented to the equivalent hourly level. The piece rate offered must be no less than what is prevailing in the area for the same crop and/or activity.

Housing: The employer must provide free housing to all workers who are not reasonably able to return to their residences that same day. Such housing must be inspected and approved according to appropriate standards. Housing provided by the employer shall meet the full set of U.S. Department of Labor Occupational Safety and Health and Administration (OSHA) standards set forth at 29 CFR 1910.142 or the full set of standards at 654.404-645.417. Rental housing, which meets local or state health and safety standards, also may be provided as housing.

Meals: The employer must either provide three meals a day to each worker or furnish free and convenient cooking and kitchen facilities for workers to prepare their own meals. If meals are provided, then the employer may charge each worker a certain amount per day for the three meals.

Transportation: The amount of transportation payment shall be no less (and not be required to be more) than the most economical and reasonable similar common carrier transportation charges for the distances involved. The employer is responsible for the following different types of transportation of workers: (1) After a worker has completed fifty percent of the work contract period, the employer must reimburse the worker for the cost of transportation and subsistence from the place of recruitment to the place of work if such cost were borne by the worker. (2) The employer must provide free transportation between the employer's housing and the work site for any worker who is provided housing. (3) Upon completion of the work contract, the employer must pay economical costs of a workers' subsistence and return transportation to the place of recruitment. Special conditions apply when the worker will not be returning to the place of recruitment because of another job. If the employer must advance transportation costs to foreign workers or provide transportation, the employer must advance such costs or provide

transportation to U.S. workers as well. In addition, if it is prevailing practice in the occupation to provide transportation, the employer must provide transportation to U.S. workers as well.

Workers' Compensation Insurance: The employer must provide workers' compensation insurance where it is required by state law. Where state law does not require it, the employer must provide equivalent insurance for all workers. Alabama does not require worker's compensation insurance for agricultural employees, based on the Department of Labor's definition of agriculture. Proof of insurance coverage must be provided to the regional administrator before certification is granted.

Tools and supplies: The employer must furnish at no cost to the worker all tools and supplies necessary to carry out the work, unless it is common practice in the area and occupation for the worker to provide certain items.

Three-Fourths Guarantee: The employer must guarantee to offer each worker employment for at least three-fourths of the workdays in the work contract period and any extensions. If the employer affords less employment, then the employer must pay the amount which the worker would have earned had the worker been employed the guaranteed number of days.

Labor Dispute: The employer must assure that the job opportunity for which H-2A certification is being requested is not vacant because the former occupant is on strike or is being locked out in the course of a labor dispute.

Certification Fee: A fee will be charged to an employer granted temporary foreign agricultural labor certification. You will receive a Final Determination letter, a certified ETA Form 9142 and Appendix A.2, and an invoice requiring payment for fees associated with processing your application (\$100) and the number of workers certified (\$10 per worker), the total of which will not exceed \$1,000.

Other Conditions: The employer must keep accurate records with respect to a worker's earnings. The worker must be provided with a complete statement of hours worked and related earnings on each payday. The employer must pay the worker at least twice monthly or more frequently if it is the prevailing practice to do so. The employer must provide a copy of a work contract or the job order to each worker.

[H-2A Program Overview Website](#)

How do I apply for H-2A, temporary agricultural labor certification?

[Employer Guide to Participation in the H-2A Temporary Agricultural Program](#)

Before requesting H-2A classification from U.S. Citizenship and Immigration Services, the employer must apply for and receive a temporary labor certification for H-2A workers with the U.S. Department of Labor. The U.S. Department of Labor (DOL), Office of Foreign Labor Certification (OFLC) issues H-2A temporary labor certifications. The OFLC must determine that there will not be U.S. workers who are able, willing, and qualified at the time and place needed to perform the agricultural labor or services. In addition, the OFLC must determine that the

employment of the foreign worker in such agricultural labor or services will not adversely affect the wages and working conditions of workers in the U.S. similarly employed.

The first step in the application process is filling a job order with the Alabama Department of Labor.

Alabama Department of Labor
649 Monroe Street
Montgomery, AL 36131
(334) 242-8020
(334) 324-1706 CELL
(334) 242-8585 FAX
mike.grier@alcc.alabama.gov

To begin the process, you will need to submit an [ETA Form 790 Agricultural and Food Processing Clearance Order](#) to the Alabama Department of Labor. You will have to include with the ETA Form 790 several attachments that explain the benefits, wages, and working conditions of the job. A written note or cover letter must also be submitted along with the ETA Form 790 that states that the job order will be used in connection with a future H-2A application. The note or cover letter should also request that the Alabama Department of Labor schedule an inspection of housing that will be provided to the workers. This segment of the application must be filed with the Alabama Department of Labor no more than 75 days and no less than 60 calendar days before the first day you will need the workers.

If the Alabama Department of Labor finds any deficiencies, you will be notified within seven calendar days of receiving your application and you will have five calendar days to respond and correct any deficiencies once you are notified. Upon acceptance of the agricultural job order, the Department of Labor will place a copy of your job order in its clearance system and begin recruitment of U.S. workers. At this point, you will be expected to cooperate with the Department of Labor by accepting referrals of eligible U.S. workers who apply for the job.

The second step in the application process is completing and filing the following items: An [ETA Form 9142 Application for Temporary Employment Certification](#) (instructions can be found at [Form 9142 General Instructions](#); an [Appendix A.2 Form](#); a copy of the [ETA Form 790 Agricultural and Food Processing Clearance Order](#); and a copy of all the attachments that were submitted to the Alabama Department of Industrial Relations. The Office of Foreign Labor Certification must receive the application package at least 45 calendar days before the first day you need the workers. Application packages should be sent to the following address:

U.S. Department of Labor - Attention: H2A Program Unit
Employment and Training Administration
Office of Foreign Labor Certification
Chicago National Processing Center
11 West Quincy Court
Chicago, IL 60604-2105

The third step in completing the application process is voluntary recruitment of U.S. workers. After receiving a Notice of Acceptance, you will need to recruit U.S. Workers on your own in addition to the recruitment conducted by the Alabama Department of Labor. Read your Notice of

Acceptance carefully as it will contain specific instructions that you will need to follow including when and where to advertise, what content the advertisements must contain, and how to prepare your recruitment report. Conducting good faith recruitment and determining whether there are insufficient eligible U.S. workers that will meet your need, at least temporarily, is a critical factor in the decision process of whether the Chicago NPC will grant a temporary labor certification. You will then be required to submit a recruitment report that gives a detailed report of the steps taken to recruit U.S. workers and the results of that recruitment. Employers are required to maintain and update the recruitment report through fifty percent of the contracted work time period.

The fourth step is completing the temporary labor certification process. In order to grant a temporary labor certification, the Chicago NPC must determine that there are insufficient U.S. workers to meet your need and the employment of H-2A workers will not adversely affect the wages and working conditions of workers in the U.S. similarly employed. This determination is based upon a favorable review of your recruitment report, the terms, and conditions of your job order and H-2A application, and other required documentation guaranteeing certain protections to employed workers.

In order to receive a final determination on your H-2A application, the Notice of Acceptance will request that the following documents be submitted by you and/or the Alabama Department of Labor:

Recruitment Report: A detailed report of the steps taken to recruit U.S. workers and the results of that recruitment.

Alabama Department of Labor Housing Certification: A statement or certification submitted by the Alabama Department of Labor on your behalf that the proposed housing meets the applicable standards and has sufficient capacity to house the number of workers requested. If rental housing or other public accommodations will be provided to workers, you (not the Alabama Department of Labor) must provide documentation that the housing complies with the applicable local and Federal standards.

Workers' Compensation Coverage: A copy of your workers' compensation insurance policy, which must be in compliance with State law or, in the event of an exemption from State law, coverage benefits at least equal to those provided under the State workers' compensation law for other comparable employment. The employer must provide proof of coverage including the name of the insurance carrier, the insurance policy number, and proof of insurance for the period of need stated on the application, or, if appropriate, proof of State law coverage.

Once this step is completed and approved, you are ready to file an I-129 with the USICS for H-2A classification.

Internet Resources on the H-2A Program:

[Employer Guide to Participation in the H-2A Temporary Agricultural Program](#)

[H-2A Program Overview](#)

[List of State Workforce Agencies and National Processing Centers](#)

USICS Classification Information:

[U.S.I.C.S. H-2A Program page](#)

[I-129 Form](#)

[I-129 Checklist](#)

What are the legalities of working immigrant laborers relative to ID cards and housing?

With respect to ID cards, each employer must verify that each new employee is legally eligible to work in the United States. This includes completing the Immigration and Naturalization Service I-9 Form, Employment Eligibility Verification. Employees are required to fill out section one of the I-9 form on their first day of work for pay. Employers must complete section 2 of the I-9 form no later than three business days of the first workday for pay. For example, if an employee starts work on Monday, the Employer must complete section two by Thursday. The employee must present to you an original document or documents that show his or her identity and employment authorization within three business days of the date employment begins. Employers must keep I-9 forms on file for at least three years or one year after the employment ends, whichever is longer. The employee may present either one document from [List A](#) or a combination of documents, one from [List B](#) and one from [List C](#). Employers cannot ask the employee to produce more documents than required by the INS Form I-9. In addition, the employer must honor documents offered by the employee that appear to be genuine when the employer does not know to a certainty that the documents are false. Beginning April 2012, employers in Alabama must verify their employees' legal presence by using the E-Verify System [Alabama's E-Verify Website](#). Alabama businesses with less than 25 employees may elect use the Alabama E-Verify Employer Agent Service. Businesses that employ more than 25 employees must enroll with the [Federal E-Verify](#).

[Handbook for Employers - Instructions for Completing Form I-9](#)

With respect to housing, Title 29 U.S.C. §1823, entitled “Safety and Health of Housing,” provides that each person who owns or controls a facility or real property which is used as housing for migrant agricultural workers shall be responsible for obtaining a Certificate of Housing Inspection based on compliance with applicable safety and health standards. The U.S. Department of Labor can complete the initial certification. However, the request for inspection must be made at least 45 days prior to the date on which the farmer wishes to house migrant agricultural workers. A farmer may renew his Certificate of Housing Inspection by completing and returning a Housing and Safety Checklist obtained from the U.S. Department of Labor. The Alabama Department of Labor should also be consulted because that department administers the inspection for the U.S. Department of Labor when temporary workers are being housed.

What safety devices are required for employees operating farm equipment and machinery?

As authorized by the Occupational Safety and Health Act (OSHA), the U.S. Department of Labor has established specific duties for employers to furnish employees a place of employment free from recognized hazards that can cause death or are likely to cause death or serious physical harm. Each employee also has a duty, under the law, to comply with standards, rules, and regulations issued by OSHA that apply to his or her own actions and conduct.

Every employer is subject to OSHA coverage, unless specifically exempt, as authorized by U.S. Department of Labor regulations. Coverage of agricultural employment is mitigated by two exemptions:

- 1) Members of the farm employer's immediate family are not considered to be employees and are excluded from OSHA coverage.
- 2) Congress has usually attached riders to annual appropriation bills for the U.S. Department of Labor that exclude workers in agricultural operation employing 10 or fewer workers (not including family members) on any one day. Farmers should be aware, however, that this is a year-to-year exemption granted by Congress. This exemption will not be granted if a "temporary labor camp" (housing for seasonal or temporary employment) has been maintained at any time in the past 12 months.

OSHA regulations, rules, standards, and orders cover agricultural employment that does not meet the criteria for either of the two previous exemptions.

In addition to other requirements, agricultural employers covered by the OSHA law must meet the following standards applicable to farm machinery and equipment:

- Safety requirements for slow moving vehicles
- Roll-over protective structures for tractors used in agricultural operations
- Safety devices for farm field equipment, including tractors, farmstead equipment, and cotton gins
- Rules governing storage and handling of anhydrous ammonia
- Post notices informing employees of OSHA protections and obligations and how to get copies of the OSHA act or specified standard
- Instruct employees, at the time of initial assignment, in the safe operation and servicing of all equipment with which the employee will be involved
- Agricultural employers who have a logging operation must provide specific training and protective equipment, tools and equipment to employees

OSHA provides intricate details on guards required for tractor power takes-offs (PTO), gears, chains, pulleys, sprockets, shafts, augers and other moving parts of equipment that are stationary, tractor-drawn, or self-propelled if the equipment is hazardous to employees (OSHA Regulations Standards-29, Guarding of Farm Field Equipment, Farmstead Equipment, and Cotton Gins (1928)).

Numerous other federal laws and regulations governing employee protection and working conditions may affect agricultural employers who are not specifically exempt. A general understanding of federal laws affecting agriculture may be obtained from a USDA publication, "Summary of Federal Laws and Regulations Affecting Agricultural Employers, 2000," *Agricultural Handbook No. 719*, which can be ordered by dialing 1-800-999-6779.

The Handbook can also be found at <https://www.ers.usda.gov/publications/pub-details/?pubid=41947>

Alabama state laws also require employers, including agricultural employers, to provide safe working conditions for employees. Moreover, they provide for employer liability where an employee is injured or killed due to a defect in equipment or negligence on the part of the employer or any of his employees who were acting on orders, rules, or instructions from the employer. Ala. Code § 25-5-31 and § 25-6-1. Farm laborers are not covered under Alabama Worker's Compensation law unless the agricultural employer elects to become subject to the law. Ala. Code § 25-5-50. Additional information on agricultural employer's responsibilities related to worker protection may be obtained from the following sources:

Alabama Department of Labor
649 Monroe Street
Montgomery, Alabama 36131
Phone: (334) 242-8055

U.S. Department of Labor
Atlanta Federal Center
61 Forsyth St. SW, Suite 6875
Atlanta, GA 30303
Phone: (404) 893-4541

U.S. Department of Labor
ESA Office of Public Affairs
200 Constitution Ave., NW
Room S-3325
Washington, DC 20210
Phone: (866) 487-2365

U.S. Department of Labor
1-800-4US-WAGE
Internet Address
<http://www.dol.gov>

Am I required to provide a restroom or hand-washing facility for my field laborers?

Regulations for minimum field sanitation standards are established under the Occupational Safety and Health Act (OSHA), and they are enforced by the Wage and Hour Division of the U.S. Department of Labor. In general, the field sanitation standards apply to any agricultural establishment employing eleven or more workers on any one day during the previous twelve months, to perform hand labor fieldwork. This includes hand-cultivation, hand weeding, hand planting, hand harvesting of crops such as vegetables, nuts, fruits, seedlings, and mushrooms, hand packing of produce in the field into containers, and reforestation work. Hand labor does not include care or feeding of livestock or hand labor in permanent structures such as packinghouses or other forestry operations such as logging.

The following must be provided to meet minimum field sanitation requirements for eleven or more workers on any one day during the previous twelve months (Fact Sheet #51: Field Sanitation Standards under OSHA, U.S. Department of Labor):

- Potable drinking water, suitably cool and in sufficient amounts, dispensed in single-use cups or a fountain, located in a place readily accessible to all employees.
- One toilet and hand washing facility for every twenty employees who work more than three hours each day, located within a quarter-mile walk. Facilities must meet public health sanitation requirements.
- Notification must be given to all employees of the location of the facilities and employees must be given reasonable opportunities during the day to use them.

See poster here: <https://www.dol.gov/whd/regs/compliance/whdfs51.pdf>

For more information on Field Sanitation Standards, contact the U.S. Department of Labor, Wage and Hour Division at 1-800-4US-WAGE.

What Department of Labor Poster am I required to place in my workplace?

The U.S. Department of Labor requires that employers give their employees notices of certain laws and regulations by displaying readily observable posters in the workplace. Employers must use official DOL posters that are available online. Posting requirements vary by statute and not all employers are required to post a specific notice. The DOL Poster Advisor helps employers determine which posters apply to their business, and it allows the posters to be downloaded for free. The Poster Advisor can be found at <http://www.dol.gov/elaws/posters.htm>. Some states also require posters to notify employees of state laws. Check with the State Department of Labor for information on state requirements.

Alabama Department of Labor
649 Monroe Street
Montgomery, AL 36131
334-242-8055
<https://www.labor.alabama.gov/>

Do I have to withhold taxes for day labor?

Employment taxes fall into three separate categories:

- 1) Federal Unemployment Tax (FUTA)
- 2) Social Security and Medicare Taxes (FICA)
- 3) Income Tax

Eligibility test for FUTA: As a general test, you are subject to FUTA tax on the wages you pay employees who are not farm workers or household workers if either of the following conditions is met:

- You paid wages of \$1,500 or more in any calendar quarter in 2016 or 2017.
- You had one or more employees for at least some part of a day in any 20 or more different weeks in 2011 or 20 or more different weeks in 2012.

See <http://www.irs.gov/pub/irs-pdf/p15.pdf>, Section 14 for general information on the 2017 FUTA Taxes.

The farm worker test specifies you are subject to FUTA on the wages you pay to farm workers if either of the follow is met:

- You paid cash wages of \$20,000 or more to farm workers during any calendar quarter in 2016 or 2017.
- You employed ten or more farm workers during at least some part of a day (whether or not at the same time) during any twenty or more different weeks in 2016 or 20 or more different weeks in 2017.

See https://www.irs.gov/publications/p51#en_US_2017_publink1000195653 for more information on taxes that apply to agricultural employers.

Eligibility test for Social Security, Medicare taxes, and income taxes: Social Security taxes, Medicare taxes, and income tax withholding apply to all cash wages paid to employees for farm work. A farmer is liable for these employment taxes if there are one or more agricultural employees—including a spouse, parents, or children age 18 or over—and if one of the following conditions is met:

- The farmer has paid the employee \$150 or more in cash wages during the calendar year.
- The farmer has paid at least \$2,500 in total wages for all farm labor during the year.

There is an exception to the above conditions. Wages paid to a seasonal farm worker who receives less than \$150 in annual cash wages are not subject to employment taxes, even if the farmer-employer pays \$2,500 or more in that year to all farm workers if the farm worker

- Is employed as a hand-harvest laborer (for example, fruit, and vegetable pickers).
- Is paid by the piece in an operation that is usually paid on a piece-rate basis in the region of employment.
- Commutes daily from his or her home to the farm.
- Was employed in agriculture less than 13 weeks in the preceding calendar year.

However, wages paid to these workers are used in considering the \$2,500 or more test, for determining the employment tax coverage of other farm workers.

A farmer may employ a crew leader who provides workers and pays their wages for the agricultural services performed. If there is no written agreement specifying that the crew leader is the farmer's employee and if the crew leader pays the farm workers on his or her own behalf or on behalf of the farmer, then the crew leader is the employer. As such, he is responsible for withholding and paying the employment taxes on the workers' wages.

In addition to withholding Medicare tax at 1.45%, you must withhold a 0.9% Additional Medicare Tax from wages you pay to an employee in excess of \$200,000 in a calendar year. You are required to begin withholding Additional Medicare Tax in the pay period in which you pay wages in excess of \$200,000 to an employee and continue to withhold it each pay period until the end of the calendar year. Additional Medicare Tax is only imposed on the employee. There is no employer share of Additional Medicare.

Social security and Medicare taxes apply to most payments of sick pay, including payments made by third parties such as insurance companies. For details, see [Publication 51-A](#).

Federal Income Taxes

Farmers and crew leaders must withhold federal income tax from the wages of farm workers if the wages are subject to social security and Medicare taxes. The amount to withhold is figured on gross wages before taking out social security and Medicare taxes, union dues, insurance, etc. You may use one of several methods to determine the amount of federal income tax withholding. They are discussed in [Section 13](#).

Form W-4

To know how much federal income tax to withhold from employees' wages, you should have a Form W-4 on file for each employee. Encourage your employees to file an updated Form W-4 for the current year, especially if they owed taxes or received a large refund when filing their previous tax return. Advise your employees to visit the IRS website at <http://www.irs.gov/Individuals/IRS-Withholding-Calculator> and select the "IRS Withholding Calculator" link for help in determining how many withholding allowances to claim on their Form W-4.

Ask each new employee to give you a signed Form W-4 when starting work. Make the form effective with the first wage payment. If a new employee does not give you a completed Form W-4, withhold tax as if he or she is single, with no withholding allowances.

What is the minimum age for agricultural workers?

The Fair Labor Standards Act (FLSA) establishes Federal Child Labor Rules. This Act establishes minimum wage, overtime pay, recordkeeping, and child labor rules affecting full and part time workers in the private sector and in the federal, state, and local governments. The FLSA establishes minimum ages for covered employment in agriculture unless a specific exemption applies. Employees of farms are subject to FLSA's child labor provisions if they are individually engaged in interstate commerce or in the production of goods for interstate commerce. An employee shall be deemed to have been engaged in the production of goods if such employee was employed in producing, manufacturing, mining, handling, transporting, or in any other manner working on such goods, or in any closely related process or occupation directly

essential to the production thereof. In addition, all employees of a farm are covered under the FLSA on an enterprise basis if the annual gross volume of sales made or business done by the enterprise that owns the farm is not less than \$500,000 (exclusive of excise taxes at the retail level that are separately stated) and if the enterprise employs workers engaged in commerce, or the production of goods for commerce, or who handle goods that have moved in commerce. Such covered employees include workers employed directly by the farmer, or by a covered contractor hired by the farmer, who

- Cultivate the soil or grow or harvest crops.
- Raise livestock, bees, fur-bearing animals, or poultry.
- Perform work which is incidental to the farming operations of that farm (such as threshing grain grown on that farm).
- Work off the farm as employees of the farmer performing work, which is incidental to the farming operations of that farm (such as delivering produce to market by truck).

Young entrepreneurs who cut their neighbor's lawn or perform babysitting on a casual basis for farmers are not covered under the FLSA.

Federal Age Restrictions:

- Minors of any age may be employed by their parents at any time in any occupation on a farm owned or operated by their parent(s).
- Minors who are at least 16 years of age may perform any farm job, including agricultural occupations declared hazardous by the Secretary of Labor, at any time, including during school hours.
- Fourteen-years-old is the minimum age for employment outside of school hours in any agricultural occupation except those declared hazardous by the Secretary of Labor.
- A minor 12 or 13 years of age may be so employed with written consent of the parent or person standing in place of the parent, or may work on a farm where such parent or person is also employed.
- Minors under 12 years of age may be employed outside of school hours with parental consent on a farm where employees are exempt from the Federal minimum wage provisions.
- Under Section 13(a)(6)(A) of the FLSA, any employer in agriculture who did not utilize more than 500 "man days" of agricultural labor in any calendar quarter of the preceding calendar year is exempt from the minimum wage and overtime pay provisions of the FLSA for the current calendar year. A "man day" is defined as any day during which an employee performs agricultural work for at least one hour.

For additional information, as well as the above information, see <http://www.dol.gov/whd/regs/compliance/childlabor102.pdf> or [Federal Agricultural Youth Employment Information](#)

Alabama Child Labor Restrictions:

Generally, Alabama's Child Labor restrictions do not apply to agricultural operations, which are wholesale operations. Agricultural operations that are retail oriented, such as nurseries that sell products to the general public in a retail setting rather, are subject to the Alabama Child Labor Restrictions. Additionally, the state restricts minors of certain ages from performing specific

tasks or engaging in specific occupations. Prohibited tasks and occupations are listed in this section.

For occupations that are not agricultural, employers are required to obtain a Child Labor Certificate in order to employ minors. A Class I Certificate is required if employing 14 or 15-year-olds, and a Class II Certificate is required if employing 16 or 17-year-olds. Each location of a business employing minors must obtain the proper certificate(s) in order to employ minors. The cost of the Child Labor Certificates is \$15 each and shall be renewed annually. However, those who employ minors in agricultural services are not required to obtain a Child Labor Certificate.

If you are required to obtain a Child Labor Certificate, an application can be applied for at https://www.alabamainteractive.org/child_labor_certificate/welcome.action

Occupation Restrictions:

No person under 18 years of age shall be permitted to work in any place or occupation, which the Alabama Department of Labor may declare dangerous to life or limb or injurious to the health or morals of persons under 18. There are 25 specifically prohibited occupations. Minors under 18 are prohibited from the following occupations:

- 1) In or about or in connection with any mine, coke breaker, coke oven, or quarry in any capacity.
- 2) In wrecking, demolition, and ship-breaking.
- 3) In any tunnel or excavation with a depth of four feet or more.
- 4) In any roofing, scaffolding, or sandblasting operations.
- 5) Operating or driving any truck or heavy equipment over three tons gross weight.
- 6) In logging or around any sawmill, lath mill, shingle, or cooperage-stock mill.
- 7) Operating any power-driven woodworking, bakery, or paper products machinery.
- 8) Upon any steam, electric, diesel, hydraulic, or other railroad.
- 9) As firefighters.
- 10) Operating any stamping machines used in sheet metal or tin ware, or in paper or leather manufacturing, or washer or nut factories.
- 11) In or around any steam boiler or rolling mill machinery.
- 12) Operating any power-driven metal forming, cutting, straightening, drawing, punching, or shearing machines.
- 13) Operating or assisting in operating any elevators, open freight elevators, cranes, derricks, or other power-driven hoisting apparatus, with the exception of an unattended automatic passenger elevator.
- 14) Operating any paper cutting, stapling, corrugating, or punching machines.
- 15) Assembling, adjusting, cleaning, oiling, or servicing machinery in motion.
- 16) Operating any circular saws, band saws, or guillotine shears.
- 17) In or around any distillery where alcoholic beverages are manufactured, bottled, wrapped, or packed.
- 18) In the manufacture, storage, or transportation of explosive components.
- 19) In the manufacturing of brick, tile, or similar products.
- 20) In the manufacture or transportation of dangerous or toxic chemicals or compounds.
- 21) In, about, or in connection with, poisonous dyes, dangerous or poisonous gases, compositions of lye in dangerous quantities, dangerous or poisonous acids, or pesticides.
- 22) In any activity involving exposure to radioactive substances or ionizing radiation.
- 23) Around asbestos or any other cancer-causing agents.

- 24) Operating or assisting in operating any job, cylinder, or offset printing presses.
- 25) In any activity involving slaughtering, butchering, and meat cutting.
- 26) In any place or occupation which the department may declare dangerous to life or limb or injurious to the health or morals of persons under 18 years of age.

Minors employed in agriculture are not exempt from any of 26 specifically prohibited occupations for persons under 18 years of age (Ala Code §25-8-43).

Minors under 16 are prohibited from being employed from the following occupations or places:

- 1) In, about, or in connection with any manufacturing or mechanical establishment, cannery, mill, workshop, warehouse, or machine shop.
- 2) Operating or assisting in operating any sandpaper or wood polishing machinery, any washing, grinding, or mixing machinery, or commercial laundry equipment.
- 3) Operating or assisting in operating any machines used in picking wool, cotton, hair, or any other material.
- 4) In any work in or about a rolling mill, machine shop, or manufacturing establishment which is hazardous or dangerous to health, limb, or life.
- 5) In proximity to any hazardous or unguarded gearing.
- 6) Upon any vessel or boat engaged in navigation or commerce within the jurisdiction of this state.
- 7) In the manufacture or packing of paints, colors, or white or red lead.
- 8) In occupations causing dust in injurious quantities.
- 9) In soldering, brazing, heat treating, or welding.
- 10) In the building trades, except that persons 14 or 15 years of age who are members of the immediate family of the contractor may be employed in trades involving nonhazardous duties or occupations.
- 11) Repairing, painting, or cleaning buildings or structures while working at the top of ladders, lifts, or scaffolds exceeding a height of six feet.
- 12) In connection with a junk or scrap metal yard.
- 13) Assorting, manufacturing, or packing tobacco.
- 14) Operating any automobile, truck, or motor vehicle, or flagging or directing traffic.
- 15) In airport hangars or landing strips or taxi and maintenance aprons.
- 16) In connection with any lumberyard.
- 17) In any place or occupation which the department declares dangerous to life or limb or injurious to the health or morals of persons under 16 years of age.

Minors employed in agriculture are not exempt from working in any of the 16 occupations or workplaces prohibited for persons under 16 years of age (Ala Code §25-8-35).

Age Restrictions:

No person under 16 years shall be employed, except in agricultural service. Any person 14 or 15 years of age may be employed outside school hours and during school vacation periods, so long as the person is not employed in, about, or in connection with, any manufacturing or mechanical establishment, cannery, mill, workshop, warehouse, or machine shop or in any occupation or place of employment otherwise prohibited by law. The presence of any person under 18 years of age in any restricted business establishment or restricted occupation shall be prima facie evidence of his or her employment therein (Ala. Code §25-8-33).

Work Time Restrictions:

No person 14 or 15 years of age shall be employed, permitted, or suffered to work in any gainful occupation for more than six days in any one week, or for more than 40 hours in any one week, or for more than eight hours in any one day, or before 7:00 a.m. or after 9:00 p.m. during school summer vacation. During the time school is in regular session, no person 14 or 15 years of age shall be employed, permitted, or suffered to work in any gainful occupation for more than six days in any one week, or for more than eight hours on a non-school day, or more than three hours on a school day, or for more than 18 hours in any school week, and not before 7:00 a.m. or after 7:00 p.m. (Ala. Code §25-8-36).

No person 16, 17, or 18 years of age who is enrolled in any public or private primary or secondary school system, shall work between 10:00 p.m. and 5:00 a.m. on any night preceding a school day. The appropriate county or city superintendent of schools, or where there is no superintendent, the school headmaster, may grant exemptions to the above time restrictions. Exemptions shall be granted only when the individual circumstances are found to be in the best interests of the minor. Information of any exemptions granted shall be transmitted to the Chief Child Labor Inspector on a form authorized by him or her.

School Hours:

No person under 16 years of age shall be employed, permitted, or suffered to work in any occupation during the hours in which the public schools of the district in which the person resides are in session, unless the minor has completed the course of study required for secondary schools. Persons 14 or 15 years of age, when school of attendance has been waived, may, upon recommendation of the local superintendent of education and approval by a child labor inspector, be permitted to work in a non-hazardous occupation.

Employment authorized by the law above shall not be for more than eight hours in any one day, or for more than 40 hours in any one week, or for more than six days in any one week, and not before 7:00 a.m. or after 9:00 p.m. (Ala. Code §25-8-37).

A Child Labor Law poster (2009 version or later) must be on display in every location employing minors 18 and younger. Posters can be downloaded from https://labor.alabama.gov/docs/doc_type.aspx?id=2

For more information on Alabama Youth Labor Laws, please visit <https://labor.alabama.gov/uc/ChildLabor/child-labor.aspx>

What is the minimum wage that must be paid for agricultural labor?

Alabama law does not provide for a minimum wage, but the Fair Labor Standards Act (FLSA), a federal law, requires every employer (unless specifically exempt) to pay each employee \$7.25 per hour for up to 40 hours per week and an hourly wage rate at not less than one and one-half times the employee's regular pay rate for hours worked in excess of 40 hours per work week. FLSA established a sub-minimum wage rate of \$4.25 for employees under 20 years old during their first 90 consecutive days of employment. This would include migrant and season farm workers and non-immigrant agricultural workers performing temporary or seasonal work, if they are under 20 years of age.

FLSA provides exemptions from the minimum wage and overtime provisions of the act for agricultural employers (1) who did not use more than 500 man-days of agricultural labor during any calendar quarter of the preceding calendar year; (2) whose employees are primarily engaged in the range production of livestock; (3) whose employees are members of the employer’s immediate family; (4) whose employees are hand-harvest laborers paid on a piece-rate basis and commuted daily from their homes and were not employed more than 13 weeks in the preceding calendar year; and (5) whose employees are 16 years of age or younger and paid on a piece-rate basis and employed on the same farm as their parent or guardian (29 C.F.R. 780.300).

In hiring new employees, what questions can I ask about health, criminal record, and similar things?

The chart below lists the lawful questions you may ask and unlawful questions to avoid.

Subject	Lawful Questions	Unlawful Questions
Name	Applicant’s full name	Original name of an applicant whose name has been changed by court order or otherwise
	Have you ever worked for this company under a different name?	Applicant’s maiden name
	Is any additional information relative to a different name necessary to check work record? If yes, explain.	
Address or Duration of Residence	How long have you been a resident of the state or city?	
Birthplace	-None-	Birthplace of applicant
		Birthplace of applicant’s parents, spouse, or other relatives
		Requirements that applicant submit birth certificate, naturalization, or baptismal record.
Age	Are you 18 years old or older? This question may be asked only for the purpose of determining whether applicants are of legal age for employment	How old are you? What is your date of Birth?
Religion or Creed	-None-	Inquiry into an applicant’s religious denomination, religious affiliations, church, parish, pastor, or religious holidays observed.
Race or Color	-None-	Complexion or color of skin
Photograph	-None-	Any requirement for a photograph prior to hire

Height	-None-	Inquiry regarding applicant's height
Weight	-None-	Inquiry regarding applicant's weight
Marital Status	Is your spouse employed by this employer?	Requirement that an applicant provide any information regarding marital status or children. Are you single or married? Do you have any children? Is your spouse employed? What is your spouse's name?
Gender	-None-	Mr., Miss, or Mrs. Or an inquiry regarding gender. Inquiry as to the ability to reproduce or advocacy of any form of birth control. Requirement that women be given pelvic examinations.
Disability	-None-	Inquiries regarding an individual's physical or mental condition which are not directly related to the requirements of a specific job and which are used as a factor in making employment decisions in a way which is contrary to the provisions or purposes of the Civil Rights Act
Citizenship	Are you a citizen of the United States?	Questions below are unlawful unless asked as part of the federal I-9 process
	If not a citizen of the United States, does applicant intend to become a citizen of the United States?	Of what country are you a citizen?
	If you are not a United States citizen, have you the legal right to remain permanently in the United States? Do you intend to remain permanently in the United States?	Whether an applicant is naturalized or a native-born citizen; the date when the applicant acquired citizenship
	To avoid discrimination based on national origin, the questions above should be asked after the individual has been hired even if it is related to the federal I-9 process.	Requirement that an applicant produce naturalization papers or first papers Inquiries into how applicant acquired ability to read, write, or speak a foreign language
National Origin	Inquiry into language applicant speaks and writes fluently	Nationality of applicant's parents or spouse
		Inquiry into applicant's lineage; ancestry; national origin; descent; parentage, or nationality unless part of the federal I-9 process in determining employment eligibility

		Inquiry into how applicant acquired ability to read, write, or speak a foreign language
Education	Inquiry into the academic, vocational or professional education of an applicant and public and private schools attended	
Experience	Inquiry into work experience	
	Inquiries into countries applicant has visited	
Arrest	Have you ever been convicted of a crime?	Inquiry regarding arrests which did not result in conviction (Except for law enforcement agencies)
	Are there felony charges pending against you?	
Relatives	Names of applicant's relatives already employed by this company	Address of any relative of applicant, other than address (within the United States) of applicant's father and mother, husband, or wife and minor dependent children
Notice in Case of Emergency	Name and address of person to be notified in case of accident or emergency	Name and address of nearest relative to be notified in case of accident or emergency
Organizations	Inquiry into the organizations of which an applicant is a member, excluding organizations the name or character of which indicates the race, color, religion, national origin, or ancestry of its members	List all clubs, societies, and lodges to which you belong.

Chapter Two

Animal Liability & Livestock

Federation Staff: Brady Ragland, Russ Durrance

What is my liability for my livestock that stray into a public road and cause an accident?

The owner of any stock or animal shall not be liable for any damages to any motor vehicle or any occupant of a vehicle caused by or resulting from a collision with such stock or animal, unless it can be proved that the owner knowingly or willfully put or placed such stock or animal upon the public highway, road, or street where such damage occurred. Although Alabama law provides some protection from liability related to damages to a motor vehicles and occupants, the owner of livestock can be liable for knowingly or negligently permitting his livestock to go at large and cause damages. The owner of such animals judged to be liable for damages to crops, trees, and shrubs creates a lien superior to all other liens on the livestock causing the damage (Ala. Code §3-5-2 and §3-5-3). If any damage is done by an animal breaking into lands not enclosed by a lawful fence, as defined by state law, the owner of such animal is not liable (Ala. Code §3-4-6).

What kind of fences am I required to have to prevent my livestock from straying on to public roads or another person's property?

State law requires that all fences must be at least five feet high, unless otherwise provided by law (Ala. Code §3-4-1). However, the law provides for several other legal fences as follows:

- A rail-fence five feet high, with rails not more than 18 inches apart, is a lawful fence for horses, mules, and cattle (Ala. Code §3-4-2).
- A fence of three or more wires fastened to posts or trees not more than eight feet apart with the wires being not more than 15 inches apart and the top wire at least four feet from the ground is a lawful fence of horses, mules, and cattle (Ala. Code §3-4-3).
- A fence made of seven or more wires securely fastened to trees or posts not more than eight feet apart, the first four wires being of four-inch barb and not over four inches apart, commencing with the first wire four inches from the ground, the fifth wire not over six inches from the fourth, the sixth wire not over eight inches from the fifth, and the seventh wire 15 inches from the sixth, shall be a lawful fence against all stock (Ala. Code §3-4-4).
- A standard woven wire fence with 10-line wires and stay wires not over 12 inches apart and 47 inches high, the bottom wire resting on the ground, the line wires, beginning at the bottom, spaced not more than three to three and a half, four to four and a half, five to five and a half, six, seven, and eight inches apart is a lawful fence against all livestock (Ala. Code §3-4-5).

What is my liability if my dog kills someone else's livestock?

Any person who keeps a dog that has been known to kill livestock shall be liable for double the value of all stock killed or injured by such dog. In addition, such dogs may be treated as a

common nuisance by Alabama law and, as such, may be justifiably killed by the owner of the livestock (Ala. Code §3-1-1).

What is my liability if my dog bites someone else?

When any person owns or keeps a vicious or dangerous animal of any kind and, as a result of his careless management of the animal or his allowing the animal to go at liberty, another person, without fault on his part, is injured, the owner or keeper of the dog shall be liable for such injury (Ala. Code §3-1-3). In addition, if any dog, without provocation, bites or injures any person who is at a place where he has the legal right to be, the owner or keeper of the dog shall be liable to the person who was bitten or injured (Ala. Code §3-6-1). The owner or keeper of the dog shall be entitled to plead and prove in mitigation of damages that he had no knowledge of any circumstances indicating that the dog was vicious, dangerous, or mischievous. If he does so, his liability will be only to the extent of the actual expenses incurred by the person who was bitten or injured (Ala. Code §3-6-3).

What liability is associated with injuries resulting from equine activities?

Under Alabama law, an equine activity sponsor or equine professional is not liable for an injury or death of a participant in equine activities resulting from the inherent risks of equine activities, pursuant to the Equine Activities Liability Protection Act. The act requires every equine professional and every equine activity sponsor to post and maintain signs which contain a specific warning notice (Ala. Code §6-5-337).

Am I required to participate in the Animal Disease Traceability Program?

Yes, participation in Alabama's Animal Disease Traceability Program is mandatory.

[Alabama Administrative Code §80-3-6-.40](#) established the procedure for livestock identification.

Can municipalities, localities, or counties preempt the state on issues concerning the care and handling of livestock or implements of husbandry?

Since 2010, the state now preempts all local governments on the issues of livestock and implements of husbandry. The Department of Agriculture and Industries and the State Board of Agriculture and Industries have the final say on enforcement of state laws involving livestock care and the control of infectious diseases. The State Veterinarian is charged by the Department and the State Board with upholding those laws and controlling diseases among livestock (Ala. Code §2-4-1).

What are the basic regulations and penalties for moving or shipping honeybees into the state of Alabama?

All honeybees shipped or moved into the State of Alabama shall be accompanied by a certificate of inspection, signed by the apiary inspector or other official performing similar duties of the state or country from which shipment is made, certifying that the bees and the combs and hives from which the bees were taken have been inspected by such official and that the bees, their combs, and hives are apparently free from contagious and infectious diseases. The inspection shall be based upon an actual examination of the bees and their combs, and hives, such examination, or inspection to be made during brood rearing and within a period of 60 days preceding the date of shipment. The inspection certificate required shall be attached to each parcel or package of each shipment or movement in a conspicuous place, plainly written. All shipments or movements of honeybees into the State of Alabama shall be in combless packages only, and shipments or movements of honeybees into this state in violation of the requirements of this section shall be unlawful.

It shall also be unlawful to ship or move into, within or out of the state, a queen bee or other bees in packages or cages that contain food, any part of which is honey. Any person moving bees into this state on a comb in violation of this section shall be fined one hundred dollars (\$100) per hive. The owner or other person in possession of the hives shall be given notice by the Department of Agriculture and Industries to move the hives within seven days of the notice. If the hives are not moved pursuant to the order of the department, the hives shall be destroyed. Upon conviction of a violation under this subsection, the judge may award a person providing information leading to the conviction a reward to be paid from the fine proceeds in an amount not to exceed one-half of the fines.

The law does not apply to bees moved into this state pursuant to a compliance agreement with the Department of Agriculture and Industries as provided by rule of the department (Ala. Code §2-14-4).

Chapter Three

Environmental Law

Federation Staff: John Allen Nichols (Water); Russ Durrance (Environmental)

What are the environmental regulations regarding timber cutting near streams?

Alabama does not have any general law concerning timber harvesting. However, in Mobile County best management practices (BMPs) are required for forestry and agriculture on any land within the J.B. Converse Lake Watershed Area. All new and existing point-source discharges shall be subject to the highest statutory and regulatory requirements, and nonpoint source discharges shall use management practices adequate to protect water quality consistent with ADEM's best management practices nonpoint source control program.

The Alabama Forestry Commission accepts the responsibility to maintain and update Alabama's BMPs for forestry. The Alabama Department of Environmental Management (ADEM) is the regulator and enforcement agency.

In most cases Alabama's BMPs for forestry and agriculture are non-regulatory guidelines that a logger should follow. More information can be obtained from the Alabama Forestry Commission at (334) 240-9348.

The U.S. Army Corps of Engineers requires certain BMPs on roads and stream crossings within wetlands and other waters of the United States. The U.S. Army Corps of Engineers baseline BMPs can be found in §404, Corps of Engineers Permit Requirements (40 C.F.R. §233.23).

What are TMDLs?

TMDL stands for Total Maximum Daily Loads. Section 303(d) of the Clean Water Act requires states to identify surface waters that do not meet certain water quality standards. Once such waters have been identified, states must establish total maximum daily loads (TMDLs) that will meet the required water quality standards. TMDLs are used to regulate the amount of pollutants that a body of water can assimilate without causing water quality standards to be breached, and they include both point and nonpoint sources of pollution. States must submit their TMDLs to the EPA for approval. Once the EPA approves a maximum load for a body of water, the state will implement the regulation through use of regulatory actions, such as issuance of permits, and through non-regulatory actions, such as implementation of best management practice and habitat reservations. In Alabama, the Alabama Department of Environmental Management (ADEM) administers the TMDL program. A list of the water bodies in the state with EPA approved TMDLs can be found at <http://adem.alabama.gov/programs/water/303d.cnt>.

Do I have to report the amount of water that I use in irrigation when it is pumped out of a river or stream?

Alabama's Water Use Reporting Program

Alabama's Water Use Reporting Program requires any non-public or irrigation water users who have facilities with the capacity to withdraw 100,000 gallons a day of surface and/or ground water, and all public water systems to register their use with the Office of Water Resources (OWR). Water usage that is not required to be registered may be voluntarily registered with the Office of Water Resources. It is important to register your water uses so that, in the event that water use regulations become more restrictive, your uses will already be recorded.

Declaration of Beneficial Use

To register a water use, the user must file a Declaration of Beneficial Use with the Office of Water Resources. A Declaration of Beneficial Use must be filed for each withdrawal facility. If a Declaration of Beneficial Use is determined to be incomplete, the applicant will be notified within thirty (30) days of the receipt of the Declaration. The notice to the applicant will identify the deficiencies in the Declaration of Beneficial Use. When a Declaration of Use is deemed complete, the Office of Water Resources will issue a Certificate of Use. Certificate of Use holders are required to file an annual Water Use Report with the Office of Water Resources.

Filing Declaration of Beneficial Use

The Declaration of Beneficial Use Form can be found on the Office of Water Resources' website <http://www.adeca.alabama.gov/owr/> or at [Declaration of Beneficial Use Form](#).

It is important to file a Declaration of Beneficial Use for every withdrawal facility. For example, a farm that has four wells, which pump over 100,000 gallons a day, must file a Declaration of Beneficial Use for each well. The form for filing an additional surface water withdrawal facility can be found at [Declaration of Beneficial Use - Additional Surface Water Withdrawal Facility](#).

The form for filing an additional ground water withdrawal facility can be found at Declaration of Beneficial Use - Ground Water Withdrawal Facility see below.
<http://www.adeca.alabama.gov/Divisions/owr/Documents/Water%20MGMT/Supplemental/dbu-gw.pdf>

Declarations of Beneficial Use can be mailed to

**Office of Water Resources Alabama Center for Commerce
Post Office Box 5690
Montgomery, Alabama 36103-5690**

-Or-

Declarations of Beneficial Use can be hand delivered to

**Office of Water Resources Alabama Center for Commerce
401 Adams Avenue, Suite 360
Montgomery, Alabama 36104**

Once the Office of Water Resources has determined that the Declaration of Beneficial Use is complete, the OWR will issue a Certificate of Use.

A Certificate of Use includes the following:

- 1) Estimated amount, in gallons, of waters of the state that is used on an average daily basis.
- 2) Estimated maximum capacity, in gallons, of waters of the state that could potentially be withdrawn or diverted within any single day.
- 3) Duration of the Certificate of Use.
- 4) Frequency of water use reporting.

Once the Office of Water Resources has issued a Certificate of Use, the certificate holder is responsible for filing an annual Water Use Report. Water Use Report forms are sent out late in December and due back in March. A Water Use Report will include the following information:

- 1) The estimated amount of water withdrawn, diverted, or consumed, in gallons, and tabulated for average daily use per month and peak day use per month.
- 2) Each water use report shall be signed and certified that, to the best of the person's knowledge and belief, the information provided in each report is true, accurate, and complete.

More information and copies of forms for Water Use Reports can be found at the Office of Water Resources' website: [Alabama Office of Water Resources](#).

A copy of the Alabama Office of Water Resources and Alabama Water Resources Commission Administrative Rules can be found at [Alabama Office of Water Resources Administrative Rules](#).

Is there a tax credit incentive for investing in irrigation?

Alabama law provides for both a one-time tax credit of 20%, up to \$10,000, on any improvements to an irrigation system, a new irrigation system or the construction of reservoirs *or* a credit of 10% of accrued costs not to exceed \$50,000. A producer can choose to utilize the incentive that results in the greater tax break. In other words, if you spend \$50,000 improving an existing irrigation system, installing a new irrigation system or constructing a new reservoir, you qualify for a \$10,000 tax credit. These credits are also good for the conversion of diesel to electricity. Be sure to keep all documentation relating to the irrigation equipment purchased. For more information click the following link: [Irrigation Incentives Law](#).

The purchase of surface water irrigation equipment whose water source is a river does qualify for the credit, when the river or stream's average annual flow exceeds 10,000 cubic feet per second. Water flow averages can be found at the US Geological Service web site www.al.water.usgs.gov. The purchase of irrigation equipment for a ground water withdrawal irrigation system also qualifies for the credit. A qualified reservoir is not required.

Should I be concerned about a discharge from my catfish pond?

Fish excrete ammonia and a lesser amount of urea into the water as wastes. ADEM only regulates state waters—all waters of any river, stream, watercourse, pond, lake, coastal, or surface water, wholly or partially within the state, natural or artificial. This does not include waters that are entirely confined and retained completely upon the property of a single

individual, partnership, or corporation unless such waters are used in interstate commerce (ADEM Chapter 355-6-10-02(10)). Typically, state waters are represented by a blue line on a USGS quadrangle map at the scale of 1: 24,000.

Currently, no permits are required about catfish farm discharge. However, if the discharge is found to cause a decline in the water quality in, for example, a downstream pond, then the catfish farm will be held accountable. Typically, when ADEM receives a complaint concerning a discharge, it will investigate and, if necessary, take action.

Alabama Pesticide Regulations:

[\ http://www.agi.alabama.gov/divisions/pesticide-management](http://www.agi.alabama.gov/divisions/pesticide-management)

Alabama Pesticide Forms:

<http://www.agi.alabama.gov/divisions/pesticide-management#forms>

What permits are required for application of pesticides and herbicides?

Before any person is legally eligible to purchase and use a restricted-use pesticide, he must meet certain requirements of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and obtain a pesticide-use permit from the Alabama Commissioner of Agriculture and Industries. Prior to issuing a pesticide-use permit, the commissioner is authorized to use education and testing to determine whether (1) the user or applicator can use and apply restricted-use pesticides in a manner that will not endanger or be injurious to human health, animals, wildlife, vegetation, crops, and water or be detrimental to the environment; and (2) the use is familiar with safe storage, handling, use, applications, and disposal of restricted-use pesticides and pesticide containers so as to avoid hazardous effects of improper use, handling, or application of restricted-use pesticides (Ala. Code §2-27-11).

Pesticide use permits are divided into two general classes, Private Applicator and Commercial Applicator. Commercial Applicator Permits are divided into five types as follows: custom, custodial, governmental, resident, and consultant. [Alabama Administrative Code 80-1-13-.06](#).

Farmers generally obtain a Private Applicator Permit, which authorizes them to purchase and apply restricted-use pesticides on lands that they farm (owned or rented) and to directly supervise the application of restricted-use pesticides by their competent employees. [Alabama Administrative Code 80-1-13-.12](#).

Applicants may obtain a Private Applicator Permit through the [Alabama Cooperative Extension System](#). Study materials, applicator permit tests, and Application for Private Pesticide Applicator Permit can all be found at the link above or you can contact your County Cooperative Extension Agent to obtain these materials and information regarding training courses (<http://www.aces.edu/counties>.)

The application, completed test, and \$25 application fee should be mailed to the following address:

**Alabama Department of Agriculture and Industries
Pesticide Management Section
1445 Federal Drive
Montgomery, AL 36107
Telephone: 334-240-7242 Fax: 334-240-7168
Email: karen.daniels@agi.alabama.gov**

Applicants for the Commercial Applicator Permit must take and pass an exam administered by the Alabama Department of Agriculture and Industries. More information regarding the Commercial Applicator Exam and permit can be found at <http://www.agi.alabama.gov/divisions/pesticide-management/professional-services>

ADAI provides an online examination and application service at <http://apply.adaitesting.com>.

How often must I register my pesticide storage and application devices?

According to the law that was amended in 2011 the new schedule for pesticide storage and application devices will be biennial, or every two years. It is to be paid on March 1, and the registration cost is \$400. If the registration is not paid within 60 days of March 1, a \$150 delinquency fine (per product to be registered) is added to the charge.

Can a county or municipality regulate the use of fertilizers on farms?

Counties and localities have no authority to regulate the use of fertilizers. The state has preemptive authority over the issue and all regulations, rules, or laws about fertilizer use come from the state. Localities may not regulate the registration, packaging, labeling, sale, distribution, transportation, storage, or application of fertilizers (Ala. Code §2-22-1 thru §2-22-23).

Can I be sued for damages caused by chemical drift?

Keep in mind that you can always be sued. If you intentionally or negligently cause the chemical drift, you may be liable. Negligence would include failing to follow the printed instructions, applying best management practices, or failing to take other general precautions.

What is the legally correct way to dispose of empty chemical containers?

It is illegal to dispose of any pesticide container in a manner as to cause direct injury or damage to humans, animals, wildlife, or property or to pollute any water in a manner harmful to wildlife or other things. The rules for disposal of excess pesticides and empty pesticide containers are explained in the [Private Pesticide Applicator Study Manual](#) provided by the Alabama Cooperative Extension System.

Disposal of excess pesticides is best handled by careful planning to avoid surplus. If it is possible and legal, apply all of the pesticides according to the label. If a surplus is unavoidable, pesticides

that are in the original container may be returned to the manufacturer. If it is not possible to dispose of surplus pesticides promptly, store them according to the label.

Disposal of empty pesticide containers should comply with the label as well as state and federal regulations. Remember the label is the law. Regardless of the method of disposal, all empty pesticide containers, other than paper bags, must be triple rinsed (or equivalent). Then offer the rinsed containers for recycling or reconditioning. Some pesticide containers can be returned to the dealer. Containers that have been properly rinsed are considered to be solid waste that can be punctured and disposed of in a sanitary landfill. Each pesticide label will have disposal instructions and that label is the law.

More information regarding pesticide container disposal can be obtained from

Alabama Department of Agriculture & Industries
(334) 240-72100

Alabama Department of Environmental Management
(334) 271-7700

EPA Hazardous Waste Hotline (Superfund)
(800) 424-9346

What is the correct way to dispose of used tires?

Information regarding Alabama's Scrap Tire Program can be found at <http://adem.alabama.gov/programs/land/scrapTire.ent>. The Scrap Tire Program, administered by ADEM, requires the collection of a \$1.00 per tire fee from consumers by tire dealers on all new, used, and retread tire sales. All receivers, transporters, and processors of scrap tires are regulated through the program and must register with ADEM, and illegal-dumping sites are inspected and cleaned up. If you are a landowner and have more than 100 tires accumulated on your land, you must register with the Scrap Tire Program and contact ADEM for requirements for removing the tires.

For more Information contact:

ADEM
Attn: Land Division
Post Office Box 301463
Montgomery, Alabama 36130-1463
(334) 271-7700
(334) 279-3050 fax
landmail@adem.state.al.us

A copy of the Scrap Tire ADEM Admin. Code R. 355.4 can be found at <http://adem.alabama.gov/alEnviroReglaws/files/Division4.pdf>. Solid waste disposal is generally regulated by the county commission through a public system or a contract with a private waste management company approved by ADEM and the county and state health departments. Unless granted a certificate of exception, every person, household, business, industry, or property owner is required to participate in the system. Provided that it is done according to a certificate of exception, any person, household, business, industry, or property owner may store, haul, and dispose of their own solid wastes on their own land. To obtain a certificate of exception, an application, an application fee and a solid waste disposal plan must be filed with (1) the County Health Officer, in the case of household solid waste, or (2) ADEM, in the case of solid waste from business or industry. The solid waste plan must set out the proposed method of storing, hauling, and disposing of solid waste so as to comply with regulations adopted by the State or County Boards of Health or ADEM, as appropriate, and not create a public nuisance or hazard to public health (Ala. Code §22-27-3).

What is the correct way to dispose of used motor oil and petroleum products?

The U.S. Department of Environmental Management (EPA) regulates the use, disposal, and recycling of used motor oil but delegates enforcement of such regulations to ADEM. Used motor oil is considered a solid waste that may or may not be hazardous. Any person, business, or industry that generates used motor oil is classified as a used oil generator. However, farmers who generate an average of 25 gallons or less of used motor oil per month are specifically exempt from regulations applicable to used motor oil generators. [ADEM Admin. Code r. 335-14-17-.03\(1\)\(a\)4](#). In determining the 25 gallons per month exemption, a farmer could generate up to 300 (25 x 12) gallons per year and meet the requirement for exemption. Farmers who generate more than an average of 25 gallons per month are required to dispose of used motor oil at an ADEM approved used oil collection center or recycling center. The used oil must be transported by an ADEM approved used oil transporter that must be displaying an EPA identification number. Farmers may self-transport used oil to a used oil collection center without an EPA identification number provided that

- 1) The used oil is transported in a vehicle owned by the used oil generator or in a vehicle owned by the generator's employee.
- 2) No more than 55 gallons of used oil are transported at one time.
- 3) The used oil generator transports the oil to a used oil collection center that complies with all ADEM requirements. [ADEM Admin Code R. 335-14-17-.03\(6\)\(a\)](#)

Used oil must be stored in safe, closed containers. All releases of used oil must be stopped, contained, cleaned up properly, and if necessary, any broken or leaking containers must be fixed or replaced. [ADEM Admin Code R. 335-14-17-.03\(4\)\(d\)](#). Used oil generators may use used oil as a fuel for space heaters, provided that the heater burns only used oil that the heater operator generated or received from household do-it-yourselfers, the space heater is designed to have a maximum capacity of not more than 0.5 million BTU per hour, and the combustion gases from the heater are vented to the ambient air. [ADEM Admin. Code r. 335-14-17-.03\(5\)](#).

For more information regarding used oil, contact ADEM at 800-533-ADEM (2336). In addition, [The Used Oil Generator Fact Sheet](#) is a helpful resource.

Is there a state law for disposal of large animals killed by disease or accident?

Dead animals are considered a solid waste and must be disposed of in accordance with ADEM and Department of Public Health regulations ([Ala. Code §22-27-3](#)). Subject to a fine of \$500, it is unlawful for any person knowingly to deposit any dead animal in any water supply for humans or in any running stream. The Alabama Department of Agriculture and Industries regulations require that all animals that die from disease be burned or buried and, when buried, covered with no less than four feet of dirt or cooked in a pressure rendering tank at a temperature not lower than 220 degrees Fahrenheit for not less than four hours. In addition, no dead animals are permitted to remain in the barn, lot, yard, or anywhere on the farm longer than 24 hours after death. Rendering plants that haul dead animals must use trucks with steel or other impervious material bodies ([Ala. Admin. Code § 80-3-6-26](#)).

What responsibilities do I have as a landowner for wetlands created by beavers after timber was cut?

Once any of your property has been officially designated as “wetlands,” you are prohibited from doing anything to harm the property’s designation as a wetland. An unintentional violation could result in your having to restore the land back to its wetland status. An intentional violation could result in your having to pay a fine or even imprisonment. Anyone, not just the landowner, can request the Army Corps of Engineers to evaluate a site for wetland determination. This evaluation will either be an onsite or offsite inspection depending on whether the Army Corps of engineers has the necessary information to complete the evaluation. A wetlands classification determination, however, is only good for five years.

When buying any piece of land, you should secure an environmental survey of the property to uncover previously unknown environmental hazards and wetlands status. Such a survey can serve to limit your potential liability from exposure to such hazards or responsibilities.

What should I know about AFO or CAFO registration requirements?

[ADEM Administrative Code Chapter 335-6-7](#) defines the requirements Animal Feeding Operations (AFOs) must meet to protect water quality. This chapter establishes an AFO compliance assistance and assurance program and a Concentrated Animal Feeding Operation (CAFO) National Pollutant Discharge Elimination System (NPDES) registration requirement. Under the rules, all CAFOs are required to register with ADEM, and all AFO/CAFOs are required to implement and maintain effective best management practices (BMPs) for animal waste production, storage, treatment, transport, and proper disposal or land application that meet or exceed USDA - Natural Resources Conservation Service (NRCS) technical standards and guidelines. NRCS guidelines:

<http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/technical/fotg/>

AFO and CAFO defined

“Animal Feeding Operation” (AFO) means a lot or facility (other than an aquatic animal production facility) where animals (does not have to be the same animals) have been, are, or will be stabled, confined, gathered, or concentrated and fed or maintained for a total of 45 days or

more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season. [40 C.F.R. 122.23\(b\)\(1\)](#). Two or more AFOs under common ownership are considered a single AFO and may require Registration as a CAFO if they adjoin, or are in close proximity to each other as determined by the Director of the Alabama Department of Environmental Management or his designee. Unless determined otherwise by the Director or his designee, two or more AFOs under common ownership or under different ownership are considered a single AFO and may require Registration as a CAFO, separately or together, if they are operated as a single operation, if they use a common area or system for the disposal of waste/wastewater, if they significantly share resources, storage or treatments systems, equipment, etc. or otherwise significantly link operations. Each owner/operator of an AFO that adjoins or is in close proximity to another AFO, or shares resources or has links to other operations, can contact ADEM for clarification in writing of the status of their facility(s). An AFO, regardless of size or number of animals, that has experienced a point source discharge after April 1, 1999 is considered included in this definition.

For questions regarding CAFO Registration go to:

<http://www.adem.state.al.us/programs/water/waterforms/CAFORule12-1-00.pdf>

The Notice of Registration (NOR) form can also be found on ADEM's website at <http://www.adem.state.al.us/DeptForms/Form429.pdf>.

More information regarding the continuing education credits can be found at

<http://www.aces.edu/pubs/docs/A/ANR-1205/ANR-1205.pdf>.

To qualify for registration, a Qualified Credentialed Professional (QCP) must certify the WMSP. It is not a simple do-it-yourself project. The WMSP must meet or exceed standards set by NRCS. The NRCS guidelines can be found in the NRCS Field Office Technical Guide at, <http://www.nrcs.usda.gov/wps/portal/nrcs/main/national/technical/fotg/>.

QCPs recognized by ADEM include Alabama Professional Engineers experienced in animal waste management and Certified Crop Advisors. A list of Qualified Credentialed Professionals can be found at <http://216.226.179.148:9002/reports/rwservlet?QCP>.

What kind of information will I be asked to register my farm as a CAFO?

- Ownership, organizational structure, operator, and person responsible for handling the waste.
- Violation history and any other permits or authorizations associated with the operation.
- Specifics on number and type of animals, structures, and waste management plans and procedures, including attaching a 7.5-minute USGS map (or equivalent) showing not only the AFO but also surrounding potential receiving waters.
- Listing of all registrant-owned, leased, or controlled land application sites, including the latest dates and results of soil testing for each such field. Note that an AFO (or CAFO) can be held responsible as a source of pollution not only at the AFO site but also when waste is transported for land application elsewhere.

- Additional information (if available) that will assist timely review and registration approval, such as (1) the WMSP; (2) a detailed facility map or drawing; (3) a soil map, flood map or other maps; (4) aerial photographs; (5) a list or maps of offsite land application areas; (6) buffer distance documentation; (7) copies of soil tests; (8) copies of waste/wastewater analyses; (9) copies of continuing education certificates/attendance; and (10) inspection records.

What do I need to know about Continuing Education credits for CAFOs?

You do not have to have the Continuing Education credits prior to new registration but are allowed continuing education credits to be certified within the first 12 months of operation. Generally, managing owners, operators, and onsite supervisors are required to attend annual continuing education sessions totaling up to 16 hours of approved group or individualized training in the first year and up to eight hours of refresher training in subsequent years.

If you do not satisfy the Continuing Education credit requirements, you must pay an additional Greenfield fee of \$500. Also in this situation, ADEM will prioritize your facility for regular comprehensive and thorough inspection and evaluation of the operation. The Greenfield fee supports ADEM's registration approval and assurance effort.

Chapter Four

Estate Planning

Federation Staff: John Allen Nichols

Do I have to have a will?

A will is a legal document that controls the way your property is divided after your death. You are not required by law to have a will. However, to ensure that all your property is passed to your heirs in the way you desire, your will should include both your real property and your personal property. Real property is immovable property consisting of such things as land and including things that are fixed, incidental, or appurtenant to the land, such as houses, minerals, fixtures, and fences. Personal property is property that is considered movable, such as cars, animals, and furniture. Intangible property such as bank accounts, stocks, and bonds are also considered personal property. Wills also allow you to make arrangements to cover any legal requirements, debt payments, taxes and funeral expenses, and the naming of executors and guardians, which prevents those burdens from falling on your heirs. When it comes to the distribution of land, a will is especially important as it can clearly establish the chain of title and can save on a number of costs that your heirs would otherwise incur. Wills can be written without an attorney; however, some estates can be extremely complicated, and a formally drawn will with the expertise of a lawyer can be significantly beneficial.

What happens if I do not have a will?

Any part of a decedent's estate, both real and personal property, that is not effectively disposed of by his or her will passes to one's heirs as outlined by Chapter 8 of Ala. Code Title 43. This could be significantly different from the way you would want your property distributed, and could result in greater cost in taxes to your heirs. The disposition of property through intestate succession is as follows:

- Spouse's share:
 - If there are no surviving children or parents, spouse inherits entire estate.
 - If there are surviving parents, but not surviving children, the spouse inherits the first \$100,000 and one-half of the remaining balance of the estate.
 - If there are surviving children who are issue of both the spouse and the decedent, the spouse inherits the first \$50,000 and one-half of the remaining balance of the estate.
 - If there are surviving children, one or more of who are not issue of the spouse, the spouse inherits one-half of the estate.
- The remaining heirs' share:
 - If there is no surviving spouse, the entire estate passes to the remaining heirs.
 - If there is a surviving spouse, the remaining balance of the estate passes as follows:
 - To the children equally, if they are all of equal degree of kinship.
 - If they are of unequal degree, the more remote degree take by representation.

- If there are no surviving children, then the parents of the decedent inherit equally.
- If there are no surviving children or surviving parents, the children of the parents (brothers and sisters of the decedent) inherit equally.
- If there are no surviving children, parents, or children of the parents, but there are surviving grandparents or children of the grandparents (aunts and uncles of the decedent), the half of the estate goes to the paternal grandparents or if deceased, to the children of the grandparents equally. If the children of the grandparents are of unequal degree, the more remote take by representation. The maternal grandparents inherit the remaining half. If deceased, their children inherit equally. If the children of the grandparents are of unequal degree, the more remote degree take by representation.

Is joint ownership a good way to avoid probate?

Property held jointly with right of survivorship, such as is usually the case with joint bank accounts and is often the case with respect to residential real property where the deed is to husband and wife, can be an appropriate method of property ownership in certain cases. With respect to businesses, farms, or timber tracts, however, joint ownership with a right of survivorship is not always the best way to go. Significant negative estate tax effects for the long-term that can ultimately result in higher estate taxes being paid by the family as a whole can occur if a joint ownership is used rather than separating the ownership and making specific provisions in a will. However, always keep in mind that while it is possible that estate taxes will be significantly lowered in the future, one should not structure one's property ownership on the belief that the estate tax will one day go away.

What special provisions are available for the valuation of farm and timber property for estate tax purposes?

The estate tax law provides for special use valuation of qualifying farm and timberland in section 2032(a) of the [Internal Revenue Code of 1986](#). In short, the farm property is valued by taking into account its use as a farm. While the principles are much the same as those underlying the current use valuation provisions of the Alabama property tax law, the special valuation provisions of the Internal Revenue Code will not necessarily arrive at the same numbers as those which the current use formulas will provide. Nevertheless, it can be a significant benefit and presently results in a maximum overall reduction in estate value of over \$750,000, adjusted for inflation each year. It is important that a will be drafted in the proper manner so as to take advantage of this deduction. For instance, if a will provides that all of the property goes to a surviving spouse, this deduction may be effectively lost forever unless the second spouse continues the operation of the farm to the time of his or her death.

Can deeds be used in estate planning?

In addition to wills, deeds to a property can be a source of estate planning. A deed is the document by which ownership, or title, is transferred. Historically, ownership interests have been classified as either freehold estates or leasehold estates. Leasehold estates last for a fixed amount of time. For example, a lease for an apartment would convey a leasehold estate. Freehold estates last for an indeterminable period of time, such as for a lifetime or forever. The type of ownership conveyed in a deed for a freehold estate can be a way to ensure your interests after your death. Freehold Estates include fee simple estates, defeasible estates, and life estates.

Fee simple absolute ownership is absolute ownership, entitling the owner to all rights and interest in the property. It is the highest degree of ownership recognized by law. A life estate is ownership that is limited in duration by the life of the interest holder. A life estate “*pur autre vie*” limits the duration of the estate by the life of a designated person other than the interest holder. Life estates are discussed in greater detail in a later passage.

Defeasible fees are ownership interests that are subject to or limited by the occurrence or non-occurrence of some event. There are three types of defeasible owners: Fee simple determinable, fee simple subject to condition subsequent, and fee simple subject to executory limitation. A fee simple determinable is an interest that ends automatically upon the occurrence of some event. Clear words of duration typically indicate a fee simple determinable. For example, a landowner may grant his son 50 acres of land “so long as” he uses the land only for agricultural purposes. If the son decides to use the land for reasons other than agriculture, the title will automatically revert to the former owner. “So long as” or “until” are typically considered to be clear words of duration. Fee simple determinable interests are generally disfavored by the courts, considering automatic forfeiture of property is generally disfavored. Fee simple subject to a condition subsequent is an interest, which limits the interest holder’s actions and where the former owner retains a right of reentry (or power of termination). A right of reentry allows the original owner to retake the land when a specified event occurs.

Ownership does not automatically revert back, as it does with a fee simple determinable interest. Rather, the original owner must take some action to retake the property. For example, a landowner grants a tract of land to his son, but if his son sells the land to someone outside of the family, the original owner retains the right of reentry. If the son ever sells the land to someone outside of the family, the original owner or his heirs have the right to reentry and may retake the land. The original owner must exercise the right of reentry to retake the land. The original owner can exercise the right of reentry by filing a lawsuit or taking some other substantial action to reclaim the land.

A fee simple subject to executory limitation is similar to a fee simple subject to a condition subsequent, but rather than the original owner retaining a right of reentry, another party designated by the original owner holds an executory interest, which may become a possessory interest upon the occurrence or non-occurrence of some event. For example, a landowner may transfer a tract of land to his son, but if he uses it for purposes other than agriculture, then to his sister. The son would hold the land in fee simple subject to an executory limitation. The sister would hold an executory interest, which could become a possessory interest if the son used the property for other than agricultural purposes.

In all cases, these instruments allow you to deed your property to someone with limitations on their ownership. In the event that those limitations are broken, the land either can revert back to you and your heirs, or be transferred to another person whom you have named as holding an executory interest.

What is a life estate?

A life estate is an estate, which lasts for the life of the estate holder. An example of a life estate is “I grant the southernmost 50 acres of the farm to my son for life.” The son holds the southernmost 50 acres for the duration of his life. In this instrument, the original owner would hold a reversion, which would return the property to the original owner or his heirs upon the son’s death. A life estate pur autre vie is a life estate which is limited in its duration by the life of a person other than the person holding the interest. “Pur autre vie” literally means for the life of another. An example of a life estate pur autre vie is “I grant the farm to my son for the life of his sister.” The son would hold the farm for the duration of his sister’s life. The grantor can also name a “remainderman” who is to receive the property after the life estate has ended. An example is a father who grants his son a life estate and names the son’s daughter as the remainderman. The instrument would look something like this: “To my son for life and then to his daughter.” The son would hold a life estate and the son’s daughter would hold a remainder. Once the son’s life estate ended, the daughter would take possession of the land. A life estate is an instrument that will help keep land within the family. Someone granted a life estate would have a possessory interest in the land, but not hold the legal title to the land, as the remainderman has a future interest in the legal title of the property.

The problem with a life estate is that it can have an untoward estate tax result if the value of the property is substantial. This is because a life estate for a surviving spouse does not ordinarily qualify for the estate tax marital deduction, meaning that the amount passing to the surviving spouse can be fully taxable to the extent the value of the property presently exceeds \$5,000,000. Many people prefer the supposed simplicity of a life estate to the supposed complications of wills and trusts, but many times the life estate creates difficult problems in and of itself, leaving aside tax matters. For instance, if the person holding the life estate becomes incapacitated or loses his or her mental ability, it may be impossible to sell the property for the benefit of that person or otherwise make proper use of the land held in the life estate without the necessity for expensive and sometimes acrimonious court hearings wherein all family member may come in and contest the proper handling of the property. The use of trusts, whether living trusts or trusts established in the will, are generally preferable to the use of life estates. You can achieve the same result but with fewer legal headaches down the road.

What are living trusts, and can they be used as a method of saving estate taxes?

Trusts can be set up in a will, called testamentary trust, or during a person’s lifetime, a so-called living trust. Either type can be used as a method of reducing estate taxes. The estate tax law provides that presently \$5,000,000 of each person’s estate may be passed tax-free to a younger generation. Often such amounts are placed into trust for the benefit of a surviving spouse for his or her lifetime, with the remainder to the younger generation after the death of the spouse. If properly drafted, such a trust would qualify for the exemption and not be included for tax

purposes in the estate of the spouse upon his or her subsequent death. This can save considerable amounts of estate tax. Sometimes a trust is also used to protect an estate's assets for the benefit of a surviving spouse when the surviving spouse may not be capable of managing the property. A trust requires a trustee, which can be a bank or an individual; the trust instrument can provide for limitations on, or the exercise of various powers by the trustee in respect to property. A trust instrument, whether a living trust or a trust contained in a will, is a technical document that needs to be carefully written and adapted to each person's individual situation.

What are the advantages of Limited Liability Companies (LLCs)?

There are several options of business forms available to producers. In selecting a business entity, each organizational form presents both advantages and disadvantages to the owner(s) that must be weighed against their own set of unique goals, desires, and needs. Each form can have significant effects on gift and estate taxes and on the consequences of the transfers of ownership. Owners must objectively consider each option to determine the organizational form that best meets their needs and goals and that minimizes their exposure to negative tax and legal consequences.

The following chart describes several options and gives associated advantages and disadvantages:

Form	Description	Advantages	Disadvantages
Sole Proprietorship	Business owned and managed by one person	<ul style="list-style-type: none"> • Easy to organize due to minimal legal requirements • Owner has complete control • All profits, losses, liabilities vested in the proprietor • Costs of organizing and dissolution are low • Business affairs are completely confidential • Owner has total discretion for selling the business • Proprietors pay no business taxes • Strong incentive to succeed 	<ul style="list-style-type: none"> • Unlimited Liability • Limited amount of capital resources • No business taxes may be disadvantage • Not being able to share control may limit opportunities for highly trained employees • Proprietorships can lack stability and continuity • Manager is in complete control-must perform all management functions
Partnership	Association of two or more persons for the purpose of carrying on a business for profit as co-owners (U.P.A. §6.1)	<ul style="list-style-type: none"> • Easy to start as proprietorships • Low cost to set up • More resources because more people involved • Taxes are paid by individuals on their share of the profits 	<ul style="list-style-type: none"> • Unlimited liability of each general partner • Partnerships have a limited number of members • Can lack continuity and stability

		<ul style="list-style-type: none"> Partners may sell their interest in the business if other partners agree 	<ul style="list-style-type: none"> Being taxed as individuals can be a disadvantage Divided management authority Capital base may be a restriction
Limited Partnership	Partnership having one or more general partners and one or more limited partners	<ul style="list-style-type: none"> Taxes are paid by individuals on their share of the profits Limited liability for limited partner(s) who does not participate in management Partners may sell their interest if other partners agree Capital can be raised by selling interest (usually limited partner's) Certain gift and estate tax benefits for the limited partner's interest may be available 	<ul style="list-style-type: none"> Unlimited liability for all general partners Unlimited liability for the limited partner who participates in control of business Limited partners may not take part in the management of the business without incurring personal liability for partnership's debts Can be expensive to set up One or more of the partners must not participate in control of the business
Cooperative	Joining together of producers or businesses to provide services and benefits to its members	<ul style="list-style-type: none"> Limited liability Potential broad capital base Certain tax advantages Special anti-trust exemptions 	<ul style="list-style-type: none"> Restrictive charter requirements Membership may not understand the co-op structure Lack of membership participation Divided management authority
Limited Liability Company	An unincorporated but registered entity whose members are protected from personal liability and are allowed any desired degree of participation in control of the business	<ul style="list-style-type: none"> Owner liability is limited Can include any number of members Ownership and net income distributed according to proportion of assets contributed Taxes paid only by individuals Not required to file articles of incorporation Management of business is flexible 	<ul style="list-style-type: none"> Fringe benefits cannot be deducted Organization is not automatically perpetual Must register in state of operation and can be expensive to set up
Corporation	A legal entity, created by operation of law, that holds the same rights and duties as an individual	<ul style="list-style-type: none"> Stockholders (owners) not personally liable for organization's debts 	<ul style="list-style-type: none"> More difficult and expensive to organize Double taxation More regulations on corporations

		<ul style="list-style-type: none"> • Transfer of ownership is easy • Relatively easy to raise equity capital • Corporation is perpetual 	<ul style="list-style-type: none"> • A lack of privacy • Individual stockholders may have little or no control over management/policies
S-Corporation	A legal entity created by operation of law, that holds the same rights and duties as an individual	<ul style="list-style-type: none"> • Owners have limited liability • Taxes are paid only by the individual, avoiding double taxation of regular corporations • Owners (up to 35) can be added without changing the business entity 	<ul style="list-style-type: none"> • Certain membership and organizational restrictions, such as 35 or fewer shareholders • Must register in state of operation and can be expensive to set up • Difficult to convert into another type of entity • Management and organization are subject to state corporation laws

Chapter Five

Licenses and Sales Taxes for Sale of Farm Products

Federation Staff: Preston Roberts

What input items used in production agriculture are exempt from taxes?

Pursuant to Ala. Code §40-23-4, when the following items are used for agricultural purposes, sales and use, the gross proceeds from the transaction are exempt from use and sales tax:

- Fertilizer.
- Insecticides and fungicides.
- All devices or facilities, and all identifiable components thereof, or materials for use therein, acquired primarily for the control, reduction, or elimination of air or water pollution and the gross proceeds from the sale of all identifiable components of or materials used or intended for use in structures built primarily for the control, reduction, or elimination of air and water pollution.
- Antibiotics, hormones and hormone preparations, drugs, medicines or medications, vitamins, minerals, or other nutrients, and all other feed ingredients including concentrates, supplements, and other feed ingredients when such substances are used as ingredients in mixing and preparing feed for fish raised to be sold on a commercial basis.
- Seedlings, plants, shoots, and slips.
- Herbicides.
- Antibiotics, hormones, and hormone preparations, drugs, medicines, and other medications including serums and vaccines, vitamins, minerals, or other nutrients for use in the production and growing of fish, livestock and poultry by whomsoever sold.

What transactions are exempt from sales and use tax?

- Cottonseed meal exchanged for cottonseed at or by cotton gins.
- Sales of fuel for use or consumption aboard commercial fishing vessels are exempt from the computation of all sales taxes levied, assessed, or payable under the provisions of this division or levied under any county or municipal sales tax law. The words “commercial fishing vessels” shall mean vessels whose masters and owners are regularly and exclusively engaged in fishing as their means of livelihood.
- Sales of sawdust, wood shavings, wood chips, and other like materials sold for use as “chicken litter” by poultry producers and poultry processors.
- Sales of grass sod of all kinds and character when in the original state of production or condition of preparation for sale, when such sales are made by the producer or members of his family or for him by those employed by him to assist in the production thereof; provided, that nothing herein shall be construed to exempt sales of sod by persons engaged in the business of selling plants, seedlings, nursery stock, or floral products.
- Sales of the following items or materials which are necessary in the farm-to-market production of tomatoes when such items or materials are used by the producer or members of his family or for him by those employed by him to assist in the production

thereof: Twine for tying tomatoes, tomato stakes, field boxes (wooden boxes used to take tomatoes from the fields to shed), and tomato boxes used in shipments to customers.

- Sales of Lespedeza bicolor and other species of perennial plant seed and seedlings sold for wildlife and game food production purposes by the state.
- Sales of all diesel fuel used for off-highway agricultural purposes.
- Sales of natural gas or electricity used for the heating of poultry houses.

Are business licenses necessary for sale of hay, produce, mulch, and compost from my farm?

Generally, no, if you are a bona fide farmer. It shall be unlawful for any municipality to charge the farmers or others engaged in the production of farm products, of whatever nature, any license or fee for the sale or other disposition of said articles produced by them at any place (Ala. Code §11-51-105). However, if the farm product is processed or altered from its original state (such as converting apples to apple cider or placing a stand on a Christmas tree), a license may be required.

Should I be paying sales tax when I purchase hay from another farmer?

The first possible exception to the sales tax is Ala. Code Sec. 40-23-4(a)(5), which provides in relevant part: The gross proceeds from the sale of farm products are exempt from the state sales tax when (1) The sale is made by (a) the producer, (b) members of the producers' immediate family or (c) by those employed by the producer to assist in the production process; (2) The thing sold is in the (a) original state of production or (b) in a condition of preparation for sale.

Example of condition of preparation of sale would be raw shelled peanuts, whereas peanuts which have been made into peanut butter would not be in a condition of preparation for sale. Thus, baled hay would likely be considered to be in a condition of preparation for sale.

Another exception that might apply is Ala. Code Sec. 40-23-4(a) (44), which provides in relevant part: The gross receipts for the sale of agricultural products are exempt from the state sales tax when those agricultural products are sold by the person who (a) planted, (b) cultivated, and (c) harvested the agricultural product being sold.

In other words, if a farmer planted his field in Alfalfa, cut, raked, baled, and then sold the bales, the proceeds from that sale would be exempt from the state sales tax. However, if a hay distributor bought the bales from the farmer and then resold them, the distributor would not be exempt from the sales tax. In short, if you are purchasing the hay from the farmer who cut, raked, and baled the hay, you are not required to pay a sales tax. However, if you purchase the hay from someone other than the person who produced the hay, the sales tax would apply.

Am I eligible for the Linked Deposit Program of 2007?

The program is designed to further stimulate growth and development in agricultural and small business operations. In addition, it allows funds to be administered for disaster relief. It authorizes the State Treasurer to invest a portion of the portfolio of the state with participating

eligible lending institutions in a below market rate deposit, which links the deposit to a reduced rate loan to eligible borrowers. To be eligible you must be an “agricultural borrower,” which requires you to be a resident of the state of Alabama with your headquarters and operation within the state. You must also derive at least 60% of your gross income from agriculture or agricultural activities and you may not owe any defaulted taxes to the state or any political subdivision (Ala. Code §41-14-50 through §41-14-56).

How does the revised Uniform Commercial Code affect me as a farmer?

The Uniform Commercial Code is a set of legal codes that in a simple sense would fill in the gaps left silent by the two parties forming a contract, by using uniform sets of rules for commercial transactions. A good example would be a commercial buyer of farm goods revoking the acceptance of those goods because there is a non-conformity between what the buyer ordered and what a seller delivers. The seller has already violated the contract by not delivering exactly what the buyer ordered. The UCC secures the rights of the buyer to decline acceptance of the goods that do not conform with the contract.

Chapter Six

Operation of Vehicles and Equipment

Federation Staff: Preston Roberts

What are the laws/regulations regarding operation of farm vehicles and equipment on public roads?

Reflective Devices: Farm tractors, combines, and other types of vehicles with a maximum potential speed of 25 miles per hour are classed as “slow-moving vehicles” and are required to be identified with a reflective device when operated, driven, towed, or otherwise moved along or across any highway in the state. The device must be an equilateral triangle in shape, at least 16 inches wide at the base and at least 14 inches high, with a bright red border, at least one and three-quarter inches wide made of highly reflective beaded material, with a center triangle, at least 12-3/4 inches on each side of yellow-orange fluorescent material (Ala. Code §32-5-246). The device must be mounted on the rear of the vehicle with the broad base down, not less than three feet and no more than five feet above the ground (Ala. Code §32-5-247). Reflective devices for slow moving vehicles may not be used on any other type vehicle (Ala. Code §32-5-248). The laws requiring reflective devices on slow moving vehicles do not amend or repeal any laws of the state requiring lights and reflectors to be mounted on vehicles (Ala. Code §32-5-250).

Lights: Every vehicle moving upon the highways of the state must display lighted lamps and illuminating devices required by law for different classes of vehicles at the following times:

- From a half hour after sunset to a half hour before sunrise.
- At any time when windshield wipers are in use because of rain, sleet, or snow.
- When there is not sufficient light to clearly discern persons and vehicles at a distance of 500 feet.

Vehicles should have at least two headlights, but not more than four, that reveal persons and vehicles at least 350 feet ahead with at least one, but not more than two, mounted on each side. Any vehicle that at no time is operated at a speed in excess of 20 miles per hour is permitted to be equipped with two lighted lamps upon the front that reveal persons and objects 75 feet ahead.

Every vehicle, trailer, or other type vehicle being drawn at the rear end of a train of vehicles must be equipped with at least one tail lamp mounted on the rear at a height of not more than 60 inches nor less than 20 inches above the ground that emits a red light for a distance of 500 feet to the rear. In addition to taillights, each truck shall be equipped on the rear with two red reflectors, one on each side, and one stop light. Trucks over 80 inches wide are required to have reflectors and clearance lights mounted on the front, side, and rear as required by law (Ala. Code §32-5-240 and §32-5-242).

Whenever the load of any vehicle shall extend more than four feet beyond the rear of the bed or body, a red flag at least 12 inches in length and width is required to be displayed at the rear end of the load, except that between one-half hour after sunset and one-half hour before sunrise a red light visible for at least 200 feet shall be displayed at the rear end of the load (Ala. Code §32-5-211).

Additional lights – including spot lights, fog lights, driving lights, directional signal lights, and amber flashing warning lights may be used if mounted, directed, and of such intensity as required by law (Ala. Code §32-5-241).

Any vehicle that is parked on a highway or street between one half hour before sunrise or when there is not sufficient light to reveal an object within 500 feet, must display a white or amber light on the roadway side visible for 500 feet to the front and a red light visible for 500 feet to the rear (Ala. Code §32-5-244). Each truck and truck tractor must be equipped with at least three flares or red electric lanterns that can be seen for 500 feet, at least three red-burning fuses unless three red electric lanterns are carried, and at least two red cloth flags 12 or more inches square (Ala. Code §32-5-220). These devices must be displayed 100 feet to the rear, 100 feet to front, and 10 feet to the roadside of a vehicle when it is disabled on a highway or shoulder (Ala. Code §32-5-221).

Tires: State law requires every motor vehicle moved on a highway to be equipped with pneumatic tires with no block, stud, flange, cleat, or other protuberances made of any material other than rubber which project beyond the tread of the traction surface of the tire. However, it is permissible to use farm machinery with tires having protuberances that will not injure the highway. The department of public safety and local authorities in their respective jurisdictions may, at their discretion, issue special permits authorizing the operation upon a highway of farm tractors and other farm machinery with movable tracks (Ala. Code §32-5-210).

Brakes: Every motor vehicle is required to be equipped with brakes adequate to stop and hold the vehicle, including two separate systems for applying the brakes, each of which apply the brakes to at least two wheels, and constructed so that no part liable to failure is common to the two systems (Ala. Code §32-5-212).

Mirrors: Every motor vehicle operated singly or when towing another vehicle shall be equipped with a mirror located so that the driver has a reflected view of the highway at least 200 feet to the rear (Ala. Code §32-5-214).

Loading: Loading or unloading a vehicle upon a highway or highway right-of-way is unlawful (Ala. Code §§32-5-3 and 32-5-4).

Any person operating a motor vehicle on any highway hauling logs, lumber, bale cotton, or hay or other articles that may shift or drop onto the highway is required to fasten the load with steel cables or chains of sufficient size to prevent it from shifting or dropping (Ala. Code §32-5-75).

Every vehicle driven or moved on any highway is required to be constructed and loaded in such a manner as to prevent any of its load from dropping, leaking, or otherwise escaping and littering the road or right-of-way. Knowingly littering of any public or private property is a criminal act punishable by a fine of up to \$500 (Ala. Code §13A-7-29). However, Ala. Code §32-5-76 provides that any agricultural product in its natural state that is unintentionally deposited upon a highway, road, street, or public right-of-way does not constitute litter for the purposes of Ala. Code §13A-7-29.

What kind of driver's license is required to operate farm equipment and vehicles on public roads?

Any person driving a farm tractor or agricultural implement temporarily driven or moved on a highway is specifically exempt from securing a driver's license (Ala. Code §32-6-2(2)). Every person, except those specifically exempt by law, is required to procure a driver's license before driving a motor vehicle (truck or car) on the highways of Alabama (Ala. Code §32-6-1a). Any person with a valid automobile driver's license is permitted to drive farm trucks that have a gross vehicle weight rating (GVWR) of no more than 26,000 pounds.

What is classified as a commercial motor vehicle?

Under the Federal Motor Carrier Safety Regulations, a commercial motor vehicle is any self-propelled or towed motor vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle

- 1) Has a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, of 4,536 kg (10,001 pounds) or more, whichever is greater; or
- 2) Is designed or used to transport more than 8 passengers (including the driver) for compensation; or
- 3) Is designed or used to transport more than 15 passengers, including the driver, and is not used to transport passengers for compensation; or
- 4) Is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under regulations prescribed by the Secretary under 49 CFR, subtitle B, chapter I, subchapter C. [49 CFR 390.5](#).

However, all straight trucks and trucks with trailers having gross vehicle weight ratings or gross combination weight ratings of 26,000 pounds or less (other than passenger busses and hazardous material haulers) are exempt from all federal regulations while operating within the State of Alabama (Ala. Code 32-9A-2(b)(5)). A commercial motor vehicle does not include a farm vehicle, controlled and operated by a farmer, his employee, or family member, used to transport farm products, machinery, or supplies to and from a farm within 150 miles of the farm (49 CFR 383.3).

Additionally, straight trucks and trucks used with a trailer other than hazardous material, having gross vehicle weight ratings or gross combination weight ratings of more than 26,000 pounds operating within 150 air miles (as defined by [49 CFR 390.5](#)) from the farm are treated as exempt from all Federal regulations while operating within the State of Alabama except for the following:

- Drivers must be at least 18 years of age to operate the vehicles (49 CFR 391.67).
- Inspection, repair, and maintenance of vehicle, including driver vehicle inspection reports if more than one commercial vehicle is owned (49 CFR 396).
- The driver must meet physical qualifications to operate a combination vehicle (49 CFR 391.67).

CDL, USDOT marking or DOT registration will not be required for farm-owned vehicles operating within 150 air miles of the farm.

Please refer to the Alabama Motor Carrier Website for any questions.

<http://dps.alabama.gov/Documents/Documents/MCS-InterstateCommercialMotorVehicleRegulations.pdf>

Commercial Driver's License (CDL)

Except as noted above in the case of farmer-owned and operated vehicles, every person must have a commercial driver's license with applicable endorsements to drive a commercial motor vehicle, except when driving with a valid commercial driver's license learner's permit and while accompanied by a holder of a CDL valid for the vehicle being driven (Ala. Code §32-6-49.7).

A CDL is either class A, B, or C according to the type and GVWR of the vehicle being driven. The classifications are as follows:

Class A - Any combination of vehicles with a gross vehicle weight rating (GVWR) of 26,001 pounds or more, provided the GVWR of the vehicle(s) being towed is in excess of 10,000 pounds.

Class B - Any single vehicle with a GVWR of 26,001 pounds or more, and any such vehicle towing a vehicle not in excess of 10,000 pounds.

Class C - Any single vehicle with a GVWR of less than 26,001 pounds or any such vehicle towing a vehicle with a GVWR not in excess of 10,000 pounds comprising:

- i. Vehicles designed to transport 16 or more passengers, including the driver.
- ii. Vehicles transporting material that has been designated as hazardous under 49 U.S.C. 5103 and is required to be placarded under subpart F of 49 CFR 172 or is transporting any quantity of a material listed as a select agent or toxin in 42 CFR Part 73.

An Alabama Commercial Driver's Manual explaining CDL requirements and the test for obtaining a CDL can be obtained free of charge from the Alabama Department of Public Safety or from <http://dps.alabama.gov/documents/manuals/cdlmanual.pdf>.

Can I tow my cotton wagons/module-movers on public roads?

It is lawful to tow cotton wagons and module-movers on the highways of the state when the wagons or module-movers are being used to haul cotton from the field to the gin and to return them to the farm from the gin, but it will not be lawful to tow the cotton wagons on any Interstate or limited-access highway in the state, provided that no more than two wagons are attached to one truck, the width of each wagon or module-mover shall not exceed 10 feet in width, and the overall length of the wagons or module-mover and truck does not exceed 85 feet (Ala. Code §32-9-2).

Who is required to carry a medical card?

Every driver operating a motor vehicle in excess of 10,000 pounds, gross vehicle weight or gross combination weight, must carry a medical examiner's certificate of his/her physical qualification to drive a **commercial motor vehicle** (49 CFR 391.51). The physical qualifications to drive a commercial motor vehicle can be found in [49 CFR 391.43](#).

What are the Hours of Service (HOS) Regulations for Commercial Motor Vehicle (CMV) drivers?

The Federal Motor Carrier Safety Administration (FMCSA) regulates the number of hours CMV drivers can operate in order to ensure the safety of the drivers and others on the roads with them. Following are the HOS rules from the FMCSA's Driver's Pocket Guide (valid until July 1, 2013):

Drivers of passenger-carrying CMVs

- Can drive 10 hours after eight hours off-duty.
- Cannot drive after 15 hours on duty, following eight hours off-duty.
- Cannot drive after 60/70 hours on-duty after seven/eight consecutive days.

All other drivers of CMVs

- Can drive 11 hours after 10 hours off-duty.
- Cannot drive beyond the 14th hour after coming on-duty, following 10 hours off-duty. Off-duty time does not extend the 14-hour period.
- Cannot drive after 60/70 hours on-duty in seven/eight consecutive days. A driver can restart a seven/eight consecutive day period after taking 34 or more consecutive hours off (49 CFR §395.3 & §395.5).

However, these regulations do not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes in a state if such transportation (1) Is limited to an area within a 150 air-mile radius from the source of the commodities or the distribution point for the farm supplies, and (2) Is conducted (except in the case of livestock feed transporters) during the planting and harvesting seasons within such state, as determined by the state and (3) Farm supplies for agricultural purposes from a wholesale distribution point of the farm supplies to a retail distribution point of the farm supplies within a 150 air-mile radius from the wholesale distribution point. (49 CFR §395.1(K)).

The planting and harvesting season in Alabama for the purpose of this regulation is defined as the period from April 1 of each calendar year to March 31 of the next succeeding calendar year (Ala. Code §32-9A-2(b)(6)).

How do I find information on regulations regarding hazardous materials transportation?

As a part of the Homeland Security Act of 2002, transportation of hazardous materials has come under federal regulation through the Department of Transportation. Information on how to comply with federal hazmat regulations can be found at the following sources:

Federal Motor Carrier Safety Administration
FMCSA Hotline 1-800-832-5660

[FMCSA Hazmat Regulations](#)

[FMCSA's Hazmat Information Page](#)

What is the legal size of a tandem trailer that can be towed on highways?

At no time shall there be more than one loaded trailer towed by any vehicle, provided that two empty farm wagons or trailers with two or more wheels may be towed in tandem when the overall length of the towing vehicle and its tow does not exceed 76 feet altogether. Trailers used for transporting commodities or products for agricultural purposes to and from a farm shall not be in excess of 10 feet wide, except on an Interstate highway where the trailer must not be more than 102 inches (8.5 feet) wide (Ala. Code §32-9-27).

Each wagon or module-mover shall not exceed 10 feet in width and the overall length of the truck and wagons or module-movers shall not exceed 85 feet. Ala. Code §32-9-2.

What are the weight limits on trucks, trailers, and farm equipment?

State law generally restricts the gross weight to a maximum 20,000 pounds per axle and the gross weight on all axles to a maximum 80,000 pounds. Counties may enforce weight limits less than state law limits. The state may require lesser weights on certain roads and bridges.

Two and three axle trailers being used exclusively for transporting agricultural commodities or products to and from a farm for purposes related to operation and maintenance of a farm by a farmer, custom harvester, or husbandman are not required to conform to 20,000 pounds maximum per axle or 80,000 pounds maximum total on all axles (Ala. Code §32-9-20(4)(j)).

Agricultural commodities and equipment are exempt from the requirement of obtaining permits for the movement of oversized loads, but no load may exceed 22,000 pounds per axle or 150,000 pounds total gross weight (Ala. Code §32-9-29).

What are the size limits on trucks, trailers, and farm equipment?

State law generally restricts the width, length, and height of trucks, trailers, and semitrailers driven or moved on the highways, but provides certain exemptions for vehicles used to haul agricultural commodities or products as well as agricultural equipment.

General restrictions:

Except for those vehicles which are specifically exempt, any vehicle or combination of vehicles driven or moved on the highways of the state of Alabama must be in accordance with the following sizes: Total outside width cannot exceed 102 inches on vehicles operating on highways with traffic lanes 12 feet or more in width; on highways with traffic lanes less than 12 feet in width, total outside width cannot exceed 96 inches. No vehicle or semitrailer or trailer shall exceed 13 ½ feet in height, including load. No vehicle shall exceed 40 feet in length, except that the length of a truck tractor-semitrailer-trailer combination cannot exceed 57 feet in length. Semitrailers exceeding 53 ½ feet can only be operated on highways designated by the state highway director (Ala. Code §32-9-20).

Trailers traveling to and from a farm transporting commodities or products for agricultural purposes:

It shall be lawful for any farmer, custom picker, or husbandman to operate a two to eight-wheel, one to four-axle trailer on the highways of this state if the trailer is being used exclusively for the purpose of transporting to and from a farm agricultural commodities or products and for agricultural purposes relating to the operation and maintenance of a farm, provided that the combined weight of the trailer and its load is not in excess of 36,000 pounds, nor more than 10,000 pounds per axle, whichever is less (Ala. Code §32-9-29).

All such trailers as described in Section 32-9-26 shall be equipped with red reflectors to adequately illuminate the rear of such trailer by placing at least two on the rear and one at each side. No such trailer shall be in excess of 10 feet in width, except that such trailer shall not exceed 102 inches in width when operated or moved on the Interstate Highway System, and no such trailer, drawbar, or other connection, including the vehicle towing such trailer, shall be in excess of overall length of 76 feet. Overhang of round bales of hay on such trailer shall not exceed one foot per side except that the width of the trailer, including overhang shall not exceed 102 inches when operated or moved on the Interstate Highway System. At no time shall there be more than one loaded trailer towed by any vehicle, provided that two empty farm wagons or trailers with two or more wheels may be towed in tandem when the overall length of the towing vehicle and its tow does not exceed 76 feet altogether (Ala. Code §32-9-27).

Exclusively Hauling Livestock:

Trucks, trailers, and semi-trailers that are constructed and used exclusively for the hauling of livestock are exempt from the 40-foot restriction on length but shall not exceed 65 feet in length. Vehicles transporting loads of poles, logs, lumber, laminated wood, building materials, structural steel, piping, and timber are exempt from length restrictions (Ala. Code §32-9-25).

Implements of Husbandry Temporarily Moved on Highways:

Implements of husbandry (agricultural, horticultural, or livestock) temporarily moved on the highways on trucks, semitrailer trucks, or trailers, used exclusively for carrying 50 bales or less of cotton, are exempt from size restrictions (Ala. Code §32-9-22). A size exemption for transporting depends upon the individual facts of each case. For example, driving a combine 200 miles on the highway to auction it off would not likely fall under the exemption.

Cotton Wagons and Module-Movers:

Cotton wagons and module-movers can be legally towed on the highways of the state to haul cotton from the field to the gin and return, except it is unlawful to tow cotton wagons on Interstate or limited-access highways. No more than two wagons shall be attached to one truck. Each wagon or module-mover shall not exceed 10 feet in width and the overall length of the truck and wagons or module-movers shall not exceed 85 feet (Ala Code §32-9-2).

Milk Trucks:

Any truck or semi-trailer truck transporting milk for human consumption, for which refrigeration and transit is necessary for the interest of public health, when moving under refrigeration to or from market from the territory in which such commodity is collect or concentrated, is exempt from weight requirements.

Farm Tractors:

Farm tractors are exempt from width restrictions, but cannot exceed nine feet in width (Ala. Code §32-9-24).

Oversized Loads:

Farm and agricultural commodities and equipment are exempt from the requirement of obtaining permits for movement of oversized loads on the state highway system (Ala. Code §32-9-29(f)).

It is important to note that these exemptions are not blanket exemptions, which would apply regardless of the manner in which a motor vehicle was operated on the public highways. The law requires that travelers on public highways, whether in an automobile or on a tractor, use the highway in such a way that they will not injure other travelers.

Should rolled sod be secured in the same way as pallets of sod?

When hauling sod, each roll and each pallet must be individually secured. For rolled sod, each roll must have a hollow tube in the middle for a chain or tie-down to pass through in order to be secured on both sides of the roll. For pallets, each one must be secured on both sides with a chain or tie-down in such a way that each individual piece of sod on the pallet is secured. Tarps are not required but are a good way to ensure that each individual piece of sod on a pallet is secured.

What tags are required for farm trucks and trailers and farm equipment?

An updated table of all the tags available through the Department of Revenue is available at <http://www.revenue.alabama.gov/motorvehicle/mvforms/feeschedule.htm>.

Every vehicle operated on any city street or other public highway of or in this state must at all times have a license tag or license plate attached and plainly visible on the rear end of the vehicle. The appropriate type of tag or plate will be determined by the Department of Revenue at the time the tag or plate is applied for (Ala. Code §32-6-51). Tractors are exempt from the license tag or plate requirement when incidentally run on the highway between one point and another for use on a farm or by a farmer transporting products to be used on the farm, to and from the farm (Ala. Code §40-12-251).

For each motor tractor used on the highways of this state there shall be paid a license or privilege tax of \$100. However, this license shall not be collected for a tractor when run on a highway to be transferred from one point to another for use on a farm with or without a "small trailer" or with or without a "semitrailer," or when used on the highway for transferring what is commonly known as a "portable sawmill" or a "well-boring outfit," or when used on the highway by a farmer for the purpose of transporting to and from his farm products or products to be used on his farm (Ala. Code §40-12-251).

For further information, you may wish to contact [Alabama Department of Revenue – Motor Vehicle Division](#) or Alabama Department of Revenue Motor Vehicle Division - <https://www.support.revenue.alabama.gov/hc/en-us/requests/new>

Can I drive in other states with my farm tag?

While farm tags are honored throughout the state of Alabama, it is not guaranteed that they will be honored in other states. Can I drive my mini-truck, ATV or Utility Vehicle on roads in Alabama?

If your minitruck has been titled using a valid bill of sale, then you may apply for a tag for the minitruck and legally drive it on roads in the state. ATVs and Utility Vehicles cannot be legally driven on roads in Alabama.

What weight do I declare to the clerk when I go to get my truck tag?

The license and registration on any pickup truck for personal or agricultural use is based on the gross vehicle weight rating or the GVWR. In the past, you were required to declare to the clerk at the time of purchasing your tag the heaviest load that you potentially would ever haul in your truck bed or pull with your trailer loaded. Now you only have to declare the trucks GVWR. The vehicle's gross weight rating can usually be found on a sticker or tag on the inside of the driver's door. For more information on pricing your tag, please see (Ala. Code §40-12-248).

What are the requirements to purchase an Ag Tag?

The vanity license plate sponsored by the Alabama Farmers Federation or better known as the ***Ag Tag*** may be used on any motor vehicle, private passenger automobiles, pickup trucks and pleasure motor vehicles (i.e. recreational vehicles). Anyone can register a pickup at the unladen (empty) weight (a pickup truck cannot exceed 12,000 lbs.). The \$50 additional fee for an Ag Tag supports programs funded by the Alabama Farmers Agriculture Foundation, an organization responsible for agricultural education, and is tax deductible. For more information on purchasing your ***Ag Tag***, please see (Ala. Code §40-12-248).

What are the laws or regulations pertaining to transportation of fertilizer, chicken litter, and pesticides on public roads?

Fertilizer and chicken litter used as fertilizer in compliance with Alabama Department of Environmental Management and Alabama State Department of Public Health Regulations are not prohibited from being transported on public roads for use on the individual's farm (Alabama Non-Point Source Management Plan, pp. 27-30). Vendors cleaning and hauling chicken litter for others must be certified before hauling litter. Trucks or other vehicles hauling bulk fertilizer and chicken litter are required to be constructed and loaded and covered so as to prevent leaking or other loss that will cause littering of roads, right-of-ways, or cause a nuisance or hazard to public health (Ala. Code §32-5-76).

Any person who has been issued a Commercial Applicator Permit or a Private Applicator Restricted Use Pesticide Use Permit can transport pesticides that are registered with the Alabama Department of Agriculture and Industries in containers that conform to U.S. Department of Transportation regulations governing transportation of explosives and other dangerous articles (Ala. Admin. Code § 80-1-13-03). Transportation and management of all items on the highways are subject to the criminal littering law which prohibits knowingly (or negligently in certain situations) littering public or private property (Ala. Code §13A-7-29).

Before transporting fertilizer, chemicals, or other products that may be considered hazardous materials, make sure that you are in compliance with Federal Hazmat regulations.

<http://www.fmcsa.dot.gov/safety-security/hazmat/complyhmregs.htm>

If you purchase a product from a co-op that falls under these regulations, some co-ops will offer the necessary placards if they are required.

Who holds the right-of-way on four-lane roads?

There are no blanket lane usage laws in Alabama. Posted signs direct lane usage. Therefore, when two lanes are heading in the same direction, the lane closest to the center of the road has the right-of-way. However, unless there is a sign posted otherwise, you are not required by law to move into the right-hand lane. This affects such areas where there are truck-passing lanes on two-lane roads. For example, if you move into the right-hand lane of a passing zone, you must yield to the vehicle in the left-hand lane when it is time to merge into one lane. However, if no sign is posted otherwise, you are not required by law to move over and give up your right-of-way when it comes time to merge.

Do I need a tag for my trailer if I am transporting my agricultural commodities and/or farm equipment?

No, you do not need a tag. However, if you are transporting equipment as a “for hire” job, or if you are transporting someone else’s commodities and/or farm equipment, you will not be exempt.

Chapter Seven

Property

Federation Staff: William Green

What is the best way to resolve the problem of adjoining landowners placing a fence on our side of the property line?

First, you want to eliminate any claims of adverse possession pursuant to Ala. Code §6-5-200. For an adverse possession claim to succeed, the adjoining landowner must show that the possession is actual, open and notorious, exclusive, hostile or adverse, and continuous. Additionally, the possession must have been under a claim of right for a term of 10 years preceding the commencement of the adverse possession action. A simple lease signed by the adjoining landowner would preclude any possibility of his adverse possession of your land, even if the fence is too far over your line.

Alternatively, you may want to have a survey of your property performed to determine the boundary line between the properties. If the fence is in fact on your land, you may seek appropriate legal action to have the fence removed.

If I lease my land to another farmer, what is my liability as the property owner?

In the absence of a covenant to repair, a landlord is liable only for injury resulting from latent defects known to him at the time of the leasing, which he concealed from the tenant (*Collier v. Duprel*, 480 So. 2d 1198). Exceptions occur where the landlord retained control over the premises or portions thereof, where the landlord has covenanted, contracted, or agreed to undertake repairs.

To limit liability, the lessor may want to include an indemnity provision, which would provide for the lessee to defend and indemnify the lessor for any acts that were the result of gross negligence or intentional actions on the part of the lessee.

As a landlord, what are my rights regarding eviction of tenants?

Regarding agricultural laborers living on your property, an employee's right to occupy that housing on your property can be made conditional upon employment. Once employment ceases, the tenant's right to occupy ceases. See the Agricultural Labor section for information on requirements and standards for housing of agricultural and seasonal workers.

If you are renting your property to a tenant whose right to occupancy is not conditional upon employment, the rental agreement will be governed by the Alabama Uniform Residential Landlord and Tenant Act (Ala. Code §35-9A-101-§35-9A-603). The act outlines the landlord's obligations and remedies as well as the tenant's obligations and remedies.

Landlord's obligations:

- Cannot demand a security deposit more than one month's rent except in the case of pets, changes to premises, or increased liability risk.
- Must timely return the entire deposit or provide an itemized list of all deductions and return the remainder of the deposit.
- Disclose the name and address of the manager and the owner of the property.
- Deliver possession in accordance with the rental agreement at the commencement of the rental term.
- Maintain the premises according to building and housing codes.
- Must keep the common areas of the leased premises reasonably clean and safe.
- Make all repairs necessary to keep premises in habitable condition.
- Maintain good and safe working order of all electrical, plumbing, sanitary, heating, ventilating, and air conditioning appliances.

Tenant's Obligations:

- Comply with provisions of building and housing codes.
- Keep premises and dwelling unit clean and safe.
- Remove trash and other waste from dwelling unit.
- Keep plumbing fixtures clear.
- Use all electrical, plumbing, sanitary, heating, and cooling facilities and appliances in a reasonable manner.
- Do not deliberately or negligently destroy or harm the premises.
- Do not disturb the other tenants' peaceful enjoyment of the property.
- Abide by any rules and regulations of the premises.
- Not unreasonably withhold consent to the landlord for access for inspections, repairs, or exhibitions.

Landlord's Remedies:

- For material noncompliance by the tenant, the landlord must provide a 14-day, written notice of termination and specify the tenant's actions that constituted the noncompliance.
- If the breach is not remedied within 14 days, the lease terminates upon the date specified in the notice.
- Must give a seven-day notice of nonpayment of rent. If rent is not paid within the seven days, the landlord may terminate the agreement.
- A seven-day, written notice must be given for noncompliance affecting health and safety. After seven days, the landlord can enter the dwelling to make repairs and submit an itemized bill to the tenant for the reasonable cost of the repairs.
- If a holdover tenant refuses to give up possession after notice has been given and the notice period has ended, the landlord has a right to recover damages and injunctive relief and in some cases of willful behavior, recover attorney's fees.
- Security deposits must be claimed within 180 days or be forfeited.
- Tenants must pay rent before enforcing any rights against the landlord.

Tenant's Remedies:

- If there is a material noncompliance by the landlord, the tenant must provide written notice specifying the acts of noncompliance and give 14 days to remedy the problem before terminating the agreement.
- Tenant can recover actual damages and injunctive relief for the landlord's breach, and in cases of bad faith, can recover reasonable attorney's fees.

- Rent abates if the landlord fails to deliver possession and the tenant may terminate the agreement upon written notice.
- If the premise was damaged beyond habitability by fire or casualty not the fault of the tenant, the tenant can immediately vacate the premises and give written notice of termination within 14 days.
- The landlord cannot remove the tenant by interrupting any utilities. In the event the landlord does this, the tenant can recover possession or terminate the agreement and can recover damages.

What are the general rules regarding access to property?

Civil Trespass

A landowner has the right to be free from a continuing trespass on his land. A trespasser is a person who goes upon the premises of another without permission or invitation, expressed or implied, or who, after rightfully entering upon the premises of another, remains on the premises after consent or license to enter or use the premises has been terminated. The landowner must refrain from causing wanton or intentional injury, including by a trap or pitfall. The landowner must exercise reasonable care to avoid causing injury to a known trespasser in a position of peril and use reasonable care to warn a known trespasser of dangers known by the landowner to exist on the property. In the event that a trespasser is discovered, a landowner may cause injury or use force to prevent or terminate the trespass, as permitted in Ala. Code § 13A-3-Article 2.

A landowner has the same responsibilities to a child trespasser with respect to “natural” conditions upon the property. However, a landowner may be subject to liability for the physical injury or death of a child trespasser caused by an “artificial” condition upon the property if **all** of the following apply:

- The place where the condition exists is one the landowner knew or had reason to know a child would likely trespass.
- The landowner knew or had reason to know that the condition would involve unreasonable risk of death or serious bodily harm to a child.
- The child, because of his or her youth, did not discover the condition or realize the risk involved in encountering the condition.
- The usefulness of the condition and the burden to the landowner of removing the condition are slight.
- The landowner failed to exercise reasonable care in removing the danger or otherwise protecting the child.

Criminal Trespass

Criminal trespass in the 1st, 2nd or 3rd degree is a misdemeanor offense. A person is guilty of criminal trespass if he or she knowingly enters or remains unlawfully in a dwelling (1st degree); in a building or upon real property which is fenced or enclosed in a manner designed to exclude intruders (2nd degree); or in or upon a premise (3rd degree) (Ala. Code §§ 13A-7-2, 13A-7-3 & 13A-7-4). A “premises” for 3rd degree criminal trespass includes any building or real property and does not have to be fenced or enclosed in a manner designed to exclude intruders (Ala. Code § 13A-7-1(1)).

A person must “knowingly” trespass for criminal trespass; hence, a person who trespasses upon a premise accidentally, or who honestly believes that he or she is licensed or privileged to enter is not guilty of any offense, irrespective of possible liability for civil trespass. A person must also “enter or remain unlawfully” in or upon premises when he is not licensed, invited or privileged to do so. A person who, regardless of his intent, enters or remains in or upon premises which are not at the time open to the public does so with license and privilege unless he defies a lawful order not to enter or remain, personally communicated to him by the owner of such premises or other authorized person. A license or privilege to enter or remain in a building which partly open to the public is not a license or privilege to enter or remain in that part of the building which is not open to the public. A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privileges unless notice against trespass is personally communicated to him by the owner of such land or other authorized person, or unless such notice is given by posting in a conspicuous manner (Ala. Code § 13A-7-1(4)).

Am I required to post “No Trespassing” signs on my property?

A person who enters or remains upon unimproved and apparently unused land, which is neither fenced nor otherwise enclosed in a manner designed to exclude intruders, does so with license and privileges unless notice against trespass is personally communicated with him by the owner of such land or other authorized person, or unless such notice is given by posting a sign in a conspicuous manner (Ala. Code 13A-7-1(4)). The question may arise as to what constitutes “posting in a conspicuous manner.” In *David Lee Boykin Family Trust v. Boykin*, the court held that signs posted on two gates to 2,100 acres did not constitute a conspicuous manner (661 So. 2d 245 (Ala. Civ. App. 1995)). Pursuant to Ala. Code 13A-7-1(4) landowners may now satisfy the “posting in a conspicuous manner” requirement by painting vertical stripes of purple paint upon trees and posts along a property line. So long as:

1. Are vertical lines not of less than eight inches in length and not less than one inch in width.
2. Are placed so that the bottom of the mark is not less than three feet from the ground or more than five feet from the ground.
3. Are placed at locations that are readily visible to any person approaching the property and are not more than 100 feet apart on forest land or 1,000 feet apart on land other than forest land.

In general, one who enters your property should have notice of their trespassing from any point of entry on your property, not just at the gates or main entrances.

What amount of force can I use to protect myself if an intruder enters my home?

A person is justified in using reasonable physical force against an aggressor to defend him or herself. You may use force to protect third parties if those third parties would be justified in using that same amount of force to defend their person. You are no longer required to retreat from an aggressor in your home prior to the use of deadly force. The use of deadly force to defend yourself is justified if deadly force is being used against you or the aggressor is using physical force against you while you are in your home during a burglary or attempted burglary (Ala. Code §13A-3-20 & §13A-3-23).

What are my rights as a landowner whose property is land-locked by another landowner?

However, if one landowner's property is surrounded by another landowner's property, then the landlocked owner may cross the other landowner's property to get to a public road or highway. "The owner of any tract or body of land, no part of which tract or body of land is adjacent or contiguous to any public road or highway, shall have and may acquire a convenient right-of-way, not exceeding in width 30 feet, over their lands intervening and lying between such tract or body of land and the public road nearest or most convenient thereto, provided written approval is obtained from the municipal government and the planning board of such municipality (Ala. Code §18-3-1).

If the catfish harvest crew that is employed by the processor gets hurt on our land while harvesting fish, who is liable?

You are liable if you in some way negligently or intentionally caused the injury.

If I allow volunteers from a non-profit organization to come onto my property to gather crops and one is injured while on my property, am I liable to them for damages?

Notwithstanding any law to the contrary, any farmer, as an owner, lessee, occupant, or person otherwise in control of land, who allows, without compensation, another person who is employed by or who is an agent of a nonprofit entity to enter upon their land for the purpose of gathering any crops remaining in the fields following the initial crop harvest, owes that person the same duty of care the farmer owes a trespasser. For the purpose of this section a nonprofit entity is an entity that is exempt from federal income tax under 26 U.S.C. §501(c)(3) (Ala. Code §6-5-343). There is no duty owed to trespassers other than not to intentionally injure the trespasser. See more information regarding duty owed to trespassers later in this section.

What are the laws pertaining to public access to my property adjacent to a creek or stream?

In the absence of an easement adjacent to the stream or creek, a landowner has the right to be free from a continuing trespass on his land. Despite the fact that a piece of property is bisected by a public waterway, the stream banks are private property, and it is considered trespassing to enter the property from the water body. A trespasser is a person who goes upon the premises of another without permission or invitation, expressed or implied, or who, after rightfully entering upon the premises of another, remains on the premises after consent or license to enter or use the premises has been terminated. For landowner responsibilities to a trespasser, please see the previous question related to civil trespass.

What are my rights regarding water use from a stream that flows through my property?

A riparian property owner is a person who owns land on a bank of a river, or one who is owner of lands along, bordering upon, bounded by, fronting upon, abutting, or adjacent and contiguous

to and contact with the river. A riparian owner can use ground water and surface water to improve his property as long as it does not unreasonably interfere with the possessory rights of the downstream landowner. In addition, a landowner may use percolating water for a reasonable and beneficial use pertaining to agriculture, manufacturing, or irrigation, but cannot waste the water to the injury of others. Finally, a riparian owner may also use state waters upon notification to the Alabama Office of Water Resources. (i.e., State waters are all waters of any river, stream, watercourse, pond, lake, coastal, groundwater, or surface water, wholly or partially within the state, natural or artificial. This does not include waters, which are entirely confined and retained completely upon the property of a single individual, partnership, or corporation unless such waters are used in interstate commerce).

Can my family farm be labeled a nuisance by a municipality, a county, or the state of Alabama?

As long as a farming operation in the state of Alabama is being lawfully run in accordance with generally accepted agricultural and farm management practices described within the Alabama Code, it shall not be labeled a nuisance. Only by violating the laws, regulations, and rules associated with farm management can a family farm be labeled a nuisance by the state, municipality or county (Ala. Code §2-6B-1-§2-6B-7).

What is my liability to customers visiting my agritourism operation?

A participant or a representative of a participant may not make a claim against, maintain an action against, or recover from an agritourism professional for injury, sickness, damage, or death of a participant, resulting from an inherent risk of an agritourism activity. For this law to apply, the agritourism operation must have a sign posted in a visible place, such as the entryway, with the following notice printed in large black font with letters that are at least one inch tall:

“Under Alabama law, an agritourism professional is not liable for injury, sickness, or damage to, or the death of, a participant in an agritourism activity at this location if the injury, sickness, damage, or death results from the inherent risks of the agritourism activity. Inherent risks of an agritourism activity include risks of injury, sickness, damage, or death inherent to land, equipment, and animals as well as the potential for you to act in a negligent manner that may contribute to your injury, sickness, damage, or death, or for another participant to act in a manner that may cause your injury, sickness, damage or death. You are assuming the risk of participating in this agritourism activity.”

This law does not limit the liability of an agritourism operator who

- (1) has actual knowledge of a dangerous condition on the land, facilities, or equipment, that is not open and obvious, or has actual knowledge of the dangerous propensity of a particular animal that is not open and obvious, and does not make the danger known to the participant, and that danger proximately causes injury, sickness, damage, or death to the participant.
- (2) Fails to properly train or improperly or inadequately trains an employee who is actively involved in the agritourism activity and an act or omission of the employee proximately causes injury, sickness, damage, or death of the participant.
- (3) Intentionally or willfully injures the participant.

- (4) Fails to vaccinate, or quarantine sick domestic or domesticated animals in accordance with applicable animal health statutes and regulations.

Can the city, county, state, or federal government take my land for public or private use, i.e. through eminent domain?

Yes. Governments have the power to take land from a landowner for public use, provided the government pays a fair market price for the land. The Fifth Amendment to the U.S. Constitution guarantees that a person will not have their private property taken for public use without being justly compensated for that land, and the person from whom the land is taken will have the rights of due process of law.

The 2005 United States Supreme Court case of Kelo v. City of New London also expanded the power of eminent domain, saying that economic growth qualified as a public use and justified the government transferring land from one private owner to another. The Court found that deference should be given to legislatures to restrict and allow eminent domain powers by governing bodies. Therefore, shortly after the Kelo decision, the Alabama Legislature passed a law to prohibit governments from using their eminent-domain authority to take privately owned property to turn it over to retail, industrial, or other private developers.

Can the local, state, or federal government restrict the use of my land through its police powers?

Yes. Federal, state, and local governments can regulate how you use your land through their police powers. This will typically come by way of local zoning ordinances. Municipalities may divide areas within their limits into zones and restrict uses of properties within those zones (Ala. Code §11-52-70). These regulations should be made in accordance with a comprehensive zoning plan and be designed to, among other things: lessen street congestion, secure safety, promote health and general welfare, provide adequate light and air, and facilitate the adequate provision of water, sewage, schools, and other public requirements (Ala. Code §11-52-72).

How is my timber or farm property valued for state tax purposes?

In 1978, the legislature passed an act enabling the valuation of farm and timberland at its current use value instead of its potential market value. Current use means the value of the property under the use that is being made of that land on October 1 of that year, while market value is what the property might sell for given the possibility of commercial development or other use. The general opinion was that a farmer should not be penalized by paying higher taxes on farm land that has a market value based on the speculative use of the property for uses other than farm land.

All agricultural, forest and single family, owner occupied residential property, including owner occupied residential manufactured homes located on land owned by the manufactured home owner, and historic buildings and sites, qualifies as a class III property and is assessed at 15%. A homestead exemption is defined as a single-family owner-occupied dwelling and the land thereto, not exceeding 160 acres. The property owner may be entitled to a homestead exemption if he or she owns a single-family residence and occupies it as their primary residence on the first day of the tax year for which they are applying.

Chapter Eight

Hunting and Wildlife

Federation Staff: William Green

Is there a limit on how high I can build a fence?

There is no law limiting the height of a fence. However, for purposes of maintaining wildlife, once an area of land is fenced, you may not import or export any wildlife to or from the area without a breeder's license. To obtain a breeder's license, check with the Alabama Division of Wildlife and Freshwater Fisheries.

When should I obtain a breeder's license?

The Commissioner of the Department of Conservation and Natural Resources is responsible for issuing annual game breeder licenses. The applicant must pass a thorough investigation by the Commissioner to determine the applicant's qualifications, responsibility, and equipment for entering the business. The game breeder license carries fee of \$250 for all species except members of the family of Cervidae (generally including species of deer). For the family Cervidae, the fee is \$250 for the first 50 animals, \$500 for 51 to 100 animals, and \$1,000 for more than 100 animals. The game breeder's license expires on September 30 of the year issued and must be renewed annually. A game breeder's license allows the breeder to sell live, protected game animals and game birds, and the eggs, embryos, or semen of the birds or animals for propagating purposes (Ala. Code §9-11-31).

What is the law regarding trespassing on my property by hunters or joy riders?

A person is guilty of criminal trespassing in the second degree if he or she knowingly enters or remains unlawfully upon real property, which is fenced or enclosed in a manner designed to exclude intruders (Ala. Code §13A-7-3). Criminal trespass in the second degree is punishable by not more than three months imprisonment in the county jail or hard labor for the county (Ala. Code §13A-5-7). A person who knowingly enters or remains unlawfully on premises not fenced would be guilty of criminal trespass in the third degree, punishable by imprisonment in the county jail, not to exceed 30 days (Ala. Code §13A-7-4). To deter trespassers, a landowner should have his land fenced and posted in a conspicuous manner. Generally, a landowner should post notices at every point of entry to the property.

A person in lawful possession or control of premises may legally use (reasonable but not deadly) physical force upon a trespasser where and to the extent he reasonably believes it to be necessary to prevent or terminate what he reasonably believes to be criminal trespass (Ala. Code §13A-3-25). Reason would dictate that a verbal command to terminate the trespass be given to the trespasser prior to using physical force. Intentional injury of a trespasser could result in criminal charges of assault being brought against the landowner. Devices such as "blind" cables or ditches used for the purpose of stopping trespassers that result in injury or death of the trespasser could also result in legal liability to the landowner.

What legal duty do I owe persons who come onto my land for recreational hunting that is not for profit?

As the owner of property, you have certain responsibilities to ensure the safety of those who come onto your land. There are three categories that characterize a person who comes onto your property: trespasser, licensee, and invitee. A licensee enters your property for their benefit, such as a social guest. Any person permitted onto your land for recreational hunting, not for commercial profit, would be classified as a licensee. The owner, lessee, or occupant is protected from liability in the event that a licensee, by his own action, injures his person or property. Ala. Code §35-15-2. However, willful or malicious failure to guard or warn against a dangerous condition that causes the injury of a licensee, may result in legal liability of the owner, lessee, or occupant (Ala. Code §35-15-3).

If I lease my property for hunting or fishing, and someone injures himself or herself on my land, can they sue me for negligence?

In 2011, the “Landowners Protection Act” became law, which protects property owners against injury liability lawsuits brought by hunters or fishermen who are injured on leased land. A landowner who leases property for hunting or fishing purposes shall not be liable for any damages to any person based on the use of the leased property for hunting or fishing purposes. However, the landowner will be liable to the lessee if he has actual knowledge at the time of the lease of a dangerous condition existing on the land that is not open and obvious and does not make the danger known to the lessee, and the danger causes injury, damage, or death to a person rightfully using the land pursuant to the lease. In addition, the landowner will be liable if he intentionally or willfully causes an injury to a person rightfully using the land pursuant to the lease. The best method of protection against uncontrollable circumstances is to obtain liability insurance. Ala. Code 1975 § 35-15-40.

What are the desirable elements of a hunting lease?

Most hunting leases are for one year or longer, must be in writing, and signed by the lessor (landowner) and the lessee (hunter) to be legally binding on both parties. A lease conveys certain property rights from the lessor to the lessee and requires certain duties of the lessee. Such rights and duties should be clearly defined in the lease. The minimum terms of the hunting lease should include

- A legal description of the land
- Types of game to be hunted
- Duration of the lease
- Amount and time of rent to be paid
- Agreement of lessee to abide by applicable game laws
- Agreement of lessee to conserve and maintain the property (roads, trees, food plots, structures)
- Number of members and limit of guests
- Agreement by the lessee to exempt the lessor from liability for injury suffered by the lessee or third parties

- Agreement of the lessee to obtain hunter's liability insurance
- The names, addresses, and signatures of the lessor and lessees

Hunting with firearms is inherently dangerous and written executed leases convey certain important rights, thus, it is advisable to seek legal advice prior to entering into long-term hunting leases.

Do I have to have a license to hunt or fish in Alabama?

In the state of Alabama, everyone between the ages of 16 and 65 years of age must obtain a hunting license. In addition, a freshwater fishing license is required for those between 16 and 65 years of age if fishing in freshwater with a rod and reel or artificial bait. An Alabama fishing license or a Wildlife Heritage License is required to fish with hook and line outside the county of legal residence or from a boat anywhere on freshwater. All saltwater anglers are required to register with the Department of Wildlife and Fisheries. The registration is free. For information on how to register, please visit <http://www.outdooralabama.com/alabama-license-information> For more information on other hunting or fishing licenses, please see the appropriate link below for the type of hunting or fishing you intend to do.

<http://www.outdooralabama.com/freshwater-fishing>

<http://www.outdooralabama.com/saltwater-fishing-alabama>

<http://www.outdooralabama.com/hunting> <http://www.outdooralabama.com/season-and-bag-limits>

All hunting or fishing licenses can be purchased via the Internet. To purchase a license go to https://www.alabamainteractive.org/dcnr_hf_license/welcome.action.

Everyone born on or after August 1, 1977 is required to provide proof of completion of an approved hunter education course before you can purchase a hunting license. The traditional hunter education course consists of a minimum 10 hours of instruction and a written examination. There are alternative methods of approved hunter education available on CD-ROM and through the Internet. For more information regarding hunter safety courses please visit <http://www.outdooralabama.com/hunter-education-alabama>

Is it legal to use any form of fishing other than “hook and line” in the state of Alabama?

It shall be unlawful for any person to take, catch, or kill or attempt to take, catch, or kill any game fish by any other means than ordinary hook and line, artificial lure, troll, or spinner in any of the public waters of this state. Any person who violates this law shall be guilty of a misdemeanor and, upon conviction, shall be punished by a fine of not less than two hundred fifty dollars (\$250) nor more than five hundred dollars (\$500) (Ala. Code §9-11-87).

May I carry my day's limit of game fish across state lines without penalty?

Yes. If you have obtained the proper fishing license from the state, you are entitled to transport your day's limit across state lines with no penalties. It is illegal to carry more than your day's creel catch, and it must be for personal use. A violation of this law would be a misdemeanor with a fine of no less than \$100 and no more than \$250 (Ala. Code §9-11-53 thru § 9-11-58).

Am I required to have a license if I am physically disabled?

In the state of Alabama, all who are physically disabled are required to obtain hunting and fishing licenses. For hunting licenses, hunters must follow the guidelines described in the question above. For a fishing license, Alabama residents can obtain a fishing license for \$1 by taking a complete physician's statement form to their local courthouse. The Division of Wildlife and Freshwater Fisheries maintains a statewide network of hunting, fishing, and shooting sites for people with physical disabilities. To find out more about Alabama's Hunting and Fishing Trail for People with Disabilities, go to <http://www.outdooralabama.com/physically-disabled-hunting-and-fishing-trail>.

For more information regarding the physician's note please visit:

http://www.outdooralabama.com/fishing/freshwater/disabled_fishing_application.pdf
<http://www.outdooralabama.com/sites/default/files/Physically%20Disabled%20Application%20new.pdf>

Do I have to have a license or a permit to plant food crops for deer or doves?

It is illegal to bait a field for killing birds or animals (Ala. Code §9-11-245). Crops must be planted according to practices recommended by the Alabama Cooperative Extension System. A crop seedbed should be prepared by breaking or disking, and seeds should be covered by disking or some other normal agricultural implement. If seeds are not covered, (a few seeds may be inadvertently not covered) the field is considered baited, and it is illegal to hunt over that field. Seed may be harvested or not harvested, and any seeds left on top of the ground because of harvesting are not considered bait. For more information regarding dove hunting and land management for dove hunting, please visit

<http://www.eregulations.com/alabama/guide/prohibited-methods-hunting/>

Alabama Farmers Federation Policy Staff Guide

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