



EXPEDITED RULE MAKING

CR-105 (June 2004)
(Implements RCW 34.05.353)
EXPEDITED RULE MAKING ONLY

Agency: Department of Revenue

Title of rule and other identifying information: WAC 458-20-210 (Rule 210) *Sales of tangible personal property for farming – Sales of agricultural products by farmers.* This rule explains the application of business and occupation, retail sales, and use taxes to the sales of tangible personal property to farmers. It also explains the application of taxes to the sale of agricultural products by farmers.

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO

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Purpose of the proposal and its anticipated effects, including any changes in existing rules:

The Department is proposing to make the following changes to WAC 458-20-210:

- Update language pertaining to taxability of:
 - Manufacturing fresh fruit and vegetables
 - Manufacturing dairy products
 - Nutrient management
- Delete language pertaining to B&O tax credit for alternatives to field burning as credit expired January 1, 2006.
- Replace resale certificate language with reseller permit language.
- Add exemption information from legislation passed thru SSB 6333, chapter XX, laws of 2014.

Copies of draft rules are available for viewing and printing on our website at [Rules Agenda](#)

Reasons supporting proposal: Legislation

Statutory authority for adoption:

RCW 82.32.300 and 82.01.060(2)

Statute being implemented:

Is rule necessary because of a:

Federal Law?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Federal Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
State Court Decision?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

If yes, CITATION:

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Agency comments or recommendations, if any, as to statutory language, implementation, enforcement, and fiscal matters: None.

AMENDATORY SECTION (Amending WSR 03-18-024, filed 8/25/03, effective 9/25/03)

WAC 458-20-210 Sales of tangible personal property for farming—Sales of agricultural products by farmers. (1) **Introduction.** This rule explains the application of business and occupation (B&O), retail sales, and use taxes to the sale and/or use of feed, seed, fertilizer, spray materials, and other tangible personal property for farming. This rule also explains the application of B&O, retail sales, and litter taxes to the sale of agricultural products by farmers. Farmers should refer to WAC 458-20-101 (Tax registration and tax reporting) to determine whether they must obtain a tax registration endorsement or a temporary registration certificate from the department of revenue (department).

(a) **Examples.** This rule contains examples which identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all facts and circumstances.

(b) **Other rules that may be relevant.** Farmers and persons making sales to farmers may also want to refer to the following rules for additional information:

~~((a))~~ (i) WAC 458-20-178, Use tax;

(ii) WAC 458-20-209 ~~((+))~~ Farming for hire and horticultural services ~~((provided to))~~ performed for farmers~~((+))~~;

~~((b))~~ (iii) WAC 458-20-222 ~~((+))~~ Veterinarians~~((+))~~;

~~((c))~~ (iv) WAC 458-20-239 ~~((+))~~ Sales to nonresidents of farm machinery or implements, and related services~~((+))~~; and

~~((d))~~ (v) WAC 458-20-262 ~~((+))~~ Retail sales and use tax exemptions for agricultural employee housing~~((+))~~.

(2) **Who is a farmer?** A "farmer" is any person engaged in the business of growing, raising, or producing, upon the person's own lands or ~~((upon))~~ on the lands in which the person has a present right of possession, any agricultural product to be sold. A "farmer" does not include a person growing, raising, or producing agricultural products for the person's own consumption; a person selling any animal or substance obtained therefrom in connection with the person's business of operating a stockyard, slaughterhouse, or packing house; or a person in respect to the business of taking, cultivating, or raising timber. RCW 82.04.213 ~~((and chapter 118, Laws of 2001))~~.

(3) **What is an agricultural product?** An "agricultural product" is any product of plant cultivation or animal husbandry including, but not limited to: A product of horticulture, grain cultivation, viticulture, viticulture, or aquaculture as defined in RCW 15.85.020; plantation Christmas trees; short-rotation hardwoods as defined in RCW 84.33.035 ~~((as of July 22, 2001))~~; turf; or any animal, including, but not limited to, an animal that is a private sector cultured aquatic product as defined in RCW 15.85.020, a bird, an insect, or the substances obtained from such animals. An "agricultural product" does not include animals defined under RCW 16.70.020 as "pet animals." RCW 82.04.213 ~~((and chapter 118, Laws of 2001))~~.

(4) **Sales to farmers.** Persons making sales of tangible personal property to farmers are generally subject to wholesaling or retailing B&O tax, as the case may be, on the gross proceeds of sales. Sales of some services performed for farmers, such as installing or repairing tangible personal property, are retail sales and subject to retailing B&O tax on the gross proceeds of such sales. Persons making retail

sales must collect retail sales tax from the buyer, unless the sale is specifically exempt by law. ~~((Readers should))~~ Refer to subsection (6) of this rule for information about specific sales tax exemptions available for sales to farmers.

(a) **Documenting wholesale sales.** A seller must ~~((obtain a resale certificate from the buyer to document the wholesale nature of any transaction. (Refer to WAC 458-20-102 for detailed information about resale certificates.))~~ take from the buyer a copy of the buyer's reseller permit, or a "Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions" to document the wholesale nature of any transaction.

(b) **Buyer's responsibility when the seller does not collect retail sales tax on a retail sale.** If the seller does not collect retail sales tax on a retail sale, the buyer must pay the retail sales tax (commonly referred to as "deferred sales tax") or use tax directly to the department, unless the sale is specifically exempt by law. The ~~((Combined))~~ excise tax return ~~(())~~ does not have a separate line for reporting deferred sales tax. Consequently, deferred sales tax liability should be reported on the use tax line of the buyer's ~~((Combined))~~ excise tax return. If a deferred sales tax or use tax liability is incurred by a farmer who is not required to obtain a tax registration endorsement from the department (see WAC 458-20-101), the farmer must report the tax on a "Consumer Use Tax Return" and remit the appropriate tax to the department. Refer to WAC 458-20-178 (Use tax) for detailed information regarding use tax.

The Consumer Use Tax Return ~~((can))~~ may be obtained by calling the department's telephone information center at 1-800-647-7706. The return may also be obtained from the department's web site at: ~~((http://))~~ dor.wa.gov.

(c) **Feed, seed, seedlings, fertilizer, spray materials, and agents for enhanced pollination.** Sales to farmers of feed, seed, seedlings, fertilizer, spray materials, and agents for enhanced pollination, including insects such as bees, to be used for the purpose of producing an agricultural product, whether for wholesale or retail sale, are wholesale sales.

However, when these items are sold to consumers for purposes other than producing agricultural products for sale, the sales are retail sales. For example, sales of feed to riding clubs, racetrack operators, boarders, or similar persons who do not resell the feed at a specific charge are retail sales. Sales of feed for feeding pets or work animals, or for raising animals for the purpose of producing agricultural products for personal consumption are also retail sales. Sales of seed, fertilizer, and spray materials for use on lawns and gardens, or for any other personal use, are likewise retail sales.

(i) **What is feed?** "Feed" is any substance used as food to sustain or improve animals, birds, fish, or insects, including whole and processed grains or mixtures thereof, hay and forages or meals made therefrom, mill feeds and feeding concentrates, stock salt, hay salt, bone meal, fish meal, cod liver oil, double purpose limestone grit, oyster shell, and other similar substances. Food additives that are given for their beneficial growth or weight effects are "feed."

Hormones or similar products that do not make a direct nutritional or energy contribution to the body are not "feed," nor are products used as medicines.

(ii) **What is seed?** "Seed" is the propagative portions of plants commonly used for seeding or planting whether true seed, bulbs, plants, seed-like fruits, seedlings, or tubers.

(iii) **What is fertilizer?** "Fertilizer" is any substance containing one or more recognized plant nutrients and is used for its plant nutrient content and/or is designated for use in promoting plant growth. "Fertilizer" includes limes, gypsum, and manipulated animal and vegetable manures. There is no requirement that fertilizers be applied directly to the soil.

(iv) **What are spray materials?** "Spray materials" are any substance or mixture of substances in liquid, powder, granular, dry flowable, or gaseous form, which is intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, mollusk, fungus, weed, and any other form of plant or animal life normally considered to be a pest. The term includes treated materials, such as grains, that are intended to destroy, control, or repel such pests. "Spray materials" also include substances that act as plant regulators, defolliants, desiccants, or spray adjuvants.

(v) **Examples.** (~~The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.~~)

(A) **Example 1.** Sue grows vegetables for retail sale at a local market. Sue purchases fertilizers and spray materials that she applies to the vegetable plants. She also purchases feed for poultry that she raises to produce eggs for her personal consumption. Because the vegetables are an agricultural product produced for sale, retail sales tax does not apply to Sue's purchases of fertilizers and spray materials, provided she gives the seller a ~~((resale certificate))~~ copy of her reseller permit, or Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. Retail sales tax ~~((does apply))~~ applies to her purchases of poultry feed, as the poultry ~~((are))~~ is raised to produce eggs for Sue's personal consumption.

(B) **Example 2.** WG Vineyards (WG) grows grapes that it uses to manufacture wine for sale. WG purchases pesticides and fertilizers that are applied to its vineyards. WG may purchase these pesticides and fertilizers at wholesale, provided WG gives the seller a ~~((resale certificate))~~ copy of their reseller permit, or Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions.

(C) **Example 3.** Seed Co. contracts with farmers to raise seed. Seed Co. provides the seed and agrees to purchase the crop if it meets specified standards. The contracts provide that ownership of the crop is retained by Seed Co., and the risk of crop loss is borne by the farmers. The farmers ~~((are obligated to))~~ must pay for the seed whether or not the crop meets the specified standard. The transfer of the possession of the seed to ~~((the))~~ each farmer~~((s))~~ is a wholesale sale, provided Seed Co. obtains a ~~((resale certificate))~~ copy of their reseller permit, or Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions from ~~((the))~~ that farmer~~((s))~~.

(d) **Chemical sprays or washes.** Sales of chemical sprays or washes, whether to farmers or other persons, for the purpose of post-harvest treatment of fruit for the prevention of scald, fungus, mold, or decay are wholesale sales.

(e) **Farming equipment.** Sales to farmers of farming equipment such as machinery, machinery parts and repair, tools, and cleaning materials are retail sales and subject to retailing B&O and retail sales taxes, unless specifically exempt by law. Refer to subsections (4)(i) and (6) of this rule for information about sales tax exemptions available to farmers.

(f) **Packing materials and containers.** Sales of packing materials and containers, or tangible personal property that will become part of a container, to a farmer who will sell the property to be contained therein are wholesale sales, provided the packing materials and containers are not put to intervening use by the farmer. Thus, sales to farmers of binder twine for binding bales of hay that will be sold or wrappers for fruit and vegetables to be sold are subject to wholesaling B&O tax. However, sales of packing materials and containers to a farmer who will use the items as a consumer are retail sales and subject to retailing B&O and retail sales taxes. Thus, sales of binder twine to a farmer for binding bales of hay that will be used to feed the farmer's livestock are retail sales.

(g) **Purchases for dual purposes.** A buyer normally engaged in both consuming and reselling certain types of tangible personal property (~~and not able~~) that is unable to determine at the time of purchase whether the particular property purchased will be consumed or resold must purchase according to the general nature of his or her business. RCW 82.08.130. If the buyer principally consumes the articles in question, the buyer should not give a (~~resale certificate~~) copy of its reseller permit for any part of the purchase. If the buyer principally resells the articles, the buyer may (~~issue a resale certificate~~) provide a copy of its reseller permit for the entire purchase. For the purposes of this subsection, the term "principally" means greater than fifty percent.

If a buyer makes a purchase for dual purposes and does not give a (~~resale certificate~~) copy of their reseller permit for any of the purchase and thereafter resells some of the articles purchased, the buyer may claim a "taxable amount for tax paid at source" deduction. Refer to WAC 458-20-102 (Reseller permits) for additional information regarding purchases for dual purposes and the "taxable amount for tax paid at source" deduction.

(i) **Potential deferred sales tax liability.** If the buyer gives a (~~resale certificate~~) copy of its reseller permit for all purchases and thereafter consumes some of the articles purchased, the buyer is liable for deferred sales tax and must remit the tax directly to the department. Refer to subsection (4)(b) of this rule (~~and~~) WAC 458-20-102 and 458-20-178 for more information regarding deferred sales tax and use tax.

(ii) **Example 4.** A farmer purchases binder twine for binding bales of hay. Some of the hay will be sold and some will be used to feed the farmer's livestock. More than fifty percent of the binder twine is used for binding bales of hay that will be sold. Because the farmer principally uses the binder twine for binding bales of hay that will be sold, the farmer may (~~issue a resale certificate~~) provide a copy of their reseller permit, or Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions to the seller for the entire purchase. The farmer is liable for deferred sales tax on the binder twine used for binding bales of hay that are used to feed the farmer's livestock and must remit the tax directly to the department.

(h) **"Fruit bin rentals" by fruit packers.** Fruit packers often itemize their charges to farmers for various services related to the packing and storage of fruit. An example is a charge for the bins which the packer uses in the receiving, sorting, inspecting, and storing of fruit (commonly referred to as "bin rentals"). The packer delivers the bins to the grower, who fills them with fruit for eventual storage in the packer's warehouse. Charges by fruit packers to farmers for such bin rentals do not constitute the rental of tangible personal

property to the farmer where the bins are under the control of the packer for use in the receiving, sorting, inspecting, and storing of fruit. These charges are income to the packer related to the receipt or storage of fruit. The packer, as the consumer of the bins, is subject to retail sales or use tax on the purchase or use of the bins. ~~((Information regarding the taxability of fruit packing is contained in WAC 458-20-214.))~~ Refer to WAC 458-20-214 (Cooperative marketing associations and independent dealers acting as agents of others with respect to the sale of fruit and produce) for more information regarding the taxability of fruit packing.

(i) **Machinery and equipment used directly in a manufacturing operation.** Machinery and equipment used directly in a manufacturing operation by a manufacturer or processor for hire is exempt from sales ~~((or))~~ and use ~~((tax))~~ taxes provided that all requirements for the exemptions are met. RCW 82.08.02565 and 82.12.02565. ~~((This exemption is))~~ These exemptions are commonly referred to as the M&E exemption. Farmers who use agricultural products that they have grown, raised, or produced as ingredients in a manufacturing process may be entitled to the M&E exemption on the acquisition of machinery and equipment used directly in their manufacturing operation. Refer to WAC 458-20-13601 (Manufacturers and processors for hire-Sales and use tax exemption for machinery and equipment) for ~~((detailed))~~ more information regarding the M&E exemption.

~~((See subsection (5)(b) of this rule for an example illustrating a farmer using agricultural products that the farmer has grown as an ingredient in a manufacturing process.))~~

(5) **Sales by farmers.** Farmers are not subject to B&O tax on wholesale sales of agricultural products. RCW 82.04.330. Farmers who manufacture products using agricultural products that they have grown, raised, or produced should refer to subsection (5)(b) of this rule for tax-reporting information.

Farmers are subject to retailing B&O tax on retail sales of agricultural products and retailing or wholesaling B&O tax on sales of nonagricultural products, as the case may be, unless specifically exempt by law. Also, B&O tax applies to sales of agricultural products that the seller has not grown, raised, or produced ~~((upon))~~ on the seller's own land or ~~((upon))~~ on land in which the seller has a present right of possession, whether these products are sold at wholesale or retail. Likewise, B&O tax applies to sales of animals or substances derived from animals in connection with the business of operating a stockyard, slaughterhouse, or packing house. Farmers may be eligible to claim a small business B&O tax credit if the amount of B&O tax liability in a reporting period is under a certain amount. ~~((For detailed information about this credit,))~~ Refer to WAC 458-20-104 (Small business tax relief based on income of business) for more information about this B&O tax credit.

(a) **Litter tax.** The gross proceeds of sales of certain products, including food for human or pet consumption, are subject to litter tax. RCW 82.19.020. Litter tax does not apply to sales of agricultural products that are exempt from B&O tax under RCW 82.04.330. RCW 82.19.050 ~~((and chapter 118, Laws of 2001))~~. Thus, farmers are not subject to litter tax on wholesale sales of agricultural products but are liable for litter tax on the gross proceeds of retail sales of agricultural products that constitute food for human or pet consumption. Also, farmers that manufacture products for use and consumption within this state (e.g., a farmer who produces wine from grapes that the farmer has grown) may be liable for litter tax measured by the value

of the products manufactured. (~~For detailed information about the litter tax,~~) Refer to chapter 82.19 RCW and WAC 458-20-243 (Litter tax) for more information about the litter tax.

(~~For example,~~) **Example 5.** RD Orchards (RD) grows apples at its orchards. Most apples are sold at wholesale, but RD operates a seasonal roadside fruit stand from which it (~~makes retail sales of~~) sells apples at retail. The wholesale sales of apples are exempt from both B&O and litter taxes. The retail sales of apples are subject to retailing B&O and litter taxes but are exempt from sales tax because the apples are sold as a food product for human consumption. (~~See~~) Refer to subsection (6)(d) of this rule for more information about the retail sales tax exemption applicable to sales of food products for human consumption.(+)

(b) **Farmers using agricultural products in a manufacturing process.** The B&O tax exemption provided by RCW 82.04.330 does not apply to any person selling manufactured substances or articles. Thus, farmers who manufacture products using agricultural products that they have grown, raised, or produced are subject to manufacturing B&O tax on the value of products manufactured. Farmers who sell their manufactured products at retail or wholesale in the state of Washington are also generally subject to the retailing or wholesaling B&O tax, as the case may be. In such cases, a multiple activities tax credit (MATC) may be available. (~~For detailed information regarding the manufacturing B&O tax and the MATC,~~) Refer to WAC 458-20-136 (Manufacturing, processing for hire, fabricating) and WAC 458-20-19301 (Multiple activities tax credits), respectively, for more information about the manufacturing B&O tax and the MATC.

(~~For example,~~ WG Vineyards (WG) produces wine from grapes that it grows in its vineyards located within this state. WG makes wholesale sales of its wine to customers both within and outside of this state. WG is subject to manufacturing B&O tax on the value of the wine it produces. WG is also subject to wholesaling B&O tax on wholesale sales of wine delivered to buyers within this state, and WG is entitled to a multiple activities tax credit. In addition, WG is subject to litter tax on the value of wine sold within this state. (See subsection (5)(a) of this rule for information on the litter tax.))

(i) (~~Special B&O tax rate for~~) **Manufacturing fresh fruits and vegetables.** (~~A special lower B&O tax rate is provided by RCW 82.04.260~~) RCW 82.04.4266 provides a B&O tax exemption to persons manufacturing fresh fruits or vegetables by canning, preserving, freezing, processing, or dehydrating(. Thus, farmers and other persons manufacturing fresh fruits and vegetables using these processes should report their manufacturing activity under the manufacturing fresh fruits and vegetables B&O tax classification) fresh fruits or vegetables.

Wholesale sales of fresh fruits or vegetables canned, preserved, frozen, processed, or dehydrated by the seller and sold to purchasers who transport the goods out of this state in the ordinary course of business are also (~~subject to the lower B&O tax rate provided by RCW 82.04.260~~) eligible for this exemption. A seller must keep and preserve records for the period required by RCW 82.32.070 establishing that the purchaser transported the goods out of Washington state.

(A) A person claiming the exemption must file a complete annual survey with the department under RCW 82.32.585.

(B) RCW 82.04.4266 is scheduled to expire July 1, 2015, at which time the preferential B&O tax rate under RCW 82.04.260 will apply.

(ii) (~~(Special B&O tax rate for~~) **Manufacturing dairy products.** (~~Effective September 20, 2001, a special lower B&O tax rate is provided by RCW 82.04.260~~) RCW 82.04.4268 provides a B&O tax exemption to persons manufacturing dairy products that, as of (~~that date~~) September 20, 2001, are identified in 21 C.F.R., chapter 1, parts 131, 133, and 135. These products include milk, buttermilk, cream, yogurt, cheese, and ice cream, and also include by-products from the manufacturing of dairy products such as whey and casein. (~~Thus, farmers and other persons manufacturing qualifying dairy products should report their manufacturing activity under the manufacturing dairy products B&O tax classification. This special rate does not apply, however, when dairy products are used merely as an ingredient or component of a manufactured product that is not a dairy product (e.g., milk-based soups or pizza).~~

~~The special B&O tax rate provided by RCW 82.04.260~~)

The exemption also applies to persons selling manufactured dairy products to purchasers who transport the goods (~~outside of this~~) out of Washington state in the ordinary course of business. Unlike the (~~special B&O tax rate~~) exemption for certain wholesale sales of fresh fruits or vegetables (see subsection (5)(b)(i) of this rule), the (~~special B&O tax rate~~) exemption for sales of qualifying dairy products does not require that the sales be made (~~by the person who manufactured the dairy products nor that they be sales~~) at wholesale.

A seller must keep and preserve records for the period required by RCW 82.32.070 establishing that the purchaser transported the goods out of Washington state or the goods were sold to a manufacturer for use as an ingredient or component in the manufacturing of a dairy product.

(A) A person claiming the exemption must file a complete annual survey with the department under RCW 82.32.585.

(B) RCW 82.04.4268 is scheduled to expire July 1, 2015, at which time the preferential B&O tax rate under RCW 82.04.260 will apply.

(C) Effective October 1, 2013, the exemption provided by RCW 82.04.4268 expanded to include wholesale sales by a dairy product manufacturer to a purchaser who uses the dairy products as an ingredient or component in the manufacturing in Washington of another dairy product. The definition of dairy products was expanded to include products comprised of not less than seventy percent dairy products measured by weight or volume.

(D) Effective July 1, 2023, the preferential B&O tax rate will no longer apply to sales of dairy products, where a dairy product is used by the purchaser as an ingredient or component in the manufacturing of a dairy product in Washington.

(c) **Raising cattle for wholesale sale.** RCW 82.04.330 provides a B&O tax exemption to persons who raise cattle for wholesale sale (~~are exempt from B&O tax under RCW 82.04.330~~) provided that the cattle are held for at least sixty days prior to the sale. Persons who (~~purchase and~~) hold cattle for fewer than sixty days before reselling the cattle are not considered to be engaging in the normal activities of growing, raising, or producing livestock for sale.

~~(For example,)~~ **Example 6.** A feedlot operation purchases cattle and feeds them until they attain a good market condition. The cattle are then sold at wholesale. The feedlot operator is exempt from B&O tax on wholesale sales of cattle if it held the cattle (~~are held~~) for at least sixty days while they (~~are~~) were prepared for market. However, the feedlot operator is subject to wholesaling B&O tax on

wholesale sales of cattle held for fewer than sixty days prior to the sale.

(d) **B&O tax exemptions available to farmers.** In addition to the exemption for wholesale sales of agricultural products, ~~((there are))~~ several other B&O tax exemptions available to farmers ~~((which))~~ that are discussed in this subsection.

(i) **Growing, raising, or producing agricultural products owned by other persons.** RCW 82.04.330 exempts amounts received by a farmer for growing, raising, or producing agricultural products owned by others, such as custom feed operations.

~~((For example,))~~ **Example 7.** A farmer is engaged in the business of raising cattle owned by others (commonly referred to as "custom feeding"). After the cattle attain a good market condition, the owner then sells them. Amounts received by the farmer for custom feeding are exempt from B&O tax under RCW 82.04.330, provided that the farmer held the cattle ~~((are held by the farmer))~~ for at least sixty days. Farmers are not considered to be engaging in the activity of raising cattle for sale unless the cattle are held for at least sixty days while the cattle are prepared for market. (See subsection (5)(c) of this rule.)

~~((ii))~~ ~~((Sales of hatching eggs or poultry.~~ RCW 82.04.410 exempts amounts received for the sale of hatching eggs or poultry by farmers producing hatching eggs or poultry, when these agricultural products are for use in the production for sale of poultry or poultry products.

~~((iii))~~ **Processed hops shipped outside Washington for first use.** RCW 82.04.337 exempts amounts received by hop growers or dealers for hops shipped outside the state of Washington for first use, if those hops have been processed into extract, pellets, or powder in this state. However, the processor or warehouse of such products is not exempt on amounts charged for processing or warehousing such products.

~~((e))~~ **B&O tax credit to encourage alternatives to field burning.** Persons who qualify for a sales or use tax exemption under RCW 82.08.840 or 82.12.840 (machinery, equipment, or structures that reduce emissions from field burning) also qualify for a B&O tax credit. RCW 82.04.4459. The amount of the credit is equal to fifty percent of the amount of costs expended for constructing structures or acquiring machinery and equipment for which an exemption was taken under RCW 82.08.840 or 82.12.840. (See subsection (6)(1) of this rule for information about the sales and use tax exemptions provided by RCW 82.08.840 and 82.12.840.) No application is necessary for the credit. Persons taking the credit must keep records necessary for the department to verify eligibility for the credit. This credit is subject to the following limitations:

~~((i))~~ No credit may be taken in excess of the amount of B&O tax that would otherwise be due;

~~((ii))~~ Credit may not be carried over to subsequent calendar years;

~~((iii))~~ The credit must be claimed by the due date of the last tax return for the calendar year in which the payment is made;

~~((iv))~~ Any unused credit expires;

~~((v))~~ Refunds will not be given in place of credits;

~~((vi))~~ The credit may not be claimed for expenditures that occurred before March 22, 2000; and

~~((vii))~~ The credit expires on January 1, 2006.)) (iii) Sales of hatching eggs or poultry. RCW 82.04.410 exempts amounts received for the sale of hatching eggs or poultry by farmers producing hatching eggs or poultry, when these agricultural products are for use in the production for sale of poultry or poultry products.

(6) **Retail sales tax and use tax exemptions.** This subsection provides information about a number of retail sales tax and corresponding use tax exemptions available to farmers and persons buying tangible personal property at retail from farmers. Some exemptions require the buyer to provide the seller with an exemption certificate. ((Readers should)) Refer to subsection (7) of this rule for additional information regarding exemption certificates.

~~((This subsection contains a number of examples which illustrate these exemptions. The examples identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.))~~

(a) **Pollen.** RCW 82.08.0277 and 82.12.0273 exempt the sale and use of pollen ((is exempt)) from retail sales and use taxes. ((RCW 82.08.0277 and 82.12.0273.))

(b) **Semen.** RCW 82.08.0272 and 82.12.0267 exempt the sale and use of semen used in the artificial insemination of livestock is exempt from retail sales and use taxes. ((RCW 82.08.0272 and 82.12.0267.))

(c) **Feed for livestock at public livestock markets.** RCW 82.08.0296 and 82.12.0296 exempt the sale and use of feed to be consumed by livestock at a public livestock market ((is exempt)) from retail sales and use taxes. ((RCW 82.08.0296 and 82.12.0296.))

(d) **Food products.** RCW 82.08.0293 and 82.12.0293 exempt the sale and use of food products for human consumption ((are exempt)) from retail sales and use taxes. ((RCW 82.08.0293 and 82.12.0293. This)) These exemptions also ((applies)) apply to the sale and/or use of livestock for personal consumption as food. ((For detailed)) Refer to WAC 458-20-244 (Food and food products) for more information about food products that qualify for this exemption((, refer to WAC 458-20-244)).

(e) **Auction sales of farm property.** RCW 82.08.0257 and 82.12.0258 exempt from retail sales and use taxes ((do not apply to)) tangible personal property, including household goods, which ((have)) has been used in conducting a farm activity, if the property ((was)) is purchased from a farmer at an auction sale held or conducted by an auctioneer ((upon)) on a farm. ((RCW 82.08.0257 and 82.12.0258.))

(f) **Poultry.** RCW 82.08.0267 and 82.12.0262 exempt from retail sales and use taxes the sale and use of poultry used in the production for sale of poultry or poultry products ((is exempt from retail sales and use taxes. RCW 82.08.0267 and 82.12.0262)).

~~((For example,))~~ **Example 8.** A poultry hatchery produces poultry from eggs. The resulting poultry are sold to egg producers. These sales are exempt from retail sales ((taxes)) tax under RCW 82.08.0267. (They are also exempt from B&O tax. See subsection (5)(d)(ii) of this rule.)

(g) **Leases of irrigation equipment.** ~~((Retail sales and use taxes do not apply to))~~ RCW 82.08.0288 and 82.12.0283 exempt the lease or use of irrigation equipment from retail sales and use taxes, but only if:

(i) The lessor purchased the irrigation equipment for the purpose of irrigating land controlled by the lessor;

(ii) The lessor has paid retail sales or use tax upon the irrigation equipment;

(iii) The irrigation equipment is attached to the land in whole or in part; and

(iv) The irrigation equipment is leased to the lessee as an incidental part of the lease of the underlying land and is used solely on such land. (~~RCW 82.08.0288 and 82.12.0283.~~)

(h) **Beef and dairy cattle.** RCW 82.08.0259 and 82.12.0261 exempt the sale and use of beef and dairy cattle to be used by a farmer in producing an agricultural product ((are exempt)) from retail sales and use taxes. (~~RCW 82.08.0259 and 82.12.0261.~~)

~~For example,~~)

Example 9. John operates a farm where he raises beef and dairy cattle for sale. He also raises other livestock for sale including hogs, sheep, and goats. (~~All of~~) John's sales of beef and dairy ((and beef)) cattle for use on a farm are exempt from retail sales tax. However, John must collect retail sales tax on all retail sales of sheep, goats, and hogs unless the sales qualify for either the food products exemption described in this subsection (6)(d) of this rule, or the exemption for sales of livestock for breeding purposes (~~which is~~) described (~~immediately below~~) in this subsection (6)(i) of this rule.

(i) **Livestock for breeding purposes.** RCW 82.08.0259 and 82.12.0261 exempt the sale or use of livestock, as defined in RCW 16.36.005, for breeding purposes where the animals are registered in a nationally recognized breed association ((is exempt)) from retail sales and use taxes. (~~RCW 82.08.0259 and 82.12.0261. This exemption is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.~~)

~~For example,~~)

Example 10. ABC Farms raises and sells quarter horses registered in the American Quarter Horse Association (AQHA). Quarter horses are generally recognized as a definite breed of horse, and the AQHA is a nationally recognized breed association. Therefore, ABC Farms is not required to collect sales tax on retail sales of quarter horses for breeding purposes, provided it receives a completed exemption certificate from the buyer.

(j) **Bedding materials for chickens.** RCW 82.08.920 and 82.12.920 exempt from retail sales and use taxes ((do not apply to)) the sale to and use of bedding materials ((used)) by farmers to accumulate and facilitate the removal of chicken manure provided that the farmer is raising chickens that are sold as agricultural products. (~~RCW 82.08.920 and 82.12.920. The exemption became effective September 20, 2001, and is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.~~)

(i) **What are bedding materials?** "Bedding materials" are wood shavings, straw, sawdust, shredded paper, and other similar materials.

(ii) **Example 11.** Farmer raises chickens for use in producing eggs for sale. When the chickens are no longer useful for producing eggs, Farmer sells (~~the chickens~~) them to food processors for soup and stew meat. Farmer purchases bedding materials used to accumulate and facilitate the removal of chicken manure. The purchases of bedding materials by Farmer are exempt from retail sales tax. The (~~law~~) exemption merely requires that the chickens be sold as agricultural products. It is immaterial that Farmer primarily raises the chickens to produce eggs.

(k) **Propane or natural gas used to heat structures housing chickens.** RCW 82.08.910 and 82.12.910 exempt from retail sales and use taxes ((do not apply to)) the sale to and use of propane or natural gas ((used)) by farmers to heat structures used to house chickens. The

propane or natural gas must be used exclusively to heat the structures, and the structures must be used exclusively to house chickens that are sold as agricultural products. (~~RCW 82.08.910 and 82.12.910. The exemption became effective September 20, 2001, and is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.~~)

(i) **What are "structures"?** "Structures" are barns, sheds, and other similar buildings in which chickens are housed.

(ii) **Example 12.** Farmer purchases natural gas that is used to heat structures housing chickens. The natural gas is used exclusively to heat the structures, and the structures are used exclusively to house chickens. The chickens are used to produce eggs. When the chickens are no longer useful for producing eggs, Farmer sells the chickens to food processors for soup and stew meat. The purchase of natural gas by Farmer is exempt from retail sales tax. The ~~((law))~~ exemption merely requires that the chickens be sold as agricultural products. It is immaterial that Farmer primarily houses these chickens to produce eggs.

(iii) **Example 13.** Farmer purchases natural gas that is used to heat structures used in the incubation of chicken eggs and structures used for washing, packing, and storing eggs. The natural gas used to heat these structures is not exempt from retail sales tax because the structures are not used exclusively to house chickens that are sold as agricultural products.

(l) **Farm fuel used for agricultural purposes.**

(i) **Diesel, biodiesel and aircraft fuels.** RCW 82.08.865 and 82.12.865 exempt from retail sales and use taxes the sale and use of diesel fuel, biodiesel fuel, and aircraft fuel, to farm fuel users for agricultural purposes. The exemptions apply to a fuel blend if all of the component fuels of the blend would otherwise be exempt if the component fuels were sold as separate products. The buyer must provide the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. See subsection (7) of this rule. The seller must retain a copy of the exemption certificate for its records.

(A) The exemptions apply to nonhighway uses for production of agricultural products and for providing horticultural services to farmers. Horticultural services include:

(I) Soil preparation services;

(II) Crop cultivation services;

(III) Crop harvesting services.

(B) The exemptions do not apply to uses other than for agricultural purposes. Agricultural purposes do not include:

(I) Heating space for human habitation or water for human consumption; or

(II) Transporting on public roads individuals, agricultural products, farm machinery or equipment, or other tangible personal property, except when the transportation is incidental to transportation on private property and the fuel used for such transportation is not subject to tax under chapter 82.38 RCW.

(ii) **Propane and natural gas.** Effective October 1, 2013, RCW 82.08.220 and 82.12.220 exempt from retail sales and use taxes sales to and the use by farmers of propane or natural gas that is used exclusively to distill mint on a farm. The buyer must provide the seller with a completed Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. The seller must retain a copy of an exemption certificate for its records. See subsection (7) of this rule. The

seller must also report amounts claimed for exemption when electronically filing excise tax returns. This exemption is scheduled to expire July 1, 2017.

(m) Machinery, equipment, and structures used to reduce emissions from field burning. Prior to January 1, 2011, RCW 82.08.840 and 82.12.840 (~~provide a~~) provided retail sales and use tax exemptions for certain property and services used to reduce field burning of cereal grains and field and turf grass grown for seed, or to reduce air emissions resulting from such field burning. The (~~retail sales tax~~) exemptions (~~applies~~) applied to sales and uses of machinery and equipment, and (~~to services rendered in respect to constructing structures, installing, constructing, repairing, cleaning, decorating, altering, or improving of structures or eligible machinery and equipment, and to~~) sales and uses of tangible personal property that (~~becomes~~) became an ingredient or component of eligible structures or eligible machinery and equipment, if all of the requirements for the exemption listed below in this subsection (~~are~~) were met. The sales tax exemption (~~is effective March 22, 2000.~~) also applied to services rendered in respect to constructing structures, installing, constructing, repairing, cleaning, decorating, altering, or improving of structures or eligible machinery and equipment, and the use tax exemption (~~applies~~) also applied to the (~~use of machinery and equipment, and of tangible personal property that becomes an ingredient or component of eligible machinery and equipment, if all of the requirements for the exemption listed below in this subsection are met. This use tax exemption is also effective March 22, 2000. The use tax exemption also applies to the~~) use of services rendered in respect to installing, repairing, cleaning, altering, or improving of eligible machinery and equipment, if all of the requirements for the exemption (~~are~~) were met. (~~This component of the use tax exemption is effective June 1, 2002.~~

~~These exemptions expire January 1, 2006.)~~

Persons taking an exemption must keep records necessary for the department to verify eligibility for the exemption. Persons who have taken an exemption and then discover that they do not meet the requirements for the exemption are subject to a deferred sales tax or use tax liability. (~~For~~) Refer to subsection (4)(b) of this rule for additional information about deferred sales tax and use tax (~~refer to subsection (4)(b) of this rule.~~).

(i) **Majority use requirement.** To qualify for an exemption, the machinery, equipment, or structure must be used more than half (50%) of the time to:

(A) (~~For gathering, densifying, processing, handling, storing, transporting, or incorporating~~) Gather, densify, process, handle, store, transport, or incorporate straw or straw-based products that results in a reduction in field burning of cereal grains and field and turf grass grown for seed; or

(B) (~~To~~) Decrease air emissions resulting from field burning of cereal grains and field and turf grass grown for seed.

(ii) (~~Exemption certificates. For the sales tax exemption, the buyer must provide the seller with an exemption certificate in a form and manner prescribed by the department.~~

~~(iii)~~) **Examples.** The following examples illustrate this exemption:

(A) **Example 14.** Farmer cultivates turf grass. Farmer purchases spray equipment. As an alternative to field burning, the fields in which the spray equipment is used must be sprayed five times instead

of twice. If the use of the spray equipment meets the requirement that the equipment be used more than half of the time to decrease air emissions resulting from field burning((;therefore,)) the purchase of the spray equipment is exempt.

(B) **Example 15.** Farmer, who performs custom baling, purchases a new baler for use in baling hay and straw. The purchase of the baler is exempt if it will be used more than half of the time to bale straw, which results in a reduction in field burning.

(C) **Example 16.** Farmer purchases a new combine for use in harvesting wheat. In addition to cutting the stalks, separating the kernels from the chaff, and unloading the kernels, the combine also chops the residual chaff before discharging it onto the field. While the need for field burning may decrease because the smaller residue more readily decomposes, the purchase of the combine does not qualify for the exemption. The combine is not used more than half of the time to decrease air emissions from field burning.

~~((m) Dairy)) (n) Nutrient management equipment and facilities.~~ RCW 82.08.890 and 82.12.890 provide ~~((a)) retail sales and use tax exemptions for ((persons operating dairy nutrient management equipment and facilities. The retail sales tax exemption applies to sales to eligible persons of services rendered in respect to operating, repairing, cleaning, altering, or improving of dairy nutrient management equipment and facilities, or to sales of tangible personal property that becomes an ingredient or component of the equipment and facilities. The sales tax exemption became effective July 13, 2001. The use tax exemption applies to the use by an eligible person of tangible personal property that becomes an ingredient or component of dairy nutrient management equipment and facilities. This use tax exemption also became effective July 13, 2001. The use tax exemption also applies to the use of labor and services rendered in respect to repairing, cleaning, altering, or improving eligible tangible personal property. This component of the use tax exemption is effective June 1, 2002. The sales and use tax exemption applies to sales made or to the use of tangible personal property or labor and services made after the dairy nutrient management plan is certified under chapter 90.64 RCW.~~

~~(i) These exemptions are available only if all of the following requirements are met:~~

~~(A) The equipment and facilities must be used exclusively for activities necessary to maintain a dairy nutrient management plan as required under chapter 90.64 RCW; and~~

~~(B) The buyer provides the seller with an exemption certificate in a form and manner prescribed by the department which must be retained in the seller's files. The department will provide an exemption certificate to an eligible person upon application. A sample letter for use in applying for an exemption certificate can be obtained from the department as provided in subsection (7) of this rule)) the sale to or use by eligible persons of:~~

~~(i) Qualifying livestock nutrient management equipment;~~

~~(ii) Labor and services rendered in respect to installing, repairing, cleaning, altering, or improving qualifying livestock nutrient management equipment; and~~

~~(iii) Labor and services rendered in respect to repairing, cleaning, altering, or improving qualifying livestock nutrient management facilities, or to tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities in the course of repairing, cleaning, altering, or improving such facilities.~~

(iv) Nonqualifying labor and services. This subsection (6)(n) (iii) of this rule does not include the sale of or charge made for labor and services rendered in respect to the constructing of new, or replacing previously existing, qualifying livestock nutrient management facilities, or tangible personal property that becomes an ingredient or component of qualifying livestock nutrient management facilities during the course of constructing new, or replacing previously existing qualifying livestock nutrient management facilities.

(v) Nutrient management plan must be certified or approved. The exemptions provided by RCW 82.08.890 and 82.12.890 apply to sales made after the livestock nutrient management plan is:

(A) Certified under chapter 90.64 RCW;

(B) Approved as part of the permit issued under chapter 90.48 RCW; or

(C) Approved by a conservation district and who possesses an exemption certificate under RCW 82.08.855.

((+ii+)) (vi) **Definitions. For the purpose((s of this)) of these exemptions, the following definitions apply:**

(A) **"Animal feeding operation"** means a lot or facility, other than an aquatic animal production facility, where the following conditions are met:

• Animals, other than aquatic animals, have been, are, or will be stabled or confined and fed or maintained for a total of forty-five days or more in any twelve-month period; and

• Crops, vegetation, forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility.

(B) **"Conservation district"** means a subdivision of state government organized under chapter 89.08 RCW.

(C) **"Eligible person"** means a person:

• Licensed to produce milk under chapter 15.36 RCW who has a certified dairy nutrient management plan ((by December 31, 2003)), as required by chapter 90.64 RCW((-

(B) ~~"Dairy nutrient management equipment and facilities" means machinery, equipment, and structures used exclusively in the handling and treatment of dairy manure, such as aerators, agitators, alley scrapers, augers, dams, gutter cleaners, loaders, lagoons, pipes, pumps, separators, and tanks. The term also includes tangible personal property that becomes an ingredient or component of the equipment and facilities, including repair and replacement parts.~~

(n+)); or

• Who owns an animal feeding operation and has a permit issued under chapter 90.48 RCW; or

• Who owns an animal feeding operation and has a nutrient management plan approved by a conservation district as meeting natural resource conservation service field office technical guide standards and who possesses an exemption certificate under RCW 82.08.855.

(D) **"Handling and treatment of livestock manure"** means the activities of collecting, storing, moving, or transporting livestock manure, separating livestock manure solids from liquids, or applying livestock manure to the agricultural lands of an eligible person other than through the use of pivot or linear type traveling irrigation systems.

(E) **"Permit"** means either a state waste discharge permit or a National Pollutant Discharge Elimination System permit, or both.

(F) **"Qualifying livestock nutrient management equipment"** means the tangible personal property listed below for exclusive use in the

handling and treatment of livestock manure, including repair and replacement parts for the same equipment:

Aerators
Agitators
Augers
Conveyers
Gutter cleaners
Hard-hose reel traveler irrigation systems
Lagoon and pond liners and floating covers
Loaders
Manure composting devices
Manure spreaders
Manure tank wagons
Manure vacuum tanks
Poultry house cleaners
Poultry house flame sterilizers
Poultry house washers
Poultry litter saver machines
Pipes
Pumps
Scrapers
Separators
Slurry injectors and hoses
Wheelbarrows, shovels, and pitchforks.

(G) "Qualifying livestock nutrient management facilities" means the exclusive use in the handling and treatment of livestock manure of the facilities listed below:

Flush systems
Lagoons
Liquid livestock manure storage structures, such as concrete tanks or glass-lined steel tanks
Structures used solely for the dry storage of manure, including roofed stacking facilities.

(o) **Anaerobic digesters.** RCW 82.08.900 and 82.12.900 provide retail sales and use tax exemptions for purchases and uses by eligible persons establishing or operating anaerobic digesters or to services rendered in respect to installing, constructing, repairing, cleaning, altering, or improving an anaerobic digester. The exemptions include sales of tangible personal property that becomes an ingredient or component of the anaerobic digester. The anaerobic digester must be used primarily (more than fifty percent measured by volume or weight) to treat livestock manure. Anaerobic digester is a facility that processes manure from livestock into biogas and dried manure using microorganisms in a decomposition process within a closed, oxygen-free container.

(i) **Exemption certificate.** The department must provide an exemption certificate to an eligible person when an application is made. An "eligible person" is any person establishing or operating an anaerobic digester to treat primarily livestock manure.

(ii) **Records retention.** Persons claiming the exemptions under RCW 82.08.900 and 82.12.900 must keep records necessary for the department to verify eligibility. A buyer must provide the seller with an exemption certificate, and the seller must retain a copy of the certificate for its files.

(p) **Animal pharmaceuticals.** RCW 82.08.880 and 82.12.880 exempt from retail sales and use taxes the sale of and use of certain animal pharmaceuticals ((are exempt from retail sales and use taxes)) when

sold to, or used by, farmers or veterinarians. (~~RCW 82.08.880 and 82.12.880.~~) To qualify for the exemption, the animal pharmaceutical must be administered to an animal that is raised by a farmer for the purpose of producing an agricultural product for sale. Also, the animal pharmaceutical must be approved by the United States Department of Agriculture (USDA) or the United States Food and Drug Administration (FDA).

~~((This exemption became effective August 1, 2001, and is available only when the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department.))~~

(i) ~~((What))~~ **Who is a ((#))veterinarian((#))?** A "veterinarian" means a person who is licensed to practice veterinary medicine, surgery, or dentistry under chapter 18.92 RCW.

(ii) **How can I determine whether the FDA or USDA has approved an animal pharmaceutical?** The FDA and USDA have an established approval process set forth in federal regulations. The FDA maintains a list of all approved animal pharmaceuticals called the "Green Book." The USDA maintains a list of approved biotechnology products called the "Veterinary Biologics Product Catalogue." Pharmaceuticals that are not on either of these lists have not been approved and are not eligible for the exemption.

(iii) **Example 17.** Dairy Farmer purchases sterilizing agents. The sterilizing agents are applied to the equipment and facilities where Dairy Farmer's cows are milked. Dairy Farmer also purchases teat dips, antiseptic udder washes, and salves that are not listed in either the FDA's *Green Book* of approved animal pharmaceuticals or the USDA's *Veterinary Biologics Product Catalogue* of approved biotechnology products. The purchases of sterilizing agents are not exempt as animal pharmaceuticals because the sterilizing agents are not administered to animals. The teat dips, antiseptic udder washes, and salves are likewise not exempt because they have not been approved by the FDA or USDA. (~~This is the case even if these products are approved by the United States Environmental Protection Agency or any other governmental agency.~~)

(iv) **What type of animal must the pharmaceutical be administered to?** As ~~((noted))~~ explained above, the exemptions ~~((is))~~ are limited to the sale ~~((and/or))~~ and use of animal pharmaceuticals administered to an animal that is raised by a farmer for the purpose of producing an agricultural product for sale. The conditions under which a farmer may purchase and use tax-exempt animal pharmaceuticals are similar to those under which a farmer may purchase and use feed at wholesale. Both types of purchases and uses require that the particular product be sold to or used by a farmer (or a veterinarian in the case of animal pharmaceuticals), and that the product be given or administered to an animal raised by a farmer for the purpose of producing an agricultural product for sale.

(v) **Examples of animals raised for the purpose of producing agricultural products for sale.** (~~The animal pharmaceutical exemption is available in the following nonexclusive list of examples because the~~) For purposes of the exemptions, the following is a nonexclusive list of examples of animals that are being raised for the purpose of producing an agricultural product for sale, presuming all other requirements for the exemption are met:

(A) Horses, cattle, or other livestock raised by a farmer for sale;

(B) Cattle raised by a farmer for the purpose of slaughtering, if the resulting products are sold;

(C) Milk cows raised and/or used by a dairy farmer for the purpose of producing milk for sale;

(D) Horses raised by a farmer for the purpose of producing foals for sale;

(E) Sheep raised by a farmer for the purpose of producing wool for sale; and

(F) "Private sector cultured aquatic products" as defined by RCW 15.85.020 (e.g., salmon, catfish, and mussels) raised by an aquatic farmer for the purpose of sale.

(vi) **Examples of animals that are not raised for the purpose of producing agricultural products for sale.** (~~The animal pharmaceutical exemption is not available in~~) For purposes of the exemptions, the following nonexclusive list of examples do not qualify because the animals are not being raised for the purpose of producing an agricultural product for sale:

(A) Cattle raised for the purpose of slaughtering if the resulting products are not produced for sale;

(B) Sheep and other livestock raised as pets;

(C) Dogs or cats, whether raised as pets or for sale. Dogs and cats are pet animals; therefore, they are not considered to be agricultural products. (See subsection (3) of this rule); and

(D) Horses raised for the purpose of racing, showing, riding, and jumping. However, if at some future time (~~in the future~~) the horses are no longer raised for racing, showing, riding, or jumping and are instead being raised by a farmer for the purpose of producing foals for sale, the exemption will apply if all other requirements for the exemption are met.

(vii) **Do products that are used to administer animal pharmaceuticals qualify for the exemption?** Sales and uses of products that are used to administer animal pharmaceuticals (e.g., syringes) do not qualify for the exemptions, even if they are later used to administer a tax-exempt animal pharmaceutical. However, sales and uses of tax-exempt animal pharmaceuticals contained in a product used to administer the animal pharmaceutical (e.g., a dose of a tax-exempt pharmaceutical contained in a syringe or cotton applicator) (~~do~~) qualify for the exemption.

(g) Replacement parts for qualifying farm machinery and equipment. RCW 82.08.855 and 82.12.855 exempt from retail sales and use taxes sales to and uses by eligible farmers of replacement parts for qualifying farm machinery and equipment. Also included are: Labor and services rendered during the installation of repair parts; and labor and services rendered during repair as long as no tangible personal property is installed, incorporated, or placed in, or becomes an ingredient or component of the qualifying equipment other than replacement parts.

(i) The following definitions apply to this subsection:

(A) "Eligible farmer" as defined in RCW 82.08.855(4).

(B) "Qualifying farm machinery and equipment" means machinery and equipment used primarily by an eligible farmer for growing, raising, or producing agricultural products.

(C) "Qualifying farm machinery and equipment" does not include:

• Vehicles as defined in RCW 46.04.670, other than farm tractors as defined in RCW 46.04.180, farm vehicles and other farm implements. "Farm implements" means machinery or equipment manufactured, designed, or reconstructed for agricultural purposes and used primarily by an eligible farmer to grow, raise, or produce agricultural products, but does not include lawn tractors and all-terrain vehicles;

- Aircraft;
- Hand tools and hand-powered tools; and
- Property with a useful life of less than one year.

(D) "Replacement parts" means those parts that replace an existing part, or which are essential to maintain the working condition, of a piece of qualifying farm machinery or equipment. Paint, fuel, oil, hydraulic fluids, antifreeze, and similar items are not replacement parts except when installed, incorporated, or placed in qualifying farm machinery and equipment during the course of installing replacement parts as defined here or making repairs as described above in this subsection (6)(q) of this rule.

(ii) **Exemption certificate.** Prior to June 12, 2014, the department was required to provide an exemption certificate to an eligible farmer or renew an exemption certificate when the eligible farmer applied for a renewal. See the department's web site for the "Application for Exemption Certificate for Replacement Parts and/or Services for Farm Machinery and Equipment."

(A) Persons claiming the exemptions must keep records necessary for the department to verify eligibility. Eligible farmers must provide sellers with their department issued exemption certificate.

(B) The exemptions provided by RCW 82.08.890 and 82.12.890 do not apply to sales made from July 1, 2010, through June 30, 2013.

(7) **Sales tax exemption certificates.** As indicated in subsection (6) of this rule, certain sales of tangible personal property and retail services either to or by farmers are exempt from retail sales tax. A person claiming an exemption must keep records necessary for the department to verify eligibility for each claimed exemption. Except as provided below, for those exemptions that require the buyer to provide the seller with an exemption certificate at the time of sale, farmers may use the department's ("~~Farmers' Retail Sales Tax Exemption Certificate~~" or another certificate with substantially the same information as it relates to the claimed exemption)) Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions. Refer to the department's web site at dor.wa.gov for the exemption certificate. In lieu of an exemption certificate, a seller may capture the relevant data elements as provided under the streamlined sales and use tax agreement as allowed under RCW 82.08.050. Sellers must retain a copy of the exemption certificate or the data elements in their files. Without proper documentation, sellers are liable for payment of the retail sales tax on sales claimed as exempt.

((~~The Farmers' Retail Sales Tax Exemption Certificate cannot be used for the dairy nutrient management exemption discussed in subsection (6)(m) of this rule. However, as noted above, the department will provide eligible persons, upon application, with an exemption certificate for this exemption. The Farmers' Retail Sales Tax Exemption Certificate and a sample letter for use in applying for the Dairy Nutrient Management Exemption Certificate can be obtained by calling the department's taxpayer information center at 1-800-647-7706. These documents can also be downloaded from the department's web site at <http://dor.wa.gov/>.~~)) Effective June 12, 2014, chapter 97, Laws of 2014, § 602 removed the requirement for the department to issue certificates for RCW 82.08.890 when qualified farmers applied for them. Sellers making tax-exempt sales of livestock nutrient management equipment may obtain a Farmers' Certificate for Wholesale Purchases and Sales Tax Exemptions certificate from the buyer in lieu of the department issued certificate. A seller may capture the relevant data elements as allowed under the streamlined sales and use tax agreement

This rule draft is being proposed under an expedited rule-making process that does not require the agency to hold public hearings. Under no circumstances is this proposed rule to be used as a basis for determining tax liability or eligibility for a tax deduction, exemption, or credit.

in lieu of the exemption certificate. The department is still required to issue an exemption certificate to eligible persons for exemptions under RCW 82.08.900.

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