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FARM LABOR REGULATIONS

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Preface

Farm employers must comply with a variety of state and federal laws and regulations. This publication contains information on the regulations of concern to New York farm employers and employees. It does not constitute a legal document; it is for general educational use. Requests for information on specific rulings or legal interpretations should be directed to the appropriate state or federal agencies or to an attorney.

The information contained in this publication is accurate as of October 1, 1997. It is the employer's responsibility to keep abreast of current changes in state and federal farm labor laws.

Employee or Independent Contractor?

Independent contractors are not considered to be employees and they are either excluded from coverage or treated differently under most of the labor laws and regulations discussed in this publication. Therefore it is important for a farmer to know whether an individual doing work is an employee or an independent contractor.

Independent contractors are persons who are actually in business for themselves and hold themselves available to the general public to perform services. A person is an independent contractor only when free from control and direction of an employer in the performance of those services.

Although the laws described here do not define an independent contractor, court decisions have held that all the factors concerning the relationship between the two parties must be considered to determine if the farmer contracting for services has the right to exercise supervision, direction, or control over the person performing the services. If an employer has any doubt about the nature of the relationship, the best course of action is to ask the state or federal agency administering the law for a written determination, because in almost all circumstances an ambiguous situation is interpreted in favor of the worker.

Although no single factor or group of factors are conclusive in deciding if an employer-employee relationship exists, the following conditions tend to indicate that a person is an employee:

- A person who is told how, when, and where to work is usually an employee.
- A person who must be trained by an experienced worker is normally an employee.

- The existence of a continuing relationship between the worker and the employer, especially if set work hours are established, indicates control.

- When an individual works full time for one party, especially if the work is done on the employer's premises, the worker is normally an employee.

- When the employer pays the worker's expenses, provides fringe benefits, or furnishes tools or equipment, it indicates control by the employer.

- An employee is usually paid by the hour, week, or month and has the right to quit at any time without incurring any liability.

- An employee is not in a position to realize a profit or suffer a loss as a result of services performed (although an employee may be paid a commission or on a piece rate).

- An individual who performs unskilled labor is usually considered to be under the supervision of an employer.

To protect themselves when hiring an independent contractor to do custom work, farmers must eliminate any confusion about the nature of the relationship. The farmer should leave the method of work to the independent contractor's discretion and specify only the desired result. In addition, the farmer should pay for the job as a whole and not on an hourly basis, refrain from furnishing the independent contractor with any equipment, and tailor the work contract (which ideally should be in writing) to deal with the other factors listed above. Obtaining proof that the independent contractor carries liability insurance and that he or she pays self-employment tax are two other safeguards that can be used.

For federal tax purposes, if you want a decision about whether a worker is

an employee, file Form SS-8, "Information for Use in Determining Whether a Worker Is an Employee for Federal Employment Taxes and Income Tax Withholding," which can be obtained at IRS offices.

For more information, contact the agency responsible for administering the law in question. The relevant addresses and telephone numbers are listed in the Appendix.

Employment Verification System

Immigration Reform and Control Act of 1986

The Immigration Reform and Control Act of 1986 makes it illegal to hire aliens who are unauthorized to work in the United States. The act also establishes stiff penalties for violation of its provisions, so it is important to recognize how this new law applies to farm employers.

In addition, the act established a legalization program that provides temporary and then permanent resident status to aliens who entered the United States prior to January 1, 1982, and who registered with the Immigration and Naturalization Service (INS).

The act also streamlines the procedures for hiring nonimmigrant alien workers, known as H-2A agricultural workers (formerly H-2 nonimmigrant temporary agricultural workers). The purpose of the H-2A program is to assure employers an adequate labor force on the one hand and protect the jobs of U.S. workers on the other. The act also implemented a program that permitted the adjustment to temporary and then to permanent resident status for seasonal agricultural workers (SAWs) who met the employment, residence, and other eligibility requirements.

Employment Verification System

Form I-9 is the key to documenting compliance with the new law. It is the employer's responsibility to be sure that new employees fill out their part of Form I-9 when they start to work. The employer must physically examine documents establishing employees' identity and eligibility to work. An employer should not rely on any document that does

not reasonably appear to be genuine. These documents should be requested promptly because the employer must complete the employer's section of Form I-9 within three business days of hiring. While not required, it is a good idea to make photocopies of the submitted documents to keep with the employee's I-9 form.

Form I-9 should be retained for at least three years, or for one year after the employee leaves the job if he or she has worked for more than three years. An employer must be prepared to present the form for inspection to an INS or Department of Labor officer upon request. At least three days' notice must be given before such an inspection.

Employers need only complete Form I-9 for individuals hired after November 6, 1986. Copies of the form can be obtained by calling the nearest INS office. For most of New York State, the Buffalo office is the best to contact. The number is (716) 846-4731. In New York City, the number is (212) 206-6500.

Some of the acceptable documents for purposes of identity and eligibility to work are listed on Form I-9 itself, others are listed in the *Handbook for Employers* (Instructions for Completing Form I-9) available from INS at the address given at the end of this section.

If an employee you wish to hire does not have the right documents, he or she can give you a copy of the receipt showing that he or she has applied for the document. You must see the actual document within 21 days of hiring.

Unfair Immigration-related Employment Practice

Employers with four or more employees may not discriminate against any individual (other than an unauthorized alien) based on citizenship or

alien status if the person alleging discrimination either is a U.S. citizen or is a permanent resident alien, has been admitted as a refugee, has been granted asylum, or is a newly legalized alien and has filed a notice of intent to become a U.S. citizen.

Employers can be fined up to \$1,000 for unfairly discriminating against an individual based on national origin or citizenship status. Repeat offenders may face fines of up to \$2,000 back pay and attorney's fees may also be awarded to a winning claimant under the act.

Sanctions

Penalties for noncompliance are chilling. Failure to fill out Form I-9 could result in fines of \$100 to \$1,000 for each form not completed. Hiring an illegal alien could result in a penalty of \$250 to \$2,000 for a first violation. Second or third violations can cost up to \$10,000 per illegal worker. Factors that INS will consider in determining the amount of the penalty include the size of the employer's business, the employer's good faith, the seriousness of the violation, and the employer's history of previous violations.

The employer has an obligation not to continue knowingly to employ an alien once he or she loses legal status. This includes liability when a contractor hires an unauthorized alien with the employer's knowledge.

Temporary H-2A Workers

The H-2A temporary agricultural worker program requires an affirmative search for available U.S. workers and a determination that the admission of alien workers will not adversely affect the wages and working conditions of similarly employed U.S. workers.

The employer must apply to the Secre-

tary of Labor for certification and then submit the petition to the U.S. Attorney General for final approval. Employers seeking alien workers cannot be required to apply for certification more than 60 days in advance of the estimated date of need and the Secretary of Labor is required to approve or deny certification not later than 20 days before the date of need. Expedited administrative appeal procedures are provided for denial of certification and for a new determination in certain cases. Protections for alien workers include guaranteed housing, workers' compensation, and access to legal assistance for work related matters.

For further information regarding the H-2A program, refer to the *H-2A Program Employee Information Booklet*, available from the U.S. Department of Labor.

Seasonal Agricultural Worker Program

The Seasonal Agricultural Worker (SAW) program was established in response to concerns of agricultural employers that the Immigration Reform Act of 1986 would result in labor shortages. Illegal aliens who had worked in perishable crops prior to May 1986 and applied for the program are eligible for temporary resident status, with permanent resident status to follow two years later.

Employers of SAW program workers must file Form ESA-92 with the U.S. Department of Labor on a quarterly basis to report the days of field work for each employee. Only employees with an INS Alien Registration Number in the A90000000 series must be included in the report. There is no need to file for a quarter when no SAW employee worked.

Additional Sources of Information

For more information, call the INS office nearest you at the following numbers: Buffalo (716) 849-6760; New York City (212) 206-6500.

The *Handbook for Employers* (Instructions for Completing Form I-9) can be obtained by contacting the U.S. Department of Justice, Immigration and Naturalization Service, 425 I Street, N.W., Washington, D.C. 20536.

Taxes

Social Security

The Social Security Act covers all farm employees, regardless of age, (including family members over the age of 18) unless the employer spends less than \$2,500 for payroll during a calendar year. If this annual payroll requirement is not met, the law covers those agricultural employees who were paid \$150 or more in cash wages during a calendar year. Cash wages are defined as the total wages paid before payroll deductions but do not include the value of meals, lodging, or farm produce an employee receives. Children under the age of 18 are not considered employees if they work for their parents but will be employees if they work for anyone else, including a farm corporation.

All employers must file year-end Social Security reports on hired help, Federal Form 943, by January 31. If federal income taxes are withheld, they are reported on this form. If taxes are deposited with the Internal Revenue Service (IRS) before the end of the year, the deadline for filing the form is February 10. To complete Form 943 properly, the employer must have an identification number and the Social Security number of every farm employee. New employers apply for an identification number on Federal Form SS-4, which is available at any IRS or Social Security Administration office.

"Month-end-check" Guide

Farm employers must either withhold employees' Social Security taxes and add the farm's share or pay both the employer's and employees' share. If the employer pays the employees' share, it becomes subject to income taxes but is not considered cash wages. Farm employers who reported \$50,000 or less of federal employment taxes during a year must make monthly

deposits of the following year's employment taxes (excluding FUTA taxes) by the 15th of the following month. Employers who report more than \$50,000 of federal employment taxes annually must make semi-weekly deposits. A farm employer who accumulates less than \$500 of employment taxes during a year may make the entire payment at the end of the year. The employer must deposit the total amount at a Federal Reserve bank or authorized commercial bank by the 15th of the following month. In either case, Form 8109, Federal Tax Deposit Coupon, should be used. A Federal Tax Deposit Coupon book is automatically sent to new employers when they receive an identification number. It may take several months to receive the coupon book. You may use Form 8109B in the meantime.

Tax Statement to Workers

Employers are required to provide each employee with a statement by January 31 indicating wages reported to the federal Internal Revenue Service and the New York State Tax Bureau and the amount of Social Security taxes that have been withheld. Copies of forms W-2 (federal) and IT-2102 (state) or SS-14 can be used for this purpose.

The intent of the law is for employees to pay their own share of the Social Security tax.

Additional Information

Detailed descriptions of an agricultural employer's obligations under the federal tax laws can be found in IRS Circular A, *Agricultural Employer's Tax Guide* (IRS Publication 51). See also *Farmer's Tax Guide* (IRS Publication 225). Contact your area Social Security Administration office for additional information.

Federal Income Tax

Reporting

The Tax Reform Act of 1986 and subsequent laws made sweeping changes in the federal income tax law. Most of these changes do not radically affect the reporting requirements of farm employers. However, because different methods are now used to calculate individual tax liability, it is important that employers and employees use only up-to-date forms and instruction booklets in tax reporting.

Withholding

Withholding is now required on wages of farm workers. The W-4 is a simple form used to claim withholding exemptions. IRS Circular E, *Employer's Tax Guide*, is available for use in calculating the correct amount of withholding.

Information Returns

Farm employers are responsible for providing each employee with an annual information return and for filing a statement with the government indicating payments of any amount (including the cash value of payments not made in cash except for meals or lodging furnished as a condition of employment) made to farm employees during the year for salaries, fees, or other compensation for personal services. Federal Form W-2 is used for this purpose and must be distributed to employees by January 31.

Working Students (Subject to Withholdings)

Under the tax law, individuals are not subject to withholding of federal income tax if they paid no tax in the previous year and they do not anticipate being liable for any federal income tax in the current year. Students who earn no more than their standard deduction amount and who have no interest or dividend income

meet these criteria. Such students should fill out Form W-4E, Withholding Exemption Certificate, and give it to their employers. This form can be obtained from district offices of the IRS. Students who follow these procedures will not have to wait to receive refunds.

Dependent Children

A single dependent child employed on a farm must file an income tax return if he or she had any unearned income and the total unearned and earned income was \$650 or more in 1996. If the dependent child had no unearned income, a return must be filed if his or her earned income was \$4,000 or more during the 1996 tax year. Unearned income includes interest, dividends, and trust income.

Employees' Tax Responsibility

Every citizen or resident of the United States, whether an adult or a minor, who was paid \$6,500 or more in the 1996 taxable year must file a return. In the case of married couples filing joint returns, the amount is \$11,800. These numbers are likely to increase again in 1997 and thereafter.

Farm employees are required to file and pay a declaration of estimated income tax (Form 1040-ES) if they have income from sources not subject to withholding and they expect their tax liability on these earnings to be \$500 or more. The tax can be paid in four equal installments. Some employees have been penalized for not filing estimates. Once an employee has filed Form 1040-ES, the IRS will automatically send additional forms and information, including payment vouchers.

Additional Information

Contact your area Internal Revenue Service, Federal Tax Office, for additional information. Call the toll-free number listed under "U.S.

Government" in the telephone book to order federal tax forms. You will have to respond to a recorded message, so be sure you know exactly which forms you wish to order.

State Income Tax

In general, New York State's income tax laws are the same as the federal laws. Tax rates are different and state forms are usually required, but the basic principles and many of the procedural requirements are the same.

Withholding

The New York State Tax Law requires farm employers to withhold income tax from farm employees. An employee should submit a completed Form IT-2104. Withheld dollars for taxes should be sent to the New York State Income Tax Division with Form IT-2101-PNS.

Since 1992, anyone required to withhold New York tax from employees is required to make deposits and file reports at least quarterly. Filers with less than \$700 quarterly withholding liability reconcile and pay taxes withheld using Form WT-4-AEZ and report employees' wages and withholding information using WT-4-B within one month of the end of the quarter, except for the last quarter when reporting will be required by February 28.

In general, filers with \$700 or more in quarterly withholding liability will remit taxes using Form WT-1 within three business days of the payroll in which \$700 was accumulated. Any withholding balance under \$700 at the end of any quarter should be remitted using WT-1.

Filers withholding \$700 or more during a quarter are required to file WT-4-A and WT-4-B by the end of the month following the end of the quarter, except for the last quarter when

the reports are due by February 28. There are some additional rules with which employers should familiarize themselves if they fall into this category.

The rules and the withholding tables are included in WT-100, "New York State Withholding Tax Guide," available from the New York State Tax Department (1-800-462-8100).

Newly Hired Employees

For employees hired on or after March 1, 1996, New York State requires an employer to report certain identifying information to the New York State Department of Taxation and Finance. This reporting requirement is designed to help insure that employees with child support obligations honor that responsibility. To meet this reporting requirement, an employer should send a legible photocopy of the newly hired employee's IRS Form W-4, Employee's Withholding Allowance Certificate, to the following address:

New York State Department
of Taxation and Finance
New Hire Notification
P.O. Box 15119
Albany, NY 12212-5119

The information can also be sent via facsimile to (518) 463-4514. Questions regarding this reporting requirement should be directed to the Business Tax Information Center at 1-800-972-1233 or 1-800-225-5829.

Additional Information

Contact the New York State Department of Taxation and Finance (see the Appendix). To order forms and receive basic tax information, check the telephone book under "New York State" for the toll-free number.

Wages

Agricultural workers must be paid "not later than seven calendar days after the end of the week in which the wages are earned." They may be paid every two weeks as long as this requirement is observed. Deductions from wages are illegal. The only deductions a farm employer can make are legal withholdings authorized by law such as income tax or Social Security, and deductions authorized in writing by the employee for his or her own benefit, such as health insurance premiums. Agricultural workers may be paid by check without special permission. Any questions or reports of violations pertaining to wages should be directed to the New York State Department of Labor (see the Appendix for a list of district offices).

The Federal Wage-Hour Law

Hired farm workers were first covered by the Federal Wage-Hour Law (Fair Labor Standards Act) in 1967. The act has been amended by Congress several times, most recently in 1996, and the current federal minimum wage for most agricultural employees is \$4.75 per hour. It will increase to \$5.15 per hour on September 1, 1997. Overtime pay is not required for agricultural employees under federal law.

The legislation also allows an employer to pay less than the minimum wage (but not less than \$4.25 per hour) to any employee under the age of 20 during the first 90 consecutive days of employment. This is called the "youth opportunity wage." It may be used only once per employee. The 90-day window applies to calendar days, not just days worked. There is no requirement that training be provided to qualify for this wage rate.

Coverage

The federal minimum wage provisions apply to all employers who used more than 500 man-days of agricultural labor in any calendar quarter of the preceding calendar year. A man-day is any day in which an employee performs any agricultural labor for one hour or more. If an employer owns more than one farm, the total number of man-days used on all farms will determine whether agricultural employees on each farm must be paid the federal minimum wage.

Exceptions

The activities of the employee, not the employer, determine whether he or she is exempt, and it is possible for both exempt and nonexempt employees to work for the same employer. The minimum wage provisions cover all employees working on farms that are covered except employees whose hours are not counted in calculating man-days and professional or administrative employees, who are exempt from all the provisions of the Fair Labor Standards Act.

Allowances

The law provides that wages may include board, lodging, and other benefits customarily provided as compensation to the employee. These non-cash wage benefits may be included at reasonable cost or farm market value as determined by the Wage and Hour Division of the U.S. Department of Labor. The division does not have dollar maximums for the allowances; each case is judged individually. Maximum allowances for noncash wage benefits have been established, however, under the New York State Minimum Wage Order for Farm Workers.

Full-Time Student Rate

Workers who are full-time students, regardless of age, may be employed by retail and service employers, farmers, and colleges and universities at

rates no less than 85 percent of the minimum wage otherwise applicable. They may work no more than 20 hours in any work week, however, except during vacations, when they may work up to 40 hours. To hire a full-time student, an employer must obtain a Full-Time Student Certificate from the U.S. Department of Labor. A certificate will be issued after the Department of Labor has determined the following: full-time students are available for employment; granting the certificate is necessary to prevent curtailment of opportunities for their employment; granting the certificate to more than six students will not substantially reduce the probability of employment for persons other than those employed under the certificate; and granting the certificate will not result in other employees, including students, receiving reduced wages.

The federal certificate covers full-time students of any age, whereas the state certificate deals with youth under 18, regardless of their student status. Also, the state Youth Rate Certificate permits an employer to hire an unlimited number of youth, whereas the federal Full-Time Student Certificate, as a rule, permits no more than six full-time students to be hired and their hours cannot account for more than 10 percent of the employer's total man-hours of labor. An employer covered by both laws must comply with both standards. See the section entitled "Youth Employment" for more details.

Farms Including Nonfarm Operations

The inclusion of certain nonfarm operations such as roadside markets and various shipping and processing activities in laws pertaining to farms results in some confusing coverage provisions, particularly because federal and state requirements differ. All operations classified as farm are subject to the 500 man-day farm exemption. If only the farmer's produce is processed, shipped, or

sold, the operation is classified as farm. If produce from other farms is processed, shipped, or sold, the operation is classified as nonfarm, in which case a mixed enterprise coverage exemption is applied. Standards for both minimum wage and overtime apply if the combined sales of the farm and nonfarm operations exceeded \$250,000 in the four most recently completed quarters. In contrast to farm coverage, the standards apply in the ensuing quarter if the sales test is met or exceeded. If an employee's hours are split during the week between a covered and a noncovered operation, then his or her total hours are treated as covered. Coverage provisions and requirements are summarized in table 1.

Greenhouses

Greenhouse employers may be classified as farm, nonfarm, or a combination of the two. They are classified as farm employers if the enterprise includes growing plants rather than just holding plants for resale. If the enterprise is classified as a

farm employer, than the farm exemption applies. If it is classified exclusively as a nonfarm employer and gross annual sales meet or exceed \$362,000, minimum wage and overtime requirements are in effect. Enterprises classified as both farm and nonfarm are covered under the provisions explained in the preceding section.

Piece Rate

Employees may be paid on a piece rate basis, but under both federal and state law, covered employees must earn at least the minimum hourly wage. With a state Youth Rate Certificate for farms, minors under 18 years of age may be paid a piece rate lower than \$4.25 per hour.

Work Hours

Work hours at farm jobs include time going from field to field and waiting for equipment, but do not include time lost because of bad weather unless the employer has asked the employee to wait for the weather to clear.

TABLE 1

Federal Minimum Wage and Overtime Requirements for Enterprises Combining Processing, Shipping, and Selling with Farming

	Farming	Selling, Shipping or	
		Own Products	Processing Other's Products
Classification	Farm	Farm	Nonfarm
Over 500 man-days ¹ Under \$500,000 sales ²	Minimum Wage	Minimum Wage	Minimum Wage
Over 500 man-days Over \$500,000 sales	Minimum Wage	Minimum Wage	Minimum Wage and Overtime ³
Under 500 man-days Over \$500,000 sales	None	None	Minimum Wage and Overtime

1. The 500 man-day test is applied only to the part of the enterprise that is classified as farm. If the selling, shipping, or processing involves only the farmer's own produce, these operations are classified as farm and the employees are included in the 500 man-day test.

2. The \$500,000 sales test is applied to the total enterprise — farm sales plus sales from the part of the enterprise classified as nonfarm. If the total enterprise is classified as farm, the sales test does not apply.

3. The overtime requirement is 1½ times the regular rate of pay for hours exceeding 40 hours of work per week.

Statement of Wages

Federal law does not require employers to issue statements of wages to any employees except migrant and seasonal workers. State law, however, requires that all employees be issued such statements. The employer's identification number must appear on these statements.

Record Keeping

The law specifies that every employer must keep true and accurate records of the hours each employee works and the wages he or she is paid, as well as each employee's Social Security number, address, and any other information required by the Federal Wage-Hour Law. These records must be kept for three years and be available for review at any time. Copies of wage statements provide the basic information needed. Inadequate records are a major complaint of minimum wage inspectors. Employers should establish a basic record system, especially if migrant or seasonal agricultural workers are employed.

An official "Notice to Employees" furnished by the U.S. Department of Labor Wage and Hour Division must be posted where employees can readily see it.

Additional Information

See the Department of Labor offices listed in the Appendix.

New York State Minimum Wage Standards for Farm Workers

The New York State Minimum Wage Standards for Farm Workers, which became effective in 1969, has been amended several times, most recently in 1990. The farm minimum wage rate is \$4.25 per hour as of January 1, 1992.

An employer who is covered by the Federal Wage-Hour Law is also covered

by the state Minimum Wage Standards for Farm Workers and must comply with both laws. Employers covered by the Federal Wage-Hour Law should confirm that they are in compliance with other provisions of the federal law pertaining to rates, allowances, Youth Rate Certificates, and the minimum wage rate for youth.

Posting

The Minimum Wage Order for Farm Workers requires that a summary of Article 19-A of the Labor Law and the minimum wage order pertaining to farm workers be posted at the work site. These posters may be obtained by contacting the Division of Labor Standards at the offices listed in the Appendix.

Coverage

The New York State Minimum Wage Standards for Farm Workers applies to any employer of farm workers whose aggregate cash payroll was \$3,000 or more during the previous calendar year. Workers supplied by a farm labor contractor are included, and the farmer who uses the services of a contractor is responsible for complying with the law.

Exceptions

The law covers all persons performing farm work except members of the employer's immediate family and persons under 17 years of age who are employed as hand-harvest workers on the same farms as their parents and who are paid on the same piece-rate basis as workers older than 17.

Allowances

The law states that wages may include allowances for meals, lodging, services, and facilities furnished by the employer to the employee. The values allowed are listed in table 2. These values represent minimum requirements and are not intended to represent the actual value of the

item furnished. No lodging allowances are permitted as part of the minimum wage for migrant employees, nor are lodging allowances permitted unless the employer pays for utilities. Payment in kind (milk, meat, and the like) acceptable to the employee may be considered at farm cost or at the current farm market value. For a discussion of housing for migrant employees, see the section on migrant workers.

Youth Rate

The minimum wage rate for youth under 18 years of age is lower than for adults (see table 2). The state youth rate exists only for workers covered under the Minimum Wage Order for Farm Workers. To pay at this lower rate, the employer must obtain a Youth Rate Certificate from the commissioner of labor and keep it on file for six years after employment is terminated. These certificates can be obtained by calling the Divi-

TABLE 2

Minimum Wage Requirements and Allowances for New York State Farms (Rate per Hour unless Otherwise Indicated)

Farm Minimum Wage ¹	\$4.25
Youth aged 16 and 17 (certificate needed)	
Harvesting	
First Harvest Season	3.60
Second Harvest Season	3.80
Third Harvest Season	4.25
Nonharvesting	
First 300 Hours	3.60
Second 300 Hours	3.80
More than 600 Hours	4.25
Youth under 16 (farm work permit required)	3.20
Allowances	
Meals ²	1.70
Lodging (dormitory style) and utilities ³	
Single occupancy (per week)	18.95
Multiple occupancy (per employee per week)	12.65
House or apartment and utilities ⁴	
Individual employee (per day)	5.00
Employee whose family resides with employee (per employee per day)	8.00
Payment in kind (milk, eggs, meat, etc.) acceptable to the employee	Cost or farm market value

1. The state general minimum wage for nonagricultural workers is the same.

2. No allowance for meals may be considered part of the minimum wage if a seasonal migrant employee earns less than \$254 in a two-week period other than by reason of a voluntary absence.

3. This allowance cannot be used for migrant workers. See the section on migrant workers for a discussion of housing for these employees.

4. This allowance cannot be used for migrant workers. See the section on migrant workers for a discussion of housing for these employees. When a house or apartment and utilities are provided by the employer (no lodging allowance is permitted if utilities are not provided), a fair and reasonable amount may be allowed for such facilities. This amount is not to exceed the lesser of either the reasonable value of comparable facilities in the area or the rates listed.

sion of Labor Standards district offices. A Youth Rate Certificate permits the employer to hire any number of young workers. Youth under 16 must also have farm work permits. These permits can be obtained by the employee from the local school office. Employers are responsible for checking to see that each young person has a work permit. An employer covered under the Federal Wage-Hour Law needs to obtain a federal Full-Time Student Certificate as well as the state certificate. Under federal law, full-time students may work no more than 10 percent of their employers' total man-hours of labor. For additional information, contact Employment Standards Administration, U.S. Department of Labor, 1515 Broadway, New York, NY 10036. See the section on youth employment for more details regarding the limitations on employing young people.

Piece Rate

Employees may be paid on a piecerate basis and, as under the federal law, must earn at least the minimum wage or the minimum wage for youths.

Work Hours

Work hours include all hours on the job, including time going from field to field and waiting for equipment, but do not include time lost because of inclement weather.

Farms Including Nonfarm Operations

Processing, shipping, and selling operations that are part of the farm operation are not necessarily treated as they are under federal law. All selling operations, such as roadside stands, florist shops, and greenhouse sales outlets, are classified as nonfarm and are covered under the Minimum Wage Order for Miscellaneous Industries and Occupations, even if the farmers sell their own products. A roadside stand will be covered under the Minimum Wage Order for Farm Workers if at least 95% of gross

sales were of goods produced on the employer's farm(s). Under this wage order, all employers, not just those with cash payrolls in excess of \$3,000 per year, are required to pay minimum wage. If an employee's work is governed by two different minimum wage orders because, for example, he or she both harvests and sells produce at a roadside stand, New York law provides that the employee should be paid in direct proportion to the actual hours of work performed under each work order during a payroll week. In this case, the farmer may credit all farm allowances against the gross wage regardless of the proportion of coverage under various wage orders.

Processing and shipping operations may be classified as either farm or nonfarm. If the farmer processes and ships only his or her own products, then the operations are classified as farm and coverage provisions for farms apply to the *entire* enterprise. If the farmer processes and ships others' products, then the operations are covered by the Minimum Wage Order for Miscellaneous Industries. Under this wage order, the farmer is required to pay overtime rates of 1 1/2 times the employee's basic wage for work exceeding 40 hours per week.

An employer may or may not be required to meet nonfarm requirements for a worker whose hours are split between farm and nonfarm operations. If the nonfarm operation is covered under the Minimum Wage Order for Miscellaneous Industries, the employer may follow farm requirements for those hours the worker spent in the farm operation and the nonfarm requirements for the remaining hours if he or she has accurate records of the hours worked in each operation by each employee. Rough estimates are not acceptable. See table 3.

Advisory Council

The law establishes a state advisory council on minimum wage standards for

farm workers which shall consult with the commissioner of labor and provide recommendations before regulations are issued. The council is appointed by the commissioner of labor and is composed of five members representing the interests of farmers, five representing the interests of employees and the public, and one who shall act as an impartial chair. Public hearings with due notice are required before issuing regulations.

Notice to Employees

Employers must notify an employee in writing when he or she is hired of the conditions of employment in a "work agreement." A copy of a generally applicable work agreement must be posted at the work site. A work agreement must include the following:

- name, address, and telephone number of employer;
- location and type of work;
- housing arrangements, including cost, number of rooms, and cooking facilities;

- allowances, if any, for meals and lodging to be deducted from wages,
- wages to be paid and time of payment;
- period of employment;
- all other planned payroll deductions;
- noneconomic terms and conditions of employment; and
- overtime provisions.

Both the employer and employee must sign the work agreement and each must keep a signed copy.

Statement of Wages

On each pay day, employees must be furnished with a statement showing - hours worked, rates paid (including wages based on piece rate, the size or weight of the piece-rate unit, and the number of units produced during the pay period), gross wages, allowances, deductions, and net wages.

Table 3

State Wage Order Coverage for Enterprises Combining Processing, Shipping, and Selling with Farming

	Farming	Processing & Shipping		Selling
		<i>Own Products</i>	<i>Others Products</i>	
Classification	Farm	Farm	Nonfarm	Nonfarm*
Wage orders	Farm	Farm	Miscell. Industries	Miscell. industries
Requirements				
Minimum wage	Yes	Yes	Yes	Yes
Overtime	No	No	Yes	Yes
Call-in pay	No	No	No	No
Weekly minimum wage	No	No	No	No
Split shift and spread of hours pay	No	No	No	No

* Up to 5% of products not produced on the farm.

The Cornell publication *Farm Employee Wage Record* (121CU-FMWAREC) provides an excellent record of employee wages and benefits. It can be purchased from the Distribution Center, 7 Cornell Business and Technology Park, Ithaca, NY 14850.

Workers must be given a written summary of their wages at the time employment is terminated. It must include gross and net earnings and a listing of deductions taken. The summary must be given or mailed to the employee not later than the regular payday for the payroll period in which the termination occurred.

Records of Employees

The law specifies that employers must keep signed copies of work agreements and accurate records of daily and weekly hours worked by each employee; wages paid, including piece-rate information; allowances and deductions; cash advances made; and information about employees under the age of 18, including evidence that appropriate permits, certificates, parental permission, and any other information needed to comply with the Minimum Wage Law have been obtained. These records must be kept for three years and be available for review at any time. Copies of wage statements provide the basic information needed. Inadequate records are a major complaint of minimum wage inspectors. It is a crime to fail to maintain proper records or to hinder the inspection process in any way. Employers have been cited for such failure, and heavy fines may be levied. Every employer should establish a basic record-keeping system.

Penalties for Noncompliance

It is a misdemeanor to pay an employee less than minimum wage, even if the employee agrees to the rate of compensation. It is also a crime to fire an employee, or otherwise discriminate against him or her, because he or she has complained that

the employer has not paid minimum wage. Civil penalties for noncompliance can include fines of up to \$3,000.

Additional Information

Additional information on the New York State Minimum Wage Standards for Farm Workers can be obtained from district offices of the New York State Department of Labor. See the Appendix for details.

Eviction When Housing Is Provided by Employer

It is a common practice for farmers to provide a house as part of the farm employee's compensation package. Problems arise when the employee is fired or quits but does not move out. The farmer wants the house vacated to make it available to a new employee. Many people mistakenly believe that time-consuming notice provisions and procedures are required under New York law before a tenant can be evicted. However, the New York Real Property Actions and Proceedings Law establishes special rules if housing is provided as a condition of employment, and it may be possible for a farmer to regain possession of a house within two weeks through a court proceeding.

To minimize later problems when providing housing as a condition of employment, a farmer should be sure that the housing arrangement is in writing and signed by the employer and the employee. There should be a clear paragraph in the work agreement that sets forth the parties' understanding, including the time that the house will be vacated if employment terminates. The farmer should require a reasonable security deposit in advance if the employee has pets or children or if the employer is concerned about the possibility of damage to the property.

If a housed employee is terminated from his or her job, a farm employer should be prepared to give the employee written notice of the termination of employment and of the housing arrangement immediately. It may be necessary to contact an attorney who can prepare summary eviction papers if the tenant does not vacate voluntarily. Under no circumstances should a farmer attempt to remove a tenant, either by changing locks or by the use of force.

Should it become necessary to seek a lawyer's help, the eviction process will be more efficient if certain information is available. A lawyer should have copies of the work agreement, the notice to quit (vacate the premises), and any other relevant documents. In addition, the farm employer should keep the lawyer informed of any other actions he or she has taken.

To start a summary eviction proceeding, a notice of the proceeding and the petition bringing the action should be served on the tenant-employee at least five and not more than twelve days before the hearing. These papers can be served as early as one day after termination of employment. The court may not adjourn the hearing for more than ten days unless all parties consent.

After a judgment for the farm employer, the court will issue a warrant to remove the tenant. The enforcing officer must give 72 hours' notice before removal. A farmer realistically can expect to get his or her house back within two weeks, but the process could possibly take as long as one month to complete.

Even if the parties agree, under state law it is not proper for the farm employer to withhold wages to cover damage done to the property. The summary eviction proceeding does not include a process for deciding claims for money due, so a separate court action is required. For this

reason, arranging a security deposit in advance is a wise idea.

New York State's Wage Reporting System

Under New York tax law, employers are required to submit wage reports to the Department of Taxation and Finance. These reports are used to verify eligibility for public assistance and benefits under the Social Services Law, to locate absent parents and establish child-support obligations, and to verify eligibility for insurance benefits administered by the Department of Labor.

Coverage

Most employers are required to file a quarterly wage report. Employers who are not required to and do not withhold federal income taxes from the wages of their employees are exempted from this regulation.

Information Required

The name, Social Security number, and gross wages of every employee who resides or is employed in New York State must be reported, regardless of whether his or her wages are subject to withholding of taxes or tax payments under the Personal Income Tax Law. Information is required on all employees. Some additional data on the employer are also required.

Filing Requirements

Wage reports are due the last day of the month following the calendar quarter. They should be sent to the Department of Taxation and Finance, WRS Report Processing Unit, State Campus, Albany, NY 12227.

Penalties for Noncompliance

Failure to provide the required information can result in financial penalties. Employers who fail to

comply will be informed by certified mail that they are delinquent. An employer who does not comply within 15 days of this mailing will be fined based on the number of employees for whom wages were not reported or reports were late or inaccurate. The fines range from \$1 to \$25 per employee, depending on the number of offenses the employer has had within the past eight reporting periods.

Records to Be Kept

All records and information pertinent to the wage reporting system must be available for inspection by the tax commission for four years after wage reports are filed.

Additional Information

Most employers who are required to report are sent the necessary form (WRS-2) by the Department of Taxation and Finance. The form contains instructions and sources of additional information. Forms and additional information can also be obtained from any local office of the Department of Taxation and Finance. See the Appendix for details.

Insurance

Workers' Compensation Insurance

Coverage

The New York State Workers' Compensation Law covers most employees. Some special coverage provisions and exemptions apply to farm laborers, volunteers, domestics, chauffeurs, and teenagers. Rules that apply to young workers are explained in the section on youth employment.

Farmers in New York State must purchase workers' compensation insurance if their cash wage payments to farm employees totaled \$1,200 or more in the previous calendar year. Insurance must be purchased from a private carrier or the State Insurance Fund for 12 months beginning April 1. Larger employers find it profitable, and may be permitted by the Workers' Compensation Board, to self-insure. Contact the Workers' Compensation Board for more information.

The \$1,200 annual payroll rule applies to only four farm classifications: general farms (0006); fruit farms (0007); vegetable or berry farms (0031); and poultry farms (0034). Other businesses classified as nursery (0005), florist, cultivating, and gardening (0035), landscape gardening (0042), custom tree pruning and spraying (0106), and stores (8001) are not subject to the \$1,200 payroll rule. These businesses must provide workers' compensation coverage regardless of their annual payrolls.

Farmers not required to provide workers' compensation coverage to their employees may voluntarily elect to do so. If employees will be expected to contribute to premium payments, they must be given 30 days notice that a voluntary plan is to be undertaken and one-half of the employees to be covered must consent to

the contribution requirements. If a farm employer who has elected voluntary participation chooses to end the coverage, the affected employees must be given 90 days' notice before coverage ends. In addition, before terminating, the employer must have made sufficient contributions to provide for payments of benefits for at least one year.

An employer who is not required to provide worker's compensation coverage may choose not to do so voluntarily, relying on coverage being provided to injured workers under other liability policies carried by the employer or the farm business. Be sure to check with the insurance company to determine whether the liability policy specifically excludes employee injuries or work-related claims. This is often the case.

Farm Family Workers

An employer's spouse employed on a farm is considered an employee for purposes of determining worker's compensation coverage. An employer's child under the age of 18 is considered an employee only if his or her services are provided under an express contract for hire. An express contract for hire is a legal term used to distinguish a situation in which a person is a hired worker from one in which a person does an occasional chore or odd job for pay. The farmer's 16-year-old son who works as an employee, whether full time during school vacations or part time during the school year, is considered an employee, for example, whereas children who help out occasionally in the barn or perform tasks for which they are paid by the job are usually considered casual laborers.

To determine which situation applies to your child, ask yourself the following three questions:

- Am I paying a regular wage for the work being done?

- Is my child performing tasks I would hire an outsider to do?

- Do I have an understanding, or an agreement, with this person (even an oral one) that tasks will be performed for compensation?

If the answer to all three questions is yes, the services are clearly being performed under an express contract for hire and workers' compensation laws apply. If you are still not sure of the nature of the relationship and your legal obligations, contact the Workers' Compensation Board.

Children 18 and over who work on the family farm are automatically considered employees, even if they are students, and their wages are included in determining whether workers' compensation coverage is necessary. If the farm meets or exceeds the \$1,200 cash wage test, then all farm employees over the age of 18 are covered, including family workers. Note that once an insurance policy is in effect on a farm, the insurance company assumes financial responsibility for work-related injuries to any covered employee, regardless of whether premiums were collected for his or her wages. Determination of the existence of an express contract for hire and coverage under the law are made by the New York State Workers' Compensation Board, not by the insurance company. Most insurance companies will therefore want to collect premiums on all workers.

The family worker exemption applies only to those individuals in the classifications above to which the \$1,200 cash wage test applies. In other businesses, family workers are considered employees even if no express contract for hire exists and thus Workers' Compensation insurance must be provided.

Farm Labor Contractors

Farm workers who are recruited, sup-

plied, or supervised by a farm labor contractor are considered employees of the farm owner or leasee for purposes of workers' compensation coverage.

Custom Work

A person doing custom work for a farmer is considered his or her employee unless it can be demonstrated that the individual is an independent contractor who does custom work for others as a normal part of his or her business. The criteria for distinguishing between employee-employer and independent contractor-owner relationships seem well established in New York case law, but problems may arise in applying criteria in an individual case. See the section "Employee or Independent Contractor?" for a discussion of the criteria used to establish whether someone is an independent contractor or an employee.

To protect him- or herself, a farmer must eliminate any confusion as to the nature of the relationship with the independent contractor. The farmer should leave the method of work to the independent contractor's discretion and specify only the desired result. In addition, the farmer should pay for the job as a whole and not on an hourly basis, refrain from furnishing the independent contractor with any equipment, and tailor the work contract to the relative nature of the work test. Courts in New York have concluded that the Workers' Compensation Law is remedial in nature and therefore requires a liberal interpretation. Ambiguity in a relationship thus works to the farmer's detriment: the injured person making a claim will be considered an employee.

One area in which problems have arisen is trucking. A truck driver who picks up produce and delivers it to a processing plant is considered the farm owner's employee, even though the evidence indicates that

the driver is an independent contractor. The farmer can avoid responsibility for workers' compensation only by obtaining a certificate of insurance from the driver. The Workers' Compensation Board may be willing to issue a nonbinding opinion on a given set of facts, but it will not issue a binding opinion. This particular issue has not yet been tested in a New York court. The area of custom work is a problem in both agricultural and nonagricultural enterprises. Questions about specific situations should be directed to the Workers' Compensation Board.

Employer's Responsibilities

- Ensure that benefits will be paid by purchasing insurance or, if applicable, self-insuring.
- Post a Notice of Compliance (Form C-105), including the name of the insurance company.
- Keep records of all injuries.
- Notify the nearest office of the Workers' Compensation Board whenever on an on-the-job injury results in loss of time.

Penalties

An employer who refuses or neglects to report an injury may be guilty of a misdemeanor, which is punishable by a fine of up to \$500. In the event of an injury, an uninsured employer is personally liable for the worker's compensation and medical benefits, as well as for an assessment of \$150 and 15 percent of any award made. The assessment may not exceed \$1,500 for any one claim. In addition, an uninsured employer loses his or her common-law defenses and may be subject to a suit by the injured worker. He or she may also be subject to criminal prosecution for failing to insure and to an additional \$50 assessment if he or she remains uninsured for 10 or more days.

Employment of a Minor

Additional liability can be incurred if the worker is under 18 years of age and employed in violation of the Labor Law. If the employee is injured on the job, he or she receives two times the Workers' Compensation award, all of which the employer must pay. If the employer is uninsured for workers' compensation, he or she is also liable for all medical awards, as well as the penalties listed above levied on uninsured employers. Rules that apply to young workers are explained in the section on youth employment.

Additional Information

If you have questions about insurance premiums or payroll reports, contact your insurance agent or on an office of the State Insurance Fund. If you have questions about on an accident or claim, contact one of the district offices of the Workers' Compensation Board (see the Appendix).

Disability Benefits

The Disability Benefits Law complements the Workers' Compensation Law. The latter provides benefits to workers injured on the job, whereas the former provides benefits for workers disabled off the job.

Coverage

An individual who employs one or more persons on each of 30 days, or on any part of 30 days, in any calendar year becomes covered four weeks after the 30th day of such employment. The law excludes certain categories of employees, such as the spouse or minor child of the employer, and certain types of employment, such as the following: farm labor, casual employment (which has a very broad definition), service as a golf caddy, and the part-time service of elementary

and secondary school students.

An employer may exclude his or her spouse from coverage, but only if the proper form is filed with the insurance carrier requesting the exclusion.

Note that laborers are the only farm employees excluded from the law. Other farm employees, such as corporate officers and office workers, are covered. Note also that if a farm is incorporated there are no family workers because the employer is the corporation. All persons working in the business, including the corporate owners, are employed by the corporation, unless they are nominal officers and receive no wages or other payment for services. If two people own all the corporate stock and hold all the corporate offices, however, they are exempt from these provisions.

A covered employer is required to post a Notice of Compliance in a conspicuous place in and about the place of business.

Cost of Disability Benefits

The disability benefits program is financed in one of two ways: either entirely by the employer or jointly by the employer and employee. If the employer is providing statutory disability benefits, the employee may be required to contribute one-half of 1 percent of his or her weekly wages, not to exceed \$.60 per week. Unlike the rates for workers' compensation insurance, those for disability benefits insurance are not uniform; the cost of the coverage varies among insurance companies. Shop around!

Benefits

An employee may receive one-half of his or her weekly wage, up to \$170, starting one week after he or she becomes ill or injured, for a maximum of 26 weeks during a 52-week period or during one period of disability.

injury is less than \$20, he or she receives the average weekly wage. These benefits are provided by statute. Some insurance companies include additional benefits in their policies.

Reporting and Filing Requirements

Reporting and filing requirements vary among insurance companies. Some require physical audits of the payroll, whereas others use a self-audit. The insurance companies provide forms and explain procedures.

Additional Information

Contact an office of the Workers' Compensation Board, your insurance agent, or the State Insurance Fund for additional information about these and special coverage provisions of the Disability Benefits Law.

Unemployment Insurance

In 1978, mandatory coverage for unemployment insurance (U.I.) was extended to include agriculture under both state and federal law. Before then, coverage was voluntary.

Coverage

Agricultural workers are covered if their employer is covered. Employers of agricultural labor are liable for payment of contributions (1) as of the beginning of any calendar year in which they employ 10 or more persons for some portion of any day in each of 20 different weeks or (2) as of the beginning of any calendar quarter in which cash labor payments of \$20,000 or more are paid.

Employment not considered agricultural labor usually comes under the general-coverage provision. Under this provision, an employer is liable for U.I. taxes if his or her cash payroll is \$1,500 or more in any calendar quarter, usually the case if

the farm has any employees. An employer is also liable for U.I. taxes as of the beginning of any calendar quarter in which at least one person is employed for some portion of any day in each of 20 weeks.

If neither the general minimum requirements nor the farm minimum requirements apply, it is necessary to determine whether a given employee is properly categorized as an agricultural laborer and therefore excluded from U.I. coverage required for nonfarm employees.

Agricultural labor includes all services performed in the following:

- on a farm, in the employ of any person, in connection with cultivating the soil or in connection with raising or harvesting any agricultural or horticultural commodity (including livestock);
- in the employ of the owner or tenant or other operator of a farm in connection with the operation of the farm;
- in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market any agricultural or horticultural commodity, but only if such service is performed in the employ of an operator of a farm, or a group of operators (as a cooperative), and if such operator(s) produced more than half the commodity associated with such service.

The term farm refers to stock, dairy, poultry, fur-bearing animal, and fruit farms, as well as truck farms, plantations, nurseries, greenhouses, and other similar operations engaged primarily in raising agricultural or horticultural commodities and orchards. If there is a retail component to the business it will be required to pay U.I.

If you have any questions about whether a particular position is classified as agricultural labor, do not guess. Seek an interpretation from the Unemployment Division of the New York State Department of Labor. Employers have unwittingly failed to provide coverage for employees only to find that the state concluded that coverage was required. A wine maker who was responsible for overseeing the processing of grapes into wine at a vineyard was considered an employee of a commercial, not an agricultural, operation even though a vineyard is clearly a farm under New York law. Apparently it did not matter that the processing occurred on the vineyard premises; nor was processing considered "incident to the preparation" of grapes for market.

Farm Owners

If the farm is a sole proprietorship or partnership, the owner or owners cannot be considered employees, even though wages may be drawn. If the firm is a corporation, however, the owners are considered employees if they draw wages or perform services. If the farm meets the coverage provisions, the owner has to pay U. I. taxes on his or her wages and they must be included in the test for coverage.

Family Workers

The unemployment insurance provisions do not apply to an employer's spouse and children under 21 unless the business is a partnership or a corporation. In this case, family workers are treated no differently than other employees in determining whether the business is covered by U.I.

Independent Contractor Status

Independent contractors are excluded from coverage under the Unemployment Insurance Law. The law, however, does not define an independent contractor, and the same problems can

arise here as in other areas where it is not clear whether a person is an employee or an independent contractor. The section "Employee or Independent Contractor?" at the beginning of this publication discusses the distinctions between the two.

Crew Leaders

Under certain very restricted conditions, a crew leader, rather than the farm owner or operator, is considered the employer. The crew leader must not be an employee of the farm operator and must not have entered into a written employment agreement with the farm operator. He or she must also hold a valid Certificate of Registration under the Migrant and Seasonal Agricultural Worker Protection Act, or the majority of crew members must operate or maintain mechanized equipment provided by the crew leader. If all these conditions are met, the crew leader may be considered the employer, in which case his or her liability is based on the coverage provisions listed above. A farm operator should receive a written opinion from the Unemployment Insurance Division before assuming that the crew leader is the employer.

Federal Unemployment Tax

Under the Federal Unemployment Tax Act (FUTA), unemployment tax is imposed on the employer and it must not be collected or deducted from the wages of employees. The tax rate is 6.2 percent on the first \$7,000 of wages paid to each employee during 1990. While there is a credit of as much as 5.4 percent for state unemployment tax payments as discussed below, an employer remains liable for federal unemployment tax even though he or she may be exempt from state tax or if employees are ineligible to receive state unemployment benefits.

An annual return, Form 940, Employer's Annual Federal Unemployment

Tax Return, must be filed by January 31 following the close of the calendar year for which tax is due. The rules for depositing FUTA tax are the same as those discussed earlier for depositing Social Security and withheld income taxes.

If an employer is liable for U.I. contributions, a notice furnished by the state Department of Labor must be posted at the workplace.

IRS Publication 51, Circular A contains information useful in determining how the federal unemployment tax will apply to an individual farm employer.

State U.I. Tax Rates

In 1988, an employer who became liable for unemployment taxes for the first time was assigned a rate of 3.6 percent on the first \$7,000 of each employee's taxed wages. Wages include both cash and perquisites at a "reasonable money value," as stated in minimum wage orders. Although taxed wages include both cash and perquisites, the coverage test is applied only to cash wages. Since the initial tax rate has changed several times in the past, it is possible that it will change again in later years.

Experience rating can change the tax rate. To qualify for experience rating, the employer

- must have been in the system during the five calendar quarters ending on the computation date -- December 31 -
- of any year;

- must have filed all contribution reports due for all periods of his or her liability in the three payroll years preceding the computation date (a payroll year encompasses the four consecutive calendar quarters ending on September 30); and

- must have paid some remuneration to employees in the payroll year ending September 30 preceding the computa-

tion date.

Employers are notified of their tax rates in March of each year, well before the April 30 due date for the first quarter report. Tax rates also appear on the reporting forms sent to employers quarterly.

Appeal

Employers who are not satisfied with a determination affecting their tax liability have 20 days from the date of the determination to request a hearing before a referee and 20 days from the date the referee's decision is sent to the employer to appeal to the Appeal Board. Employers are not charged for these proceedings (see "Additional Information" for the office to contact).

Reconciling State and Federal Reporting

The annual total taxable New York State wages reportable for FUTA purposes on Form 940 should be reconciled to the taxable wages reported to the state on the quarterly Employer's Report of Contributions (state Form IA 5). Employers should take time to review these figures and resolve any discrepancies before submitting the reports that are due January 31 of each year. This will assure they receive proper credit toward their FUTA tax due and may forestall future questions resulting from any apparent discrepancy between the amounts of taxable wages reported to each agency for the year.

An employer subject to FUTA will obtain a 5.4 percent credit against the federal tax if the state tax is paid in full by January 31 following the close of the taxable year and a reduced credit if the state tax payment is made later.

Penalties for Noncompliance

Failure to register or pay the required taxes on time can result in

substantial penalties. Late tax payments are not credited to the employer's account and can thus result in a higher than usual tax rate. An interest rate of 12 percent is charged on all delinquent payments. Refusal to submit taxes, or excessive delay in doing so, may result in a warrant, which, when filed, becomes a lien upon the employer's title and interest in real property.

Record Keeping

All employers must maintain for each person they employ records that show the employee's name and Social Security number as well as the dates that the employee worked and the earnings, including bonuses, noncash payments, and similar forms of compensation. The records must be retained for the current year and at least three preceding years and be available for inspection.

Additional Information

The Unemployment Insurance Division of the New York State Department of Labor publishes useful materials regularly. Two publications are particularly valuable: *Employer's Guide to Unemployment Insurance* (updated periodically and sent to insured employers) and *Agricultural Employment*.

Questions regarding coverage and an employer's liability for unemployment insurance taxes should be directed to Liability and Determination Section, Unemployment Insurance Division, New York State Department of Labor, State Campus, Albany, NY 12240-0322.

Questions regarding claims should be directed to your local New York State Department of Labor Unemployment Insurance Office, listed in the phone directory.

Safety and Health

Occupational Safety and Health Act

The Williams-Steiger Occupational Safety and Health Act established the Occupational Safety and Health Administration (OSHA), which is administered by the Department of Labor, to ensure that working conditions for every man and woman in the nation are as safe and healthful as possible.

The act allows each state to implement a safety and health program, but many states, including New York, have decided not to have such programs. In these states, OSHA regulations apply to any employer who is in a business that affects interstate commerce. Generally, all the employees of these businesses are covered. OSHA regulations do not apply to a farm owner's or renter's immediate family members, however, or in labor exchange situations. Thus farmers involved in informal neighborhood labor exchanges are not normally covered.

The following OSHA regulations apply to farming operations: record-keeping requirements; general duty clause; and standards pertaining to the following specific topics:

- temporary labor camps;
- pulpwood logging;
- storage and handling of anhydrous ammonia;
- rollover protective structures on agricultural tractors; and
- guarding of farm, field, and farmstead equipment.

Record-keeping Requirements

Employers must display the OSHA poster, which describes the protection and obligations provided by the act and specific safety and health standards, in a prominent place where

employees normally report to work.

OSHA regulations require that any work-related fatality involving an employee and any accident or occurrence involving three or more hospitalizations be reported to the OSHA area director within 8 hours. The report must include the circumstances of the accident, the number of fatalities, and the extent of injuries.

Employers who had fewer than 11 full- or part-time employees at any one time during the previous calendar year are required to do the following:

- Report on-the-job fatalities or accidents involving multiple hospitalizations.
- Keep a log of occupational injuries and illnesses.
- Participate in a statistical survey upon written notification by the Bureau of Labor Statistics that the employer has been selected.

Employers who had 11 or more employees at any time during the calendar year must report job-related illnesses or injuries to the OSHA area director as soon as possible, but no later than six working days after being notified of the injury or illness. Forms are provided (OSHA 200) to prepare these reports. Forms and posters can be obtained from one of the Region II OSHA offices, listed in the Appendix.

General Duty Clause

The general duty clause in the OSHA regulations applies to agriculture. The regulation states that employers must furnish every employee with a place of employment free from recognized hazards that are causing or are likely to cause death or serious physical harm and comply with occupational safety and health standards promulgated under the act.

A recognized hazard is defined as one commonly known or generally recognized in the industry in which it occurs, detectable by the senses or of such wide, general recognition as a hazard that there are generally known and accepted tests for its detection.

Temporary Labor Camps

This standard contains specifications regarding the camp site, camp construction, water supply, toilet facilities, sewage disposal, laundry, hand washing and bathing facilities, lighting, refuse disposal, construction and operation of the kitchen, dining hall, and feeding facilities, insect and rodent control, first aid, and procedures for reporting outbreaks of communicable diseases.

New York State law requires employers to have permits for public housing, and inspections are made to determine whether the terms are being followed. The right to inspect housing has been challenged in court and upheld.

The New York State Department of Health has been issuing permits based on a code that has been used for several years. New York State officials may become more rigid in requiring that camps be in full compliance with the law before occupancy. The New York State regulations are contained in Title 10 of the state Sanitary Code.

Storage and Handling of Anhydrous Ammonia

This standard specifies construction details for the equipment used to store and transport anhydrous ammonia. Personnel required to handle ammonia should be trained in safe operating practices and in actions to take in an emergency. All stationary storage installations should have readily accessible at least two suitable gas masks and a shower or 50-gallon drum of water. A self-contained breathing apparatus is re-

quired in areas containing concentrated ammonia. Any vehicle transporting ammonia in bulk, except farm applicators, must carry a container of at least five gallons of water and be equipped with a full-face mask. Farm vehicles must carry a can containing five or more gallons of water. The trailer should be constructed so that it will follow substantially in the path of the towing vehicle and not whip or weave dangerously from side to side. Hitches should be supplemented with suitable safety chains.

Goggles are to be used when handling anhydrous ammonia. It is essential that the vehicle carry water so that in the event of an accidental leak an employee can flush the parts of the body that are hit. Continued flushing of the eyes is critically important.

Pulpwood Logging

This standard applies to pulpwood logging operations only and not to operations relating to saw logs, veneer bolts, poles, piling, or other forest products. The standard contains specifications relating to personal protective equipment, first aid, environmental conditions, work areas, explosives, and the operation of chain saws, hand tools, and other equipment.

Roll-over Protective Structures on Agricultural Tractors

Agricultural tractors manufactured after October 25, 1976, must meet the following requirements:

- Every tractor operated by an employee must have a roll-over protective structure (ROPS).
- Where ROPS are required, the employer shall ensure that

each tractor has a seat belt that meets requirements specified in the standard;

each employee uses the seat belt properly while the tractor is moving;

batteries, fuel tanks, oil reservoirs, and coolant systems are constructed and located or sealed so that the operator does not come in contact with spillage in the event of an upset; and

there is as little risk of injury as possible from sharp edges and corners in the event of an upset at the operator's station.

The requirements of this standard do not apply to the following:

- "low-profile" tractors while they are used in orchards, vineyards, or hop yards where the vertical clearance requirements would substantially interfere with normal operations and while their use is incidental to the work being performed;
- "low-profile" tractors while they are used inside a farm building or greenhouse in which the vertical clearance is insufficient to allow the operation of a ROPS-equipped tractor;
- tractors while they are used with mounted equipment that is incompatible with ROPS (e.g., corn pickers, cotton strippers, vegetable pickers, and fruit harvesters).

Definitions

An "agricultural tractor" is a two- or four-wheel drive-type vehicle, or track vehicle, of more than 20-engine horsepower designed to furnish the power to pull, carry, propel, or drive agricultural implements. All self propelled implements are excluded.

A "low-profile" tractor is a wheeled tractor with the following characteristics:

- The spacing between the front wheels is equal to the spacing between the rear wheels, as measured

from the center line of each right wheel to the center line of the corresponding left wheel.

- The clearance from the bottom of the chassis to the ground does not exceed 18 inches.

- The highest point of the hood is no more than 60 inches from the ground.

- The operator straddles the transmission when seated.

"Tractor weight" includes the protective frame or enclosure, all fuels, and other components required for normal use of the tractor.

Remounting

If ROPS are removed for any reason, they must be remounted so that they meet the requirements of the standard.

Labeling

Each ROPS shall have a label that is permanently affixed to the structure stating the following:

- manufacturer's or fabricator's name and address;
- ROPS model number, if any;
- tractor makes, models, or series that the structure is designed to fit; and
- that the ROPS model was tested in accordance with the requirements of the standard.

Operating Instructions

Every employee who operates an agricultural tractor must be informed of the operating practices listed below and of any other practices dictated by the work environment. This information should be provided at the time of initial assignment and at least annually thereafter.

- Fasten your seat belt securely.

- When possible, avoid operating the tractor near ditches, embankments, and holes.

- Reduce speed while turning, crossing slopes, and on rough, slick, or muddy surfaces.

- Stay off slopes too steep for safe operation.

- Watch where you are going, especially at the end of rows, on roads, and around trees.

- Do not permit others to ride.

- Operate the tractor smoothly--do not make jerky turns, starts, or stops.

- Hitch only to the drawbar and hitch points recommended by tractor manufacturers.

- When the tractor is stopped, set the brakes securely and use a lock if available.

PTO Guarding

All agricultural equipment, regardless of age, must have a completely guarded power take-off (PTO) drive line. The master shield on the rear PTO shaft must be kept in place. The master shield should have sufficient strength to prevent permanent deformation of the shield when a 250-pound operator mounts or dismounts the tractor using the shield as a step. The master shield can be removed when necessary to operate PTO-driven equipment if the guards on this equipment cover the PTO shaft. The equipment should also include protection from that portion of the tractor PTO shaft that protrudes from the tractor.

Operating Instructions

At the time of initial assignment and at least annually thereafter, employ-

ees must be given instructions, including at least the following, in the safe operation and servicing of all equipment with which they will be involved:

- Keep all guards in place when the machine is operating.
- Do not permit anyone to ride on farm field equipment except if he or she is receiving instruction or assistance in its operation.
- Stop the engine, disconnect the power source, and stop all machine parts before servicing, adjusting, cleaning, or unclogging the equipment unless the machine must be running to be serviced or maintained properly. In this case, the employer will instruct employees in all steps and procedures necessary to service or maintain the equipment properly.
- Make sure everyone is clear of the machine before starting the engine, engaging the power, or operating.
- Lock out electrical power before performing maintenance or service on farmstead equipment.

Safety Signs

Signs should be placed at prominent locations on tractors and power take-off equipment stating that safety shields must be kept in place.

If removing a guard or access door will expose an employee to any component that continues to rotate after the power is disengaged, a readily visible or audible warning of rotation should be placed in the immediate area along with a safety sign warning employees to look and listen for evidence of rotation and not to remove the guard or access door until all components have stopped.

Other OSHA Requirements

In addition to signs and PTO guarding, all farm equipment manufactured

after June 7, 1976, must meet the following specifications:

- The mesh or nip points of all power-driven gears, belts, chains, sheaves, pulleys, sprockets, and idlers must be guarded.
- All revolving shafts, including projections such as bolts, keys, or set screws, must be guarded, with the exception of the following:

smooth shafts and shaft ends (without any projecting bolts, keys, or set screws), revolving at less than 10 rpms, on feed-handling equipment used on the top surface of materials in bulk storage facilities; and

smooth shaft ends protruding less than one-half the outside diameter of the shaft and its means of locking.

- Components such as snapping or husky rolls, straw spreaders and choppers, cutterbars, flail rotors, rotary beaters, mixing augers, feed rolls, conveying augers, rotary fillers, and similar units that must be exposed for proper function must be guarded to the fullest extent possible that will not substantially interfere with normal functioning.

- Sweep-arm material-gathering mechanisms used on the top surface of materials within silo structures must be guarded. The lower or leading edge should be located no more than 12 inches over the material surface and no less than 6 inches in from the leading edge of the rotating member in the gathering mechanism. The guard should be parallel to the material-gathering mechanism and extend the fullest practical length.

- Exposed flighting on portable grain augers should be guarded with either grating-type guards or solid baffle-style covers as follows:

Openings in grating-type guards through which materials are required to flow should be no more than 4 3/4

inches. The areas of each opening must be located less than $2 \frac{1}{2}$ inches from the rotating flighting.

Slotted openings in solid baffle-style covers should be no wider than $1 \frac{1}{2}$ inches or closer than $3 \frac{1}{2}$ inches to the exposed flighting.

- Guards, shields, and access doors must be in place when the equipment is in operation.

- When removal of a guard or access door will expose an employee to any component that continues to rotate after the power is disengaged, the employer must provide a readily visible or audible warning in the immediate area.

Additional Information

For further details, write to the OSHA Region II offices (see the Appendix) or to John Pollock, Cornell Cooperative Extension Safety Engineer, Riley-Robb Hall, Cornell University, Ithaca, NY 14853.

Hazardous Substances

In the past several years, the state and federal governments have passed laws and enacted regulations requiring businesses that use toxic chemicals to inform employees and community members of the possible dangers inherent in such substances, how to handle them, and how to react in an emergency.

Farmers may have legal obligations under Title III of the Superfund Amendment and Reauthorization Act (SARA), which is administered by the federal Environmental Protection Agency (EPA) and requires that state and local governments plan to respond to chemical spills or other emergencies related to hazardous substances. A detailed discussion of all the legal requirements of SARA is beyond the scope of this publication, but more information can be obtained by contacting the New York State Departments of Health and Environmental Conservation, the federal EPA, or the nearest OSHA office. EPA has a toll-free hotline to answer questions concerning the Chemical Emergency Preparedness Program created by SARA. The number is 1-800-535-0202; call weekdays between 8:30 A.M. and 4:30 P.M.

Separate laws and regulations deal with employers' obligations to employees with respect to hazardous substances used in a business. Since 1980, farmers in New York have been covered by the state Right-to-Know Law. In addition, a federal law--the OSHA Hazard Communication Standard (see below)--applies, but it is not currently being enforced on farms. If the federal regulations are enforced on farms, the state Department of Labor will not apply the state law. If farm employers are in compliance with the state law requirements described below, they will probably be in compliance with the federal Hazard Communication Standard as well.

New York Right-to-Know Law

Under the Right-to-Know Law, employers in New York State must tell workers about the health effects of any toxic substances at their work sites and maintain records to reflect compliance with the law. The law applies to all employees except domestic workers or casual laborers employed at the employer's residence.

To conform to the law, an employer must first know what, if any, toxic substances are present at the workplace. A "toxic substance" is any substance that is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) *Registry of Toxic Effects of Chemical Substances* or that has yielded evidence of acute or chronic health hazards in biological testing. Employers should conduct an inventory and gather information about components of the substances present. Manufacturers are now required to provide health hazard information on each toxic substance they produce. This information is furnished on a Material Safety Data Sheet (MSDS), which can be obtained from manufacturers and, in most instances, from the state Department of Health as well.

You may receive a MSDS that does not have the identity of the product on it because the product is registered as a trade secret. If a request is made for information concerning a substance that is registered as a trade secret, the specific identity of the substance does not have to be revealed, but all information concerning the health hazards and toxic effects of the substance must be disclosed. You can check the registration and the accuracy of information on registered products with the state Department of Health.

Employer Responsibilities

Employers have four major responsibilities under the Right-to-Know Law.

Notification

Employers must display a sign or poster in every workplace to inform workers that they have a right to information concerning the hazards of toxic substances. In addition, employers are required to make this information available in writing to each employee who may be exposed to these substances and to new employees at the time they are hired. This information must be written in a language that the employee understands. The employer, however, is not required to disseminate written information concerning toxic substances.

Posters are available free of charge from the state Department of Health. The employer should include on the poster the name, location, and telephone number of the representative the employer has designated to receive and respond to information requests. The health department poster is a model; employers are not required to use it as long as something substantially similar is used.

Information

Employees or their representatives may request information about the toxic substances to which they are exposed. These requests may be oral but written requests are preferable and should be encouraged because they document the nature and the time of the request. (Upon receiving the request, the employer must supply the information in writing within 72 hours, excluding weekends and holidays. If the employer fails to provide the information within 72 hours, the employee may refuse to work with the toxic substance until he or she has received the information. The employee cannot be discriminated against or fired for exercising these rights.

Employee Education and Training

Employers must set up an education and training program for employees regularly exposed to toxic substances. Employees must be educated and trained in both the possible health effects and the symptoms of exposure to these substances and in how to handle them safely. The education and training program must take place before their first assignment, a least once a year after that, and any time the exposure to toxic substances is changed. The program must also include information on the employee's rights under the Right-to-Know Law.

Record Keeping

Employers must keep a record of the name, address, and Social Security number of every employee who handles or uses substances included in part 1910 of OSHA's General Industry Standards, subpart Z. In addition, for each subpart Z substance, whether used in pure form or as a component in a mixture, the employer must record the chemical name, the CAS number, the name of the product containing the chemical, and the name of the manufacturer of the product. Employers should consult Title 29 of the Code of Federal Regulations to determine if their workers are exposed to any subpart Z substances and to learn about any specific requirements that may exist for these substances. For further information, see *Record-Keeping for Subpart Z Substances under the Right-to-Know Law*, a pamphlet provided by the New York State Department of Health (address provided in the Appendix).

These records are to be made available to each affected employee and former employee, the employee's physician or representative, and the New York State Commissioner of Health upon request for examination and copying. The records must be kept for 40 years, and if the employer's establishment ceases to operate in

New York, the records must be sent to the Department of Health.

Employers are required to keep records of training activities, including dates, names of attendees, program content, and names of those conducting the program.

Penalties

An employee cannot be required to give up any rights under the law as a condition of employment. An employee who is discriminated against in violation of the Right-to-Know Law may file a complaint with the state Department of Labor. Any employer who fails to comply with the Right-to-Know Law may be liable for a civil penalty of up to \$10,000. In addition, any person who intentionally violates any part of the law can be convicted of a misdemeanor and fined up to \$500, imprisoned for up to thirty days, or both.

Additional Information

Detailed information may be obtained by contacting the New York State Department of Health. In addition, a very helpful publication, *Farm Guide to the Right-to-Know Law* published by the Cornell Chemicals-Pesticides Program, can be purchased by contacting the Distribution Center, 7 Cornell Business and Technology Park, Ithaca, NY 14850, (607) 255-2080.

OSHA Hazard Communication Standard

The federal Hazard Communication Standard (HCS) ensures that employers and employees have information available to them regarding the hazards associated with chemicals in the workplace. Implemented for some industries in 1986, the HCS was expanded to encompass all businesses regulated by OSHA, including farms, in July 1988. It requires that all chemical manufacturers and importers

assess the hazards of the chemicals they make available and that all employers inform their employees about the hazardous chemicals to which they are exposed in the workplace. The information is transmitted in two steps; first from chemical manufacturer to employer and then from employer to employee. Employers, therefore, have rights under the HCS as well as obligations.

Manufacturers' Obligations

To comply with the HCS, chemical manufacturers must determine if their product is hazardous; if so, they must appropriately label the product and provide a MSDS for that product.

Hazard Determination

Chemical manufacturers and importers must use rigorous standards to evaluate all chemicals and determine if they present a physical hazard (for example, if they are flammable) or a health hazard (if they are toxic). An employer may rely on these evaluations and need not conduct a separate evaluation. If chemicals are mixed at the workplace in a way that has not been tested or evaluated, it can be assumed the mixture presents the same health hazards as do its components.

Labeling

Once a chemical is evaluated as hazardous, the manufacturer must label each container with the identity of the substance, appropriate hazard warnings, and the name and address of the manufacturer or importer. If a chemical container label lists no hazards, an employer can assume that he or she has no duties under the HCS when that particular substance is used. The labeling requirements of the HCS do not apply if chemicals are subject to labeling requirements under another federal law, such as the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) administered by the EPA.

Employers' Rights to Material Safety Data Sheets

Chemical manufacturers and importers must provide a MSDS for each hazardous chemical they make available. The MSDS must contain detailed information about the identity and makeup of the hazardous substance; its physical and chemical characteristics; specific hazards associated with the substance; how to use it safely; and how to react in case of a leak, spill, or other emergency. Data sheets are to be included in shipments to distributors and businesses, and the manufacturer is responsible for ensuring that they are kept up to date. Retailers of hazardous chemicals need not give a MSDS to customers with every sale but must make them available upon request. Because employers are required to make data sheets available to employees, it is important that farmers obtain one for each hazardous chemical used on the farm.

Employers' Obligations

The HCS requires that all employers have a comprehensive hazard communication program. The plan itself must be written and must list the hazardous chemicals present at the workplace. The plan also must describe how the employer keeps employees informed of the presence and use of those chemicals.

To comply with the HCS, a farm employer must provide labels and other warnings regarding hazardous chemicals; MSDS'S; and employee information and training.

Labeling

All employers subject to the HCS must be sure that containers of hazardous chemicals present anywhere on their property are labeled legibly in English with the name of the chemical and at least summary hazard warnings. On the farm, this is readily accomplished by protecting the original

label on the container and by not repackaging chemicals into other containers unless absolutely necessary. If chemicals must be stored in containers other than those in which they were shipped or purchased, the new containers should be properly labeled. The label must clearly identify the chemical, its hazard, and the damage it can cause to the user.

If there are employees on the farm who speak a language other than English, an employer may label containers of hazardous chemicals in that language. This is appropriate as long as there are labels in English as well.

It is not necessary to label portable containers, such as hand sprayers, when they are for immediate use by the employee who fills them. Labeling is required on stationary process equipment involving hazardous chemicals. An employer can communicate hazard information in several ways, such as including the information in operating procedures, as long as the hazard information is accurate and readily accessible in the work area.

Employee Access to Material Safety Data Sheets

Employers are required to keep a MSDS on file for every hazardous chemical present or used in the workplace. These must be readily accessible to all affected employees during their work shift. The HCS defines an affected employee as a worker who can be exposed to hazardous chemicals under normal operating conditions or in foreseeable emergencies, such as equipment failure or rupture of a container.

A special exemption applies to consumer products that contain hazardous substances. If an employee uses a substance on the job in the same way a consumer would at home, the HCS does not apply. For example, if a

worker occasionally uses a cleanser containing a chlorine compound to clean a sink at work, just as one would clean a sink at home, this would be considered "normal consumer use" and not a health hazard. By contrast, an employee who cleans sinks all day with the same cleanser should be informed of the potential hazard and receive training pertinent to the job and the chemical involved. OSHA intends to treat this exemption narrowly, so an employer who is not sure whether an employee's exposure is from a "normal consumer use" should treat the chemical as hazardous and have a MSDS on file.

Although MSDS's need not be given routinely to every employee, a copy must be provided within a reasonable time if an employee requests one.

Employee Information and Training

Employers must train employees before they use hazardous chemicals or are exposed to them on the farm. The HCS does not specify how the training and dissemination of information must take place, as long as employers "adequately address the hazards posed by chemicals in the workplace." The HCS gives guidelines as to what information must be included in a training program.

All farm employees must be told about the fundamental requirements of the HCS, including the employer's written hazard communication program plan. In addition, employees must be told about activities in their work area on the farm that involve hazardous chemicals as well as where to find the list of hazardous chemicals used and the MSDS's that pertain to those substances.

Employees must be trained to work with hazardous substances. They must be taught how to detect the presence or release of a hazardous chemical in the work area. They also must be informed about the physical and health hazards presented by the chem-

icals and what protective measures should be taken both to prevent a problem and in an emergency.

Training can be specific for the hazards of each chemical or, if preferable, can focus on the hazards of categories of chemicals (for example, flammable liquids or carcinogens). If the program deals with categories of chemicals, employees can be referred to the specific information found on labels and data sheets, as long as they are trained how to interpret this information.

The HCS does not require that employees sign a document saying they received training, but it is advisable to have them do so. Employers should keep these statements with their written hazard communication program plan in case of an OSHA compliance inspection.

Record Keeping

It is essential that a farm employer have a written hazard communication program plan. In addition, MSDS's must be kept on file for every hazardous chemical used or present on the farm. The data sheets can be discarded if use of a hazardous material is discontinued; but an employer must keep a list of chemicals used and the dates they were used for thirty years. Records must be kept for this period because the harmful effects of some hazardous substances do not always appear immediately.

The employees who participated in training programs and the dates of training should be recorded. These records must be available for inspection by OSHA upon request.

Pesticide Use Regulations

In January 1995, the 1992 revisions to the EPA Worker Protection Standard (WPS) took full effect, creating a comprehensive set of standards de-

signed to protect workers using pesticides on farms and in forests, greenhouses, and nurseries. These standards replaced the limited EPA standards that had been in place since 1974 and mesh with the OSHA Hazard Communication Standard to provide a comprehensive program of protection for agricultural employees who use or are exposed to pesticides and other chemicals at work. This publication offers only a brief summary of the current regulations, but a booklet containing a detailed explanation of the current WPS can be obtained by calling your regional EPA office.

The WPS covers the use of pesticides for production of agricultural plants on farms, forests, greenhouses, and nurseries. There is no exclusion for small sized operations or for those with only a few employees. All agricultural and pesticide handling activities that expose workers to pesticide hazards are subject to the regulations with such exceptions as the use of pesticides on animals and on pastures or rangelands and the application of pesticides on harvested portions of agricultural plants. Even family members are included as covered employees with respect to some of the requirements of the WPS, such as restricted-entry intervals (REI's) and personal protective equipment (PPE), and all the specific requirements listed in the pesticide labeling.

Labeling

The EPA regulatory system is based on a system of registration and labeling. The regulations require manufacturers to test pesticides and provide label information to assist those who will apply the pesticides. Owners and applicators of the pesticide must follow all directions and conform to the worker protection standards contained on the label. If the pesticide product labeling contains specific instructions or requirements that conflict with the

requirements of WPS, the instructions or requirements on the label should be followed.

Employer Responsibilities

The responsibility of ensuring that pesticide use is in accordance with both pesticide labeling and the WPS falls upon the employer. An employer, for purposes of the WPS, may be either a worker employer or a handler employer. A worker employer is one who employs or contracts for the services of workers to perform tasks related to the production of agricultural plants or one who owns or operates an establishment that uses such workers. A handler employer is either one who employs pesticide handlers or is self-employed as a pesticide handler. WPS requirements apply only to employers who meet these definitions.

Although some WPS protections that employers must provide are the same for all employees, additional protections apply depending on whether an employee is a worker or a handler. A worker is anyone who performs tasks related to the cultivation and harvesting of agricultural plants on farms, or in greenhouses, forests, or nurseries. A handler is anyone who mixes, loads, transfers, or applies pesticides, handles opened containers of pesticides, acts as a flagger, cleans, handles, adjusts or repairs equipment that may contain pesticide residue, or assists in the application of pesticides.

Protections For All Employees

Employers must provide five main elements of protection for all employees. First, a central location must be established for displaying a poster containing WPS-specified information, listing the nearest emergency medical facility, and posting the product name, EPA registration number, and active ingredients for each pesticide used along with the time, date and location of each ap-

plication. All information regarding applications must remain posted for at least 30 days after the PEI expires.

Second, the employer is required to furnish emergency assistance in the case of a suspected pesticide poisoning by making available prompt transportation to an appropriate medical facility. Also, the worker, handler, or treating medical personnel must be provided with information from the pesticide labeling and an explanation of how the suspected exposure occurred.

Third, employers must provide a decontamination site for workers who are performing permitted activities in a treated area between time of application and 30 days following the expiration of the REI and handlers who are carrying on handling activities. Supplies for washing pesticides from the skin and eyes must be provided within one-fourth mile of all workers and handlers. This includes enough clean water for washing, soap and single-use towels, clean coveralls, and eyeflush water if employees are required to wear protective eyewear.

Fourth, a commercial handler employer must inform the operator of the farm, forest, nursery, or greenhouse when and where a pesticide is to be applied along with the REI of the pesticide and any requirements on the labeling. Operators of agricultural establishments are required to provide commercial pesticide handlers in their employ with the location and description of any areas on the establishment that the commercial handler may be in (or within one forth mile of) which may be treated with a pesticide or be under an REI while the commercial handler is on the establishment.

Finally, employers hold the responsibility of ensuring that each employee is properly trained. All pesticide handlers and early entry workers

(workers who perform permitted tasks in a treated area which remains under an REI) must be trained with written or audiovisual materials presented in an understandable manner, using non-technical terms. Handlers must be trained before they commence any handling activities and workers are required to be trained before their 6th day of entry into treated areas on an establishment where, within the past 30 days, a pesticide has been applied or a REI has been in effect. The trainer must be a certified applicator, a trainer of certified applicators, or someone who has completed an approved train-the-trainer course. Workers and handlers must undergo training at least once every five years. The appropriate WPS training materials are developed by the EPA.

Protections For Workers

Employers must keep workers out of areas undergoing pesticide treatment. Workers can not enter treated areas until the REI is over except for the purpose of carrying on non-hand labor tasks up to one hour/worker/day, and tasks necessary due to a declared agricultural emergency. For early-entry workers, employers must make sure of the following: entry to treated areas can not be gained for 4 hours following the end of application and until any specified inhalation exposure level specified on the pesticide labeling or the WPS ventilation criteria have been met; the workers are informed about health effects and safety information from the pesticide labeling; PPE is provided, cleaned and properly maintained; the workers wear and use the PPE correctly; the workers are instructed on how to put on, use, and remove the PPE and about the importance of washing thoroughly after removing the PPE; the workers are provided with a clean place to put on and remove the PPE and to store personal clothing; soap, towels, and water are provided for when the PPE is removed; and no contaminated PPE

is worn home or taken home.

All workers who might enter a treated area or walk within one-fourth mile of a treated area during application or an REI must be given notice either orally or by posting visible warning signs at all usual entrances to the treated area. Some pesticides have labeling which requires employers to both warn workers orally and post signs. A posted warning sign must include the words "Pesticides - Danger - Keep Out" in both English and Spanish, contain the WPS warning symbol, and meet color and size requirements. An oral warning must give location and description of the treated area, state the time during which entry is restricted, and instruct workers not to enter the treated area until the REI is over.

Protections For Handlers

Employers are required to make sure that no pesticide is applied so as to contact, either directly or by drift, any person other than a trained and protected handler. Any handler who is handling a pesticide with a skull and crossbones symbol on the label must be monitored visually or by voice contact at least every two hours.

When Personal Protective Equipment is required by the pesticide labeling for the handling activity, employers must provide clean and properly maintained PPE to the handler. Employers must provide all handlers a clean place to change into and out of the PPE and to store personal clothing. Soap, towels, and water need to be furnished to each handler following a handling activity when the PPE is removed. No handler may be allowed to wear home or take home PPE worn for handling activities. Employers must make sure that anyone cleaning PPE is informed that the PPE might have pesticides on it, that pesticides have potentially harmful effects (and what those effects might be), and of the correct ways to han-

dle and clean PPE. PPE must be inspected, repaired and cleaned according to manufacturers' instructions or in detergent and hot water before each use. PPE that can not be cleaned and clothing drenched with concentrates of Danger or Warning pesticide must be disposed of. Employers must also make sure that PPE is kept, washed, and stored separately from personal clothing and dried appropriately after cleaning. Respirator filters, cartridges, and canisters should be replaced when needed.

It is the employer's responsibility to make the pesticide product labeling accessible to the handler during the handling activity and to ensure that each handler has either read the information on the labeling or been informed of the information on the labeling. Each handler must be instructed in the safe operation of handling equipment and the handling equipment must be inspected and in good operating condition before each use.

Penalties For Noncompliance with the WPS

The penalty for noncompliance with the WPS is equivalent to the penalty for using a pesticide in a manner inconsistent with its labeling. Fines can be as high as \$1,000 per offense for owners or operators of agricultural establishments and up to \$5,000 per offense for commercial handling establishments. Knowing violation may result in a criminal penalty of up to \$1,000 and 30 days in jail for owners or operators of agricultural establishments and as high as \$25,000 and 1 year in jail for commercial handling employers. State and local governments may impose their own pesticide-related ordinances and may impose their own penalties.

Additional Information

The New York State Department of Environmental Conservation (DEC) is

the regulatory arm of the EPA in New York State. Additional information can be obtained from your county Cornell Cooperative Extension association or district offices of the DEC (see the Appendix for a list of offices).

Certification of Pesticide Applicators

Environmental Protection Agency standards for certification of both commercial and private applicators of restricted pesticides are presented in Title 40 of the Code of Federal Regulations.

Who Must Be Certified?

All persons using restricted-use pesticides must be certified or supervised by a certified applicator. Applicators are divided into two classifications: private and commercial. Commercial applicators are certified applicators (whether or not they are private applicators with respect to some users) who apply restricted-use pesticides for purposes other than those provided in the definition of a private applicator. Private applicators are certified applicators who use or supervise the use of restricted-use pesticides in producing an agricultural commodity on their own property or on property they or their employer rents or, if applied without compensation other than to trade personal services, on the property of another person with whom they trade services. An "agricultural commodity" is defined as any plant or part of a plant, or animal or animal product, produced by farmers, ranchers, vineyardists, plant propagators, Christmas tree growers, aquaculturists, floriculturists, orchardists, foresters, or other comparable persons primarily for sale, consumption, propagation, or other use by humans or animals. Unrestricted pesticides that can be used properly and safely by the gen-

eral public are generally available to homeowners.

Categorization of Commercial Pesticide Applicators

To meet federal requirements, commercial applicators must be certified in one or more of 10 categories. States must certify according to these categories but may subcategorize, subject to EPA approval, to meet requirements peculiar to the state. In New York, all commercial applicators must be certified whether they use restricted-use or general-use pesticides. An additional category for certification of aerial applicators has also been established. The 10 federal categories are listed below.

1. Agricultural Pest Control

Plants. Includes but is not limited to applicators using pesticides on the following: tobacco, peanuts, cotton, feed grains, vegetables, soybeans and forage; small fruits; tree fruits and nuts, including grasslands and noncrop agricultural lands.

Animals. Includes but is not limited to applicators who apply pesticides on beef cattle, dairy cattle, swine, sheep, horses, goats, poultry, and livestock and areas where they are confined. Veterinarians engaged in the business of applying pesticides for hire, publicly holding themselves out as pesticide applicators, or engaged in large-scale use of pesticides are included in this category.

2. Forest Pest Control

Applicators who apply pesticides on forests, in forest nurseries, and in forest seed-producing areas.

3. Ornamental and Turf Pest Control

Applicators who apply pesticides on ornamental trees, shrubs, flowers, and turf.

4. Seed Treatment

Applicators who apply pesticides on seeds.

5. Aquatic Pest Control

Applicators who apply pesticides on standing or running water. Applicators engaged in public health-related activities are included in category 8 below.

6. Right-of-Way Pest Control

Applicators who apply pesticides on public road and railway rights-of-way, electric power lines, pipelines, and other similar areas.

7. Industrial, Institutional, Structural, and Health-related Pest Control

Applicators who apply pesticides in, on, or around food-handling establishments, human dwellings, institutions such as schools and hospitals, industrial areas such as warehouses and grain elevators, and areas adjacent to these establishments. Also included are applicators who apply pesticides to stored, processed, or manufactured products.

8. Public Health Pest Control

Applicators who apply pesticides in public health programs to manage and control pests having medical and public health importance (this category includes state, federal, or other government employees).

9. Regulatory Pest Control

Applicators who apply pesticides to control regulated pests (this category includes state, federal, or other government employees).

10. Demonstration and Research Pest Control

Demonstration Pest Control. This category includes people who demon-

strate to the public the proper use and application of restricted-use pesticides or supervise such demonstrations. Examples include Cornell Cooperative Extension specialists, county agents, representatives of commercial companies, and individuals demonstrating methods used in public programs.

Field Research Pest Control. This category includes people who use or supervise the use of restricted pesticides in field research. Examples include state, federal, commercial, and other people who do field research on or using restricted pesticides.

The Certification Process

A one-step process is required for certification of private applicators and a two-step process for commercial applicators. The first step is the same for both. Cornell Cooperative Extension associations in each county provide general training followed by a written examination by the New York State Department of Environmental Conservation (DEC), the regulatory arm of the EPA in New York State. An individual is certified as a private applicator after successfully completing the study program and test.

To be certified as a commercial applicator, a person must demonstrate competence in the use and handling of pesticides. Competence is determined on the basis of written examinations and, as appropriate, performance testing based on standards approved by the EPA. Examinations and testing cover the general standards applicable to all categories and additional standards (if any) specifically identified for each category or subcategory in which the applicator is to be classified.

Standards Pertaining to Supervision of Noncertified Applicators

A certified applicator may or may not be required to be present during the

application of pesticides, depending on the hazard of the situation. In many situations, a certified applicator must provide only direct supervision of the applicator, that is, verifiable instructions, including detailed guidance for proper application of the pesticide and provisions for contacting the applicator quickly if he or she is needed.

Certified applicators are required to be present in highly hazardous situations and according to some pesticide labels.

Certified applicators who have a supervisory role must demonstrate a practical knowledge of federal and state supervisory requirements, including labeling, regarding the application of restricted-use pesticides by noncertified applicators.

General EPA Guidelines

- The EPA does not expect the commercial applicator to depend on memory or rote. Rather, the applicator should have a storehouse of general information about potential problems.
- Reciprocity between states is encouraged in honoring private and commercial applicators who have a single certification but must work in more than one state.
- Pesticides are classified on the basis of use rather than the nature of the chemical. Some chemicals have both restricted and general uses.
- Products available to homeowners are defined as those that can be used properly and safely by the general public.
- Both civil and criminal penalties may result from violation of pesticide related law.

Additional Information

Contact your county Cornell Cooperative Extension association or dis-

strict offices of the DEC (see the Appendix for a list of offices).

Respirators and Gas Masks Approved for Pesticides

Respirators used for pesticides at one time were tested by the U.S. Department of Agriculture and more recently were approved by the Bureau of Mines. In 1973, responsibility for testing was transferred to the National Institute for Occupational Safety and Health (NIOSH). Respirators must meet standard regulations and tests for approval, which are issued jointly by the Mine Safety and Health Administration (MSHA) and NIOSH.

Approval is indicated by an approval number, which must appear on the boxes in which the respirator and replacement filters and cartridges are packed. This number is preceded by the letters TC. Bureau of Mines--approved pesticide respirators (indicated by BM and a number) that were purchased before June 30, 1975, are no longer approved unless they have been upgraded to meet current requirements through use of appropriate cartridges and filters. Civil and criminal penalties may be imposed for allowing workers to use unapproved respirators or gas masks.

As of this date, the following respirators are approved under the new standards:

Standard Chemical Cartridge Respirators. MSA 459520 respirator with 4591519 cartridge. Approval number TC-23C-45. Mine Safety Appliances Co. (No longer manufactured but still approved for use.)

Wilson AGRI-TOX-2 respirator. 1200 series respirator with R21 chemical cartridges, R15 filters, and R683 filter retainers. Approval number TC-23C-54. Wilson Products Division, ESB, Inc.

Welsh 7549 respirator with 7500-21 cartridges and 7500-23 filters, Approval Number TC-23C-74. Welsh, a Textron company.

MSA 448848 respirator with 448847 cartridges. Approval number TC-23C-79. Mine Safety Appliances Co.

AO number R5058 or R6058 respirator with R58 cartridge. Approval number TC-23C-106. Safety Products Division, American Optical Corp.

Pulmanson number C241 respirator with TC-23C-81 organic vapor cartridge and C-241-7 filter. Approval number TC-23C-110. Pulmanson Safety Equipment Corp.

Powered Air-Purifying Respirators

3MW262 and W263 powered air-purifying respirators with W2114 cartridge and W2031 filter. Approval number TC-23C-78. 3M Co.

Gas Masks

MSA Clearview or Ultraview chin-style gas mask systems with pesticide-approved canister (numbers 448983, 448984, and 448986). Canister alone is 448972. Approval number TC-14G-86. Mine Safety Appliances Co.

Use and Care of Respirators

Most respirators are half-face masks that cover the nose and mouth but not the eyes. They are recommended for protection from dusts or mists during the field handling of pesticides. They are not a substitute for essential precautions. They do not provide adequate protection during fumigation or greenhouse applications of highly toxic pesticides or while mixing highly toxic pesticides in closed or inadequately ventilated spaces.

Follow these practices when using respirators:

- Make sure valves, filters, and cartridges are properly positioned

and sealed.

- Fit the respirator on the face with headbands that are snug enough to ensure a tight but comfortable seal.

- Test for leakage by placing the hand over the outside housing of the exhaust valve. Exhale so that there is slight pressure inside the face piece. If no air escapes, the respirator is properly fitted. If air escapes, readjust the headbands and test again.

- Change filters when breathing becomes difficult-usually twice a day, or more often during heavy use.

- Replace cartridges every eight hours while in use and more often if the pesticide can be detected by taste or smell or if extremely toxic pesticides are being used.

- Remove filters and cartridges and wash the face piece with soap and warm water after use. After washing, rinse it thoroughly to remove all traces of soap. Dry the face piece with a clean cloth that is not contaminated with pesticide. Place the face piece in a well-ventilated area to dry.

- Store the respirator, filters, and cartridges in a clean, dry place - preferably in a tightly closed paper or plastic bag. Replace worn or faulty parts as needed. Do not store them in the same room as pesticides.

- Remember that many pesticides can be absorbed through the skin. When it is necessary to use a respirator, it is also necessary to wear the other protective clothing as recommended on the label.

Additional Information

Contact your county Cornell Cooperative Extension association.

Migrant Workers

Registration of Farm Labor Contractors

New York State Registration

A farmer or processor who uses the services of a farm labor contractor or crew leader must ascertain that he or she has a Farm Labor Contractor Certificate of Registration issued by the New York State Department of Labor. A farm labor contractor is defined as anyone who solicits, hires, recruits, or transports agricultural workers for a fee (cash or other valuable consideration). This does not include growers or processors who recruit or hire workers for work on their farms or plants that must comply with different rules as described below. A Certificate of Registration is issued after the contractor submits an application that bears the farmer's or processor's countersignature and is approved by the New York State Department of Labor. When the contractor receives a Certificate of Registration, the grower or processor receives a certificate authorizing him or her to employ the farm labor contractor.

The registration is employer-specific. A contractor who chooses to work for another employer must obtain another certificate within the specified grace period. A grower or processor may hire any certified farm labor contractor for five days or less, provided that within 24 hours after the contractor begins work he or she prepares a supplemental application, has it countersigned by the grower or processor, submits it to the Department of Labor, and posts a copy at the job location.

Growers and processors who bring five or more out-of-state migrant workers into New York State and do not use

the services of a farm labor contractor must furnish the Department of Labor with information on wages, housing, and working conditions and obtain a Migrant Labor Registration Certificate before bringing the workers into the state.

Wage and job information must be posted in each labor camp in which migrants are housed, along with the contractor's registration. If the contractor fails to post information or keep the required payroll records, the grower or processor will be primarily responsible for compliance with the law.

Federal Registration

The Migrant and Seasonal Agricultural Worker Protection Act (MSAWPA) repeals the federal Farm Labor Contractor Registration Act. The MSAWPA has five titles; the first covers farm labor contractors. A farm labor contractor is defined under MSAWPA as it is under New York law. Under federal law, a farm labor contractor is required to obtain a Certificate of Registration from the U.S. Department of Labor as well as the New York State Department of Labor.

In addition to registering, farm labor contractors must comply with all other applicable provisions of the MSAWPA when they solicit, hire, transport, or house farm laborers (unless they are members of the contractor's immediate family).

Besides members of a contractor's immediate family, MSAWPA normally does not apply to a family farm business in which the owner or a member of the owner's immediate family engages in farm labor contracting on behalf of the business. Small businesses are also excluded from MSAWPA, as are agricultural employers who used fewer than 500 man-days of agricultural labor during any calendar quarter of the preceding calendar year. The act also does not apply to a farm labor contractor who operates

solely within a 25-mile intrastate radius of his or her permanent residence and no more than 13 weeks each year. An employer's use of independent third-party crew leaders, however, or tacit approval of farm labor contracting activities on his or her behalf may disqualify such employers from the family business exemption under MSAWPA. Courts are likely to construe the exemptions narrowly to be sure that as many workers as possible are covered by the law.

No person (employer or grower) may engage the services of any farm labor contractor to supply farm laborers unless he or she first determines that the contractor has obtained a registration certificate. It is important to confirm that the contractor is authorized to transport or house workers. Employers using farm labor contractors have a duty to determine whether the contractor has a valid certificate covering each activity for which the contractor is engaged, including recruiting, transporting, or housing laborers, or they risk legal liability for dealing with an unregistered contractor.

In addition, if a contractor transports workers, the contractor and agricultural employer must ensure that the vehicle conforms to safety regulations, that the driver is properly licensed, and that an appropriate bond or insurance policy is in effect.

Working Crew Leader

If a farm labor contractor does work for a farmer, such as picking apples, while supervising other workers, he or she should not be considered an independent contractor. A farmer should withhold Social Security and state and local income taxes on all earnings and count the working crew leader as an employee for purposes of whether workers' compensation or unemployment rules apply.

Migrant and Seasonal Agricultural Worker Protections

The second and third titles of MSAWPA provide various protections for migrant and seasonal agricultural workers. The act requires that these workers be given written notice of the following terms of employment at the time of recruitment:

- place of employment;
- wages to be paid;
- nature of the work to be done;
- period of employment;
- transportation, housing, and any other employee benefits to be provided and any costs to be charged for them;
- whether there is a strike or work stoppage; and
- whether the contractor or employer receives a commission from sales to me workers.

In addition, MSAWPA requires that a poster provided by the Secretary of Labor setting forth workers' rights and protections be posted in a conspicuous place.

Anyone who employs migrant or seasonal workers is required to record and provide each worker with the following information for each pay period:

- basis on which wages are paid;
- number of piece-work units earned if paid on a piece-work basis;
- number of hours worked;
- total earnings for the pay period;
- amounts withheld and reasons for withholding; and
- net pay.

These records must be kept for three years and supplied to anyone who employs the worker. If the worker is not literate in English, the information must be furnished to the worker in his or her native language. Forms are available from the U.S. Department of Labor to assist in meeting this requirement.

Additional Information

Application forms and additional information can be obtained from local New York State Employment Service offices.

Migrant Camps and Commissaries

Migrant labor camps must meet both New York State and federal requirements.

New York State Requirements

Labor camps occupied by five or more persons, one or more of whom are employed as laborers in farm activities must meet the requirements of the state Sanitary Code. The requirements cover housing and sanitary standards, cooking and eating facilities, and laundry, washing, and bathing facilities. Application must be made each year at least 30 days before the first day of proposed camp operation. The health commissioner or health officer will issue a permit to operate if he or she finds that the migrant labor camp conforms to state requirements. The camp must remain in compliance during the period of occupancy.

Federal Requirements

Federal regulations covering temporary housing for migrant and seasonal workers have been issued under the authority of the MSAWPA and by OSHA. The regulations contain safety and health standards for housing, including fire protection, water supplies, plumbing maintenance, construction

and maintenance of buildings, heating, and protection from insects and rodents. The federal standards are similar to the New York State regulations for migrant labor camps, but they are more detailed than those of the state Sanitary Code and may require more careful attention to ensure compliance. Compliance with both state and federal standards is required. All housing must be inspected by a state or local or federal agency, and a certificate of occupancy must be posted before occupation unless a request for inspection has been made at least 45 days prior to expected occupation and no inspection has been conducted by that date. Note that farm labor contractors who provide housing must have a valid certificate authorizing the housing of migrant agricultural workers.

Labor Camp Commissaries

Commissaries in New York must be operated in compliance with three laws: the state Labor Law, the state Sanitary Code, and federal law. Under the State Labor Law, operators must obtain a permit from the state Department of Labor each year before operating and post it in a conspicuous place in the commissary. Prices of all goods offered for sale or lease to workers must also be posted, and higher prices cannot be charged. Commissary records should be maintained and made available for inspection on request for a period of at least three years. Applications for permits are mailed to commissary operators who have previously held permits or can be obtained from offices of the Division of Labor Standards, New York State Department of Labor (see the Appendix for a list of offices).

Workers cannot be required to purchase goods or services from the camp commissary. Additionally, all food handling facilities must meet both federal and state health and sanitation requirements.

Field Sanitation Standards

Under federal law, all agricultural operations employing 11 or more hand laborers on any given day must comply with field sanitation requirements without cost to the employee.

Potable drinking water must be provided and placed in locations readily available to all employees. Separate toilet and hand washing facilities must be provided for employees who perform field work for more than three hours per day. At least one facility per 20 employees must be located within 1/4 mile of the work site. Drinking water, toilet, and hand washing facilities must be kept sanitary and thoroughly cleaned regularly in accordance with public health sanitation practices.

Employers must notify each worker of the location of the sanitary facilities and must allow each worker reasonable opportunities during the workday to use them. Employers must also inform each worker that good hygiene practices minimize exposure to health hazards in the field.

Additional Information

Contact OSHA Region II district offices (see the Appendix for a list of offices).

Migrant Minimum Wage

Migrant workers come under the provisions of the New York State Minimum Wage Order for Farm Workers, which requires employers to include a written wage statement with each payment of wages. This statement must include both gross and net earnings and a listing of all deductions. All farm workers recruited by a labor contractor to work on a farm are deemed to be employees of the owner, lessee, or operator of the farm with reference to this order. Lodging allowances are not permitted in cal-

culating the minimum wage for migrant labor (see the section "New York State Minimum Wage Standards for Farm Workers" for details). If covered, the employer must also comply with the Federal Wage-Hour Law (see the section on this law for details).

Employer Liability

Questions will often arise as to whether individuals employed by a farm labor contractor are also jointly employed by another person engaged in agriculture (including any person defined in the act as an agricultural employer or an agricultural association). Such joint employment relationships are common and have been addressed by the federal courts. If a worker is injured or a dispute arises over the terms of employment, an employer may be liable for damages if a "joint employment" relationship exists. To determine whether such a relationship exists, the courts have cited the broad definition of "employ" in the Fair Labor Standards Act, which includes "to suffer or permit to work." Factors considered include but are not limited to the following:

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

Youth Employment

Both the State of New York and the federal government heavily regulate employment of persons under 18 years of age. Note that an employer could be subject to fines of as much as \$10,000 for each person employed in violation of federal child labor provisions.

Minimum Age for Employment

Nonfarm Employment

Children less than 14 years old may not be employed at any time either after school or during vacations. Children 14 and 15 years old may work after school and during vacations but not as factory workers. They may do delivery and clerical work in an enclosed office of a factory and in dry cleaning, tailor, shoe repair, and similar service stores. Children 16 years of age and older who are not attending school may work full time throughout the year. Children more than 16 years of age may work in factories but are restricted by the state Labor Law in the number of hours they may work.

Note that working in a packing shed that either is off the farm property or handles products grown on other farms is considered factory work, and these rules rather than the farm work rules apply.

Farm Employment

As detailed below, an exception from these rules is made for farm employment in the harvest of berries, fruits, and vegetables and for children working on the home farm.

10- and 11-Year-Olds

Federal law allows an employer to hire 10- and 11-year-olds to hand-harvest selected short-season agricultural crops, but state law does

not. Children this age may not legally work on farms in New York State.

12- and 13-Year-Olds

Children in this age bracket may work on the home farm without working papers, and they may work on other farms if they present a farm work permit. Children in this age bracket may now also assist their parents, grandparents, aunt, uncle, or guardian in selling produce grown on their farm at a farm stand or at a farmer's market stand if accompanied by a parent or guardian or with written consent from a parent or guardian. On farms other than the home farm, they may assist only in the hand-harvest of berries, fruits, and vegetables and may work no more than four hours a day, between the hours of 7 A.M. and 7 P.M., and when school is not in session between June 21 to Labor Day. They must be accompanied by a parent or present written consent from a parent or guardian.

14- and 5-Year-Olds

Children in this age bracket may work on their family's farm without working papers but are required to have a farm work permit to work on other farms. For jobs other than farming, working papers are required. Children in this age bracket may now also assist their parents, grandparents, aunt, uncle, or guardian in selling produce grown on their farm at a farm stand or at a farmer's market stand if accompanied by a parent or guardian or with written consent from a parent or guardian.

16- and 17-Year-Olds

Children in this age bracket may work on a farm without a permit or working papers. Children under the age of 18 generally should not be hired for nonfarm work on or around automobiles or trucks, in construction, to repair buildings, or in jobs requiring the use of power tools.

Proof of Age

Farm employers may not rely on a minor's statement that he or she is over 16. Proof of age must be obtained and retained. Proof of age consists of the following documents, listed in the order of preference:

- a state age or employment certificate, also called working papers or work permit (which can be obtained at the minor's school);

- an original birth certificate or a certified copy.

The following documents may be used when a state employment certificate or birth certificate is not available:

- a baptismal record or record of the baptism attested to by the church official;

- a school record or school census record, together with a parent's sworn statement and a physician's certificate of the minor's age.

To protect themselves from unwitting violation of the law, employers should obtain a birth or state employment certificate from any employee if there is reason to believe that the person is under the applicable minimum age. The employer should sign it, make a copy for his or her records, and return the permit to the youth to keep. The certificate should be kept on file for as long as the person is employed (and retained for six years after termination) and made available to state or federal officials should it be requested. Note that the civil penalty under state law for violating these provisions is \$1,000 for a first-time offense.

Prohibited Occupations

Persons under 18 years of age are prohibited from engaging in certain occupations. In the nonagricultural industries, there are 17 hazardous occupations orders promulgated under the Fair Labor Standards Act and a list of occupations that minors may not perform under the New York State Labor Law. These occupations are not listed here but are summarized in the booklet *Laws Governing the Employment of Minors*, published by the New York State Department of Labor.

In agriculture, a hazardous occupations order, promulgated under the Fair Labor Standards Act, regulates employment of children under the age of 16, whether or not the minimum wage laws apply to the employer. The provisions of this order are presented below. This same list of prohibited agricultural jobs for minors is now included under the New York State Labor Law as well.

Federal Hazardous Occupations Order for Youth under 16

The agricultural jobs listed below have been declared hazardous under both the Fair Labor Standards Act and New York law for persons under the age of 16. Violations subject the employer to fines or imprisonment. Insurance companies do not have to cover injuries to youths working in violation of the act. The act does not apply, however, to a child working on his or her parent's or guardian's farm.

1. Operating a tractor of more than 20 PTO horsepower or connecting or disconnecting an implement or any of its parts to and from such a tractor.
2. Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines: corn picker, cotton picker, grain combine, hay

baler, potato digger or pea viner; feed grinder, crop dryer, forage blower, auger conveyer, or the unloading mechanism of a nongravity-type self-unloading wagon or trailer; or power post hole digger, power post driver, or nonwalking-type rotary tiller.

3. Operating or assisting to operate (including starting, stopping, adjusting, feeding, or any other activity involving physical contact associated with the operation) any of the following machines: trencher or earthmoving equipment, fork lift, potato combine, or power-driven circular, band, or chain saw.
4. Working in a yard, pen, or stall occupied by a bull, boar, or stud horse maintained for breeding purposes; a sow with suckling pigs; or a cow with a newborn calf (with umbilical cord attached).
5. Felling, bucking, skidding, loading, or unloading timber with a butt diameter of more than six inches.
6. Working from a ladder or scaffold (painting, repairing, or building structures, pruning trees, picking fruit, and the like) at higher than 20 feet.
7. Driving a bus, truck, or automobile transporting passengers or riding on a tractor as a passenger or helper.
8. Working inside any fruit, forage, or grain storage facility designed to retain an oxygen-deficient or toxic atmosphere; inside an upright silo within two weeks after silage has been added; inside a silo when a top unloading device is in the operating position; inside a manure pit; or operating a tractor for packing purposes on a horizontal silo.
9. Performing work involving handling or applying any agricultural chemical classified under the Federal Insecticide, Fungicide, and Rodenticide Act

(7 U.S.C. 135 et seq.) as Category I of toxicity, the label of which bears the word "danger" and the "skull and crossbones" poison symbol; or Category II of toxicity, the label of which bears the word "warning"; decontaminating or cleaning equipment used in connection with any of the chemicals specified in this paragraph; serving as a flagperson for an aircraft applying any of the chemicals specified; handling or using a blasting agent, including but not limited to dynamite, black powder, sensitized ammonium nitrate, blasting caps, and primer cord; or transporting, or applying anhydrous ammonia.

Exclusions from the Provisions

A vocational agricultural student may be exempted from requirements in paragraphs 1 through 6 above if he or she meets all of the following requirements:

- He or she is enrolled in a course in a cooperative vocational education training program in agriculture under recognized state or local educational authority or in a similar program conducted by a private school.

- He or she is employed under a written agreement that provides that the work is incidental to the training; that the work shall be intermittent, for short periods of time, and under the direction and close supervision of a qualified and experienced person; that safety instructions shall be given by the school and complemented by the employer with on-the-job training; and that a schedule of organized and progressive work processes to be performed on the job has been prepared.

- The written agreement contains the name of the student and is signed by the employer and by a person authorized to represent the school.

- Copies of the agreement are kept on file by both the school and the employer.

Under an exemption accorded Cornell Cooperative Extension (4-H) and vocational agricultural (Vo-Ag) programs, a youth may be employed in jobs included in paragraph 1 of the Hazardous Occupations in Agriculture Order if he or she meets the following requirements:

- He or she has been instructed by the employer on the safe and proper operation of the specific equipment to be used; he or she is continuously and closely supervised by the employer when feasible, or when not feasible, his or her safety is checked at least at midmorning, noon, and midafternoon.

- He or she is 14 years of age or older.

- He or she is familiar with the normal working hazards in the occupation.

- He or she has successfully completed a 10-hour training program that includes the required units from the manual of the 4-H tractor program conducted by, or in accordance with, the requirements of Cornell Cooperative Extension or a vocational agriculture program.

- He or she has passed a written and practical examination on tractor safety and has demonstrated on one of the 4-H tractor operator's contest courses the ability to operate safely a tractor with a two-wheeled implement.

- His or her employer has on file a copy of a certificate signed by the leader who conducted the youth's training program and by the county Cornell Cooperative Extension agent to the effect that the youth has completed all the requirements specified above.

A youth may be employed to do jobs included in paragraph 2 of the Hazardous Occupations Order if he or she meets the following requirements of

Cornell Cooperative Extension or vocational agriculture programs in addition to those stated above:

- He or she has completed an additional 10-hour training program on farm machinery safety, including Unit 1, "Safe Use of Farm Machinery", of the 4-H fourth-year manual. The programs are designed to meet county needs and emphasize the most common types of equipment used in the area.
- He or she has passed a written and practical examination on safe operation of machinery.
- The employer has a certificate on file stating that all of these requirements have been met and completed.

Certificates are available on request from the Department of Agricultural Engineering, Riley-Robb Hall, Cornell University, Ithaca, NY 14853.

The name, age, and address of each qualified applicant must be submitted with requests. The certifying agency should keep on file its list of applicants for that year.

Additional Information

Questions concerning specific aspects of these programs should be directed to Howard Longhouse, Agricultural Engineering Department, Riley-Robb Hall, Cornell University, Ithaca, NY 14853, or to the U.S. Department of Labor, Division of Wages, Hours, and Public Contracts (see the Appendix for a list of offices).

Workers' Compensation Insurance

Farms covered by the Workers' Compensation Law must provide insurance for all workers, including minors. Minors who are employed in violation of the Labor Law are entitled to two workers' compensation awards if they

are injured while working on a farm that is covered. The employer has to pay one award, and the employer's insurance carrier has to pay the other. Employers who are uninsured for workers' compensation are liable for both awards plus all medical awards, as well as for the normal penalties levied on uninsured employers. An employer cannot escape liability by arguing that he or she did not know the employee was a minor or that he or she acted in good faith in hiring the employee. See the section on workers' compensation insurance for a more detailed description.

Lawn and Garden Work

Workers' compensation insurance and employment certificates (working papers) contain special provisions for children 14 years of age and older doing yard work and household chores in and about a one-family owner-occupied residence or the premises of a nonprofit, noncommercial organization. The provisions have to do with whether the work is casual and whether power-driven machinery is used. The term casual means without regulation, occasional, and without foresight, plan, or method. A lawn mower is an example of power-driven machinery. Table 4 clarifies the need for workers' compensation insurance and employment certificates.

Working Papers

Children under the age of 18, including high school graduates, children who work for their parents, and children who do industrial work at home, are required to have employment certificates (working papers) to work. Farm work is one of the few exceptions. People 16 years old and older who work on a farm are not required to have farm work permits, but 14- and 15-year-olds are. As indicated above, children 12 to 14 who are employed to hand-harvest berries, fruits, and vegetables also are required to have permits. Get working papers from the local school.

Wages

See the section on state and federal minimum wage laws for a discussion of the minimum wage levels and certificates required for youths and students.

Additional Information

Additional information can be obtained from a booklet entitled *Youth Employment*, published by the New York State Department of Wages, Hours and Public Contracts or from district offices of the New York State Department of Labor, Division of Labor Standards (see the Appendix for a list of offices).

Table 4
Worker's Compensation and Working Paper Requirements for Minors Doing Lawn and Garden Work

	14- and 15-year olds	16- and 17-year olds
No power-driven machinery is used.	No working papers or workers' compensation insurance is required if work is casual.	No working papers or workers' compensation insurance is required if work is casual.
Power driven machinery is used.	Working papers and workers' compensation insurance are always required.	Working papers are not required but workers' compensation insurance is required if work is casual. Working papers and workers' compensation are both required if work is not casual.

Appendix

U.S. Department of Labor

City or Borough	Address	Phone
Albany	Leo W. O'Brien Federal Bldg., 12207	(518) 431-4278
Buffalo	Rm. 1512, 111 W. Huron St., 14202	(716) 551-4891
Syracuse	100 South Clinton St., Rm. 1373, 13202	(315) 448-0630
White Plains	140 Grand St, Suite 304, 10601	(914) 682-6348
Garden City	825 East Gate Blvd., Suite 202, 11530	(516) 227-3100
Manhattan	26 Federal Plaza, Rm. 3838, 10278	(212) 264-8185

New York State Workers' Compensation Board

City or Borough	Address	Phone
Albany	100 Broadway, 12241	(518) 474-2121
Binghamton	State Office Bldg., 13901	(607) 773-7867
Buffalo	State Office Bldg., 65 Court St., 14203	(716) 8947-3158
Hempstead	175 Fulton Ave., 11550	(516) 486-4300
New York City	180 Livingston St., Brooklyn, 10047	(718) 802-6600
Rochester	155 Main St. W., 14614	(716) 238-89300
Syracuse	333 E. Washington St., 13202	(315) 428-4464

New York State Department of Environmental Conservation

City or Borough	Address	Phone
Stony Brook (Region I)	Environmental Conservation Water Supply Mgmt. Unit, Bldg. 40, SUNY 11794	(516) 751-7900
New York (Region II)	Hunters Point Plaza, 47-40 21st St., Long Island City, 11101	(718) 482-4900
New Paltz (Region III)	21 S. Putt Corners Rd., 12561	(914) 255-5453
Schenectady (Region IV)	2176 Guilderland Ave., 12306	(518) 382-0680
Ray Brook (Region V)	Rt. 86, 12977	(518) 891-1370
Watertown (Region VI)	317 Washington St., 13601	(315) 785-2239
Liverpool (Region VII)	7481 Henry Clay Blvd., 13088	(315) 428-4497
Avon (Region VIII)	6274 E. Avon-Lima Rd., 14414	(716) 226-2466
Buffalo (Region IX)	600 Delaware Ave., 14202	(716) 847-4600

New York State Department of Health

<i>City or Borough</i>	<i>Address</i>	<i>Phone</i>
Albany	S. Ferry and Green St., Empire State Plaza, 12201	(518) 445-7811
Geneva	81 North St., 14456	(315) 789-3030
Glens Falls	21 Bay St., 12801	(518) 474-3921
Hornell	107 Broadway, 14843	(607) 324-5120
Johnstown	19 N. William St., 12095	(518) 762-4643
Massena	180 Andrews St., 13662	(315) 764-0551
Monticello	6 Prince St., 12701	(914) 794-2045
Oneonta	P.O. Box 51C, R.D. #4, 13820	(607) 432-3911
Saranac Lake	P.O. Box 11-15, St. Bernard St., 12983	(518) 473-4925
Utica	State Office Bldg., 207 Genesee St., 13501	(315) 793-2585
Watertown	State Office Bldg., 317 Washington Ave., 13601	(315) 785-2277

New York State Department of Taxation and Finance

<i>City or Borough</i>	<i>Address</i>	<i>Phone</i>
Albany*	30 Russell Rd., 12206	(800) 462-8100 (for forms) (800) 225-5829 (for information).
Binghamton	164 Hawley St., 13901	same as above
Brooklyn	141 Livingston St., 11201	same as above
Buffalo	State Office Bldg., 65 Court St., 14202	same as above
Mineola	114 Old Country Rd., 11501	same as above
New York	State Office Bldg., 163 West 125th St., 10027	same as above
New York	2 World Trade Ctr., 10047	same as above
Queens	97-77 Queens Blvd., 11374	same as above
Rochester	259 Monroe Ave., 14607	same as above
Suffolk	State Office Bldg., Veterans Memorial Hwy., 11787	same as above
Syracuse	State Office Bldg., 333 E. Washington St., 13202	same as above
Utica	State Office Bldg., 207 Genesee St., 13501	same as above
White Plains	99 Church St., 10633	same as above
*Public Information Officer		(518) 457-4242

OSHA Region II District Offices

<i>City or Borough</i>	<i>Address</i>	<i>Phone</i>
Albany	Federal Bldg., Rm. 132, Clinton Ave. and Pearl St., 12207	(518) 472-6085
Buffalo	State Office Bldg., 65 Court St., 14202	(716) 847-7133
Garden City	370 Old Country Rd., 11530	(516) 334-3344
New York	1515 Broadway, 10036	(212) 944-3425
Syracuse	James M. Hanley Federal Bldg., 13210	(315) 423-5188
Rochester	5360 Genesee St., 14614	(716) 684-3891

New York State Department of Labor, Division of Standards

<i>City or Borough</i>	<i>Address</i>	<i>Phone</i>
New York	One Main St., Brooklyn, 11201	(718) 797-7499
Albany	State Office Bldg. Campus, 12240	(518) 457-2730
Binghamton	221 Washington St., 13901	(607) 772-6678
Buffalo	65 Court St., 14202	(716) 847-7141
Hempstead	175 Fulton Ave., 11550	(516) 481-6064
Rochester	155 Main St. W., 14614	(716) 258-4550
Syracuse	333 E. Washington St., 13202	(315) 428-4057
Utica	207 Genesee St., 13501	(315) 793-2716
White Plains	30 Glenn St., 10603	(914) 997-9521

OTHER A.R.M.E. EXTENSION BULLETINS

<u>EB No</u>	<u>Title</u>	<u>Author(s)</u>
97-19	1997 Farm Income Tax Management and Reporting Reference Manual	Smith, S.F. and C.H. Cuykendall
97-18	Lake Erie Grape Farm Cost Survey, 1991-1995	Shaffer, B. and G.B. White
97-17	LEAP, Lease Analysis Program -- A Computer Program for Economic Analysis of Capital Leases	LaDue, E.L.
97-16	Analyzing Capital Leases	LaDue, E.L.
97-15	Dairy Farm Business Summary, Eastern New York Renter Summary, 1996	Knoblauch, W.A. and L.D. Putnam
97-14	Dairy Farm Business Summary, Intensive Grazing Farms, New York, 1996	Conneman, G., C.Crispell, J. Grace, K. Parsons and L. Putnam
97-13	Fruit Farm Business Summary, Lake Ontario Region, New York, 1996	White, G.B., A.M. DeMarree and L.D. Putnam
97-12	Dairy Farm Business Summary, Northern New York Region, 1996	Milligan, R.A., L.D. Putnam, P. Beyer, A. Deming, T. Teegerstrom, C. Trowbridge and G. Yarnall
97-11	Dairy Farm Business Summary, Central Valleys Region, 1996	LaDue, E.L., S.F. Smith, L.D. Putnam, D. Bowne, Z. Kurdich, C. Mentis, T. Wengert and C.Z. Radick
97-10	"Maximizing the Environmental Benefits per Dollar Expended": An Economic Interpretation and Review of Agricultural Environmental Benefits and Costs	Poe, G.
97-09	Dairy Farm Business Summary, Northern Hudson Region, 1996	Smith, S.F., L.D. Putnam, C.S. Wickswat, S. Buxton and D.R. Wood
97-08	Dairy Farm Business Summary, New York Large Herd Farms, 300 Cows or Larger, 1996	Karszes, J., W.A. Knoblauch and L.D. Putnam
97-07	Dairy Farm Business Summary, Southeastern New York Region, 1996	Knoblauch, W.A., L.D. Putnam, S.E. Hadcock, L.R. Hulle, M. Kiraly, C.A. McKeon
97-06	Dairy Farm Business Summary, Western and Central Plateau Region, 1996	Knoblauch, W.A., L.D. Putnam, C.A. Crispell, J.S. Petzen, J.W. Grace, A.N. Dufresne and G. Albrecht