

Acknowledgements

The Alabama Farmers Federation is proud to offer you a newly-revised printing of *Ag Law and You*. The first printing 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. The use of this book by persons in production agriculture, agri-business, academics, law enforcement and perhaps politics must certainly be done with the thought in mind that the document is not comprehensive in its application but is sufficient as a guide to steer its user in the proper direction. If you have legal questions you should contact your attorney to fully discuss that particular legal situation.

Ms. Kelly Segrest served as an intern with the Alabama Farmers Federation Department of Governmental Affairs and was the project coordinator for the revision. Kelly was assisted by Dr. William Hardy Jr., J.D., associate dean of the College of Agriculture at Auburn University and professor of Agriculture Law and Economics at Auburn University, and Paul Pinyan, J.D., assistant director of the Department of Governmental Affairs for the Alabama Farmers Federation. Freddie Patterson, director of Governmental Affairs outlined the mission to not only update the law book but also to make it more user friendly. I hope that the charts and the removal of some of the legalese make this a source of quick reference to legal questions you may encounter on your farms.

We join the farmers of Alabama in expressing a word of appreciation to the many state agencies including the Alabama Department of Public Safety, Alabama Department of Agriculture and Industries, Alabama Department of Environmental Management, Alabama Department of Industrial Relations, U.S. Department of Labor, and the Alabama Department of Revenue. It is the hope of everyone involved in this project that this can serve as an educational tool to help the agriculture community comply with the laws by referencing *Ag Law and You*.

Jerry A. Newby, President
Alabama Farmers Federation

Important Notice

This handbook is intended to provide accurate and authoritative information with regard to the various subject matters covered in it. It is being provided by the Alabama Farmers Federation with the understanding that neither the Federation nor any of the persons involved in the preparation of this handbook is hereby engaged in rendering legal, tax, accounting, or other professional services. If legal advice or other professional assistance is required, the services of your attorney should be sought.

At various points in this handbook, references and citations are made to statutes, regulations, and governmental publications. All quotations of and references to these materials are believed to be current and reliable as of the date of publication, but these materials are also subject to change at any time. No responsibility is assumed for editorial or clerical errors. Updated information concerning statutes and regulations can be obtained at a number of public websites and resources in addition to those available at public libraries. Excellent basic sources for Alabama laws include Alabama.gov (www.state.al.us), Alabama Legislative Information System (www.legislature.state.al.us) and Office of the Alabama Attorney General (www.ago.state.al.us). A huge collection of links to legal materials of all types for all states, including Alabama, is contained in FindLaw (www.findlaw.com).

July 2005

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

This book is outlined in major topics resulting from questionnaires and inquiries received from active members of the Alabama Farmers Federation. They were as follows: agricultural labor, animal liability, environmental law, estate planning, licenses and sales taxes for sale of farm products, operation of vehicles and equipment, and property. A new section including questions pertaining to wildlife and hunting has been added.

This book was originally a product of an idea 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 FAQs are contained within this handbook and are referred to by question in the index.

TABLE OF CONTENTS

5	Chapter One: Agricultural Labor
29	Chapter Two: Animal Liability
32	Chapter Three: Environmental Law
43	Chapter Four: Estate Planning
52	Chapter Five: Licenses and Sales Taxes for Sale of Farm Products
55	Chapter Six: Operation of Vehicles and Equipment
68	Chapter Seven: Property
72	Chapter Eight: Hunting and Wildlife
82	Index
85	Appendix

Chapter One **Agricultural Labor**

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 C.F.R. 500.120.

While other types of insurance may not be required, farmers may want to consider the following insurance to limit their exposure to possible losses:

- Fire Insurance
- Group Life Insurance
- Liability Insurance
- Business Life Insurance
- Automobile Insurance
- Group Health Insurance
- Workers' Compensation Insurance
- Disability Insurance
- Business Interruption Insurance
- Retirement Insurance
- Crime Insurance
- Key Man Insurance
- Glass Insurance
- Marine and/or Inland Marine Insurance
- Rent Insurance
- Boiler and Machinery Insurance
- Employee Benefit Coverage Insurance
- Flood Insurance
- Aviation Insurance

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 workers' compensation insurance.

I farm and log. Can logging be classified as agricultural labor?

For the purposes of compensation law, the applicability of the farm-labor exemption does not depend on whether the employer is primarily engaged in farming operations. Rather, it is the nature of the work the employee does that determines whether he or she should be considered a "farm laborer" for purposes of Ala. Code §25-5-50. Based on this analysis, the employee will be considered a farm laborer only in cases where the employment consists of traditional farming activities, such as raising crops and tending to livestock, or where his or her work forms an integral contribution to the farming operation. The test excludes occupations that do not involve duties historically associated with farming even when those jobs are incidentally related to the operation of the farm. The question may naturally arise as to whether employees of businesses denominated as "farms"—catfish, poultry, and others—should be considered farm laborers. Under the test proposed by the court in *Patrick v. Miller*, 440 So. 2d 1096 (Ala.Civ.App. 1983), these workers should not be exempted from the act as their duties do not reflect traditional farming activities. Some examples of workers that fall within this exemption include a worker employed to operate farm machinery for the purpose of picking crops; an employee whose work activities include repairing fences, cleaning out stalls, feeding livestock, and general farm labor; a worker involved in the production of nursery stock; and an employee engaged in milking cows, tending barns, driving tractors, and plowing fields. An employee engaged to raise, train, groom, and care for riding horses in a stable facility located on land along with a small farming operation "might qualify" for coverage, but the farm exemption may operate against him in the correct circumstances.

While compensation law does not specifically address the issue of whether logging is considered an agricultural activity, Section 810-3-14.03 entitled "Gross Income of Farmers" specifically provides that a taxpayer engaged in forestry or the growing of timber is not engaged in the business of farming. However, there is some inconsistency between state and federal laws. Thus, it would be prudent and advisable to obtain additional information from the U.S. Department of Labor if you are engaged in logging.

What is the H-2A Certification for Temporary or Seasonal Agricultural Work and how do I comply?

According to 20 CFR 655.100 - .199, the H-2A temporary agricultural program establishes a means for agricultural employers who anticipate 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. Before the U.S. Citizenship and Immigration Services (CIS) can approve an employer's petition for such workers, the employer must file an application with the Department stating that there are not sufficient workers who are able, willing, qualified, and available and that the employment of aliens will not adversely affect the wages and working conditions of similarly employed U.S. workers. The statute and Departmental regulations provide for numerous worker protections and employer requirements with respect to wages and working conditions that do not apply to nonagricultural programs. The Department's Wage and Hour Division, Employment Standards Administration (ESA) has responsibility for enforcing provisions of worker contracts.

"Temporary or seasonal nature" means employment performed at certain seasons of the year, usually in relation to the production and/or harvesting of a crop, or for a limited time period of less than one year when an employer can show that the need for the foreign workers(s) is truly temporary.

Qualifying Criteria

The following general categories of individuals or organizations may file an application:

- An agricultural employer who anticipates a shortage of U.S. workers needed to perform agricultural labor or services of a temporary or seasonal nature, may file an application requesting temporary foreign agricultural labor certification. “Temporary or seasonal nature” means employment performed at certain seasons of the year, usually in relation to the production and/or harvesting of a crop, or for a limited time period of less than one year when an employer can show that the need for the foreign worker(s) is truly temporary.
- The employer may be an individual proprietorship, a partnership or a corporation. An association of agricultural producers may file as a sole employer, a joint employer with its members, or as an agent of its members.
- An authorized agent, whether an individual (e.g., and attorney) or an entity (e.g., an association), may file an application on behalf of an employer. Associations may file master applications on behalf of their members.

Many of the benefits that must be included in a job offer and other conditions that must be satisfied will be dependent upon what prevailing practices exist in the same occupation, crop and area. Employers are advised that it is desirable to make an independent determination of factors such as prevailing wages and employer practices before filing an application.

An employer who files an application for temporary foreign labor certification pursuant to H-2A regulations must meet the following specific conditions:

Recruitment: The employer must agree to engage in independent positive recruitment of U.S. workers. This means an 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 State Workforce Agency (SWA). 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 Department of Labor for every state except Alaska. Employers should consult with the SWA or the Department of Labor regional office to determine what the rate is for their state.

If a worker will be paid on a piece-rate basis, the worker must be paid the prevailing piece-rate as determined by the SWA. 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 workers’ 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 the same day. Such housing must be inspected and approved according to appropriate standards. Housing provided by the employer shall meet the full set of DOL Occupational Safety and Health 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.

Meals: The employer must provide either 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 shall 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 costs 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 economic 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. 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.

Fifty Percent Rule: The employer must hire any qualified and eligible U.S. worker who applies for a job until fifty percent (50%) of the period of the work contract has elapsed.

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. The fee is \$100, plus \$10 for each job opportunity certified, up to a maximum fee of \$1,000 for each certification granted.

Other Conditions: The employer must keep accurate records with respect to a workers' 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.

Process for Filing

When to Apply

An employer should observe the following time considerations when applying for H-2A certification:

- A complete labor certification application must be filed with and received by the appropriate regional administrator and local SWA at least forty-five (45) calendar days before the first date on which workers are needed. If the initial application is accepted or amended within the required time frame

and complies with the regulations, the regional administrator will make a certification determination thirty (30) calendar days before the date on which the workers are needed.

Delays in obtaining an acceptable application beyond the time permitted in regulations will delay the certification determination. Employers are encouraged to file before the minimum forty-five (45) calendar-day requirement. This allows more time for review, discussion, and amendment, if necessary.

- Employers are encouraged to consult with the U.S. Department of Labor, Employment and Training Administration regional office and SWA staff for guidance and assistance well before the forty-five (45) calendar day filing period.
- In emergency situations, the regional administrator may waive the time period specified, provided the regional administrator has an opportunity to obtain sufficient labor market information on an expedited basis in order to make a determination of U.S. worker availability. None of the minimum conditions of employment (wages, housing, other benefits) are waived, however.

How To Apply

Applications may be filed using any of the methods below:

- Filed in person with the appropriate regional administrator and local SWA;
- Mailed to the appropriate regional administrator and local office of the SWA by certified mail, return receipt requested; or
- Delivered by guaranteed commercial delivery to the appropriate regional administrator and local office of the SWA.

Recruitment of U.S. Workers

After an employer's application is accepted for consideration, the regional administrator will require the employer to independently engage in specific positive recruitment efforts within a multi-state region of traditional or expected labor supply if the regional administrator determines there is a sufficient supply of labor to be recruited.

Certifications Granted

If the regional administrator determines that the employer has complied with the recruitment assurances, the adverse effect criteria, all time requirements and other appropriate requirements established by law and regulation, then the regional administrator will grant the temporary foreign agricultural labor certification for the number of job opportunities for which it has been determined there are not sufficient U.S. workers available. After certification has been granted, the employer must continue to recruit U.S. workers until the H-2A workers have departed for the place of work. In addition, the SWA must continue to refer to the employer qualified and eligible U.S. workers who are seeking employment and who apply up to fifty (50) percent of the contract period, and then the employer must hire these U.S. workers.

Violations, Penalties, and Sanctions

The Wage and Hour Division of the Employment Standards Administration (ESA) of the U.S. Department of Labor has a primary role in investigating and enforcing the terms and conditions of employment. ESA is responsible for enforcing the contractual obligations employers have toward employees, and may assess civil money penalties and recover unpaid wages. Administrative proceedings and/or injunctive actions through federal courts may be instituted to compel compliance with an employer's contractual obligations to employees.

The Employment and Training Administration (ETA) enforces other aspects of the laws and regulations. ETA is responsible for administering sanctions relating to substantial violations of the regulations (denial of certification for up to three years) and less than substantial violations of the regulations (reductions of one-fourth of job opportunities certified).

You may obtain additional information and forms at www.doleta.gov, or at:

Employment and Training Agency
U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue N.W.
Washington, D.C. 20210
1-877-US 2 JOBS (872-5627)

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 (INS) Form I-9, Employment Eligibility Verification. Employers must keep I-9s on file for at least the greater of three years or one year after employment ends.

Even though federal law prohibits hiring undocumented aliens, the Immigration Reform and Control Act of 1986 (IRCA) makes it illegal to discriminate against a person because he is not a United States citizen or national. IRCA prohibits employers from discriminating against aliens who have been lawfully admitted to the United States for permanent or temporary residence as well as aliens who have applied for temporary residence status. When verifying eligibility status, the employer cannot ask the employee to produce more than 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.

With respect to housing, Title 29 U.S.C. §1823, entitled "Migrant and Seasonal Workers," 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 Department of Labor. The Alabama Department of Industrial Relations should also be consulted because that department administers the inspection for the 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:

- Members of the farm employer's immediate family are not considered to be employees and are excluded from OSHA coverage.
- Congress has usually attached riders to annual appropriation bills for the U.S. Department of Labor that exclude workers in agricultural operations 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 logging operations must provide specific training and protective equipment, tools and equipment to employees.

OSHA provides intricate details on guards required for tractor power take-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.

Alabama state laws also require employers, including agricultural employers, to provide safe working conditions for employees. Moreover, they provide for employer liability when an employee is injured or killed by reason of 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 Workers' 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 Industrial Relations
Room 543, Industrial Relations Building
649 Monroe Street
Montgomery, Alabama 36130
Phone: (334) 242-8265

U. S. Department of Labor
Atlanta Federal Center
61 Forsyth St. SW, Suite 6875
Atlanta, GA 30303
Phone: (404) 562-2080

U. S. Department of Labor
ESA Office of Public Affairs
200 Constitution Ave., NW
Room S-3325
Washington, DC 20210
Phone: (202) 693-0023

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 *11 or more workers on any one day during the previous 12 months*, to perform hand labor field work. 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 land-labor reforestation work. Hand labor does not include care or feeding of livestock or hand labor in permanent structures such as packing houses or other forestry operations such as logging.

The following must be provided to meet minimum field sanitation requirements for 11 or more workers on any one day during the previous 12 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 handwashing facility for every 20 employees who work more than 3 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.

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

What DOL Posters am I required to place in my workplace?

The U.S. Department of Labor requires that employers give their employees notice 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 employees 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
RSA Union, 6th Floor
PO Box 303500
Montgomery, AL 36130-3500
334-242-3460
<http://www.alalabor.state.al.us>

Do I have to withhold taxes for day labor working in a hay field?

Employment taxes fall into three separate categories: (1) federal unemployment tax (FUTA), (2) Social Security and Medicare taxes (FICA), and (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 2004 or 2005.
- You had one or more employees for at least some part of a day in any 20 or more different weeks in 2004 or 20 or more different weeks in 2005.

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

- You paid cash wages of \$20,000 or more to farm workers during any calendar quarter in 2004 or 2005.
- You employed 10 or more farm workers during at least some part of a day (whether or not at the same time) during any 20 or more different weeks in 2004 or 20 or more different weeks in 2005.

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 is 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.

Tax rates and Social Security wage limit: For 2000, the employer and the employee will continue to pay:

- 6.2% each for social security tax (old-age, survivors, and disability insurance).
- 1.45% each for Medicare tax (hospital insurance).

What is the minimum age for agricultural workers?

Alabama and federal child labor laws place certain restrictions on employees less than 18 years of age, but there appears to be inconsistency between state and federal laws. Thus, it would be prudent and advisable to consult both federal and state laws before employing persons less than 18 years of age.

Federal minimum age standards: Minors, 16 years or older, may perform any job, whether declared hazardous or not, for unlimited hours outside of school hours. Minors who are 14 and 15 years old may be employed, outside school hours, in any agricultural occupation not declared hazardous by the U.S. Secretary of Labor. Minors, 12 and 13 years old, may be employed with written parental consent on farms where their parent or guardian is also employed.

Children of farm owners or operators may be employed by the parents at any time and in any occupation on a farm owned or operated by their parents. 29 C.F.R 570.2 and 29 C.F.R. 570.70

Minors under age 12 may be employed with written parental consent on farms where employees are exempt from federal minimum wage requirements.

Alabama child labor law restrictions: No person under 18 years of age shall be permitted to work in any place or occupation which the Alabama Department of Industrial Relations may declare dangerous to life or limb or injurious to the health or morals of persons under 18. There are 25 specifically prohibited occupations. Of these, the following may be related to agriculture:

- Operating or driving any truck or heavy equipment over three tons gross weight.
- Engaged in logging or around any sawmill.
- Operating or assisting in operation of any power-driven hoisting apparatus.
- Assembling, adjusting, cleaning, oiling or servicing machinery in motion.
- Manufacturing or transporting of toxic chemicals or compounds.
- In, about, or in connection with pesticides.

Minors employed in agriculture are not exempt from any of 25 specifically prohibited occupations for persons under 18 years of age. Ala. Code §25-8-43. Persons under 16 years of age are prohibited from working in any place or occupation which the Alabama Department of Industrial Relations declares to be dangerous to life or limb or injurious to the health or morals of persons under 16. Of the 15 specifically prohibited occupations or workplaces, the following may be related to agriculture:

- Operating or assisting in operating any machines used in picking cotton or any other material.
- Proximity to any hazardous or unguarded gearing.
- Occupations causing dust in injurious quantities.
- Soldering, brazing, heat treating or welding.
- Operating any automobile, truck or motor vehicle.

Minors employed in agriculture are not exempt from working in any of the 15 occupations or workplaces prohibited to persons under 16. Ala. Code §25-8-35.

In addition to the specifically prohibited occupations or workplaces for persons under 18 years of age, the Department of Industrial Relations can declare any occupation or workplace dangerous and prohibit employment of persons under 18 years of age. Ala. Code §25-8-34.

No person under 16 years of age shall be employed, permitted, or suffered to work in any gainful 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 attendance has been waived, may, upon recommendation of the superintendent of education in the area and approval by a child labor inspector, be issued a work permit for nonhazardous occupations. Employment authorized by this section shall not be for more than eight hours in any one day, or for more than 40 hours in any one week, and not before 7:00 a.m. or after 9:00 p.m. Ala. Code §25-8-37.

Persons 16 and 17 years old who are enrolled in a private or public school are not permitted to work between 10:00 p.m. and 5:00 a.m. on any night preceding a school day, except in cases where the superintendent or headmaster grants an exemption. Ala. Code §25-8-36.

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 \$5.15 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 seasonal 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 Code of Federal Regulations 780.300).

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

Listed below are 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?	
	Is any additional information relative to a different name necessary to check work record? If yes, explain.	Applicant's maiden name
Address or Duration of Residence	How long have you been a resident of this state or city?	

Subject	Lawful questions	Unlawful questions
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.

Questions for Potential New Employees (continued):

Subject	Lawful questions	Unlawful questions
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.

Subject	Lawful questions	Unlawful questions
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. Inquiry into how applicant acquired ability to read, write or speak a foreign language.
National Origin	Inquiry into language applicant speaks and writes fluently.	Inquiry into applicant's lineage; ancestry; national origin; descent; parentage, or nationality unless part of the federal I-9 process in determining employment eligibility. Nationality of applicant's parents or spouse.

Questions for Potential New Employees (continued):

Subject	Lawful questions	Unlawful questions
National Origin	Inquiry into language applicant speaks and writes fluently.	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.	
Arrests	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

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 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 other people'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 for 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.
- A standard woven wire fence with stay wires not over 12 inches apart not less than 36 inches high, the bottom wire resting on the ground, the first eight 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, and six inches apart, with two wires being of not more than four-inch barb, spaced so as to make the fence 48 inches high and securely fastened to trees or posts not more than 10 feet 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.

Chapter Three

Environmental Law

What are the environmental regulations regarding timber cutting near streams?

Alabama does not have any general law concerning timber cutting. However, in Mobile County BMP's 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 and nonpoint source control program.

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

Alabama's BMP's are non-regulatory guidelines and more information can be obtained from the Alabama Forestry Commission at (334) 240-9348.

The U.S. Army Corps of Engineers require BMP's on roads and stream crossings within wetlands and other waters of the United States. The U.S. Army Corps of Engineers baseline BMP's can be found in Section 404, Corps of Engineers Permit Requirements, 40 CFR Part 233.22.

What are TMDLs?

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 regu-

late 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 Practices and habitat reservations. In Alabama, the TMDL program is administered by the Alabama Department of Environmental Management (ADEM). A list of the water bodies in the state with EPA approved TMDLs can be found at <http://www.adem.state.al.us/WaterDivision/WQuality/TMDL/ApprovedTMDLs04.htm>.

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

All producers who are diverting any waters of the state or have the capacity to withdraw at least 100,000 gallons of water a day from of surface and/or ground water and all public water system must register their use with the Office of Water Resources, a division of the Alabama Department of Economics and Community Affairs. A declaration of beneficial use must be filed for each withdrawal facility. Information on the Beneficial Use program and forms for registration can be found on the ADECA website under the Office of Water Resources section at www.adeca.alabama.gov. If the declaration of use is deemed complete, the Office of Water Resources has 90 days to issue a certificate of use. It is important to register your water use so that, in the event that the regulation of water diversion becomes necessary, your use of the water is on file.

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 sur-

face 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 335-6-10-02(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 with regard to 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.

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 user 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 Permit and Commercial Applicator Permit. Commercial Applicator Permits are divided into five types as follows: custom, custodial, governmental, resident, 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 for a Private Applicator Permit should obtain an application from a County Cooperative Extension Agent designated by the Commissioner of Agriculture and Industries to provide pesticide use training. The designated agent shall provide the required training to include study materials. The applicant will take a test, complete an application, pay a \$15 fee and the designated agent will certify the training. The Department of Agriculture will issue the Restricted-Use Pesticide Applicator Permit (Alabama Administrative Code 80-1-13-.09).

Applicants for the Commercial Applicator Permit must take and pass a written examination, given and graded by the Examining Board, created by the Commissioner of Agriculture under the authority of Ala. Code §2-28-2.

The written examination will be based on problems and situations appropriate to the particular category or subcategory of the applicator's certification. The comprehensive examination will measure the applicant's knowledge, understanding, and use of pesticides (Alabama Administrative Code 80-1-13-.08).

Can I be sued for damages caused by chemical drift?

If you intentionally or negligently cause the chemical drift, you may be liable. Negligence can be found if you do not follow printed instructions, applicable best management practices, and similar 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 Commissioner of Agriculture is authorized to make rules and regulations governing the discarding and handling of pesticides and pesticide containers. Ala. Code §2-27-59. 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 label directions. 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 label directions.

Disposal of empty pesticide containers should comply with label directions as well as state and federal regulations. Regardless of the method of disposal, all empty pesticide containers, other than paper bags, must be triple rinsed or pressure rinsed prior to disposal. Some empty pesticide containers may be returned to the pesticide dealer, but containers that have been properly rinsed are considered to be solid waste that can be disposed of in a sanitary landfill. Each pesticide label will have disposal instructions.

More information on disposal of pesticides may be obtained from the Alabama Department of Environmental Management (ADEM) at (334) 271-7984.

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

In 2003, the Alabama legislature enacted the Alabama Scrap Tire Environmental Act to regulate the disposal of scrap tires. The Scrap Tire Program went into effect in August 2004 and is administered by ADEM. Under the Act, a \$1.00 per tire fee is to be collected from consumers by tire dealers on all new, used, and retread tire sales in order to fund the Scrap Tire Program. All receivers, transporters, and processors of scrap tires are regulated through the program and must register with ADEM, and illegal-dumping sites will be 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. Information, forms, and regulations on the Scrap Tire Program can be found at http://www.adem.state.al.us/LandDivision/ScrapTire/scrap_tire.htm.

For more information on scrap tire disposal contact ADEM:

Alabama Department of Environmental Management
Solid Waste Branch
P. O. Box 301463
Montgomery, AL 36130-1463
Telephone 334-271-7988
Fax 334-279-3050
e-mail: ScrapTire@adem.state.al.us

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 §22-7-3.

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 to be 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. 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 classified as used oil generators. As such, they are required to transport or have transported by a used oil collector approved by ADEM and displaying an EPA identification number to an ADEM approved used oil collection center or recycling center. Used oil must be stored in safe, closed containers; all spills must be cleaned up with cleaning supplies properly disposed of. Used oil generators are also permitted to use used motor oil as a fuel in heating devices. To obtain more information on the handling and disposal of used motor oil, one may contact ADEM by calling (334) 271-7743.

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

Dead animals are considered to be a solid waste and must be disposed of in accordance with ADEM and Health Department 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 (1) 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 and (2) that no dead animals be permitted to remain in the barn, lot, yard, or anywhere on the farm longer than 24 hours after death before disposing of the carcass. Rendering plants that haul dead animals must use trucks with steel or other impervious material bodies (Alabama Administrative Code 80-3-6-.27).

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 prevented from doing anything to harm the property's designation as a wetlands. An unintentional violation could result in your having to restore the land back to its wetlands 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 wetlands 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 5 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?

Since April 1, 1999, under the National Pollutant Discharge Elimination System (NPDES) rules the Alabama Department of Environmental Management has required that livestock

feeding operations obtain required permits and control the discharge of pollutants.

Registration is required in any of the following three categories:

- A concentrated animal feeding operation (CAFO) as defined by the rule (simplified), a CAFO is an AFO with more than the following number(s) and type(s) of animals: 1,000 confined slaughter or feeder cattle; 700 mature dairy cattle (milked or dry); 2,500 swine (approximate weight at least 55 pounds each); 500 horses; 10,000 sheep or lambs; 55,000 turkeys; 125,000 laying hens, broilers, or other poultry; 5,000 ducks or 1,000 animal units of any other type/size animal as determined by ADEM.
- Any animal feeding operation (AFO) that has been designated as a CAFO not by definition but due to a point source (end-of-pipe) or nonpoint source (field runoff) discharge of pollutants after April 1, 1999
- Any AFO not meeting or exceeding Natural Resources Conservation Service (NRCS) technical standards and guidelines.

Currently, there are no fees associated with the registration application but the department has the authority to implement fees if the legislature does not continue to provide adequate funding for the CAFO program.

Registration is an annual application that must be approved before a facility can legally begin construction or operation or continue operation. To comply with the main registration requirements, you must:

- Complete a detailed Notice of Registration (NOR) with the assistance of the Soil and Water Conservation District (SWCD) office.
- Develop and file a comprehensive Waste Management System Plan (WMSP) certified by a Qualified Credentialed Professional (QCP).
- Provide proof of a certain number of annual continuing edu-

cation (CE) credits in waste management or other approved topics.

Your local Soil and Water Conservation District (SWCD) office is the official registration point. Every SWCD office has the NOR form and should be the first place to contact. You should also check with your county Extension office for assistance obtaining continuing education credit or with educational information. (PubID: ANR-1175: Ted Tyson/AFO-CAFO Registration Requirements: Your ?'s Answered).

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. QCPs recognized by ADEM include Alabama Professional Engineers (PEs) experienced in animal waste management and (for nutrient management plans only) Certified Crop Advisors (CCAs).

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

- Ownership, organizational structure, operator, and persons 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 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. Important: **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 CAFO's?

You do not have to have the CE's 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 8 hours of refresher training in subsequent years.

If you don't satisfy the CE 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

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 don't 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 (next page):

- Spouse's share:
 - If there are no surviving children or parents, spouse inherits entire estate.
 - If there are surviving parents, but no 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), then 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 take by representation.

Isn't 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 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 joint ownership is used rather than separating the ownership and making specific provisions in a will. But always keep in mind that while it is possible that estate taxes may 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 number 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 ownership is absolute ownership, entitling the owner to all rights to 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 owner or some other designated person or persons. Life estates are discussed later. Fee simple defeasible ownership is ownership that is subject to or limited by the occurrence or non-occurrence of some event. There are two types of defeasible ownership: fee simple determinable and fee simple subject to condition subsequent. Fee simple determinable is ownership that terminates upon the happening of some event and the ownership automatically ends. The former owner can retain a possibility of reverter, which automatically returns the ownership to the former owner once the specified event occurs. 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 back to the former owner. Fee simple subject to condition subsequent is ownership in which the new owner must not perform some activity, and the former owner reserves the right to terminate the estate upon the happening of some specific event. The ownership does not automatically revert back, however. The former owner must take some action, such as retaining a right of entry. The right of entry gives the former owner the right to retake possession of the property through legal action. For example, a landowner grants

a tract of land to his son "on the condition that" it is not sold to anyone outside the immediate family. If the son sells the property to someone else, the former owner could pursue legal action to retake possession. In both cases, a remainderman can be named as the person to whom the property reverts back to or has the right of entry to retake possession upon the happening of the specified event. This allows you to deed your property to an heir under special conditions that limit their ownership rights, even after your death.

What is a life estate?

A life estate is a way of owning property that is measured by the life of its owner or some other designated person or persons. Even though the life tenant has the possessory right and use of the property much like a fee simple owner, such a person does not hold the legal title to the property. Life estates can be created by wills or deeds and can terminate upon such events as remarriage, as well as death. Also, the grantor of a life estate can name a remainderman as the person to whom the property will pass when the life estate ends. For example, a husband can grant his wife a life estate in their property, and he names his daughter as the remainderman. When the wife's life estate ends, possession of the property passes to his daughter. Many farmers in Alabama have used life estates as a method by which they have provided for a surviving spouse during his or her remaining lifetime after the death of the property owner; the property passes at the death of the spouse to the heirs of the original property owner. This approach has kept the property tied up in the family and ensured that the surviving spouse could have the use and benefit of the property during his or her remaining life.

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 \$950,000. 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 members 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 many 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 trusts, 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 \$950,000 of each person’s estate may be passed tax-free to a younger generation (this amount increases to \$1,000,000 in 2006 and thereafter). 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. Therefore, no business form is necessarily better than another. Each form can have significant effects on gift and estate taxes and on the consequences of the transfer 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 list describes several options and gives associated advantages and disadvantages.

<i>Form</i>	<i>Description</i>	<i>Advantages</i>	<i>Disadvantages</i>
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 a 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

<i>Form</i>	<i>Description</i>	<i>Advantages</i>	<i>Disadvantages</i>
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"> • As 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 • Partners may sell their interest in the business if other partners agree 	<ul style="list-style-type: none"> • Unlimited liability of each general partner • Partnerships have a limited number of members • Can lack continuity and stability • 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 that participate 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

<i>Form</i>	<i>Description</i>	<i>Advantages</i>	<i>Disadvantages</i>
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 • Transfer of ownership is easy • Relatively easy to raise equity capital • Corporation is perpetual 	<ul style="list-style-type: none"> • More difficult and expensive to organize • Double taxation • More regulations on corporations • 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

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 hereby 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 a person 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 bonafide 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. If, however, the farm products are processed or altered from their original state (such as converting apples to apple cider or placing a stand on Christmas trees), a license may be required.

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

Pursuant to Ala. Code §40-23-4 the following gross proceeds from the transactions are exempt from sales and use tax:

- Sales of seeds for planting purposes and baby chicks and poults.
- Sales of all livestock by whomsoever sold, and also the gross proceeds of poultry and other products of the farm, dairy, grove, or garden, when in the original state of production or condition of preparation for sale, when such sale or sales are made by the producer or members of his immediate family or for him by those employed by him to assist in the production thereof.
- Sales of seedlings, plants, shoots, and slips which are to be used for planting vegetable gardens or truck farms and other agricultural purposes.
- 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 a person engaged in the business of selling plants, seedlings, nursery stock, or floral products.
- Sales of fruit or other agricultural products by the person or corporation that planted, cultivated, and harvested such fruit or agricultural product.

Chapter Six

Operation of Vehicles and Equipment

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 anytime 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 tail lights, 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 after sunset and 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 road side 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, there is an exemption provided for in Ala. Code §32-5-76 for 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.

Except as noted below in the case of farmer-owned and operated vehicles, every person must have a commercial drivers license (CDL) with applicable endorsements to drive a commercial motor vehicle, except when driving with a valid automobile drivers license and accompanied by the holder of a CDL valid for the vehicle being driven. Ala. Code §32-6-49.7. A commercial motor vehicle is vehicle with a GVWR of 26,001 or more pounds; a vehicle designed to transport 16 or more passengers, including the driver; and a vehicle transporting hazardous materials required by federal or state law to display a warning placard. Ala. Code §32-6-49.3. 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.

A CDL is classified as class A, B, or C according to the type and GVWR of the vehicles to be driven. Each CDL may have additional endorsements and restrictions related to type and size of vehicles authorized to be driven. Ala. Code §32-6-49.10. An Alabama Commercial Drivers Manual explaining CDL requirements and tests for obtaining a CDL can be obtained free of charge from the Alabama Department of Public Safety.

Can I tow my cotton wagons/modules 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 10,001 lbs., 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 C.F.R. 391.51. The physical qualifications to drive a commercial motor vehicle can be found in 49 C.F.R. 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. The following are the HOS rules from the FMCSA's Driver's Pocket Guide.

Drivers of Passenger-Carrying CMVs:

- Can drive 10 hours after 8 hours off-duty.
- Cannot drive after 15 hours on duty, following 8 hours off-duty.
- Cannot drive after 60/70 hours on-duty after 7/8 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.
- Cannot drive after 60/70 hours on-duty in 7/8 consecutive days. A driver can restart a 7/8 consecutive day period after taking 34 or more consecutive hours off.

There is a special exemption for property carrying drivers. Drivers may extend the 14 hour on-duty period to 16 hours if they are released from duty at the normal work reporting location for the previous 5 duty tours; and return to their normal work reporting location and are released from duty within 16 hours; and have not used this exemption in the previous 6 days, except following a 34-hour restart of a 7/8-day period.

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

Transport of hazardous materials across our country has been identified as a possible threat to our homeland security. 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 1-88-832-5660
www.fmcsa.dot.gov

Office of Hazardous Materials Safety
U.S. Department of Transportation
hazmat.dot.gov

Alabama Department of Public Safety
P.O. Box 1511
Montgomery, AL 36102
334-242-4371
www.dps.state.al.us

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

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.

Two-to-eight wheel, one-to-four axle trailers traveling to and from a farm transporting commodities or products for agricultural purposes shall not be in excess of 10 feet wide (except not in excess of 102 inches on interstate highways) and 76 feet in overall length (trailer and towing vehicle). Overhang of round bales of hay cannot exceed one foot on each side. Only one loaded trailer can be towed by any one vehicle. Two empty trailers can be towed by one vehicle if the overall length is not in excess of 76 feet. Ala. Code §§32-9-26 and 32-9-27.

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.

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

Trucks, trailers, and semi-trailers which 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 (agricultural, horticultural, or livestock) temporarily moved on the highways on trucks or trailers used exclusively for carrying 50 bales or less of cotton are exempt from size restrictions. Ala. Code §32-9-22.

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).

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 1/2 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 1/2 feet can only be operated on highways designated by the state highway director. Ala. Code §32-9-20.

What are the weight limits on trucks and 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 84,000 pounds. Counties may authorize weight lim-

its 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 84,000 pounds maximum total on all axles. Ala. Code §32-9-20(4) j.

Farm and 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 (f).

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 idea 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?

A license tag of the proper classification is required to be attached to the rear of any motor vehicle which is operated upon public streets or highways. Ala. Code §32-6-51. Farm tractors used primarily for drawing plows or other implements and other farm implements, only incidentally moved upon public highways, are not required to have a license tag (Alabama Administrative Code 810-5-1-.223).

The annual license tax and registration fee for farm trucks or

truck tractors is limited to \$30 where the gross vehicle weight of the truck (the empty weight of the vehicle plus the heaviest load to be carried) does not exceed 30,000 pounds and to a maximum of \$85 where the gross vehicle weight exceeds 30,000 pounds but does not exceed 42,000 pounds. A farmer will be entitled to pay this reduced amount for only one truck tractor. The annual license tax and registration fee for trucks and truck tractors in excess of 42,000 pounds ranges from \$585 to \$845. Ala. Code §40-12-248.

Any truck trailer, tractor trailer, or semi-tractor used by a farmer to transport farm products to and from market or personal property to be used on the farm are exempt from the license taxes and registration fees of \$20. Ala. Code §40-12-252. Each tractor used on the highway by a farmer to transport farm products and products to be used on the farm or to be transferred from one point to another is exempt from the \$100 privilege tax on motor tractors. Ala. Code §40-12-251.

Prior to obtaining a tag for a vehicle having a gross weight in excess of 55,000 pounds, the applicant must furnish proof (IRS Schedule 1, Form 2290) that the federal heavy vehicle use tax has been paid. Ala. Code §32-6-58. This tax is suspended for agricultural vehicles if it is reasonably expected that the vehicle will be used for 7,500 or less miles on public highways (Alabama Administrative Code 810-5-1-.233). No license tags will be issued for any motor vehicle until the Alabama ad valorem tax has been paid for the preceding year. Ala. Code §40-12-253. Trucks used by farmers exclusively to transport farm products or personal property used on their farms are issued F1 tags for gross weights to 30,000 pounds and F2 tags for gross weights to 42,000 pounds and are exempt from apportioned registration. However, under the provisions of the International Registration Plan for Apportioned Registration of Motor Vehicles, such trucks can use the public highways in other states without purchasing license plates in the other states (Alabama Administrative Code 810-5-1-.442).

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. Before crossing into other states, it is a good idea to check with the public safety department to make sure your farm tag will be honored. Otherwise you will be considered traveling without a tag.

What are the different types of tags and fees associated with those tags?

ALABAMA REGISTRATION (TAG) FEE SCHEDULE

Only vehicle registration (tag) fees are listed in the following schedules. For most vehicles, ad valorem (property) tax and local issuance fees will also apply. Effective January 1, 2005, prorated tag fees (1 month -11 months) will not be allowed for most vehicle REREGISTRATIONS (renewals). **EXCEPTIONS: Alabama law will continue to allow prorated registration fees for self-propelled campers, farm trucks, and farm truck tractors that are to be REREGISTERED (or registered for the first time).** Alabama law will also continue to allow prorated registration fees for newly acquired vehicles and vehicles initially brought into Alabama.

Standard	Category	Annual Adm'l Fee	Plus	12 Months	11 Months	10 Months	9 Months	8 Months	7 Months	6 Months	5 Months	4 Months	3 Months	2 Months	1 Month
Passenger and Pickups (0-6,000 lbs Gross Vehicle Weight.)	None	n/a *	\$23.00	\$21.00	\$19.17	\$17.25	\$15.33	\$13.42	\$11.50	\$9.58	\$7.67	\$5.75	\$3.83	\$1.92	
Passenger and Pickups (0-6,000 lbs Gross Vehicle Weight.) - PERSONALIZED	\$50.00	+	\$23.00	\$21.00	\$19.17	\$17.25	\$15.33	\$13.42	\$11.50	\$9.58	\$7.67	\$5.75	\$3.83	\$1.92	
Passenger and Pickups (0-6,000 lbs Gross Vehicle Weight.) - HANDICAP	None	n/a	23.00	21.00	19.17	17.25	15.33	13.42	11.50	9.58	7.67	5.75	3.83	1.92	
Motorcycles	None	n/a	15.00	13.75	12.50	11.25	10.00	8.75	7.50	6.25	5.00	3.75	2.50	1.25	
Motorcycles - PERSONALIZED	50.00	+	15.00	13.75	12.50	11.25	10.00	8.75	7.50	6.25	5.00	3.75	2.50	1.25	
Motorcycles - HANDICAP	None	n/a	15.00	13.75	12.50	11.25	10.00	8.75	7.50	6.25	5.00	3.75	2.50	1.25	

* n/a = not applicable

Trucks and Truck Tractors

Gross Vehicle Weight (Pounds)	Tag Indicator F1 or Distinctive plate (1)	12 Months	11 Months	10 Months	9 Months	8 Months	7 Months	6 Months	5 Months	4 Months	3 Months	2 Months	1 Month
8,001 - 10,000		\$30.00	\$28.00	\$26.17	\$24.25	\$22.33	\$20.42	\$18.50	\$16.58	\$14.67	\$12.75	\$10.83	\$8.92
10,001 - 12,000	XA & XM	105.00	96.25	87.50	78.75	70.00	61.25	52.50	43.75	35.00	26.25	17.50	8.75
12,001 - 18,000	X1	170.00	155.83	141.67	127.50	113.33	99.17	85.00	70.83	56.67	42.50	28.33	14.17
18,001 - 26,000	X2	235.00	215.42	195.83	176.25	156.67	137.08	117.50	97.92	78.33	58.75	39.17	19.58
26,001 - 33,000	X3	300.00	275.00	250.00	225.00	200.00	175.00	150.00	125.00	100.00	75.00	50.00	25.00
33,001 - 42,000	X4	320.00	296.67	273.33	250.00	226.67	203.33	180.00	156.67	133.33	110.00	86.67	43.33
42,001 - 55,000	X5	585.00	536.25	487.50	438.75	390.00	341.25	292.50	243.75	195.00	146.25	97.50	48.75
55,001 - 64,000	X6	650.00	595.83	541.67	487.50	433.33	379.17	325.00	270.83	216.67	162.50	108.33	54.17
64,001 - 73,280	X7	715.00	655.42	595.83	536.25	476.67	417.08	357.50	297.92	238.33	178.75	119.17	59.58
73,281 - 80,000	X8	780.00	715.00	650.00	585.00	520.00	455.00	390.00	325.00	260.00	195.00	130.00	65.00
Over 80,000	X9	845.00	774.58	704.17	633.75	563.33	492.92	422.50	352.08	281.67	211.25	140.83	70.42

(1) P1 personalized plates and distinctive plates, excluding military plates and plates with the international symbol of access, may be issued for TRUCKS (not truck tractors) in this weight category when the additional plate fee is paid along with the standard registration fee.

Farm - F1, F2, and F3 plates are only issued to trucks. F4 plates are only issued to truck tractors.

Gross Vehicle Weight (Pounds)	Tag Indicator	12 Months	11 Months	10 Months	9 Months	8 Months	7 Months	6 Months	5 Months	4 Months	3 Months	2 Months	1 Month
0 - 30,000	F1	\$30.00	\$27.50	\$25.00	\$22.50	\$20.00	\$17.50	\$15.00	\$12.50	\$10.00	\$7.50	\$5.00	\$2.50
30,001 - 42,000	F2	85.00	77.92	70.83	63.75	56.67	49.58	42.50	35.42	28.33	21.25	14.17	7.08
Over 42,000 (Truck)	F3	250.00	229.17	208.33	187.50	166.67	145.83	125.00	104.17	83.33	62.50	41.67	20.83
Over 42,000 (Truck Tractor)	F4	250.00	229.17	208.33	187.50	166.67	145.83	125.00	104.17	83.33	62.50	41.67	20.83

Forest Product (Trucks, Only)

Gross Vehicle Weight (Pounds)	Tag Indicator	12 Months	11 Months	10 Months	9 Months	8 Months	7 Months	6 Months	5 Months	4 Months	3 Months	2 Months	1 Month
0 - 30,000	L1	\$40.00	\$36.67	\$33.33	\$30.00	\$26.67	\$23.33	\$20.00	\$16.67	\$13.33	\$10.00	\$6.67	\$3.33
30,001 - 42,000	L2	85.00	79.58	74.17	68.75	63.33	57.92	52.50	47.08	41.67	36.25	30.83	25.42

This fee schedule can be found at:

<http://www.ador.state.al.us/motorvehicle/mvforms/FeeSchedule.pdf>

For further information, you may contact:

Alabama Department of Revenue
50 North Ripley St.
Montgomery, AL 36132
(334) 242-1170
www.ador.state.al.us

What are the laws or regulations pertaining to transportation of fertilizer, chicken litter, pesticides, and herbicides 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 or rights-of-way 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 and stored in containers that conform to U.S. Department of Transportation regulations governing transportation of explosives and other dangerous articles (Alabama Administrative 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. If you pur-

chase 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 two-lane roads?

There are no blanket lane usage laws in the state of 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.

Chapter Seven

Property

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. The elements of adverse possession are actual, exclusive, open, notorious, and hostile possession under claim of right for a term of 10 years preceding the commencement of the 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 engage a surveyor to determine the boundary line between the two pieces of land. If the fence is in fact on your land, you may seek appropriate legal action to have the fence removed.

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 the Boykin case, the court ruled that two signs on two gates was not a conspicuous manner of posting for the 2,100 acres in question. It was agreed that, for this particular case, placing signs every 100 feet apart so that one sign could be read from the other sign would constitute conspicuous posting. 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. *See*

David Lee Boykin Family Trust v. Boykin, 661 So.2d 245 (Ala. Civ. App. 1995).

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 latent defects are known by the landlord and concealed; instances where the landlord retained control over the premises or portions thereof; instances where landlord voluntarily undertakes to repair; and instances where 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.

What are the general rules regarding access to property?

A landowner has the right to be free from a continuing trespass on his land. Trespass has been defined as "any entry on the land of another without express or implied authority," *See Cove Properties, Inc. v. Walter Trent Marina, Inc.* (Ala. Civ. App. 1999).

However, if one landowner's property is surrounded by other landowner's property, then the landlocked landowner may obtain access over 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 the 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. (See page 74 - Licensee)

If I allow volunteers from a non-profit to come onto my property to gather crops and if one is hurt while on my property, can they sue me 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 the land for the purpose of removing any crops remaining in the farmer's fields following the harvesting of the crops, owes that person the same duty of care the farmer owes a trespasser. Ala. Code §(Act 2004-367). For purposes of this section a nonprofit entity is an entity that is exempt from federal income tax under 26 U.S.C. Section 501(c)(3). This includes churches and other religious organizations. There is no duty owed to trespassers other than to use not more force than is necessary to terminate the trespass or not to intentionally injure the trespasser. (See the Hunting and Wildlife section for more information on duty of care for trespassers.)

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

In the absence of an easement, a landowner has the right to be free from a continuing trespass on his land. Trespass has been defined as "any entry on the land of another without express or implied authority," See Cove Properties, Inc. v. Walter Trent Marina, Inc. (Ala.Civ.App. 1999).

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

A riparian owner is a person who owns land on a bank of a river, or one who is owner of land along, bordering upon, bounded by, fronting upon, abutting, or adjacent and contiguous to and in 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 lower landowner. Also, 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 (i.e., 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) upon notification to the Alabama Office of Water Resources.

Non-riparian owners have a right of nonconsumptive use of water from naturally occurring, navigable watercourses in this state. This right of nonconsumptive use does not extend, however, to non-navigable watercourses. Neither does this right of nonconsumptive use extend to common law surface waters. Riparian owners, by comparison, have nearly exclusive rights to use and consume the non-navigable waters on their lands.

Chapter Eight

Hunting and Wildlife

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.

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.

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 of the landowner.

What legal duty do I owe persons who come onto my land for hunting, etc.?

As the owner of property, you have certain responsibilities to ensure the safety of those that come onto your land. There are three categories that characterize persons who come onto your property: trespasser, licensee, and invitee. In general, a trespasser is someone who enters your property without permission. There is no duty owed to trespassers other than to use not more force than is necessary to terminate the trespass or not to intentionally injure the trespasser. 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 results in legal liability of the owner, lessee, or occupant. Ala. Code §35-15-3. An invitee enters your property for reasons of your own benefit, such as fee hunting, fee fishing, or a customer on your "pick-you-own operation". Invitees are owed the highest level of duty. There may be circumstances that are beyond your control, such as insects or animals, that you are required to be aware of and warn invitees against. The best method of protection against uncontrollable circumstances is to obtain liability insurance. Also, in the case of fee hunting and other related ventures, it would be advisable to prepare and execute a detailed written lease addressing liability, as well as other items, and require the lessees to obtain hunter's/sportsman's liability insurance.

The property owner's level of duty owed to the visitors differs between the different types of entrants as discussed in the following table (next page).

Status of Entrant	Duties owed			
	Artificial Conditions	Natural Conditions	Active Operations	Examples
<i>Undiscovered Trespasser</i>	-No duty-	-No duty-	-No duty-	<ul style="list-style-type: none"> • Thief or robber
<i>Discovered or Anticipated Trespasser</i>	Duty to warn of or make safe known conditions that are non-obvious and highly dangerous	-No duty-	Duty of reasonable care	<ul style="list-style-type: none"> • A hunter accidentally on your side of the property line • Someone fishing in a creek that runs on your property
<i>Infant Trespasser (if presence on land is foreseeable)</i>	Duty to warn of or make safe if the risk to the child outweighs the expense of eliminating the danger	-No duty-	No duty unless the child is also considered a discovered or anticipated trespasser	<ul style="list-style-type: none"> • You live in a neighborhood with children who might come into your yard
<i>Licensee</i>	Duty to warn of or make safe known conditions that are non-obvious and dangerous	Duty to warn of or make safe known conditions that are non-obvious and dangerous	Duty of reasonable care	<ul style="list-style-type: none"> • Social guest • Non-paying hunter • Free farm tours • Free school field trips to your farm
<i>Invitee</i>	Duty to make reasonable inspections to discover non-obvious, dangerous conditions and warn of or make them safe	Duty to make reasonable inspections to discover non-obvious, dangerous conditions and warn of or make them safe	Duty of reasonable care	<ul style="list-style-type: none"> • Pick-your-own operation customer • Fee hunting • Fee fishing • Paid farm tours • Pumpkin patches, etc.

What are the desirable elements of hunting leases?

Most hunting leases are for one year or longer and 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. 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 lessee(s).

Hunting with firearms is inherently dangerous, and written and 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. Also, a fishing license is required for those between 16 and 65 years of age if fishing with a rod and reel, artificial bait, or a hook and line outside your county of residence. 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 con-

sists of a minimum of 10 hours of instruction and a written examination. There are alternative methods of approved courses available on CD-ROM and through the Internet. For information on licenses and hunter education courses go to www.outdooralabama.com or contact the Alabama Department of Conservation and Natural Resources.

Alabama Department of Conservation and Natural Resources
Division of Wildlife and Freshwater Fisheries
64 N. Union Street
Montgomery, AL 36130
334-242-3465
www.outdooralabama.com

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

In the state of Alabama, all persons who are physically disabled are required to obtain hunting and fishing licenses. For a hunting license, 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 completed physician's statement form to their local courthouse. The Division of Wildlife and Freshwater Fisheries of the Department of Conservation and Natural Resources 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 www.outdooralabama.com.

What can I do to be safe while I hunt?

The Outdoor Alabama website has several helpful tips for staying safe while you hunt that are listed in the following paragraphs.

The Alabama Division of Wildlife and Freshwater Fisheries recommends all hunters abide by the following basic hunter safety rules:

- Keep the muzzle pointed in a safe direction at all times.
- Treat every firearm with the respect due a loaded gun.
- Be sure of your target and what is in front of it and beyond it.
- Keep your finger outside the trigger guard until ready to shoot.
- Wear a blaze orange cap or vest.
- Use a small flashlight during dimlight conditions to identify yourself as a human being.

Falls from treestands are a leading cause of injuries for Alabama hunters. Please abide by the following treestand safety tips when using an elevated platform:

- Read and follow the manufacturer's instructions prior to using an elevated platform.
- Inspect your stand and tree prior to each use.
- Always wear a fall restraint device anytime you are climbing, sitting, or descending from an elevated position.
- Always pull your gun or bow up with a pull up rope. Firearms should be unloaded, action open, and safety on.

Every hunter has an obligation to fulfill when they enter wildlife habitat to participate in our hunting heritage. The ethical code hunters abide by has been developed by America's hunters during the past century since the inception of modern wildlife management. Most sportsmen agree that every responsible hunter should do the following:

- Respect the landowner and his property.
- Show respect to other hunters and non-hunters.
- Give respect to the wildlife and its habitat.
- Follow all state laws and regulations.
- Use equipment adequate for the game being hunted and be proficient with that equipment.

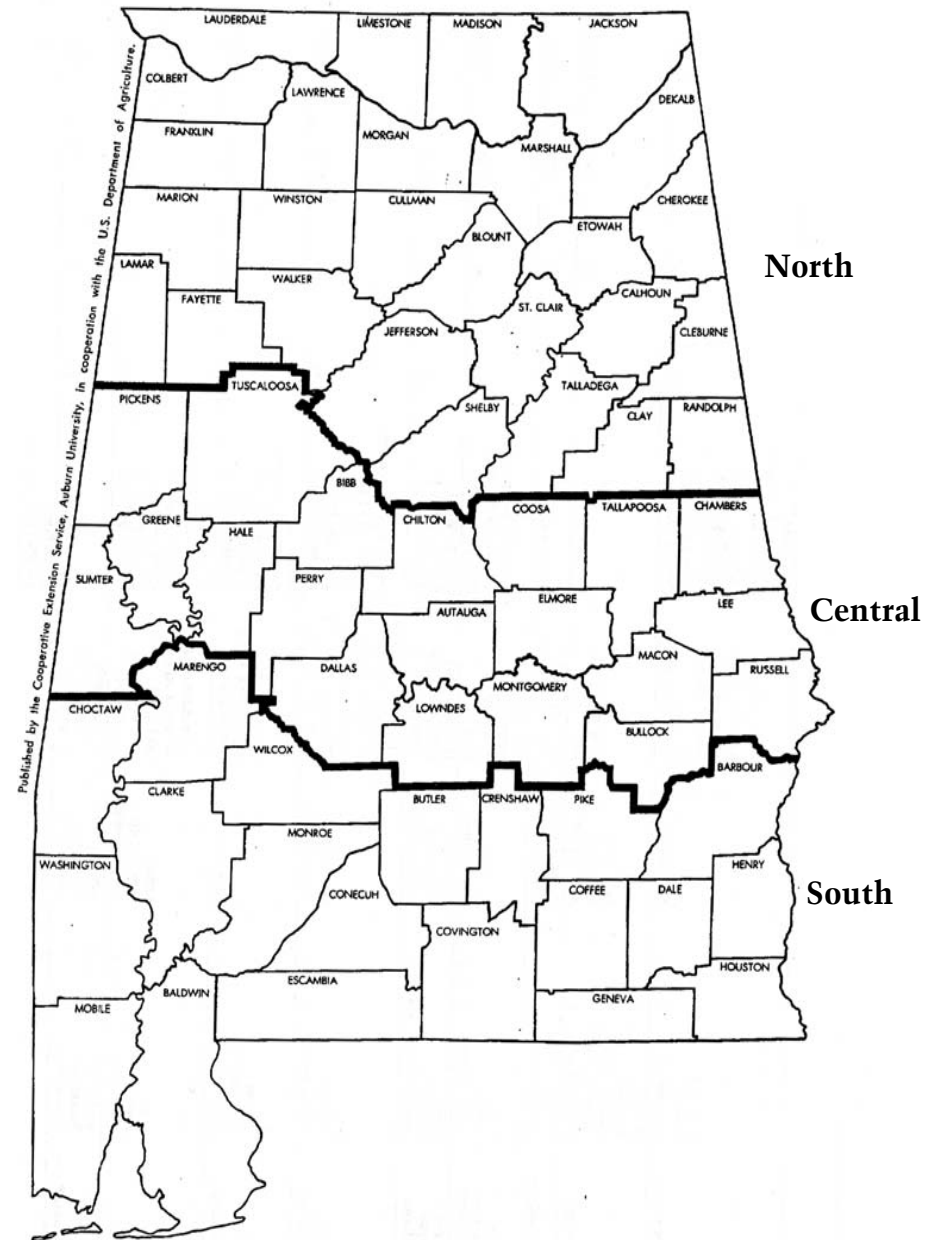
Do I have to have a license or a permit to plant food crops for deer or doves?

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 (some few seeds may be inadvertently not covered), the field is considered to be "baited" and is illegal. Seed (corn, wheat, or other grains) may be harvested or not harvested, and any seeds left on top of the ground as a result of harvesting is not considered to be "bait." For additional information on this subject, you may contact the local Game and Fish Conservation Officer or call (334) 242-3467.

Is it legal to top sow small grains as a cover crop in low-input management systems?

Yes, but all small grain planting should adhere to planting dates recommended in printed tables furnished by the Alabama Cooperative Extension System.

Area Designations for Alabama



Crop	Growth Habit; Uses (1,2)	Area (3)	Soils	Seeding Rate (1,4) (lb./A); Depth
Oats (1, 5, 7)	Cool-season annual; a, d, e, g, h	N, C, S	Clay loam to sandy loam	Grain: 60-90; Grazing: alone B:90-120, in mixtures 60-90; 1-2 inches deep
Orchardgrass	Cool-season perennial; a, b, e, h	N	Well drained, medium to heavy, fertile	B: Alone 15, in mixtures 10; 1/4 inch deep
Rye (1, 5, 7)	Cool-season annual; e, h	N, C, S	Well drained, sandy to clay loams	Grain: 60-90; Grazing: alone 90-120, in mixtures 60-90; 1-2 inches deep
Ryegrass (1, 7)	Cool-season perennial or annual; e	N, C, S	Clay loam	Alone B:20-30 in mixtures 15-20; 0-1/2 inch deep
Sorghum, Grain	Warm-season annual; d, g	N, C, S	Well drained, productive	Wide rows D:4-8 narrow rows D:15-20. Narrow rows (24 in. or less) are best, especially for late plantings; 1 inch deep
Sorghum-Sudan Hybrids	Warm-season annual; a, f, g	N, C, S	Well drained, productive; pH 5.6-6.5	D:20-25, B:30-35 wide rows 8-12; 1/2-1 inch deep; D:20-25, B:30-35 wide rows 8-12; 1/2-1 inch deep
Sorghum, Sweet and Forage	Warm-season annual; f, g, i	N, C, S	Well drained; pH 5.6-6.5	B:15-20; Syrup: D:3-5; Silage: D:4-6; 1 inch deep
Sudangrass	Warm-season annual; a, f	N, C	Light sandy to heavy clay	D:20-25, B:30-40; 1/2-1 inch deep
Timothy	Cool-season perennial; often acts as annual in Alabama; b, e, h	N	Well drained, productive; pH 6.0-6.5	B:8; 1/4-1/2 inch deep
Wheat (1, 5, 6)	Cool-season annual; a, d, e, g	N, C, S	Medium to heavy	Grain: B:60-90, D:60-75 Grazing: alone 90-120, in mixtures 60-90; 1-2 inches deep

1 In mixtures of grasses, reduce seeding rates of each grass species by one third. When precisely drilled, seeding rates for grasses can be reduced by about one third as compared to broadcast plantings.

2 Uses:
a. Hay b. Permanent pastures
c. Soil improvement d. Grain
e. Cool-season grazing
f. Summer temporary grazing g. Silage
h. Late fall grazing i. Syrup

3 N--North, C--Central, S--South
4 B--Broadcast, D--Drill

Planting Dates (3)	Seed Quality			Seed/lb
	Min. Germ. Percent	Min. Purity Percent	Max Weed Seed Percent	
Grain: N:Oct.1--Nov.1; C:Oct.1--Nov.15; S:Oct.15--Dec.1; Grazing and Grain: N:Sep.1--20; C:Sep.1--Oct.1; S:Sep.20--Oct.30; Forage only: same as for ryegrass	85	98	0.07	13,000
Sep.--Oct.	80	90	0.50	653,000
Grazing and Grain: N:Aug.25--Oct.1; C:Sep.1--Oct.15; S:Sep.15--Nov.1; Forage only: same as for ryegrass	75	98	0.07	18,000
N:Aug.25--Oct.1; C:Sep.1--Oct.15; S:Sep.15--Nov.1; Overseeded: 3-5 wk. later	85	95	0.05	227,000
N:May1--Jun.30; C:Apr.15--Jun.30; S:Apr.1--Jul.15 S only: Apr.1-15 if ratoon crop is desired	80	98	0.01	Variable
N:May1--Aug.1; C:Apr.15--Aug.1; S:Apr.1--Aug.15	80	98	0.01	Variable
Late Apr.--May15; S only: late as July 1 for forage sorghums	80	98	0.01	24,000
May1--Aug.1	80	98	0.01	54,000
Aug.15--Sep.15	80	97	0.50	1,232,000
Grain:N:Oct.15--Nov.1; C:Oct.15--Nov.15; S:Nov.1--Dec.1; Grazing and Grain: NandC:Sept.15--Nov.1; S:Oct.1--Nov.15; Forage only: same as for ryegrass	85	98	0.07	11,000

5 Small Grains

Species	lb./Bu.
Barley	48
Oats	32
Rye	56
Wheat	60
Triticale	approx. 48

6 Northern wheat varieties should be planted before November 1.

7 When aerially seeded, seeding rates for this crop should be increased at least 30 percent.

8 Fescue generally performs best in the upper half of the state or on moist, low-lying sites in the lower half. In Alabama, endophyte (fungus) levels are provided on fescue seed tags.

Index

Agricultural Labor	5-28
child labor law restrictions	22-23
day laborers, withholding tax	19-21
field laborers, sanitation	18
FUTA posters in the workplace	19
H-2A certification	7-14
immigrant workers, ID, housing	14-15
liability insurance	5
logging	6-7
new employees, questions	24-28
temporary or seasonal workers	7-15
worker safety	15-17
workers, minimum age	21-22
workers, minimum wage	23-24
workers' compensation	6
Animal Liability	29-31
fences	29-30
liability, dogs	30-31
liability, equine activities	31
liability, stray livestock	29
Environmental Law	32-42
AFO requirements	39-41
BMP regulations, timber cutting near streams	32
CAFO requirements	39-42
catfish pond discharge	33-34
chemical drift	35
disposal, empty chemical containers	36
disposal, large animals	38-39
disposal, used tires and petroleum products	37-38
irrigation	33
permits, pesticides and herbicides	34-35
responsibilities, wetlands	39
TMDL's	32-33

Estate Planning	43-51
deeds	46-47
estate tax, farm and timber property	45
joint ownership	45
life estate	47-48
limited liability companies	49
living trust	48
ownership types (table)	49-51
will	43-44
Hunting and Wildlife	72-81
disabled hunters	76
fence height	72
food plots/baiting	78-81
hunting leases	75
hunting safety	76-77
license, hunting or fishing	75-76
property owner liability	73, 74
trespassers	72-73
Licenses and Sales Taxes	52-54
business licenses	53-54
products exempt from taxes	52
sales tax, purchase of hay	54
transactions exempt from taxes	52-53
Operation of Vehicles and Equipment	55-67
farm vehicle tags	63-66
hours of service for CMV drivers	59-60
farm equipment on public roads	55-58
licenses, operation on public roads	58-59
lights	55-57
loading	57-58
medical card	59
mirrors	57
right-of-way	67

tandem trailers on highways . . . . .	.61-62
tires . . . . .	.57
transportation of hazardous materials . . . . .	.60-61
transportation of sod . . . . .	.63
transporting fertilizer, chemicals, etc. . . . .	.66-67
weight limits . . . . .	.62-63
 Property . . . . .	.68-71
fences across property lines . . . . .	.68
gleaning . . . . .	.70
no trespassing signs . . . . .	.68-69
property access69-70
property owner liability69, 70
water rights71

Appendix

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Notes
