

OccuCollect™

Creating Conflict in the Record with Vocational Expert Testimony

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For 15 days free/extension the code: Training

The Administrative Notice Regulation

§ 404.1566, § 416.966. Work which exists in the national economy.

(d) Administrative notice of job data. When we determine that unskilled, sedentary, light, and medium jobs exist in the national economy (in significant numbers either in the region where you live or in several regions of the country), we will take administrative notice of reliable job information available from various governmental and other publications.

For Example

§ 404.1566, § 416.966. Work which exists in the national economy.

(d) [...] For example, we will take notice of—

- (1) *Dictionary of Occupational Titles*, published by the Department of Labor;
- (2) *County Business Patterns*, published by the Bureau of the Census;
- (3) *Census Reports*, also published by the Bureau of the Census;
- (4) *Occupational Analyses*, prepared for the Social Security Administration by various State employment agencies; and
- (5) *Occupational Outlook Handbook*, published by the Bureau of Labor Statistics.

Social Security Ruling 00-4p

In making disability determinations, we rely primarily on the DOT (including its companion publication, the SCO) for information about the requirements of work in the national economy. We use these publications at steps 4 and 5 of the sequential evaluation process.

42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B)

An individual shall be determined to be under a disability only if his physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which **exists** in the national economy, regardless of whether such work **exists** in the immediate area in which he lives, or whether a specific job vacancy **exists** for him, or whether he would be hired if he applied for work. For purposes of the preceding sentence (with respect to any individual), “work which **exists** in the national economy” means work which **exists** in significant numbers either in the region where such individual lives or in several regions of the country.

The Cases – Cross-examination is Hard

- *Britton v. Astrue*, 521 F.3d 799 (7th Cir. 2008)
- *Shaibi v. Berryhill*, 883 F.3d 1102 (9th Cir. 2018)

The VE Does Not Have to Cooperate

- *Biestek v. Berryhill*, 139 S.Ct. 1140 (2019)
- *Ford v. Saul*, 950 F.3d 1141 (9th Cir. 2020)
- *Bayliss v. Barnhart*, 427 F.3d 1211 (9th Cir. 2005)

The VE Does Not Have to Understand

- *Purdy v. Berryhill*, 887 F.3d 7 (1st Cir. 2018)

The VE Does Have to Explain Rationally

- *Chavez v. Berryhill*, 895 F.3d 962 (7th Cir. 2018)

The Representative Must Raise the Issue

- *Shaibi v. Berryhill*, 883 F.3d 1102 (9th Cir. 2018)
- *Meanel v. Apfel*, 172 F.3d 1111 (9th Cir. 1999)

Explanation or Just Substantial Evidence

- *Taylor v. Comm'r of Soc. Sec. Admin.*, 659 F.3d 1228 (9th Cir. 2011)

The DOT per the DOL

The O*Net is now the primary source of occupational information. It is sponsored by ETA through a grant to the North Carolina Department of Commerce. **Thus, if you are looking for current occupational information you should use the [O*Net](#).**

<https://www.dol.gov/agencies/oalj/topics/libraries/LIBDOT>

SSA Statement about the O*NET

Why are you developing a new occupational information system (OIS)? Why can't the Department of Labor (DOL) update the Dictionary of Occupational Titles (DOT), or why can't you use the Occupational Information Network (O*NET)?

The Department of Labor (DOL) developed the DOT in the late 1930s to match jobseekers to jobs. For almost 50 years, the DOT has been our primary source for occupational information. The DOL discontinued updating the DOT in 1991, and replaced it in 1998 with another job placement tool, the Occupational Information Network (O*NET). We studied whether O*NET could take the DOT's place in our disability adjudication process but found *it does not describe the physical requirements of occupations at the level of detail needed for claims adjudication.*

What is the Occupational Requirements Survey (ORS)?

The ORS is a test by the Bureau of Labor Statistics' (BLS) National Compensation Survey (NCS) in association with the Social Security Administration (SSA). The ORS seeks to provide data regarding current job characteristics to aid the SSA in their disability determination process. The ORS is testing questions that ask for information on the job duties and mental demands of jobs. Your organization is being asked to provide occupational information to help determine future survey guidelines and data collection methods.

https://www.bls.gov/ncs/ocs/ors_info_sheet_2013.pdf

Marker – DOT code 209.287-034

- Light
- Unskilled
- Reasoning level 2
- Math and Language level 1
- Frequent Reaching, Handling, and Fingering
- Frequent Near Acuity
- No Hazards
- Moderate Noise

Cashier II

- Light
- Unskilled
- Reasoning level 3
- Math and Language level 2
- Frequent Reaching, Handling, and Fingering
- Frequent Talking, Hearing, and Near Acuity
- No Hazards
- Moderate Noise

A Presentation from June 2020

- <https://www.youtube.com/watch?v=WVW0eKQOZhl>

Egg Processor – DOT 559.687-034

- Sedentary
- SVP 2
- Reasoning level 2
- SOC/OES/O*NET – 51-9199 – Production Workers, All Other
- O*NET OnLine DOT Crosswalk:
<https://www.onetonline.org/crosswalk/DOT?s=559.687-034&g=GO>
- VE says 240,000 jobs

DOT

- Pharmaceutical and Related Products Industry
- DOT parenthetical statement
- DOT, Occupational Titles Arranged by Industry Designation

<https://www.dol.gov/agencies/oalj/PUBLIC/DOT/REFERENCES/DOTINDU>

O*NET OnLine

- Production Workers, All Other
- 1,590 DOT codes at all exertion and skill levels
- 2018 employment 244,700 jobs

Occupational Outlook Handbook

- Production Workers, All Other
 - Education: high school diploma or equivalent
 - Moderate-term on-the-job training
 - 2019 employment 238,600 jobs
-
- Moderate-term means more than 30 days and up to one year.

2018 Occupational Requirements Survey

- Production Workers, All Other
- SVP 2 = 53% of jobs
- Medium work = 63.9% of jobs
- Standing/Walking = 87.5% of the day at the 25th percentile
- 6.75 hours of weightbearing
- No report of standing/walking that fits the sedentary definition

Job Browser Pro

- Egg Processor
- Agrees with SOC/OES 51-9199
- Assigns to pharmaceutical and medicine manufacturing NAICS 325400
- 1,592 jobs at the intersection
- 69 jobs for egg processor

Occupational Employment Statistics

- 2019 data Production Workers, All Other
- 222,230 jobs in the economy for production workers, all other
- 91,940 jobs in the manufacturing sector (NAICS 31-330000)
- 7,530 jobs in chemical manufacturing subsector (NAICS 325000)
- 1,330 jobs in the pharmaceutical and medicine manufacturing industry group (NAICS 325400)
- JBP overestimated 1,592 jobs in the occupation-industry intersection

Hand Almond Blancher – DOT 521.687-010

- Sedentary
- SVP 2
- Reasoning level 1
- SOC/OES/O*NET – 51-9198 – Helpers - Production Workers
- O*NET OnLine DOT Crosswalk:
<https://www.onetonline.org/crosswalk/DOT?s=521.687-0104&g=GO>
- VE says 320,000 jobs

DOT - Hand Almond Blancher

- Canning and Preserving Industry
- DOT parenthetical statement
- DOT, Occupational Titles Arranged by Industry Designation

<https://www.dol.gov/agencies/oalj/PUBLIC/DOT/REFERENCES/DOTINDU>

O*NET OnLine

- Helpers - Production Workers
- 553 DOT codes at all exertion and skill levels
- 2018 employment 354,600 jobs

Occupational Outlook Handbook

- Helpers - Production Workers
- Education: high school diploma or equivalent
- Short-term on-the-job training
- 2019 employment 304,200 jobs

2018 Occupational Requirements Survey

- Helpers - Production Workers
- SVP 2 = 53% of jobs
- Medium work = 49.2% of jobs
- Lift/Carry 15 pounds maximum at the 10th percentile
- Standing/Walking = 75% of the day at the 10th percentile
- No report of lifting/carrying or standing/walking that fits the sedentary definition

Job Browser Pro

- Hand Almond Blancher
- Agrees with SOC/OES 51-9198
- Assigns to fruit and vegetable preserving and specialty food manufacturing NAICS 311400 AND other food manufacturing NAICS 311900
- 5,455 jobs at the intersections
- 351 jobs for hand almond blancher

Occupational Employment Statistics

- 2019 data – Helpers – Production Workers
- 303,030 jobs in the economy for helpers - production workers
- 186,280 jobs in the manufacturing sector (NAICS 31-330000)
- 50,060 jobs in food manufacturing subsector (NAICS 311000)
- 5,590 jobs in the fruit and vegetable preserving and specialty food manufacturing industry group (NAICS 311400)
- 3,590 jobs in the other food manufacturing industry group (NAICS 311900)
- JBP underestimated 5,455 jobs in the occupation-industry intersections

Stuffer – DOT 731.685-014

- Sedentary
- SVP 2
- Reasoning level 2
- SOC/OES/O*NET – 51-9111 – Packaging and Filling Machine Operators and Tenders
- O*NET OnLine DOT Crosswalk:
<https://www.onetonline.org/crosswalk/DOT?s=731.685-014&g=GO>
- VE says 400,000 jobs

DOT - Stuffer

- Toys, Games, and Sports Equipment Industry
- DOT parenthetical statement
- DOT, Occupational Titles Arranged by Industry Designation

<https://www.dol.gov/agencies/oalj/PUBLIC/DOT/REFERENCES/DOTINDU>

O*NET OnLine

- Packaging and Filling Machine Operators and Tenders
- 74 DOT codes at all exertion and skill levels
- 2018 employment 394,900 jobs

Occupational Outlook Handbook

- Packaging and Filling Machine Operators and Tenders
- Education: high school diploma or equivalent
- Short-term on-the-job training
- 2019 employment 304,200 jobs

2019 Occupational Requirements Survey

- Packaging and Filling Machine Operators and Tenders
- SVP 2 = 63.6% of jobs
- Lift/Carry 20 pounds maximum at the 10th percentile
- Standing/Walking = 95% of the day at the 25th percentile
- No report of lifting/carrying or standing/walking that fits the sedentary definition

Job Browser Pro

- Stuffer
- Agrees with SOC/OES 51-9111
- Assigns to other miscellaneous manufacturing NAICS 339900
- 1,562 jobs at the intersection
- 195 jobs for stuffer

Occupational Employment Statistics

- 2019 data
- 390,540 jobs in the economy for packaging and filling machine operators and tender
- 287,860 jobs in the manufacturing sector (NAICS 31-330000)
- 5,390 jobs in miscellaneous manufacturing subsector (NAICS 339000)
- 2,000 jobs in the other miscellaneous manufacturing industry group (NAICS 339900)
- JBP underestimated 1,562 jobs in the occupation-industry intersection