

OFFICE OF THE SECRETARY OF STATE

LAVONNE GRIFFIN-VALADE  
SECRETARY OF STATE

CHERYL MYERS  
DEPUTY SECRETARY OF STATE  
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK  
DIRECTOR

800 SUMMER STREET NE  
SALEM, OR 97310  
503-373-0701

**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 150  
DEPARTMENT OF REVENUE

**FILED**

08/29/2023 11:50 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Farming Operations: Clarifying Definitions for Agricultural Commodities and out-of-state resale certificate requirements.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 09/26/2023 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

CONTACT: Katie McCann  
503-509-9787  
RulesCoordinator.dor@oregon.gov

955 Center St NE  
Director's Office - Room 457  
Salem, OR 97301

Filed By:  
Katie McCann  
Rules Coordinator

HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 09/26/2023

TIME: 9:00 AM

OFFICER: Maribel Luna

REMOTE MEETING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 669-216-1590

SPECIAL INSTRUCTIONS:

Join by video: <https://www.zoomgov.com/j/1602485538>

Join by phone:

1-669-254-5252

Meeting ID: 160 248 5538

Passcode: 290058

NEED FOR THE RULE(S)

OAR 150-317-1170 provides guidance to taxpayers with farming operations in determining their percentage of in-state compared to out-of-state sales of agricultural commodities as described in ORS 317A.102; specifies requirements for out-of-state sales certificates; defines the phrase "other sources of sales information" as used in ORS 317A.102(2)(b); and clarifies which agricultural commodity sales data may be used. The proposed amendment to OAR 150-317-1170 adds "processors" to the list of buyers of agricultural commodities and the related guidance for taxpayers with farming operations in determining their percentage of in-state compared to out-of-state sales of agricultural commodities.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Oregon Revised Statutes: 317A.100 – 317A.161 as amended by HB 2073 (2023) available online through Legislative Counsel.

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STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The adoption of this rule does not have any known direct impact on racial equity; it applies to all taxpayers. Revenue from the corporate activity tax program is dedicated to the Fund for Student Success and used for public education spending. The Fund for Student Success is administered by the Department of Education. According to the Oregon Department of Education, the funds will be used to pay for the creation of new programs or expansion of existing programs at the Oregon Department of Education aimed at improving educational opportunities for Oregon students, especially historically underserved student groups.

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FISCAL AND ECONOMIC IMPACT:

There is no fiscal or otherwise economic impact related to the proposed amendment to OAR 150-317-1170. The rule does not establish additional requirements outside those provided in state law chapter ORS 317A.

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COST OF COMPLIANCE:

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

(1) There is no known impact on state agencies or units of local government. As to taxpayers, administrative compliance activities, including professional service costs, generally are a result of statutory requirements. It is anticipated that guidance provided in this rule will clarify statutory requirements and reduce reporting and recordkeeping burdens.

(2)(a) All entity types with more than \$1 million in gross receipts are required to file a CAT return. We estimate Oregon has approximately 11,500 small businesses with fewer than 50 employees who are subject to these rules. According to the 2022 Oregon Agricultural Statistics & Directory, 980 Oregon farms had economic sales of \$1M or more in 2020. Out of the 980 Oregon farms only those selling agricultural commodities out-of-state are subject to this rule.

(2)(b) Under both federal and state law, taxpayers must keep documentation to substantiate inventory, deductions, and credits, therefore recordkeeping requirements generally are already required, and we do not anticipate additional costs for professional services to comply with the requirements of this rule.

(2)(c) None

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DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The department will be notifying interested parties of the rule making process including the public hearing prior to adopting these rules as permanent. During the public comment period, interested parties, including small businesses, can provide the department with feedback.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

No, the Department of Revenue did not consult a formal advisory committee for these rules. The proposed amendment conforms to statutory changes adopted during the regular legislative session. Taxpayers will have an opportunity to provide comments during the public comment period and during the public hearing.

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AMEND: 150-317-1170

RULE SUMMARY: Provides additional guidance to taxpayers with farming operations in determining their percentage

of in-state compared to out-of-state sales of agricultural commodities as described in ORS 317A.102. It details broker, wholesaler, or processor certificate requirements, defines the phrase "other sources of sales information" as used in ORS 317A.102(2)(b), and clarifies which agricultural commodity statistics may be used.

CHANGES TO RULE:

150-317-1170

Farming Operations: Clarifying Definitions for Agricultural Commodities, Farming Operations, Out of State Sales Based on Industry Averages

(1)(a) General rule: A taxpayer that is engaged in a farming operation, as defined in ~~Oregon Laws 2020 First Special Session, chapter 2, section 6~~ RS 317A.102(1)(c), that sells agricultural commodities to a broker, wholesaler, or processor may demonstrate the amount of the taxpayer's goods sold in this state compared to outside this state, for purposes of determining commercial activity, by: ¶

(A) Obtaining an out-of-state resale certificate as provided in OAR 150-317-1400;¶

(B) Obtaining a certificate from the broker, wholesaler, or processor receiving an agricultural commodity from the taxpayer that states the percentage of the taxpayer's goods sold in this state compared to outside this state; or¶

(C) Using an industry average percentage for sales of the agricultural commodity made the previous tax year, based on the most recent information from the United States Department of Agriculture National Agricultural Statistics Service and other sources of sales information.¶

(b) The phrase "other sources of sales information" includes any publication by a governmental entity or trade association that publishes agricultural commodity sales information.¶

(c) "Agricultural commodities" include all agricultural, horticultural, viticultural, and vegetable products, including bees and honey, regardless of the state in which they were produced.¶

(2) Certificate Requirements: A farming operation taxpayer that seeks to demonstrate the percentage of the taxpayer's goods sold in this state compared to outside this state by obtaining a certificate, pursuant to section (1)(a)(B) of this rule, from the broker, wholesaler, or processor, must obtain the certificate by the due date of the return, including extensions. The certificate provided by the broker, wholesaler, or processor to the seller must contain:¶

(a) The broker, wholesaler, or processor's legal name and Oregon address;¶

(b) The broker, wholesaler, or processor's federal tax identification number;¶

(c) The date of purchase;¶

(d) The total amount of purchased property;¶

(e) The purchase price paid by the broker, wholesaler, or processor;¶

(f) The percentage of purchased property that the broker, wholesaler, or processor will resell outside of Oregon; and¶

(g) The signature of the broker, wholesaler, or processor, their authorized representative, or employee, certifying that the person is a broker, as that term is defined in ~~Oregon Laws 2020 First Special Session, chapter 2, section 6(1)(b), or a wholesaler~~ RS 317A.102(1)(b), a wholesaler, as that term is defined in ORS 317A.100(21), or a processor, as that term is defined in ORS 317A.100(202(1)(d)).¶

(3) Industry Average Statistics: A farming operation taxpayer that seeks to demonstrate the percentage of the taxpayer's goods sold in this state compared to outside this state by using industry average statistics, pursuant to section (1)(a)(C) of this rule, must rely on statistics for the specific sub-type of agricultural commodity sold, where available, or may rely on statistics for the general type of agricultural commodity where sub-type statistics are unavailable for the specific agricultural commodity.

Statutory/Other Authority: ORS 305.100, 317A.143

Statutes/Other Implemented: ~~Oregon Laws 2020 First Special Session, chapter 2, section 6~~ RS 317A.102