Washington Direct Farm Business Guide

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LEGAL DISCLAIMERS

This Guide is not intended as legal advice. It is not intended to, and cannot, substitute for sound legal advice from a competent, licensed attorney. Rather, it is meant to help farmers understand the many issues that must be considered when establishing and operating a direct farm business. There is more to farming than just growing crops and selling to customers. This Guide is intended to highlight the key legal considerations facing direct farm entrepreneurs and to direct readers to the experts and resources needed to help their operations develop on a sound and successful footing.

The legal information provided by this Guide is a general overview of the many laws and regulations that may be applicable to a direct farm business. The reader should never assume that the information contained herein applies to his or her specific situation without consulting a competent attorney in his or her home state. Further, though the authors have made every effort to ensure the accuracy of the information in this Guide, they cannot guarantee that all of it is correct. Laws, regulations, and guidelines can change at any given time, and the status of laws and regulations in the future cannot be predicted with any certainty. Therefore, every user of this Guide should at all times independently ensure that the legal information is up-to-date before using it in any way.

Any URLs provided herein are purely for the convenience of the user, and the authors of this guide disclaim any liability for the content of the referenced websites.

Finally, any opinions, findings and conclusions, or recommendations expressed in this Guide are those of the authors and do not necessarily reflect the view of the funding organization.

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INTRODUCTION

If you are reading this Guide, you are likely already familiar with the growing interest in local and regional food systems. Across Washington and the United States, consumers are increasingly seeking out food produced close to home, not only because they perceive it as fresher, healthier, and better tasting, but also because they value the broader benefits that local food systems provide.

Local farmers play a central role in these systems. By producing and marketing food directly to consumers, they help strengthen connections between communities and the sources of their food, increase transparency in how food is grown and handled, and contribute to the long-term stewardship of agricultural land. Direct farm businesses, whether selling at farmers markets, through community-supported agriculture (CSA) programs, or on-farm, create opportunities for producers and consumers to build relationships that are often absent in conventional supply chains.

Although consumer demand is a primary driver of expanding local food networks, policymakers have also recognized the role of direct farm businesses in strengthening food system resilience. In an era of supply chain disruptions, rising energy costs, and broader food security concerns, local and regional food systems are increasingly viewed as important components of emergency preparedness and community stability. At the federal level, the Farmer-to-Consumer Direct Marketing Act acknowledges the importance of direct farm businesses by supporting state level marketing programs and research into direct marketing practices (7 U.S.C. Chapter 63).

Local food systems provide important economic and community benefits. When consumers purchase food from local producers, a greater share of those dollars remains within the local economy, supporting farms, creating jobs, and contributing to rural and regional economic development. Direct marketing can also improve farm profitability by increasing the producer's share of the consumer food dollar, which is often reduced by intermediaries in conventional supply chains. At the same time, direct relationships with consumers can make farming more responsive, adaptable, and personally rewarding.

In Washington state, direct farm businesses play a particularly important role in a diverse and geographically expansive agricultural landscape. Washington farmers produce a wide range of products, from tree fruit, vegetables and grains to dairy, livestock and specialty crops, often in close proximity to rapidly growing urban and suburban populations. Direct marketing allows producers to respond to strong consumer demand for local food while navigating the state's unique land use, water, and regulatory environments. By connecting farmers with nearby communities, direct farm businesses support rural economies, promote the viability of working lands, and help preserve agriculture as an essential component of Washington's cultural, environmental, and economic identity.

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Despite these opportunities, operating a direct farm business can be challenging. Producers must navigate a complex set of laws and regulations that affect nearly every aspect of the business, from taxation and employment to labeling, processing, and facility requirements. These rules are administered by multiple agencies at the federal, state, and local levels, often with overlapping authority. Determining which laws apply, which agency has jurisdiction, and how to comply can be difficult, especially for new or expanding operations.

This guide is intended to address that challenge. It provides an overview of key legal requirements for direct farm businesses in Washington and identifies the agencies and resources that can assist producers in achieving compliance. By clarifying the regulatory landscape, the Guide aims to support a more accessible, resilient, and vibrant local food system.

I. USING THIS GUIDE

This guide is divided into two primary sections. Section I outlines rules that apply to all farming operations, regardless of agricultural products and marketing strategy. Section II is organized according to agricultural products. It is important to consider the information from both sections when constructing a business plan. Following are a few additional notes about the guide.

Legal-eze: Because this guide attempts to explain the law, the authors must use terms that have precise meaning to lawyers. Some of these terms are common English words, where the legal meaning is different or more exact than the common usage, and others are phrases based in Latin. The authors have attempted to explain specialty terms in the text but may not always do so. For the reader's convenience, there is a glossary of terms at the back of the guide.

Internet Links: Throughout this Guide, the authors have provided links to websites that provide additional information and resources on various topics. These online resources are highlighted in bold text or underlined. Internet links and resources do not always remain in one place, but the supporting documents referenced in this Guide are public, and an internet search on key terms can in some cases locate a broken link or its updated version or location.

Statutes and Regulations: Throughout the text, references to specific statutes or regulations are accompanied by citations in parentheses. The authors give these citations so that the reader can look up the exact language of the text. Citations also are a helpful starting point for searching the internet for more information or contacting the regulatory agency or an attorney. Below is an explanation of the most common citation formats and websites for locating the legal documents.

U.S.C. § ## are federal laws – otherwise collectively known as the U.S. Code. They can easily be accessed at **GovInfo | U.S. Government Publishing Office** (official site) or at http://www.law.cornell.edu/uscode/ (Cornell University). Three of the most common

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federal statutes cited in this book are the Tax Code, which is in Title 26; the Food, Drug and Cosmetic Act, which is in Title 21; and Agriculture, which is in Title 7.

- ## C.F.R. ### are regulations implemented by federal agencies. The IRS's regulations are in Title 26 and the FDA's regulations are in Title 21. The Department of Agriculture's regulations are divided between Title 7 and Title 9. GovInfo | U.S. Government Publishing Office

- RCW § ##.## refers to Washington state statutes contained in the *Revised Code of Washington*. The first set of numbers identifies the title, which generally corresponds to a broad subject area. The numbers that follow identify chapters and sections within that title. The Washington State Legislature provides free public access to the Revised Code of Washington through its website: Revised Code of Washington (RCW)

- WAC § ###-###-### refers to Washington Administrative Code regulations, which are developed by state agencies to implement and enforce statutes enacted by the Legislature. The full text of Washington Administrative Code rules is available through the Washington State Administrative Code website: Washington Administrative Code (WAC).

***Federal vs. State law*:** Federal and state law do not always impose the same requirements, and often one establishes stricter standards. Always comply with the strictest standards – the existence of a more lenient law does not excuse non-compliance with the other government's standards.

***Checklists and Further Resources*:** At the end of each chapter there is a short checklist of the important issues to consider and/or information on further resources.

II. Overview of Administrative Agencies

Before delving into the specifics of the laws and regulations, it may be useful to have a basic understanding of the state-federal regulatory system and which agencies have authority over what operations. The Constitution gives the U.S. Congress power to regulate any goods traveling in interstate commerce (i.e., goods that cross state lines). The U.S. Supreme Court has interpreted this to include regulatory power over activities that *affect* goods traveling in interstate commerce, even if those activities might take place completely within state lines. In addition, however, the Constitution allocates to the states the power to regulate everything not exclusively reserved for the federal government or protected by the Constitution. Therefore, states can impose additional regulations on items within their borders that are already subject to federal regulations, as well as regulate items and activities over which the federal government does not have authority. The one limit on this allocation of power is that federal law is supreme over state law, so if the federal law contradicts or is inconsistent with a state law, the federal law controls.

Federal Agency Rulemaking

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When Congress authorizes an agency to implement and enforce a statute, it delegates rulemaking authority to that agency. Agencies exercise this authority by promulgating regulations, which have the force and effect of law so long as they are consistent with the authorizing statute and adopted in accordance with the Administrative Procedure Act (5 U.S.C. §§ 551 et seq.) (APA), which establishes procedures for agency rulemaking and operation. The most common rulemaking is notice and comment, in which the agency issues a notice of proposed rulemaking in the Federal Register, receives comments from the public, and issues a final rule that takes into consideration the public's comments. The less common form of rulemaking is known as formal rulemaking, and requires a trial-like procedure with hearings, testimony, and decisions on the record. Whether developed in a notice and comment or formal rulemaking, all rules are published in the Code of Federal Regulations (CFR).

Agencies also use guidance documents to establish policies that help the agency interpret and apply its own rules. These documents are often called policy guides, technical information bulletins, or interpretive manuals. If not established through notice and comment or formal rule making, policies set forth in guidance documents are not binding upon the agency. Nonetheless, they help to guide and inform much of agency procedure, and many courts consider them to be persuasive evidence when determining the legitimacy or scope of an agency action.

State Rulemaking

Washington's Administrative Procedure Act, (RCW Chapter 34.05) governs the process by which state agencies adopt regulations, conduct administrative hearings, and issue orders. The Act establishes requirements for public notice, opportunity for comment, and judicial review of agency actions. Administrative rules adopted under the authority of the APA are published in the Washington Administrative Code (WAC), which is publicly available through the Washington State Legislature.

III. THE FOOD AND DRUG ADMINISTRATION'S FOOD CODE

Every four years, the U.S. Food and Drug Administration (FDA) publishes a model Food Code for use by state and local officials in regulating retail food sales and food service establishments. The purpose of the Food Code is to protect public health by providing regulators with a scientifically sound and nationally consistent legal framework for food safety regulation. States are not required to adopt the FDA Food Code; however, many states—including Washington—have incorporated the Code largely word-for-word into their regulatory systems.

Washington has adopted the FDA Food Code through the Washington Food Code, which is

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codified in the Washington Administrative Code and administered by the Washington State Department of Health through local health jurisdictions (WAC 246-215). While Washington has adopted the Food Code in large part, the state has also made modifications to reflect local policy choices and enforcement practices. As a result, some requirements in Washington may differ from the most current FDA model version.

Washington's adoption of the Food Code has several important implications for direct farm businesses. The FDA publishes extensive guidance documents, interpretation manuals, and scientific justifications to support the provisions of the Food Code. Because Washington's rules are closely based on the FDA model, many requirements enforced by local health inspectors—such as materials, equipment standards, or food handling practices—are rooted in FDA guidance and scientific risk analysis. When questions or concerns arise during inspection, consulting the FDA Food Code and related guidance materials may help producers better understand the purpose of a requirement or work collaboratively with inspectors to identify alternative approaches that meet Washington's food safety standards while accommodating farm-scale operations.

A second effect of the widespread adoption of the FDA Food Code is that it can promote greater consistency among state food safety regulations, which may ease regulatory transitions for some producers. Washington has adopted the Food Code through the Washington Food Code (WAC 246-215), and many other states have adopted similar versions of the same model regulation. Because the Food Code standardizes many core food safety principles, compliance with Washington's retail food requirements often places a producer in a strong position to understand and meet comparable requirements in other jurisdictions.

That said, engaging in interstate sales typically requires additional considerations beyond compliance with Washington's Food Code. Depending on the nature of the product and the method of sale, producers may need to comply with federal food safety regulations, obtain additional inspections or registrations, or meet destination-state requirements. Cottage food products and certain farm-direct sales authorized under Washington law may not be eligible for interstate commerce. Nevertheless, producers familiar with Washington's Food Code requirements will generally find the regulatory frameworks of other Food Code–adopting states to be recognizable and grounded in similar food safety principles.

IV. Washington's Agencies

Numerous agencies regulate agricultural production and marketing in Washington State, and the individual chapters of this guide address those agencies and requirements in greater detail. At a general level, however, the Washington State Department of Agriculture (WSDA) and the Washington State Department of Health (DOH) administer laws and regulations that apply broadly to food production, processing, and sales.

Although WSDA and DOH are the primary agencies regulating direct-to-consumer food

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sales in Washington, additional state and local agencies exercise important authority over different segments of the food system. These include local health jurisdictions, the Department of Ecology, and federal agencies such as the FDA and USDA.

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SECTION I: FARMING OPERATIONS

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CHAPTER 1: STRUCTURING THE BUSINESS

I. PLANNING THE DIRECT FARM BUSINESS

There are many types of direct farm businesses, including:

- Farmers market
- Roadside stand
- U-pick
- Agritourism
- Community Supported Agriculture (CSA)
- Farm to Institution (schools, hospitals, etc.)
- Selling Direct to Restaurants, Grocery Stores, or Food Cooperatives
- Food Hub
- Online Marketplace

A direct farm business may consist of one of these options, or a combination. For example, a farmer might sell products at the farmers market on Saturday and have a CSA. Or a farmer could run a U-pick pumpkin farm, a concession stand that sells foods made from pumpkins and offer bed and breakfast facilities to guests.

The type of direct farm business a producer chooses triggers different legal considerations. This guide seeks to give direct farm business owners a solid understanding of the legal implications of these different business models. There are many other considerations necessary to a successful business, including business planning, marketability of products, and access to markets. Although discussion of these topics generally is beyond the scope of this guide, the following are some resources that a producer may wish to read in order to develop or improve upon a business plan:

Online Business Planning Resources

Washington State Department of Agriculture — Regional Markets Program

The Washington State Department of Agriculture (WSDA) Regional Markets Program supports small, direct-marketing farms and food businesses in Washington (agr.wa.gov/farmfoodbiz). Program staff can help producers navigate regulations that apply to their product or business and can help them develop strategies for accessing local and regional markets. A key resource is the WSDA Handbook for Small and Direct Marketing Farms (also known as The Green Handbook). The handbook is a plain-language guide to the regulations that apply to operating a farm or food business generally, as well as to the regulations that apply to selling specific agricultural products. The guide also provides strategies and information about direct market opportunities in Washington.

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Business Planning Assistance *The U.S. Small Business Administration (SBA) administers the overall SBDC program while implementation of each state program rests with the SBDC State Director and the participating organizations within the state. The Washington Small Business Development Center (SBDC) provides free, confidential business advising and training to help entrepreneurs start, manage, and grow small businesses. Services are available statewide, and can be found here: Locations | SBDC*

The Guide to Direct Farm Marketing*, published by The National Sustainable Agriculture Information Center (NSAIC), through the Appropriate Technology Transfer for Rural Areas (ATTRA) program, details several direct farm business alternatives, including case studies, and provides resources for further reference. The guide is available at directmkt. NSAIC publishes a wealth of other resources that can guide you in marketing, business planning, and risk management, available through their website at Business and Marketing – ATTRA – Sustainable Agriculture.*

II. Choosing a Business Entity

One of the first steps in establishing any business is deciding the business type – that is, the formal legal structure under which the business will operate. Typical farm business entities include the sole proprietorship, partnership or limited partnership, corporation (for-profit or nonprofit), S-Corporation, limited liability company (LLC), and cooperative.

Although this section touches on the tax implications of business form choice, the subject is discussed in more detail in the "Taxation" chapter of this Guide. Because the law treats certain forms of businesses differently than others, *the following generalized information should not be considered a substitute for consulting with a qualified attorney and/or accountant prior to choosing a business form.* Consulting with a professional is important because the entity selected affects potential tax and legal liabilities, as well as business succession and estate planning. In addition, each form varies as to setup cost and complexity.

For those interested in learning more detail about entity choices for the farm business, the National Agricultural Law Center's *An Overview of Organizational and Ownership Options Available to Agricultural Enterprises Part 1* and *Part 2* are helpful in understanding the legal and tax implications of the various business entities.

Finally, many business entities must file registration paperwork with the Washington Secretary of State before filing the Business License Application. The forms necessary for forming entities and schedules of fees are available through the Secretary of State's website, Corporations & Charities | WA Secretary of State, or by calling the Washington Secretary of State Corporations & Charities Division at (360) 725-0377. In many cases, the Secretary of State provides for online registration and payment of fees. Use the Washington State Department of Revenue Business Licensing Wizard to determine the Washington state endorsements that may be required for your business.

Direct farm business owners often adopt an "assumed name" for their business (e.g., Sunnyside Farm) when they do not wish to conduct the business in their real names (e.g.,

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Jane and John Doe Farm). In Washington, any individual or entity that does business in Washington under or through a trade name must register it (RCW 19.80.010). The trade name registration form can be found on the Washington State Department of Revenue website.

Sole Proprietorship

The sole proprietorship is a business owned and operated by one individual or married couple in business alone. The entity forms automatically when an individual begins operating his or her own business. Due to the automatic formation and ease of administration, the majority of farms are owned as sole proprietorships.

Under a sole proprietorship, the law treats the owner and the business as one and the same. This makes the owner personally responsible for the business' *legal* and *tax* liabilities. Therefore, a creditor of the business can force the owner to sell personal assets in order to pay off the business' debts; on the other hand, assets from the business may be used to satisfy personal debts - an action normally prohibited in most forms of business entities. Additionally, the individual owner is taxed personally on the profits generated by the sole proprietorship—this makes filing taxes somewhat easier because no separate tax filing is necessary.

A. Corporations

Corporations formed or operating in Washington are governed by the Washington Business Corporation Act, RCW Title 23B. A corporation is formed by filing articles of incorporation with the Washington Secretary of State. This Washinton Secretary of State website provides detailed filing instructions. The articles of incorporation dictate the management of the corporation's affairs and outline the issuance of shares to shareholders. A board of directors manages the business, while the shareholders own (and thus finance) the business.

The corporate form is advantageous in some respects because it is a separate legal entity from its owners, such that the owners are not personally liable for the corporation's liabilities and debts. On the other hand, incorporation is time-consuming and expensive due to the paperwork and filings required by the statute. Further, there are many statutory and administrative formalities that *must* be followed when operating the corporation. Owners that fail to follow these formalities may lose personal liability protection. Finally, corporations are subject to "double taxation" whereby the government taxes the corporation on its profits and the owners/shareholders pay individual income tax on profits distributed as dividends.

The Internal Revenue Service Code classifies corporations as either "Subchapter C-Corporations" or "Subchapter S-Corporations." The IRS considers all corporations C-Corporations unless shareholders elect S-Corporation status. Electing Subchapter-S status with the IRS, if certain requirements are met, may avoid this double taxation problem.

S-Corporations

As noted above, corporations in Washinton are formed and governed under the Washington Business Corporation Act, RCW Title 23B. Washington does not have a separate state statute

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that "creates" or authorizes S-corporations as a distinct entity type. Instead, Washington recognizes federal S-corporation status through its tax statutes, by reference to a corporation's valid election under the Internal Revenue Code. S-corporations elect to pass corporate income, losses, deductions and credit through to their shareholders for federal tax purposes to avoid double taxation. A corporation elects S-Corporation status with the IRS by filing Form 2553. Only after the IRS accepts the registration may the corporation file its Federal taxes as an S-Corporation. Although avoiding double taxation is appealing, an S-Corporation can be difficult to establish due to many restrictions. All shareholders must agree to the S-Corporation status. All shareholders must be U.S. citizens or resident aliens and only individuals, estates, certain exempt organizations, and certain trusts can be shareholders. The S-Corporation must be a U.S. company. Finally, an S-Corporation may only have one class of stock with limitations on the type of income received.

The primary advantages of an S-corporation include the personal liability shield and the absence of double taxation. Primary drawbacks include the difficulty and expense of incorporation, the need to maintain statutorily mandated formalities, and registration restrictions.

B. Partnerships

A ***partnership*** (also known as a ***general partnership***) is an association of two or more persons who combine their labor, skill and/or property to carry on as co-owners of a business for profit. The Washington Uniform Partnership Act governs the formation of partnerships in Washington (RCW Title 25.05) . There are no formal requirements for formation of a partnership, and one can be formed by default if more than one person is carrying on a business. The entity itself is not taxed, but instead tax liability passes through to the partners in pro rata shares. Partnerships, like corporations, exist in several different forms (discussed below).

The primary disadvantage to a partnership form is that each partner is an agent of the partnership and can bind the partnership. Moreover, all partners are *personally* liable jointly and severally for the debts and obligations of the partnership. This means that if the partnership lacks the assets to pay the debts, creditors may force the partners to pay the partnership's debts out of their personal assets. If one partner has no personal property, creditors can force the other partners to personally pay the full debts of the partnership, even if they were not personally responsible for the debt. If this happens, the partner who paid can sue the other partner to recover their fair share; however, this is not a desirable situation for the partnership. Another disadvantage is that if one partner dies or leaves, the partnership may dissolve. Partnership shares, therefore, are not freely transferable and create special concerns for both business succession and estate planning. Despite these limitations, partnerships are a common form of business organization, especially among family members, due to their simplicity and tax status. From a liability perspective, however, other forms of partnership may be more desirable.

Limited Partnerships

Limited partnerships (LP) address the problem of exposure of the partners to unlimited personal liability by separating the partnership into two classes-- general partners, who

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remain personally liable for the partnership's obligations, and limited partners, who possess the same personal liability protection as the shareholders of a corporation. Although the limited partners are shielded from personal liability, the *partnership* remains liable for the actions of the general partner's wrongful act or omission, or other actionable conduct.

The Washington Uniform Limited Partnership Act (RCW Title 25.10) governs the formation of limited partnerships in Washington. Among the requirements for formation and operation of an LP is a filing a certificate of limited partnership with the Washington Secretary of State.

One of the benefits of an LP over a corporation is that partners may deduct their partnership losses for taxation purposes up to the extent of their investment, which is not available to corporation shareholders. Limited partnership interests in personal property are freely transferable.

Limited Liability Limited Partnerships

Washington does not have a separate statute for limited liability limited partnerships *(LLLPs)* Instead, LLLPs are expressly authorized and governed within RCW 25.10 as a form of limited partnership that has elected limited liability status for general partners. Unlike in the LP, in the LLLP, the general partner is not personally liable for obligations of the partnership solely because of their status as a general partner. The liabilities of the LLLP are the partnership's alone – similar to a corporation.

The LLLP must file the same certificate with the Department of State as an LP but must include a statement that the partnership is a limited liability limited partnership in the certificate of limited partnership.

Limited Liability Partnership (LLP)

Limited liability partnerships in Washington are governed by the Washington Uniform Limited Liability Partnership Act (RCW Title 25.05). General partners in an LLP are shielded from *personal* liability for the debts and obligations of the partnership, regardless as to how the debt or obligation is created. The *partnership* remains jointly and severally liable, however, for a partner's wrongful act or omission, or other actionable conduct, if the partner is acting in the ordinary course of business of the partnership or with authority of the partnership. This liability shield for partners is one important benefit of the LLP over the general partnership form. To form an LLP, the partnership must file a registration with the Washington Secretary of State following the rules set forth in RCW 25.05.500.

Limited Liability Company (LLC)

Limited liability companies in Washington are governed by the Washington Limited Liability Company Act (RCW Title 25.15). One or more persons must execute a certificate of formation and submit it to the Washington Secretary of State for filing.

An LLC is advantageous because the form enjoys the benefits of both the LP and a corporation. Members of an LLC have limited liability against claims and debts of the LLC and the favorable pass-through tax treatment of an LP. Yet they have more management

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flexibility because they can elect to manage the corporation themselves or designate managers through the articles of organization.

LLCs, LLLPs, and LLPs are all very similar in that they provide liability shields for all the owners and managers, beneficial tax status, and flexible management options. The primary difference is how they are created, but depending on the specifics of the direct farm business one model may offer greater benefits than the others. Hence, it is important to speak with an attorney or a tax specialist when deciding to form a business.

C. Cooperatives

A cooperative is a user-owned and controlled business that generates benefits for its users and distributes these benefits to each member based on the amount of usage. Common reasons for forming agricultural cooperatives include improved marketing or access to markets and increased efficiency in delivering to markets.

The Washington Cooperative Association Act (RCW Title 23.86) governs the formation and operation of cooperative associations, including incorporation and governnance, member rights and voting, patronage distributions, and cooperative purpose and structure. A complete anaylsis of Agricultural Cooperative Formation in Washington can be found here: WA-Coop.pdf.

Cooperatives can be complex to establish and operate because they require coordinating numerous individuals. Moreover, there are several legal documents necessary to running an effective cooperative, including: an organization agreement securing financial commitments and patronage; articles of incorporation to be filed in accordance with the provisions of general corporation law; bylaws governing the management of the cooperative; marketing agreements between the cooperative and its members; and membership applications. The details of operating a cooperative are beyond the scope of this guide, but there are several online publications available on the legal aspects of cooperatives, as well as general information on starting a cooperative:

- USDA Rural Development Publications for Cooperatives
- USDA Rural Development Cooperative Programs
- *The Farmer's Legal Guide to Producer Marketing Associations* by Doug O'Neil, D. Hamilton, and Robert Luedeman.
- USDA, *Cooperative Marketing Agreements: Legal Aspects*, July 1992.

III. LOOKING TO THE FUTURE: ESTATE PLANNING

Estate planning may not seem like an important component of managing a direct farm business, but it is critical for farmers who wish to keep the farm in the family for future generations. Without an estate plan, the estate will have to go through probate court, which means that it may take years to settle the distribution of land and assets among heirs

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and creditors. Meanwhile, younger generations may not be able to make business decisions or plant the crops necessary to continue the operation. The probate court also applies a set of default rules for distribution that may not be beneficial for the business or the family's wishes: For instance, if the farm has been used to secure equipment, land may be sold off to pay debtors instead of passed down to children, even though there may be other ways to satisfy the debts. Estate planning is highly personal because it involves decisions concerning family and wealth distribution. This guide cannot provide comprehensive information on estate planning; rather, business owners are strongly encouraged to contact an attorney to develop an estate plan.

IV. CHECKLIST

Have you…?

- Consulted with an attorney or accountant regarding business entities? Will you be comfortable with the liability protection that the entity offers? Will your choice of business entity require any registration or ongoing paperwork?
- Considered estate planning for your farm?

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CHAPTER 2: SETTING UP THE DIRECT FARM BUSINESS

After finalizing a business plan and selecting an appropriate business entity, direct farm businesses must turn to the practical steps necessary to begin operations. These steps typically include securing a suitable site for the business, obtaining all required permits, licenses, and registrations from state and local authorities, and ensuring that the operation is adequately insured. Careful attention to these foundational requirements is essential to establishing a compliant and sustainable direct farm enterprise.

I. SITING

County zoning laws, environmental regulations, water rights, and potential nuisance claims are important considerations in choosing where to site a farm and may affect what activities are allowable on the land.

A. County Zoning

The principal state statute governing zoning and land use planning in Washington is The Growth Management Act (RCW 36.70A), which requires certain counties and cities to adopt comprehensive plans and requires adoption of development regulations, including zoning ordinances, to implement those plans. The act also establishes mandatory planning goals, including agricultural land protection.

The Washington Growth Management Act encourages innovative zoning techniques to conserve agricultural lands by limiting nonagricultural uses to land with poor soils or otherwise not suitable for agricultural purposes (RCW 36.70A.177). Whether a specific farm activity is allowed is determined by local zoning ordinances adopted under this statute. Because zoning is adopted at the local level, farmers must look to county or city ordinances to determine what agricultural activities are allowed on a specific property. Most counties and cities publish their zoning ordinances online and they may also be accessed by contacting the county or city planning department. Owners may wish to consult with a local lawyer who is knowledgeable about property law.

B. Nuisance Law and Right to Farm Statutes

Farming operations, whether through generation of odors, dust, smoke, or even noise can in some circumstances have a significant impact upon surrounding land. As a result, direct farm business owners should be aware of two related legal issues when selecting a site and planning production or processing activities: nuisance law and Washington's Right to Farm statutes.

Under Washington law, a nuisance is broadly defined as an act or condition that is "injurious to health," "indecent or offensive to the senses," or that "obstructs the free use of property" (RCW 7.48.010). Absent statutory protection, agricultural activities could be subject to nuisance claims under this general standard.

To address this concern, the Washington legislature enacted a series of provisions commonly referred to as the state's Right to Farm law (RCW 7.48.300 – .310 and 7.48.905. These statutes

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are intended to limit nuisance claims against agricultural operations under certain conditions.

The core protection is established in RCW 7.48.300, which provides that agricultural activities conducted on farmland are presumed to be reasonable and do not constitute a nuisance if they are consistent with good agricultural practices and were established prior to surrounding non-agricultural uses.

This presumption reflects a legislative policy choice to protect existing farms from conflicts arising from encroaching development. However, the protection is not absolute. The presumption may be overcome if the agricultural activity has a substantial adverse effect on public health and safety. Additional provisions within RCW 7.48.305-.310 further define the scope and application of these protections, while RCW 7.48.905 sets forth legislative findings emphasizing the importance of preserving agricultural land and supporting the continued viability of farming in Washington.

II. Registration and Permits

A. Food Facility Registration

The Federal Food, Drug and Cosmetic Act (FDCA) requires most facilities that manufacture, process, pack or hold food for human or animal consumption in the United States to register with the U.S. Food and Drug Administration (FDA) before beginning operations (21 U.S.C. § 350d). This requirement applies broadly to food facilities, but does not apply to facilities that are regulated exclusively by the USDA, such as those handling meat, poultry, or certain egg products. Facilities that fail to register when required may be subject to civil penalties or criminal enforcement.

However, several important exemptions apply. Farms, retail food establishments, restaurants, nonprofit food facilities, fishing vessels, and facilities regulated entirely by USDA are generally not required to register (21 C.F.R. §1.226). As a result, many direct farm businesses fall within one or more of these exemptions.

Whether a particular operation qualifies for an exemption depends on how it is defined under FDA regulations (21 C.F.R. § 1.227). Because these definitions can be technical (particularly the distinction between a "farm" and a "facility") producers should review FDA guidance carefully.

The FDA has published a Small Entity Compliance Guide that explains who must register, the available exemptions, and how to complete the registration process.

Many questions arise about whether a facility qualifies for an exemption under these definitions. FDA considers some facilities "mixed-type" that require registration. For example, a Washington apple grower harvests apples from their orchard and then presses the apples into fresh apple cider for sale at a grocery store or distributer. Harvesting apples is a farm activity, but pressing apples into cider is considered manufacturing/processing. Because the cider is processed for consumption off the farm and sold to businesses rather than directly to consumers, the operation does not qualify for the farm exemption and does

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not qualify as a retail food establishment. In this scenario, the facility would be required to register with the FDA as a food facility.

By contrast, if the same apple grower presses apples into cider and sells the cider directly to consumers at a roadside stand, farmers' market, or through a CSA, the operation may qualify for the retail food establishment exemption, because the primary function of the operation is selling food directly to consumers.

The FDA has published a guidance document that contains a long list of questions and answers regarding whether an exception to registration applies. Businesses that are uncertain whether they must register should contact an attorney or the FDA help line at 1-800-216-7331.

The Food Safety Modernization Act (FSMA) enacted January 4, 2011, amended section of 415 of the Federal Food, Drug and Cosmetic Act to expand FDA's food facility registration requirements. As amended, section 415 requires food facilities subject to registration to submit additional registration information to FDA, including an assurance that FDA is permitted to inspect the facility as authorized under the FDCA. They are also required to renew FDA registration biennially and comply with expanded FDA oversight and enforcement authority.

FSMA also authorizes FDA to suspend a food facility's registration in certain circumstances. FDA may suspend registration if it determines that food manufactured, processed, packed, received, or held by the facility has a reasonable probability of causing serious adverse health consequences or death to humans or animals, and that the facility created, caused, or was otherwise responsible for that reasonable probability; or knew, or had reason to know, of the reasonable probability and packed, received, or held the food. A facility with a suspended registration may not legally introduce food into interstate commerce while the suspension is in effect. The FDA maintains a webpage that contains step-by-step instructions and tutorials for completing the registration process.

Washington State Laws and Regulations

Washington regulates food facilities through a combination of state licensing and local permitting, depending on the type of activity involved. In general, food processing and manufacturing activities are governed by the Washington Food Processing Act, implemented through WAC 16-165 and require a license from the Washington State Department of Agriculture (WSDA) unless a specific exemption applies (RCW 69.07).

In contrast, retail food establishments and food service operations (such as commercial kitchens and prepared food vendors) are governed by The Washington Food Code, implemented through WAC 246-215. These operations are typically permitted and inspected by local health jurisdictions.

Certain direct-to-consumer food businesses may qualify for alternative licensing under the Washington Cottage Food Act, which allows certain low-risk foods to be produced in a home kitchen and sold directly to consumers (RCW 69.22). This will be explored in more depth in the Section II of this guide.

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Understanding which system applies is essential, as different licensing, inspection and compliance requirements apply depending on whether a business is engaged in processing food or selling it directly to consumers.

B. Federal and State Environmental Regulations

Another set of permitting issues a farmer might encounter are environmental permits and regulations. Environmental permitting is very complex and individualized because multiple agencies may have regulatory authority depending on the surrounding environment and potential pollutants involved. This section gives a brief overview of some of the most common issues; however, it is not comprehensive. Federal environmental statutes also may apply to agricultural operations, such as the Endangered Species Act and the Safe Drinking Water Act. For information and links to federal environmental laws and regulations, visit the EPA's Laws and Regulations that Apply to Your Agricultural Operation by Farm Activity | US EPA

Animal Waste Management

In Washington, animal waste management is regulated through a combination of federal and state law, including the federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.), the Washington Water Pollution control Act (RCW 90.48), the Dairy Nutrient Management Act (RCW 90.64), implementing regulations adopted by the Washington Department of Agriculture (WAC 16-611), and state and federal discharge permitting programs administered by the Department of Ecology (WAC 173-216/ WAC 173-220). Certain animal waste handling and disposal activities may also be subject to the Washington Solid Waste Management Act (RCW 70A.205). The table below lists authority for each activity:

Topic	Washington Authority
Water pollution from animal waste	**RCW 90.48** (Water Pollution Control Act)
Nutrient management planning	**RCW 90.64** (Dairy Nutrient Management Act) and **WAC 16-611**
Animal waste causing health hazards	**WAC 246-203-130**
Water quality standards	**WAC 173-201A / WAC 173-200**
Solid waste considerations (digesters)	**WAC 173-350-250** (solid waste handling exemptions)

The Clean Water Act (CWA) requires facilities that house large numbers of animals and discharge into waters of the United States to obtain permits under the National Pollutant Discharge Elimination System (NPDES). Washington regulates water pollution from animal operations through two distinct permitting programs, both administered by the Washington Department of Ecology. As noted above, NPDES permits are required under the federal Clean Water Act for facilities that discharge pollutants directly to waters of the United States, such as rivers, streams, lakes or marine waters (WAC 173-220). These permits are issued by the Washington Department of Ecology under delegated federal authority (33 U.S.C. Sec 1342). The second permitting program is state waste discharge permits, which are required

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under state law for facilities that discharge wastewater or pollutants to the ground or to waters of the state in a manner that does not qualify as a direct discharge to waters of the United States. This includes certain land application for indirect discharge scenarios (RCW 90.48; WAC 173-216). Which permit applies depends on where and how the discharge occurs. Some facilities may require only one type of permit, while others may be subject to both programs depending on their activities.

The Clean Water Act requires landowners to obtain permits from the Army Corps of Engineers to discharge dredge or fill materials into waters of the United States (33 U.S.C. § 1344). These permits, commonly referred to as Section 404 permits, may be required for activities such as filling wetlands or altering streams. The Clean Water Act exempts normal farming, silviculture, and ranching activities that are part of an established, ongoing operation, provided the activity does not bring an area into a new use or impair the flow or circulation of waters. Note that the scope of "waters of the United States" (WOTUS) under the Clean Water Act has been significantly narrowed by recent Supreme Court decisions (Notably *Sackett v. EPA* (2023). Whether a wetland is jurisdictional now depends on a continuous surface connection to traditional navigable waters. For updates on the definition of WOTUS under the Clean Water Act, farmers and advisors should monitor the EPA's official WOTUS webpage, which consolidates current rule status, proposed revisions, fact sheets, and implementation materials. Official rulemaking documents and public comments can be accessed through Regulations.gov at the WOTUS docket.

In Washington, farm construction or land-altering activities may also require state permits even when a federal Section 404 is not required. Projects affecting streams or rivers may require a Hydraulic Project Approval from the Washington Department of Fish and Wildlife under RCW 77.55.021. Additional requirements may apply under the Water Pollution Control Act, RCW 90.48, or the Shoreline Management Act, RCW 90.58, depending on location or activity.

Pesticide Regulation

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. Sec 136 et seq.) requires EPA to register pesticides sold or distributed in the U.S. Registered pesticides are subject to labeling requirements, and pesticide use must comply with labeling directions. FIFRA also establishes applicator training and certification requirements and authorizes the federal Worker Protection Standard, implemented through EPA regulations at 40 CFR Part 170.

In Washington, pesticide sale and use are regulated under the Washington Pesticide Control Act, RCW 15.58, which is administered by the Washington State Department of Agriculture (WSDA). This statute and its implementing rules require licensing or certification for many pesticide applicators and regulate pesticide registration, sale, and use (WAC 16-228). Washington enforces worker protection requirements for agricultural pesticides through state rules implementing the federal Worker Protection Standard (WAC 16-233).

Farmers using pesticides should consult WSDA to determine whether applicator licensing, certification, or training is required for the pesticides they use. regardless of licensing status,

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pesticide users must always follow label directions, which are legally enforceable under both federal and state law.

Environmental Incentives Programs

There are numerous state and federal programs that provide financial and technical assistance to farmers who wish to participate in certain conservation practices. Providing detailed explanations of how all the programs work is beyond the scope of this guide. The programs generally work by requiring the farmer to enroll their lands or sign a contract for a certain number of years. In exchange for implementing certain practices (or sometimes building structures), the farmer receives annual payments or technical assistance from the various agencies. A farmer's lands will probably need to be approved as eligible for the program (i.e., capable of furthering the program's purpose or priority goals) and will be subject to inspection to ensure ongoing compliance with the program. For more information on the federal programs, call or visit your local USDA Service Center. A directory can be found here. You can also find information on the USDA Natural Resource Conservation Service webpage, and the USDA Farm Service Agency Conservation Reserve Program webpage, and the National Agricultural Law Center Reading Room on conservation programs.

Another program that direct farm businesses may wish to in participate in is the National Organic Program. Under this program, once a farm has been certified as organic, it can place the official USDA Organic label on its products. For more information on Organic certification, see the "Organic Marketing" chapter of this Guide or the NALC Reading Room on the National Organic Program.

III. INSURANCE

Business Liability and Property Insurance

In order to best determine the insurance needs of a direct farm business, it is a good idea to start with a visit to a qualified insurance agent - preferably one who is familiar with how direct farm businesses operate. Farmers should be prepared to explain their operation in detail and may wish to compare proposals from multiple insurers.

Common types of insurance for direct farm businesses include premises liability, worker's compensation, property coverage, product liability, motor vehicle, crop insurance, and casualty insurance covering goods in transit.

Some of these insurance needs may be incorporated into a basic farm insurance policy, where others require endorsements or separate commercial policies depending on the scale and nature of the operation. Coverage can include losses to the farm dwellings and outbuildings, personal property (including tractors and other equipment), and premises liability arising from some incidental on-farm business operations. Depending upon the scale of the operation and the particular insurance company, roadside farm stands and U-pick enterprises may be covered under incidental business operations in the basic farm insurance policy. Agritourism, petting zoos or seasonal farm festival activities generally are not considered incidental farm business operations for insurance purposes and will

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require specific endorsements. Insurance field agents may review all of the above mentioned operations and require implementation of best management practices to eliminate or reduce potential risks in the operation.

Product liability arising from raw/unprocessed farm-grown products usually falls under basic farm insurance policies. This would include unprocessed items sold at road side stands or farmers markets. Once the product is transformed to a processed good, however, the basic farm policy may not cover injuries arising from consumption of the product. For example, a farm insurance policy may cover milk from a dairy operation, but not an artisanal cheese produced on-farm. A general commercial insurance policy would likely fill the gap in insurance in this instance. Similarly, an on-farm business with a commercial scale kitchen would not likely qualify as "incidental" to the farm operation, but rather a commercial undertaking with particular insurance coverage needs.

In Washington, certain insurance coverage is legally required. Most agricultural employers must provide worker's compensation coverage under the Industrial Insurance Act (RCW Title 51). Motor vehicles operated on public highways must carry liability insurance (RCW 46.30.020). Farms engaging in agritourism may receive limited liability protection under RCW 4.24.830-835, but that does not eliminate the need for liability insurance. Product liability exposure for food products is governed by the Washinton Product Liability Act (RCW 7.72), which imposes strict liability and may affect insurance needs, particularly for processed foods.

Because insurance requirements and availability vary by activity, insurance planning should occur early in the business development process. Lenders and wholesale buyers may require proof of insurance as a condition of financing or sales. Farmers should consult both an insurance professional and legal counsel to ensure adequate coverage and risk management.

Crop Insurance

Crop insurance is authorized under the Federal Crop Insurance Act (7 U.S.C. Sec 1501 et. seq.), which provides insurance coverage for losses resulting from natural disasters, adverse weather, and other specified causes. Coverage may include yeild losses, revenue losses, prevented planting, and certain quality losses (policy specific). The type and availabilty of coverage depend on crop type, geographic area, farming practices, and policy election. Common categories of federal crop insurance policies include yield based policies, revenue based policies, and whole farm revenue protection. Eligibility, coverage limits, and reporting requirements vary by policy and must be confirmed with an approved insurance provider. Although not legally required, crop insurance may be required by lenders as a condition of financing. Crop insurance programs are partially subsidized by the federal government.

Diversified and direct-market farms that grow multiple crops or sell primarily through direct-to-consumer channels may be eligible for Whole-Farm Revenue Protection (WFRP) or the Micro Farm insurance program. These policies insure farm revenue rather than individual crops, which can make them more suitable for operations with diverse production or marketing strategies. The Micro Farm program, a streamlined option within WFRP, is designed for smaller, diversified farms and offers simplified recordkeeping and coverage based on historic farm revenue. Micro Farm policies are available to farms that meet

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eligibility criteria and revenue limits established by USDA. Coverage levels, revenue caps, and documentation requirements are set by federal program rules. Because program terms may change, farmers should consult with an approved crop insurance provider to confirm current eligibilty requirements and coverage limits. Information including policies, handbooks, factsheets, interpretations of procedure, and frequently asked questions can be found on the USDA Risk Management Agency Website.

To find an agent who can sell Micro Farm or WFRP in Washington, go to the RMA Agent Locator and enter your ZIP code or city/state. Under Agent Emphasis, select Whole Farm/Micro Farm. A list of local agents will come up. When you meet with an agent, be prepared to discuss your farm structure and revenue sources, historic gross revenue, list of enterprises (vegetables, fruit, cut flowers, livestock, etc.), approximate acreage per enterprise, marketing channels (direct-to-consumer, wholesale, CSA, farmers markets).

Under USDA's Risk Management Agency policies for WFRP and the Micro Farm Program, beginning farmers and ranchers are eligible for special benefits that make revenue-based crop insurance more accessible. Producers meeting the statutory definitions of beginning farmer or rancher status may receive enhanced premium subsidies, waivers of administrative fees, and the ability to use another producer's farm records to establish expected revenue when they have materially participated in the operation.

IV. CHECKLIST

Have you?

- considered where you want to locate your business?
- reviewed applicable zoning laws in your area?
- looked into registration and permitting requirements?
- researched insurance options and costs?

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CHAPTER 3: MANAGING AND MARKETING THE DIRECT FARM BUSINESS

Successfully managing a direct farm business involves navigating a wide range of legal and operational issues. Some areas, such as taxation and employment, are complex enough to warrant their own chapters in this Guide. This chapter focuses on several additional aspects of business management that are equally important to long-term success.

First, contracts play a central role in direct farm operations and are governed by a variety of laws, many of which are designed to protect farmers from unfair practices. In addition, effective marketing is essential for reaching customers and selling products. A marketing strategy may include online sales, participation in direct markets, and agreements with buyers, as well as the use of intellectual property such as business names and branding.

Once products are offered for sale, producers must also comply with laws governing weights and measures to ensure that products are accurately presented to consumers. Finally, long-term planning is an important component of farm management. Estate and succession planning can help ensure a smooth transition of the business and preserve the operation for future generations.

I. CONTRACTING

Contracts are an integral part of every business. Contractual agreements can take many forms: some are small cash transactions and others are detailed documents resulting from lengthy negotiations. Regardless of the type of direct farm business, there are basic contract principles that owners and managers should know to assist in running a smooth operation and for protecting business interests.

A. General Contract Law

A contract is an agreement between two or more competent parties to exchange something of legal value. There are three basic elements of a valid contract: an offer, acceptance, and consideration. An offer is a committed and definite proposal that is sufficiently communicated to others. Acceptance is communicated when a party agrees to the exact proposal in the offer using clear and unequivocal terms. Consideration is an explicitly bargained for benefit or detriment that has legal significance. This could be money, land, crops, or even a promise to provide products in the future.

The Uniform Commercial Code (UCC) is a uniform set of laws adopted in every state in order to facilitate interstate commerce. The American Law Institute and the National Conference of Commissioners on Uniform State Laws develop the UCC, and then each state subsequently adopts it with any minor variations the state deems necessary for its local

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needs. Washington has adopted the UCC in Title 62A of the Revised Code of Washington (RCW 62A).

The UCC covers a broad array of commerce issues, such as the rights and duties of creditors and debtors, how loans can be transferred between varying parties, and standards for forming and interpreting leases. Farmers need to be aware of the UCC, especially with regard to sale of goods, because it establishes unique rules for commercial transactions. Specifically, it defines when a contract is formed between two merchants, sets standards for how contract terms are interpreted, provides default terms to cover contractual omissions, and defines what remedies are available if the contract is breached. It is important to note that these UCC rules are the default law that courts will apply if contracting parties do not come to an agreement or fail to include a term in their agreement. However, businesses are free to negotiate alternative terms for their contract. The following discussion covers several relevant provisions of the UCC.

Oral Contracts, Written Contracts – Which One?

A contract does not necessarily have to be in writing in order to be binding and enforceable. In fact, many contracts are oral contracts, where no writing ever exists. Generally, creation of a contract requires an offer and an acceptance, and there must be performance in the form of mutual exchange of consideration. Small direct farm sales, for example most roadside stand cash transactions, are usually oral contracts. When a farmer sets up a stand and communicates the availability of his or her product in some way at a certain price, he or she makes an *offer*. By agreeing to pay the purchase price, the consumer *accepts* the offer, forming an enforceable contract. The *consideration* is the product the farmer provides and the money the customer pays. The contract is *performed* (and thus complete) when the farmer receives the money, and the customer receives the product. In most cases, oral contracts are binding and enforceable—just like a written contract. There are instances, however, where a contract must be in writing to be enforceable.

As early as the 1600s, people recognized that certain contracts are particularly susceptible to misrepresentation. Responding to this, the English Parliament adopted what is known as the "statute of frauds" to require that fraud-prone contracts must be in writing to be enforceable. Following this English tradition, every state in the Union has adopted a version of the statute of frauds. The Washington statute (RCW 19.36.010) lists a number of circumstances specifically requiring a written contract, but the ones most relevant to farmers are contracts that will take more than one year to perform, including leases of land that will last more than a year, and sales of real property. Not in the statute of frauds, but related to it, the UCC requires contracts for the sale of goods totaling $500 or more to be in writing.

Contracts lasting more than a year can present themselves in many different forms. For example, a contract to sell grain could have an execution date that is more than a year away, making it fall within this section of the statute. The statute only applies to contracts that one cannot possibly perform within one year. The mere possibility that a contract will take longer than a year to perform does not force it into the statute of frauds. So, for example, a contract to sell the milk of an animal for the rest of its life would not fall within the statute because there is no guarantee that the animal will live longer than one year. Many community supported agriculture (CSA) contracts might fall within this provision of the statute of

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frauds. For example, an agreement to receive delivery on produce through the end of the next year may or may not fall within the provision, depending on the timing and terms of the contract. If the agreement requires taking delivery at a date that is more than one year away, it must be in writing to be enforceable in court. If the contract is set up in a way that could potentially last over a year but could also be completed within a year under certain circumstances, it does not fall within this provision of the statute of frauds.

The statute provides a slightly different rule for contracts between merchants. If both parties to a contract are merchants, an oral contract that would otherwise have to be in writing under the statute of frauds is binding if a confirmation of the oral contract is sent in writing within a reasonable time and neither party *objects* within ten days after the writing is received (RCW 62A.2-201(2)). Washington law defines a merchant as a person who deals in a particular good or by occupation holds themselves out as having knowledge or skills related to the goods involved in a transaction (RCW 62A.2-104(1)).

It may also be useful to understand what constitutes a "writing." To be enforceable under Washington law, a written contract must be signed by the party against whom enforcement is sought or by someone authorized to sign on that party's behalf. The party seeking to enforce the contract does not necessarily have to have signed it. A writing may omit terms or include terms that differ from what was orally agreed upon and still satisfy the statute of frauds. Once a final written contract exists, prior or contemporaneous oral agreements generally may not be used to contradict its terms (RCW 62A.2-201; RCW 62A.2-202).

Although there are times when an oral contract will be enforceable, it is *always* a good business practice to put contracts in writing. Doing so protects legal interests and avoids potential disagreements that can lead to a negative business reputation and possible legal battles. When preparing a written contract, it is important to be thorough and accurate. At the bare minimum, the contract should contain the identities of the parties, what item is being contracted for, including quantities and a clear description including quality standards, the negotiated price, and when performance is expected. It might also include ways the contract can be cancelled and what remedies each side will have if the other fails to perform. Contradictory oral statements made during negotiations will not override the terms contained in a written contract. Taking the time to prepare a well-crafted written document will increase the security of each side's interest in the contract, reduce the chance of unmet expectations due to ambiguity, and create a tangible record in case any problems do arise. Regardless of the dollar amount or the time involved in a contract, it is advisable to have an attorney at least review any important contract before signing it.

Excused Contract Performance

Sometimes one or both parties break one of the requirements of a contract, but courts nonetheless refuse to impose liability for the breach of contract. Situations where a party might be excused from performing a contractual obligation fall into three broad categories. First, if circumstances create a situation where it is impossible to perform the contract, then a party may be released from their obligations (impossibility). Second, if performance is technically possible but requiring a party to perform would be extremely unfair under the circumstances, then performance might be excused (commercial impracticability). Finally, a

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party might not be required to perform if the purpose for entering into the contract no longer exists or would no longer be furthered by performance of the contract (frustration of purpose).

Impossibility is an unforeseen, unexpected event occurring after creation of a contract but before performance that makes performance of the contract not possible. This could occur when a particular piece essential to the contract is destroyed or when a particular essential person to the contract dies or is otherwise incapacitated. The thing destroyed or the person incapacitated must be absolutely necessary to the contract in order to fall under the doctrine of impossibility. Destruction of a small non-essential element does not excuse performance for impossibility. For example, if a farmer has a contract to sell a particular animal, such as a prized boar, and the animal dies, then both parties may be excused from performing under the contract. However, if a farmer has a contract to sell ten healthy piglets, and the piglets become ill but can be treated and then delivered when healthy, performance is not excused for impossibility. Instead, the farmer must treat the illness.

Impossibility and related doctrines are applied narrowly under Washington law. A contract does not become unenforceable merely because performance becomes more difficult or more expensive. In contracts for the sale of goods, the effect of an unforeseen disaster depends on whether the goods were identified to the contract. If a contract requires delivery of generic goods, such as 100 bushels of corn not tied to a specific crop or field, destruction of the seller's own crop does not excuse performance. The seller may still be required to obtain substitute goods to fulfill the contract. In contrast, if the contract is for identified goods, such as corn grown on a specific farm or a particular animal selected for breeding, and those goods are destroyed without fault before the risk of loss passes, the seller's performance may be excused (RCW 62A.2-613).

A community supported agriculture (CSA) agreement illustrates how the doctrine of impossibility may apply differently depending on how the contract is structured. If a CSA contract promises delivery of produce grown on a particular farm during a particular season, and an unforeseen disaster such as flooding or wildfire destroys that season's crops before delivery, the farm's performance may be excused if the produce was effectively identified to the contract and the loss occurred without fault. In contrast, if a CSA agreement promises delivery of a specified quantity of value of produce without tying performance to a specific farm, field, or harvest, performance may not be excused even if the farm's own crops fail. In that case, the farm may still be required to obtain substitute produce from another source to fulfill its contractual obligations. Increased cost or inconvenience alone is not sufficient to excuse performance. This shows how important precise contract language can be. CSA agreements that clearly state whether shares are limited to produce grown on a specific farm and address crop failure risk expressly reduce uncertainty if a disaster occurs.

Washington law recognizes limited doctrines that may excuse contractual performance even when performance is not technically impossible. One such doctrine is commercial impracticability, which applies when an unforeseen event makes performance extremely difficult and the non-occurrence of that event was a basic assumption of the contract. Performance is not excused merely because it becomes more expensive or burdensome. See RCW 62A.2-615. For example, if a farmer contracts with a trucking company to deliver crops

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and an unforeseen fire destroys the company's entire fleet, performance may be impracticable if replacing or obtaining substitute equipment would require extraordinary measures beyond ordinary business risk. Whether performance is excused depends on the facts, including whether the risk was foreseeable or allocated by contract.

Another doctrine is frustration of purpose, which applies when a contract is entered into for a particular, mutually understood purpose and that purpose is substantially destroyed by an unforeseen event. For example, if a farmer contracts to purchase feed for a specific herd of cattle and the cattle die from disease before delivery, the underlying purpose of the contract may be frustrated even though performance remains possible. Whether performance will be excused under either doctrine is a fact-specific determination. When unexpected events arise, parties should first attempt to renegotiate the agreement. If renegotiation fails, legal counsel can help evaluate whether performance may be excused under applicable law.

Community Supported Agriculture (CSA) agreements can raise issues of impracticability or frustration of purpose when unforeseen events disrupt production or distribution. For example, if a CSA agreement requires a farm to deliver produce grown during a specific season, and an unforeseen wildfire destroys access roads and packing facilities, making distribution to members extraordinarily difficult or unsafe, performance may be commercially impracticable if the non-occurrence of that event was a basic assumption of the agreement and the risk was not allocated by contract (RCW 62.A.2-615). Increased cost or inconvenience alone would not excuse performance.

Frustration of purpose may arise where the central reason for the CSA agreement is substantially destroyed. For example, if a CSA is organized specifically to supply produce to a particular institutional partner, and that partner permanently closes due to an unforeseen event before delivery begins, the underlying purpose of the agreement may be frustrated if that purpose was mutually understood by the parties at the time of contracting. In that circumstance, the agreement may be set aside even though performance remains technically possible.

B. Contract Laws that Protect Farmers

Although contracts are personal and can vary greatly from negotiation to negotiation, even between the same two parties, there are some restrictions, obligations and remedies that federal and Washington law impose upon particular agricultural contracts.

The Packers and Stockyards Act (PSA) (7 U.S.C. §§ 181-229b) was enacted in 1921 to facilitate fair competition in livestock, meat, and poultry markets. The Act prohibits unfair, deceptive, unjustly discriminatory, fraudulent and anti-competitive practices. Livestock dealers are required to register and be bonded to protect producers. The PSA will not apply to most direct farm businesses because farmers are not subject to the Act when buying livestock for their own purposes or when marketing their own livestock and livestock products. However, the Act's registration and bonding requirements may apply to agricultural cooperatives marketing livestock on their members' behalf. Furthermore, the Act provides several protections for farmers engaged in production contracts. The section on production contracts, below, discusses these in more detail. The PSA is administered through USDA's Agricultural Marketing Service (AMS) through its Packers and Stockyards Division. USDA

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previously administered the Act through the Grain Inspection, Packers, and Stockyards Administration (GIPSA), but those functions were transferred to AMS. Information about Packers and Stockyards Act enforcement is available through USDA AMS.

The Perishable Agricultural Commodities Act (PACA) (7 U.S.C. §§ 499 *et seq*.) is relevant to direct farm businesses because it governs many produce transactions beyond face-to-face retail sales and provides strong payment protections for fruit and vegetable sellers. Direct-market farms that sell to restaurants, grocery stores, distributers, or other intermediaries may be covered by PACA even if they are exempt from licensing. Understanding PACA helps farms protect their right to timely payment and manage financial risk.

PACA regulates fair trading practices in the marketing of fresh and frozen fruits and vegetables. PACA primarily protects sellers by requiring prompt payment by buyers and by prohibiting unfair conduct in produce transactions. The Act is administered and enforced by the USDA Agricultural Marketing Service (AMS).

PACA generally requires dealers, brokers, and commission merchants engaged in the business of buying or selling fruits and vegetables to obtain a PACA license, unless an exemption applies (dealers are exempt from licensing only if they buy or sell less than $230,000 per year in produce).

PACA also establishes a trust right to protect farmers who sell fruits and vegetables. If the farmer notifies a buyer that they intend to be covered by the trust, the buyer must hold the produce or any proceeds from the sale of it in trust for the farmer until the buyer has paid for the produce in full. The primary benefit of the trust is to make it easier for farmers to get paid when they file a court action. The trust also puts farmers ahead of other creditors if the buyer goes out of business or declares bankruptcy. Producers do not need to hold a PACA license to benefit from the trust, but they must comply with statutory notice or invoice language requirements. PACA complaints are filed with the USDA AMS through its PACA division. USDA provides complaint forms and instructions for filing administrative complaints alleging PACA violations. In some cases, unpaid sellers may also enforce PACA trust rights directly in federal court.

The Agricultural Fair Practices Act (7 U.S.C. §§ 2301-2306) was enacted in 1967 to protect agricultural producers' right to join together in cooperative marketing and bargaining activities without retaliation or coercion by handlers. The Act defines handlers broadly to include persons who acquire agricultural products from producers or associations of producers for processing or sale; or grades, packages, handles, stores, or processes agricultural products received from producers or associations of producers; or contracts or negotiates contracts or other arrangements, written or oral, with or on behalf of producers or associations of producers with respect to the production or marketing of any agricultural product; or acts as an agent or broker for a handler in the performance of any of the above functions. The Act prohibits handlers from coercing or refusing to deal with a producer for joining a cooperative, discriminating against a producer in price, quantity, quality or other terms due the producer's membership in a cooperative, attempting to bribe producers to quit or not join cooperatives, making false reports about the activities and finances of a cooperative, or conspiring with anyone else to do any of aforementioned (7 U.S.C. § 2303). If a producer feels a handler has violated the Act, they may bring a civil action for damages or

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injunctive relief or may file a complaint with the Secretary of Agriculture, who may investigate and refer the matter to the U.S. Department of Justice for civil enforcement. The court may award the prevailing party reasonable attorney's fees. Although the AFPA provides important protections, it has been infrequently enforced. Producers considering action under the statute should seek legal advice regarding available remedies and enforcement actions.

C. Special Contracts

Production Contracts

Production contracts are contracts where a company (often called an integrator or contractor) hires a farmer to raise animals or crops according to the company's specifications. In these arrangements, the company typically controls key inputs such as animals, seed, feed, genetics, and production standards, while the farmer provides land, facilities, labor, and day-to-day management. Production contracts are most common in the poultry and swine industries, but similar arrangements exist in other agricultural sectors. Because production contracts can require significant capital investment and limit a farmer's control over production and marketing decisions, federal law provides additional protections for farmers entering into these agreements.

The Packers and Stockyards Act (PSA) generally prohibits poultry dealers and swine contractors from engaging in unfair, unjustly discriminatory or deceptive trade practices in livestock, meat, and poultry markets (7 U.S.C. 192). When hiring growers to perform production contracts, the PSA requires the first page of the contracts to conspicuously disclose whether capital investments are necessary to perform the contract (7 U.S.C. § 197a(b)). This provision is intended to insure that producers understand up front whether they will be expected to build new facilities, upgrade equipment, or make other major investments to comply with contract requirements. In 2024, USDA finalized regulations requiring poultry dealers to provide growers with meaningful, advance disclosures about key contract terms. These rules require integrators to provide growers with the true written contract at the time poultry house specifications are provided, rather than after a producer has already made significant investments. Required disclosures include contract duration and grounds for termination, payment terms and how compensation is calculated, how feed costs, live weights, and slaughter weights are determined, and whether a Performance Improvement Plan (PIP) applies and the standards used (9 C.F.R. Sec 201.100).

USDA has also finalized rules clarifying that the PSA prohibits discrimination, retaliation, and deceptive conduct by packers, poultry dealers, and swine contractors (9 C.F.R. Part 201). These rules are significant because they clarify that harm to an individual producer may be sufficient to establish a violation, rather than requiring proof of harm to competition across an entire industry.

Rules addressing poultry grower payment systems, including tournament systems, have been repeatedly proposed and withdrawn. They are currently governed by the general prohibitions of the Packers and Stockyards Act and existing transparency regulations, rather than by detailed payment system specific rules. Producers should monitor USDA AMS rulemaking for future developments.

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The PSA authorizes the Secretary of Agriculture, through USDA's Agricultural Marketing Service (AMS) Packers and Stockyards Division to investigate alleged PSA violations and, in appropriate cases, refer matters to the U.S. Department of Justice for civil enforcement. (7 U.S.C. § 210). Producers may also bring a private civil lawsuit in federal court for violations. Filing a complaint with USDA is not required before pursuing a private lawsuit (7 U.S.C. § 209).

Requirements and Output Contracts

Requirements and output contracts are two types of agreements that can provide some security to producers as well as those who buy directly from farmers in bulk. The concept behind these agreements is simple: In a requirements contract, the buyer agrees to purchase all of a product that they may require or use from a certain party. Similarly, an output contract is an agreement by a purchaser to sell all of a product that they produce to a particular buyer. Direct farm businesses may find these types of contracts useful when dealing with institutional buyers or restaurants.

The UCC Section 2-306 (adopted by Washington at RCW 62A.2-306) puts some restrictions on these types of contracts by imposing a duty of "good faith" on the parties to the contract. This means that neither side can demand or produce a quantity that is unreasonably disproportionate to the quantity estimated by the parties when striking their deal. If the parties failed to make any estimates at the inception of the contract, the UCC restricts quantities to "normal" or "comparable" quantities to what would ordinarily be required or produced but does not specifically identify how those terms should be defined.

The specific language used in a requirements or output contract can be very important. The contract must use assertive language such as "require," "need," "can use," and so on. Using equivocal language such as "might want to use" or "wish" does not create a binding requirements or output contract. While such language does not prohibit parties from agreeing to deal with one another, it is not sufficiently definite to impose an enforceable duty on the parties. When parties fail to use definite language but act as though they formed a valid requirements or output contract, they are really acting under a series of mini-contracts. While such ad-hoc mini-contracts may produce satisfactory results in the short term, producers should realize that indefinite contractual terms may, in the event of a dispute, result in a contract that fails to bind either party to its terms (and is thus unenforceable). However, when drafted carefully, requirements and output contracts can provide some security for the parties. Farmers can produce at normal levels with confidence that all of their output will be purchased, and buyers are given some assurance that their needs will be filled. Because of the large volume typically associated with these types of arrangements, parties should be careful when agreeing to terms and should, at a minimum, have an attorney review these documents prior to agreeing to the terms to ensure that they fully understand the obligations and likely outcomes of the contract.

Procurement Contracts

Procurement contracts can be another advantageous way for a direct farm business to make significant sales. The USDA Agricultural Marketing Service (AMS) administers commodity procurement programs that purchase a variety of domestically produced and processed food products to support domestic nutrition assistance programs such as the National School

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Lunch Program, food banks, and emergency food distribution, creating market opportunities for agricultural producers. AMS conducts these purchases through competitive solicitations and schedules published on its Commodity Procurement pages, and approved vendors may submit offers through the Web-Based Supply Chain Management System (WBSCM). AMS also posts notices of intent to purchase and pre-solicitation announcements to inform potential suppliers of upcoming opportunities. Information for new vendors and prospective producers on qualifying to sell to USDA, including master solicitations and technical requirements, is maintained on the AMS procurement and vendor information pages.

Participating in the AMS procurement programs can be a big step for farmers looking to scale up. Producers new to this process can get free, on-on-one technical assistance. In Washington, small businesses seeking to contract with federal, state, or local governments may obtain assistance through the Washington APEX Accelerator (formerly the Procurement Technical Assistance Center). The Washington APEX Accelerator, administered by the Washington State Department of Commerce, provides no-cost guidance on government registrations, bid preparation, procurement requirements, and contracting opportunities.

II. MARKETING

At its core, marketing is about more than selling products – it is about telling your farm's story, building trust, and creating lasting relationships with customers. For direct farm businesses, effective marketing turns first-time buyers into repeat customers and helps differentiate your products in an increasingly competitive marketplace.

Today's marketing tools go well beyond roadside signs and farmers market flyers. Farms may use websites, email newsletters, social media platforms, online marketplaces, community partnerships, and brand-driven packaging to reach customers. Traditional methods such as on-farm signage, market displays, and print materials are still useful, but they are often part of a broader, integrated strategy.

Marketing choices can carry legal consequences. This section focuses on the legal framework governing product labeling and advertising claims as well as online marketing and e-commerce considerations. Understanding these rules helps ensure that marketing builds credibility and expands markets without creating regulatory risk.

A. Labeling and Advertising

Labeling is regulated by the Food and Drug Administration (FDA) under the Food, Drug and Cosmetic Act (21 U.S.C. Chapter 9), which prohibits selling "adulterated" or "misbranded" food, while The Federal Trade Commission (FTC) regulates advertising pursuant to the Federal Trade Commission Act (FTCA) (15 U.S.C. §§ 41-58), which prohibits untruthful and deceptive or unfair advertising. Although the line between advertising and labeling is a bit fuzzy, both are subject to consistent rules because the FTC and FDA have a collaborative enforcement arrangement. FTC guidance documents treat advertising as deceptive if it contains a statement or omits information that is material (that is, important to a consumer's decision-making process) and is likely to mislead consumers. A statement is unfair if it causes or is likely to cause substantial consumer injury that a consumer could not reasonably avoid and that is not outweighed by the benefit to consumers. These laws have implications for several types of claims a direct farm business may wish to make about its

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products, whether on its labels or in its advertising: Health claims, structure/function claims, and nutrient content claims. Each will be briefly addressed below.

Health claims describe a relationship between the food (or a component of it) and reducing the risk of a disease or health-related condition. For instance, a label might claim "low fat diets rich in fiber-containing grain products, fruits, and vegetables may reduce the risk of some types of cancer, a disease associated with many factors." Producers who wish to place a health claim on a label must either use a pre-approved claim or have their claim approved by the FDA. Approved health claims are listed in Appendix C of FDA's food labeling guide. If a claim is not already approved, a food producer can petition the FDA to approve the claim and must support the petition with sufficient scientific evidence.

A label may also contain a *qualified health claim*, which is a health claim supported by emerging scientific evidence that suggests the claim may be valid but that is not strong enough to meet the standard necessary to be a health claim. Like with health claims, qualified health claims must be preapproved by the FDA through a petition. Failure to obtain pre-approval causes the food to be "misbranded" and therefore subject to FDA enforcement.

Washington law parallels federal requirements. The Washington Food, Drug, and Cosmetic Act prohibits the sale of misbranded food and incorporates federal standards governing nutrient content and health claims (RCW 69.04.240 and RCW 69.04.398). Misleading health claims may also violate the Washington Consumer Protection Act.

Structure/Function Claims describe the role of a nutrient in affecting normal structure or function in humans. For instance, "calcium helps build strong bones." These types of claims are not preapproved by the FDA, but must be truthful and not misleading. Producers should ensure that any structure/function claim is carefully worded, scientifically supportable, and does not imply disease treatment or prevention. For more information on these types of claims, see the FDA's Small Entity Compliance Guide on Structure/Function Claims.

Nutrient content claims characterize the level of a nutrient in a food, such as "high in vitamin A;" they also encompass claims such as "low fat" and "light" foods. The FDA prohibits these claims unless specifically approved in FDA's regulations (21 C.F.R. § 101.13 and subpart D). Raw fruits and vegetables and fish are not required to contain nutritional content labels, but the FDA provides posters for voluntary labeling of their nutritional content.

B. Internet Marketing

Many small businesses consider an Internet presence an essential part of their business strategy. The Internet and other forms of electronic communication (e.g. email or social networking sites such as Facebook and Instagram) can open doors to a direct farm business for customers otherwise unable to visit the retail operation due to distance, time, or other factors. Although the Internet's flexibility as a marketing tool makes it an attractive option for direct farm businesses, farmers should be aware of several important legal issues that may arise in the context of doing business on the Internet.

Shipping Products

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If a farm's products can be shipped, online ordering may expand market reach beyond local customers. Shipping perishable foods, however, requires careful handling and compliance with shipping and consumer protection laws.

Federal food safety agencies recommend that perishable foods be packaged to maintain safe temperatures during transit. Foods that require refrigeration should be kept at or below 40 degrees F upon delivery. Insulated packaging, gel packs, or dry ice may be used to maintain temperature. When shipping with dry ice, additional federal hazardous materials labeling requirements may apply (see 49 C.F.R Section 173.217). Producers should also follow carrier specific packaging and labeling requirements.

The Federal Trade Commission's (FTC) Mail or Telephone Order Merchandise Rule (16 C.F.R. Part 435) applies to sales made over the Internet. The Rule regulates shipment promises, unexpected delivery delays, and customer refunds. To comply with the Rule, a seller must have a reasonable basis for promising shipment within a certain time frame. If online advertising does not specify the shipment period, the seller must have a reasonable basis for believing that they can ship within 30 days. If shipment cannot be made within the promised time period, then the seller must notify the customer of the delay and provide the customer with the option of cancelling the order and receiving a full refund. If a seller cannot fill an order, then they have the right to cancel it but must notify the customer of the cancellation and refund payment to the customer in full.

Producers expanding into online or interstate sales should ensure that packaging, labeling, shipping timelines, and refund policies are clearly disclosed and legally compliant.

Protecting Customers' Personal Information

If a farm's website collects personal information such as names, email addresses, or payment information, the business should implement reasonable safeguards to protect that data. The Federal Trade Commission regulates data security under its authority to prohibit unfair or deceptive acts or practices in commerce (15 U.S.C. Section 45(a)). The FTC provides business guidance on data security and privacy on its website. The FTC has brought enforcement actions against companies that failed to implement reasonable safeguards to protect consumer information or that misrepresented their data security practices.

Washington law imposes additional obligations. Under Washington's data breach notification statute, any business that owns or licenses personal information of Washington residents must provide notice if that information is compromised (RCW 19.255.010). In certain circumstances, notice must also be provided to the Washington Attorney General.

Farms that collect consumer information online should consider:

- Limiting collection to necessary information,
- Using secure payment processors,
- Maintaining updated security software,
- Establishing internal procedures for responding to potential data breaches.

Email Marketing

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Emailing a weekly, monthly or annual newsletter requires little time or money, and avoids the costs and hassle of printing and sending documents via mail. Short email updates concerning revised hours of operation or seasonality may be a convenient method of communication between the direct farm business and its customers. All commercial email from a business to a consumer is regulated by the FTC's CAN-SPAM Act (15 U.S.C. § 7701 *et seq*.). When sending commercial emails, the "from" and "to" lines and routing information must be accurate and identify who initiated the email, and may not contain deceptive subject lines. The email must give the recipient an opt-out method if they do not wish to receive any more commercial emails from the business. The email must also be identified as an advertisement and include the sender's valid physical postal address. As a general rule, emails concerning an agreed-upon business transaction or updating the customer on that business relationship are allowed under the Act. Violations of the rules in this Act can result in significant fines.

Washington law contains similar protections. The Washington Commercial Electronic Mail Act (RCW 19.190), prohibits sending commercial email with misleading transmission information or deceptive subject lines.

Taxation of Internet Sales

Washington generally requires retailers to collect retail sales tax on taxable products delivered to customers in Washington. Local sales taxes may also apply depending on delivery location (RCW 82.08.020; RCW 82.14). However, many farm products (e.g. fresh produce) are exempt from Washington sales tax (RCW 82.08.0293). The Washington Department of Revenue has a step by step guide on when to charge sales tax on a food item here. Farm businesses selling products online should consult the Washington Department of Revenue for current guidance on registration, tax collection, and filing requirements. See Chapter 4 Taxation for more information.

III. INTELLECTUAL PROPERTY

Marketing a business often involves developing and protecting intellectual property (IP). Intellectual property is basically creations of the mind: inventions, literary and artistic works, as well as symbols, names, images, and designs used in commerce. Specific forms of IP include trademarks, patents, copyrights, and trade secrets. Each may be important to the direct farm business in that ownership gives the right to *prevent others* from doing certain activities without permission. These rights are important because they protect the investment the owner has made in developing the IP. Understanding IP will also help the direct farm business avoid having any actions for violations of IP rights brought against them.

A. Trademarks and Trade Names

Trademarks are often he most useful form of intellectual property for a direct farm business. A trademark is used to distinguish goods or services from those produced or sold by others and allows consumers to associate a product with a particular source and reputation. A trademark may consist of a word, name, symbol, device, or combination of these elements, including sounds or colors, used to identify goods in commerce (15 U.S.C. Section 1127). In some cases, the overall design or appearance of a product or its packaging may also be

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protected. This type of protection is known as trade dress. Trade dress may include elements such as packaging design, product shape, or other visual characteristics, provided those features are distinctive and nonfunctional (15 U.S.C. Section 1125(a).

A trade name, by contrast, identifies a business itself rather than a specific product or service. While a trade name may overlap with a trademark, the U.S. Patent and Trademark Office (USPTO) generally registers marks only when they are used to identify goods or services in commerce (15 U.S.C. Section 1127).

Registration of Trademarks and Trade Names

A trademark identifies the source of goods or services and distinguishes them from those sold by others. Trademark rights generally arise through use of the mark in commerce, meaning a business does not need to register a mark to obtain protection (15 U.S.C. Section 1127). However, unregistered (common-law) trademark rights are usually limited to the geographic area where the mark is actually used. Registering a mark provides stronger protection because it gives public notice of the owner's claim and can expand the geographic scope of protection.

Trademarks may be registered at the federal and state levels. Federal registration through the USPTO provides nationwide notice and enforcement rights (15 U.S.C. Sections 1051-1072). Washington also provides state trademark registration through the Secretary of State, with protects the mark within Washington (RCW 19.77). businesses may use the symbol TM to claim trademark rights at any time, but the ® symbol may only be used after federal registration (15 U.S.C. Section 1111). To be registrable, a trademark must be distinctive and not confusingly similar to an existing mark.

B. Patents

A patent grants the inventor the right to exclude others from making, using, or selling the invention in the United States or 'importing' the invention into the United States for a limited period, generally 20 years (35 U.S.C. Sections 154, 271). Patents are issued by the USPTO. To obtain a patent, an invention must be *new* – meaning that it was not known or used by others in the United States or "patented or described in a printed publication in a foreign country" – and it cannot be *obvious* (35 U.S.C. Sections 101-103). There are different kinds of patents, but the most common patents relating to farms are plant patents and patents on genetically modified plants. Plant patents are also available to one who has invented or discovered and asexually reproduced a distinct and new variety of plant, other than a tuber propagated plant or a plant found in an uncultivated state (35 U.S.C. Section 161). A plant patent precludes others from asexually reproducing or selling or using the patented plant for 20 years from the filing of the patent application (35 U.S.C. Section 163).

New varieties of sexually reproduced plants and tubers may instead be protected through a Plant Variety Protection Certificate (PVPC) issued by the USDA Agricultural Marketing Service Plant Variety Protection Office under the Plant Variety Protection Act (7 U.S.C. Sections 2321-2583). These certificates provide patent-like protection for certain seed varieties.

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If a farm develops a new process, device, or plant variety, consulting a patent attorney may be advisable. General information on patents and resources for finding a patent attorney are available on the USPTO's website**.** Obtaining a patent can be costly and time consuming, so producers should consider whether the potential market value justifies pursuing patent protection.

Farmers who purchase patented seeds or protected plant varieties often do so under license agreements, which may restrict seed saving or replanting. Producers should carefully review these agreements because companies may enforce them aggressively.

C. Copyrights

A copyright protects "original works of authorship fixed in any tangible medium of expression" (17 U.S.C. Section 102(a)). Although literary works come easily to mind as examples of copyrighted material, in the direct farm business context, copyright protection could extend to categories such as pictures and graphics, sound recordings, movies, and other information related to the direct farm business operation. A copyright does not protect the actual ideas or methods, but rather it gives the owner certain exclusive rights to the way the copyrighted work is *used*. For example, in many circumstances a copyright owner has the exclusive right to reproduce the work, to make derivative works, and to display the work publicly (17 U.S.C. Section 106). The owner also has the exclusive right to authorize others to do the same. Pictures of growing crops or a farmers market used on the direct farm business website or promotional material would qualify for copyright protection. On the other hand, unpermitted use of another's pictures (perhaps copied from the Internet) could constitute infringement upon the copyrights of another.

A work does not have to be published or even registered with the Copyright Office to gain protection. Copyrights attach once a work is "created" - that is, once it has been fixed in a tangible medium of expression such as a copy or recording. Even so, registration is important for providing a public record of the copyright claim. Registration also provides significant advantages regarding the enforcement of rights in courts. Other information on copyrights, including a searchable database of registrations and up-to-date fee information, can be found at the U.S. Copyright Office website. The webpage also contains a link to step-by-step instructions on obtaining a copyright.

D. Trade Secrets

A trade secret is information that derives economic value from not being generally known and that the business takes reasonable steps to keep confidential. Examples may include customer lists, proprietary recipes, or specialized production methods. Trade secrets are protected under both federal law (the Defend Trade Secrets Act, 18 U.S.C. Section 1836), and state law (the Washinton Uniform Trade Secrets Act, RCW 19.108).

To qualify as a trade secret, the information must provide competitive advantage because it is secret, and the business must make reasonable measures to maintain its secrecy, such as limiting access or using confidentiality agreements (RCW 19.108.010).

Direct farm businesses that rely on confidential information may wish to use nondisclosure agreements (NDAs) with employees or business partners to help protect trade secrets.

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Washinton law places significant limits on non-compete agreements, so businesses should consult an attorney before relying on those types of restrictions (RCW 49.62).

IV. Weights and Measures

Washington law regulates the weighing and measuring of commodities sold in commerce to ensure that buyers receive the quantity of product represented by the seller (RCW 19.94). The Washington State Department of Agriculture (WSDA) administers the state's weights and measures program and is responsible for enforcing those requirements.

Devices used to weigh or measure products sold to consumers, such as scales used at farm stands or farmers markets, must be accurate and properly inspected or approved for commercial use. Inspectors from WSDA periodically test commercial weighing and measuring devices and may inspect packaged goods to ensure that quantity statements are accurate. Packaged commodities sold by weight, measure, or count must correctly state the quantity of the product contained in the package.

Washington incorporates technical standards developed by the National Institute of Standards and Technology (NIST) for weighing and measuring devices. These standards govern the accuracy and testing of commercial devices used in trade. Farms selling products by weight should ensure that their scales meet these standards and have been inspected and approved for commercial use.

V. Checklist

Have you…

- developed a marketing plan? Do your current practices comply with FDA and FTC law? Are any methods you are considering likely to create legal problems?
- properly labeled your products?
- ensured your Internet business in compliance with all requirements for shipping products, protecting personal information, email marketing, and taxation of goods?
- considered if you have any intellectual property you want to protect? Are you infringing on someone else's intellectual property?
- arranged for state inspection and approval of your scales and measuring devices?

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CHAPTER 4: ORGANIC PRODUCTION AND MARKETING

Organic production refers to a system of farming and food processing that emphasizes soil health, ecological balance, and the avoidance of synthetic inputs. The use of the term "organic" in labeling and marketing is strictly regulated under federal law to ensure consistency and prevent misleading claims. Although organic production often reflects broader environmental and ethical goals, the meaning of "organic" is defined by compliance with federal standards.

I. HISTORY AND PURPOSE OF THE ORGANIC FOODS PRODUCTION ACT

Organic production is governed at the federal level by the Organic Foods Production Act (OFPA) ((7 U.S.C. Section 6501-6524), enacted in 1990. Congress passed OFPA in response to growing consumer demand for organic products and concerns about inconsistent and potentially misleading "organic" claims in the marketplace. Prior to OFPA, organic standards varied widely by state and private certifiers, creating confusion for consumers and barriers to interstate commerce.

The statute is implemented through the National Organic Program (NOP), which is administered by the USDA Agricultural Marketing Service (AMS) (7 U.S.C. Section 6501-6524; 7 C.F.R. Part 205). These regulations establish uniform national standards for organic production, processing, handling, and labeling. As a result, there is no separate Washington organic certification system; instead, producers must comply with the federal framework.

II. CERTIFICATION REQUIREMENTS AND EXEMPTIONS

The most important rule for direct farm businesses is that a product may not be labeled, advertised, or otherwise marketed as "organic" unless it has been produced and handled in accordance with NOP standards (7 C.F.R. Sections 205.100-101.)

Producers who sell more than $5,000 annually in organic products must obtain certification from a USDA accredited certifying agent. Producers who sell less than $5,000 per year are exempt from certification but must still comply with all organic production and labeling requirements and may not use the USDA organic seal.

III. ORGANIC LABELING CATEGORIES

Organic labeling depends on the percentage of organic ingredients in a product. Products labeled as "100% organic" must contain only organic ingredients. Products labeled simply as "organic" must contain at least 95% organic ingredients, with the remaining ingredients limited to approved substances. Products containing between 70 - 95% organic ingredients may be labeled "made with organic (specified ingredients)", but may not use the USDA organic seal. Products containing less than 70% organic ingredients may identify organic ingredients only in the ingredient list (7 C.F.R. Section 205.301 -305).

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IV. Transition and Organic System Plan

To become certified organic, producers must undergo a transition period during which no prohibited substances are applied to the land for at least three years prior to certification (7 C.F.R. Section 205.202).

Producers must also develop and implement an Organic System Plan (OSP), which describes production practices, inputs, monitoring procedures, and recordkeeping systems (7 C.F.R. Section 205.201). Certification requires submission of the OSP, review by a certifying agent, and an on-site inspection (7 C.F.R. Section 205.401-404).

Allowed and Prohibited Substances

A central feature of the organic regulatory framework is the National List of Allowed and Prohibited Substances (7 C.F.R. Sections 205.600-606). Allowed substances are certain synthetic materials that have been specifically approved for use in organic production because they are deemed necessary and consistent with organic principles (for example, certain pest control substances or food processing aids). Prohibited substances include most synthetic pesticides, fertilizers, sewage sludge, irradiation, and genetic engineering (excluded methods).

In general, production follows a guiding principle: natural substances are allowed unless specifically prohibited, and synthetic substances are prohibited unless specifically allowed. The national list is periodically reviewed and updated through a formal rulemaking process, with recommendations from the National Organic Standards Board (NOSB). Producers must insure that all inputs used in production and processing comply with this list.

V. Crop and Livestock Production Requirements

Organic production requirements vary depending on the type of operation. For crop production, the regulations emphasize soil fertility, crop rotation, and natural pest management practices, while prohibiting the use of most synthetic pesticides and fertilizers (7 C.F.R. Sections 205.202-206). Organic producers must also prevent contamination from non-organic sources through buffer zones and other management practices.

Organic livestock production requires continuous organic management from the last third of gestation (or from early life for poultry) through slaughter (7 C.F.R. Section 205.236). Animals must be fed 100% organic feed, provided with living conditions that support natural behaviors, and managed without the use of prohibited substances such as most synthetic growth promotors and antibiotics (7 C.F.R. Sections 205.237-239). At the same time, producers may not withhold necessary medical treatment from animals, even if doing so would preserve organic status.

VI. Processing and Handling Requirements

Organic certification also applies to processing and handling. Facilities that process, package, or otherwise handle organic products must be certified and must prevent

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comingling with non-organic products and contamination from prohibited substances (7 C.F.R. Sections 205.100, 205.270-272). Retail establishments are generally exempt from certification but still must comply with labeling and segregation requirements (7 C.F.R. Section 205.101).

VII. WASHINGTON STATE ROLE

In Washington, the Washington State Department of Agriculture (WSDA) plays an important role in supporting organic producers. WSDA operates an accredited organic certification program and provides technical assistance, education, and outreach. Producers may choose to use the WSDA certification program or another USDA accredited certifier operating in the state.

VIII. CHECKLIST

Before marketing products as "organic," confirm the following:

- Are you using the term "organic" only for products that comply with NOP standards? Are you avoiding misleading, false, or unapproved claims?
- Has your land been free from prohibited substances for at least 3 years prior to harvest?
- Have you taken steps to prevent contamination from neighboring non-organic operations (i.e. buffer zones)?
- Have you developed an Organic System Plan? Are you maintaining required records of inputs, practices, and production?
- Are you using only approved substances and methods? Are you preventing contamination or commingling with non-organic products?
- For livestock, are animals under continuous organic management? Are you using 100% organic feed and approved health practices? Are living conditions consistent with organic standards?
- If processing organic products, is your facility certified if required? Are you preventing commingling and contamination during handling?
- Have you contacted the WSDA Organic Program or another certifier for guidance? Have you reviewed USDA resources for organic producers?
- Will you sell more than $5,000 annually in organic products? If yes, have you obtained a certificate from a USDA accredited certifier? If exempt, are you still complying with all organic standards and avoiding use of the USDA organic seal?

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CHAPTER 5: TAXATION

Farm taxation rules are detailed, complex and subject to frequent change. The following generalized information is not a substitute for consulting with a qualified attorney and/or accountant. The information provided herein is for general information purposes only.

This chapter is organized by the type of tax for which the direct farm business may be liable, such as income, self-employment and employment, sales, excise, and property taxes. Because the uniqueness of each direct farm business requires particularized tax analysis, a thorough discussion of tax liability is beyond the scope of this Guide. The sections in this chapter provide basic information on types of taxes, forms and sources of additional information, but it is important to contact a professional for more detailed guidance.

An excellent place to start any research is the IRS *Publication 225: Farmer's Tax Guide*. The guide covers tax issues specific to farming, including records, accounting methods, income and expenses, expenses associated with soil and water conservation, asset basis, depreciation/depletion/amortization, gains and losses, disposition of property, installment sales, casualties/theft/condemnation, self-employment tax, employment tax, excise tax, estimated taxes, filing a return, and where to get help. In addition, the website www.ruraltax.org covers a wide range of tax issues relevant to farmers and direct farm businesses, including who is a "farmer" for tax purposes, filing dates and estimated tax payments, self-employment taxes, and others.

The IRS Small Business and Self-Employed Tax Center maintains a website of resources for small businesses and self-employed individuals. The website contains links to workshops, educational videos, resources provided by state and other federal agencies and other relevant information.

I. REGISTRATION REQUIREMENTS

A. Federal registration requirements

A direct farm business may need to obtain a federal Employer Identification Number (EIN) from the Internal Revenue Service (IRS). An EIN is used to identify a business entity for federal tax purposes (26 C.F.R. Section 301.6109-1). A farm business generally must obtain an EIN if it has employees or is organized as a corporation or partnership. An EIN is also required if the business files certain federal tax forms, including employment, excise, or Alcohol, Tobacco and Firearms (ATF) tax returns.

Businesses must also obtain an EIN of they withhold taxes on income paid to a nonresident alien or if the business maintains certain retirement plans, such as a Keogh plan. In addition, an EIN is required for farms that are involved with certain types of organizations, including trusts (other than certain grantor-owned revocable trusts or IRAs), estates, real estate mortgage investment conduits, nonprofit organizations, farmers' cooperatives, or plan administrators.

Sole proprietors without employees may generally use the owners Social Security Number as the business taxpayer identification number, although many businesses obtain an EIN for administrative or privacy reasons (26 C.F.R. Section 301.6109-1(d)). Businesses may apply for

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an EIN free of charge through the IRS, typically using the online application system, though applications may also be submitted by mail or fax using IRS Form SS-4. Another useful resource is IRS Publication 1635 - Understanding your EIN.

B. Washington Registration Requirements

Businesses making retail sales in Washington must generally register with the Washington Department of Revenue before conducting business in the state. Businesses obtain this registration through a Washington business license, which allows the state to administer retail sales tax and other business taxes (RCW 82.32.030).

Retailers are responsible for collecting and remitting sales tax on taxable sales made to customers in Washington (RCW 82.08.050). Even if a farm sells products that are exempt from Washington retail sales tax, such as many unprepared food products intended for human consumption, the business may still need to register with the Department of Revenue and obtain a Washington business license before conducting business (RCW 82.32.030; RCW 82.08.0293). Sales tax registration is typically completed through the Washington Business Licensing Service, which issues a unified state business license used for multiple regulatory purposes.

Failure to properly register or report taxes may result in penalties and interest.

II. TAXATION OF BUSINESS INCOME

A. Federal Taxation (26 U.S.C. Subtitle A)

As noted above, a thorough discussion of the intricacies of business tax is beyond the scope of this guide. This is particularly true of business income taxes, where complex rules specific to each type of entity, base income and any deductions and/or credits are highly dependent on the operations of the particular business.

To obtain further information and publications on the taxation of each type of business entity, as well as necessary forms, go to the online IRS A-Z Index for Businesses.

Sole Proprietorships

Sole proprietors report business income on their individual federal income tax return using form 1040, typically including Schedule C (Profit or Loss From Business). The IRS treats sole proprietors as self-employed, meaning they are generally responsible for self-employment tax (Social Security and Medicare), estimated income taxes, and other federal tax obligations. If the business has employees, the owner may also be responsible for employment taxes and federal unemployment tax (FUTA) (26 U.S.C. Sections 1401-1402; 3301-3311).

Partnerships

Partnerships generally do not pay federal income tax at the entity level. Instead, the partnership files an informational tax return (Form 1065) reporting its income, and other tax items (26 U.S.C. Section 701).

Tax liability passes through to the partners, meaning each partner reports their share of the partnership's earnings on their individual income tax return (26 U.S.C. Section 702). For

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example, a partner who owns a 70% interest in the partnership would generally report 70% of the partnership's taxable income.

Partners must report and pay tax on their share of the partnership's earnings even if the partnership does not distribute the income. For example, if the partnership reinvests all profits into expanding the business, partners are still taxed on their distributive share of those profits. Similarly, partnership losses pass through to the partners, but deductions are generally limited to the partner's basis in the partnership interest (26 U.S.C. Section 704(d).

Corporations

A C Corporation generally pays federal income tax on its taxable profits (26 U.CS.C. Section 11). When a corporation distributes profits to shareholders, those payments are typically treated as dividends, which shareholders must report as income on their personal tax returns (26 U.S.C. Section 301-316). Because the corporation pays tax on its profits and shareholders pay tax on distributed dividends, this structure is often described as "double taxation". Shareholders who also work for the corporation must report wages or salary as ordinary income, just like any other employee, and the corporation must comply with normal payroll tax requirements (26 U.S.C. Sections 3101-3128).

S-corporations

S-corporations, except in limited circumstances, do not pay taxes. Instead, earnings and losses pass through to the shareholders, who pay taxes on these earnings based on their individual income level. The earnings are allocated on a per share, per day basis, with shareholders liable for taxes on these earnings even if there is no cash distribution (26 U.S.C. Section 1363(a), 1366(a)).

Limited Liability Company (LLC)

For federal tax purposes, the IRS does not treat a Limited Liability Company (LLC) as a separate tax classification. Instead, the IRS classifies an LLC under existing tax categories such as a sole proprietorship, partnership, or corporation (26 C.F.R. Section 301.7701-3).

If an LLC has one owner, the IRS generally treats it as a disregarded entity, meaning the business is not taxed separately from its owner unless the owner elects corporate treatment (26 C.F.R. Section 301.7701-3(b)(1)(ii)). The owner typically reports the business income on an individual tax return using Form 1040, usually with Schedule C, E, or F, depending on the nature of the business.

If an LLC has two or more owners, the IRS generally treats it as a partnership unless the entity elects corporate treatment (26 C.F.R. Section 301.7701-3(b)(1)(i)). In that case, the LLC files an informational partnership using Form 1065.

An LLC may elect to be taxed as a corporation by filing Form 8832 (Entity Classification Election) (26 C.F.R. Section 301.7701-3(c)). If corporate status is elected, the entity files a corporate tax return using Form 1120 or, if it qualifies and elects S-corporation status, Form 1120S.

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Cooperatives

Federal taxation of cooperatives is governed primarily by Subchapter T of the Internal Revenue Code (26 U.S.C. Sections 1381-1388). Under these rules, cooperatives are generally taxed as corporations but may deduct certain patronage dividends distributed to members or patrons.

A cooperative reports its income using IRS Form 1120-C (U.S. Income Tax Return for Cooperative Associations). Patronage dividends distributed to cooperative members are typically reported to patrons using Form 1099-PATR. Members must then report these amounts as income on their individual tax returns.

Although cooperatives may deduct patronage dividends, they may still owe tax on certain income, such as non-patronage income or earnings not distributed as patronage dividends. As a result, cooperative taxation can be complex and may require specialized accounting or legal guidance. The IRS Farmer's Tax Guide (Publication 225) also discusses cooperative tax reporting and patronage dividends.

B. State Taxation

Unlike many states, Washington does not impose a state personal or corporate income tax. Instead, businesses operating in Washington may be subject to the Business and Occupation (B&O) tax, which is a tax on the gross receipts of business activities conducted in the state (RCW 82.04.220). Because the B&O tax is calculated on gross revenue rather than profit, businesses may owe tax even if they have little or no net income.

The B&O tax applies to many types of business activities, including retailing, wholesaling, manufacturing, and services, each of which may be subject to a different tax rate (RCW 82.04.250 - retailing classification; and RCW 82.04.270 – wholesaling classification). Farm businesses that sell products directly to consumers (such as through farm stands, farmers markets, CSA programs, or online sales) are typically subject to the retailing B&O classification.

Certain agricultural activities may qualify for exemptions or special classifications under Washington law. For example, some activities involving the production or sale of agricultural products may receive preferential treatment under the B&O tax provisions (RCW 82.04.213).

III. EMPLOYMENT AND SELF EMPLOYMENT TAXES

This section provides a brief overview of the taxes employers must withhold from employee wages. For more detailed information, see IRS Publication 15, Employer's Tax Guide, which explains federal withholding requirements for farm employers. Federal employment tax rules are primarily found in Subtitle C of Title 26 of the Unites States Code, with implementing regulations in Part 31 of Title 26 of the Code of Federal Regulations.

A. If the Direct Farm Business Has Employees

Employers are responsible for withholding and submitting certain federal employment taxes on behalf of their employees. Federal employment taxes to be withheld include the Federal

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Income Tax and Social Security/Medicare (FICA) taxes (26 U.S.C. Sections 3101-3128; 26 U.S.C. Sections 3401-3406). FICA taxes do not apply to all farm wages. Agricultural employers must pay FICA taxes only if certain thresholds are met (26 U.S.C. Section 3121(a),(g)). For farm work, FICA generally applies if the employer pays an employee $150 or more in cash wages in a year, or the employer pays total farm wages of $2,500 or more to all employees during the year. Agricultural employers generally report FICA taxes using Form 943, Employer's Annual Federal Tax Return for Agricultural Employees (26 U.S.C. Section 6011; IRS Publication 51.) Washington does not impose a state personal income tax, so employers generally do not withhold state income tax from employee wages.

Employee Income Taxes

Withholding federal income taxes from employees entails obtaining a W-4 form from each employee that indicates what withholding allowances they qualify for and what class (e.g. single or married) they fall into. The employer uses this information to calculate the employee's tax rate using the IRS's withholding tables, which are available in IRS publication 15-T. The IRS bases withholdings on base pay, as well as supplemental wages (such as overtime pay) and fringe benefits. The IRS excludes some fringe benefits, such as the *de minimis* exception (26 U.S.C. Section 132) that covers small benefits for which it would be inconvenient and unreasonable to have to keep an accounting of (for instance, allowing employees to occasionally take home small quantities of produce). Some employees may qualify for an exemption from income tax withholding if they did not owe taxes in the previous year and do not expect to owe taxes the next year. Such employees should indicate this on their W-4.

Employers must deposit taxes with an authorized repository either monthly or semiweekly, depending on the employer's tax liability during the applicable lookback period (26 C.F.R. Section 31.6302-1).

Agricultural employers generally report federal employment taxes using Form 943, Employer's Annual Federal Tax Return for Agricultural Employees (26 U.S.C. Section 6011; IRS publication 51). If an employer has both farm employees and non-farm employees, the taxes must typically be reported separately. Non-farm wages are usually reported on Form 941, Employer's Quarterly Federal Tax Return.

Although Washington does not require withholding of state income tax, employers must comply with several state payroll-related programs. Employers must pay unemployment insurance taxes on employee wages through the Washington Employment Security Department (RCW 50.24). Most Washington employers must provide worker's compensation coverage through the Washington Department of Labor & Industries (RCW 51.12). Employers must participate in Washington's Paid Family Medical Leave program, which requires payroll contributions from both employers and employees (RCW 50A.04). Employers must also maintain payroll records documenting employee wages and employment information (29 U.S.C. Section 211(c) and 29 C.F.R. Part 516).

B. Farmers Who Are Self-Employed

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The self-employment tax is the Social Security and Medicare tax paid by persons who work for themselves (26 U.S.C. Sections 1401-1402). Individuals carrying on the direct farm business as a sole proprietor or as a member of a partnership, or who are otherwise in business for themselves, are "self-employed" and must pay self-employment tax on earnings of $400 or more (26 U.S.C. Section 1402(b)). The tax consists of two components, the Social Security portion and the Medicare portion. An additional Medicare tax may apply to earnings above certain thresholds (26 U.S.C. Section 1401(b)(2). Individuals must report self-employment taxes on Schedule SE (Form 1040). The IRS Publication 225, *Farmer's Tax Guide* provides additional details regarding the self-employment tax rules.

IV. SALES AND SERVICES TAXES

Direct farm businesses that sell food and/or other goods to customers are responsible for collecting state and local sales and services taxes. Direct farm businesses that purchase goods may be responsible for paying sales tax, but in some instances the purchases will be exempt.

A. Sales and Use Tax

Washington imposes a retail sales tax on the sale of most tangible personal property and certain services within the state (RCW 82.08). In addition, a complementary use tax applies to goods used in Washinton when retail sales tax has not been paid (RCW 82.12.020).

Unlike some states, Washinton's tax system does not rely on a general gross receipts sales tax structure; instead, it combines retail sales tax collected from customers with the Business and Occupation (B&O) tax on gross receipts (RCW 82.04.220).

Businesses making retail sales in Washington must generally register with the Washington Department of Revenue and obtain a business license before engaging in business activities (RCW 82.32.030; RCW 19.02.075). Registration is completed through the Washington Business Licensing Service.

Computing the Sales Tax

Washington imposes a state retail sales tax on the selling price of taxable goods and services (RCW 82.08). The "selling price" is defined broadly as the total amount of consideration paid or delivered by the buyer, whether in money or otherwise, in exchange for the sale (RCW 82.08.010). In addition to the state rate, local sales taxes imposed by cities and counties apply, so the total tax rate varies depending on location. The applicable tax rate is generally determined by the location where the buyer receives the goods (RCW 82.32.730).

Paying Sales Tax

Businesses must collect retail sales tax from customers and remit it to the Washington Department of Revenue, generally through electronic filing using the Department's online system. The frequency of filing (monthly, quarterly, or annually) depends on the business's volume of taxable sales and is assigned by the Department (RCW 82.32.045).

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Businesses are also required to maintain adequate records of all sales and transactions to substantiate the amount of tax reported and paid. These records must be sufficient to allow the department of revenue to verify compliance through audit if necessary (RCW 82.32.070).

Sales Tax Exemptions for Farm Purchases

In addition to understanding how taxes apply to sales to customers, direct farm businesses should also be aware of sales and use tax exemptions that may apply to certain farm purchases. Washington does not provide a blanket exemption for all farm related purchases; instead, exemptions are specifically defined by statute and often limited to items used directly in agricultural production.

For example, Washington law provides exemptions for items such as livestock nutrient management equipment and facilities (RCW 82.08.890; RCW 82.12.890). Other exemptions may apply to items such as feed, seed, and certain agricultural inputs, depending on how they are used in the farming operation.

These exemptions generally apply only when the items are used directly in the production of agricultural products, and not for general business or personal purposes. Because Washington law defines eligible items and uses narrowly, direct farm businesses should review the applicable statutes or consult the Washington Department of Revenue to determine whether specific purchases qualify for exemption.

V. EXCISE TAXES

An excise tax is a tax levied on the purchase of a specific good. The most common excise tax that a direct farm business may encounter is the motor fuel excise tax. Under federal statutes, certain uses of fuel, such as farm use, are nontaxable. The user, therefore, may be able to seek a credit or refund of the excise tax paid for fuel. Credits or refunds are available for many types of fuel.

A. Federal Fuel Excise Taxes

Federal fuel taxes are governed by the Internal Revenue Code, including 26 U.S.C. Sections 4041 and 4081, with additional provisions addressing refunds and credits for certain uses of fuel (26 U.S.C. Sections 6420, 6427). The IRS provides practical guidance in IRS Publication 510, Excise Taxes, and IRS Publication 225, Farmer's Tax Guide. Federal excise taxes apply to gasoline, diesel, and other fuels, generally at rates ranging from 18.3 to 24.3 cents per gallon, depending on type of fuel.

Fuel used in certain activities may qualify as a nontaxable use, allowing the taxpayer to recover excise taxes paid through a credit or refund. In the agricultural context, fuel used on a farm or for farming purposes may qualify. "Farming purposes" generally include cultivating crops, raising livestock, operating and maintaining farm equipment, and handling or storing raw agricultural commodities. By contrast, fuel used for non-qualifying activities, such as transportation on public highways or processing agricultural products (e.g. canning or freezing), is generally subject to the excise tax.

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Fuel used off-highway in trade or business may also qualify for a credit or refund, even if it does not meet the definition of farming use. This includes fuel used in stationary equipment, generators, forklifts, and similar machinery. However, fuel used in vehicles operated on public roads does not qualify for this treatment.

In most cases, excise tax is paid at the time of purchase, and the taxpayer later recovers the tax through a credit or refund. Taxpayers may claim a credit using Form 4136 on their federal income tax return. Taxpayers who incur more than $750 in refundable fuel taxes in a quarter may file for a quarterly refund, while smaller amounts may be carried forward (26 U.S.C. Section 6427(i)). To substantiate claims, taxpayers must maintain records documenting the type, quantity, and use of fuel, as well as the identity of the seller (26 C.F.R. Section 48.6427-5).

B. Washington Motor Fuel Tax Laws

Washington also imposes a state motor fuel tax (RCW 82.38.030). Similar to federal law, Washington provides most exemptions or refunds for certain nonhighway uses of fuel, including fuel used in agricultural operations (RCW 82.38.080). In practice, many farmers used dyed diesel fuel for off-road purposes, which is not subject to state fuel tax at the point of sale. Farms that pay state fuel tax on qualifying uses may apply for a refund through the Washington Department of Licensing, subject to documentation and procedural requirements.

VI. PROPERTY TAXES

Direct farm businesses in Washington are generally required to pay local property taxes on real property, including land and improvements. Property taxes are administered at the county level under state law (RCW 84.40).

If a farmer leases from a tax-exempt owner (such as a government entity), the leasehold interest may be subject to a leasehold excise tax in place of property tax (RCW 82.29A.030). This tax is imposed on the use of publicly owned, tax-exempt property.

A. Washington's Open Space Taxation Act

The Open Space Taxation Act provides a special property tax program for agricultural land known as the Current Use Program, which allows qualifying farmland to be valued based on its current agricultural use rather than its highest and best use (RCW 84.34). This often results in significantly lower property taxes for farmland. Under this program, land is valued based on factors such as the type of agricultural use, the productive capacity of the land, and typical income from agricultural production (RCW 84.34.065). County assessors determine the value of land enrolled in the program using capitalization rates and valuation methods established under state law.

To qualify, land must meet certain minimum size or income requirements and must be actively devoted to agricultural use (RCW 84.34.020; RCW 84.34.035). The size requirement is typically 20 acres or more, although smaller parcels may qualify if they generate minimum gross agricultural income (thresholds vary by parcel size). Land that is removed from the

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program may be subject to additional taxes, interest, and penalties (RCW 84.34.108). Applications for classification are submitted to the county tax assessor's office. Additional information is available through the Washington Department of Revenue.

B. Taxation of Easements

Agricultural conservation easements may affect the property tax valuation of farmland. When a landowner grants an easement that restricts development, the easement may reduce the market value of the property, which can influence how the land is assessed by the county.

Because the tax treatment of land subject to an easement can vary based on local assessment practices and program participation, landowners should consult the county assessor or a tax professional when evaluating the tax implications of granting a conservation easement. For a broader discussion of conservation easements, including program options and legal considerations, see Chapter 6: Special Topics in Washington Agricultural Law – Easements.

VII. CHECKLIST

Have you...?

- obtained an Employer Identification Number from the Internal Revenue Service?
- registered with the Washington Department of Revenue?
- obtained the necessary forms and established proper taxing procedures for your business entity?
- obtained the appropriate forms and established good record keeping procedures?
- considered the Washington Current Use (Agricultural) Property Tax Valuation?

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CHAPTER 6: LABOR AND EMPLOYMENT

Several federal and Washington laws address labor and employment issues in the agricultural context. Direct farm businesses that employ workers must comply with a range of legal requirements governing wages and hours, worker safety, migrant and seasonal labor, unpaid worker arrangements, and employer liability.

This chapter provides an overview of key labor and employment laws affecting farm operations, including federal and state wage and hour requirements, which establish minimum wage, overtime, and recordkeeping obligations. It also addresses occupational safety and health laws, including requirements enforced by the Washington Department of Labor & Industries, which regulate working conditions and workplace safety on farms.

In addition, this chapter discusses laws applicable to migrant and seasonal agricultural workers, including federal protections under the Migrant and Seasonal Agricultural Worker Protection Act (MSPA), as well as related disclosure and hiring requirements. The chapter also examines the legal risks associated with unpaid workers, such as interns and student workers, and explains when such arrangements may violate wage and hour laws.

Finally, this chapter addresses employer liability, including potential responsibility for employee injuries, workplace violations, and actions taken by employees within the scope of their employment.

These are only some of the employment issues a direct farm business may encounter. This chapter is not intended to be comprehensive, and the applicability of specific laws may vary depending on the nature of the operation, the type of workers employed, and where the work is performed. Accordingly, farm businesses should consult with an attorney or appropriate agency to ensure compliance with all applicable labor and employment laws.

I. FAIR LABOR STANDARDS

A. The Fair Labor Standards Act and Washington State Labor Laws

The Fair Labor Standards Act (FLSA) is the primary federal law governing wages, hours, and child labor in the United States (29 U.S.C. Sections 201-219). The FLSA establishes minimum wage requirements, overtime pay obligations for hours worked over 40 in a workweek, and restrictions on the employment of minors (29 U.S.C. Sections 206, 207, 212). Because agricultural operations commonly involve goods, supplies, or markets that cross state lines, the FLSA applies to most direct farm businesses.

The FLSA includes several exemptions for agricultural employees. To qualify, an employee's work must fall within the Act's definition of "agriculture" (29 U.S.C. Section 203(f)). This definition includes farming in all of its branches, such as cultivating the soil, producing and harvesting crops, dairying, and raising livestock, poultry, or other agricultural commodities. It also includes certain practices performed by a farmer or on a farm that are incidental to or

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in conjunction with farming operations, such as preparing products for market or delivering them to storage or transportation.

The U.S. Department of Labor further distinguishes between primary agriculture, which includes direct farm activities, and secondary agriculture, which includes related activities that must be performed by a farmer or on a farm and be incidental to farming (29 C.F.R. Section 780.105). Whether a particular activity qualifies as agricultural can be complex and depends on the specific facts, particularly where work involves processing, off-farm activities, or products from multiple farms. Employers should consult the U.S. Department of Labor Wage and Hour Division or legal counsel if there is uncertainty about whether an activity qualifies for the agricultural exemption.

Under federal law, agricultural employees are generally exempt from overtime requirements, meaning employers are not required to pay time and a half for hours worked over forty in a workweek (29 U.S.C. Section 213 (b)(12)). However, agricultural employees are still subject to minimum wage requirements unless a specific exemption applies. Certain agricultural employees are exempt from both minimum wage and overtime requirements under limited circumstances, including employees working on small farms that used fewer than 500 man-days of labor in any quarter of the preceding year, immediate family members of the employer, certain hand laborers paid on a piece-rate basis, certain minors working on the same farm as their parents, and employees primarily engaged in range livestock production (29 U.S.C. Section 213 (a)(6)).

The FLSA also regulates the employment of minors in agriculture. In general, children under the age of sixteen may work in agriculture under certain conditions, including on farms owned or operated by their parents (29 U.S.C. Section 213(c)). However, minors under sixteen are prohibited from performing particularly hazardous work unless employed by their parents (29 U.S.C. Section 213(c)(2). Hazardous occupations include activities such as operating heavy machinery, working at significant heights, handling certain animals, and working with hazardous chemicals (29 C.F.R. Section 570.71).

Overall, the FLSA applies broadly to agricultural employers, and it is uncommon for a direct farm business to fall outside of its scope. Because agricultural labor laws include numerous exemptions and are highly fact specific, direct farm businesses should carefully evaluate their employment practices and consult with the U.S. Department of Labor or the Washington Department of Labor & Industries when questions arise.

Washington Wage and Overtime Requirements

Washington law differs significantly from federal law in this area. Washington establishes its own state minimum wage, which is higher than the federal minimum wage (RCW 49.46.020). In addition, Washington now requires overtime pay for agricultural workers, meaning that most agricultural employees must be paid overtime for hours worked over 40 in a workweek. As a result, farm employers in Washington must comply with both federal and state law, and where the two differ, the rule that is more protective of the employee applies.

II. Occupational Safety and Health

A. The Occupational Safety and Health Act (OSHA)

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The Federal Occupational Safety and Health Act (OSHA) establishes workplace safety and health standards that apply to agricultural employers (29 U.S.C. Sections 651-678; 29 C.F.R Parts 1900-1999). OSHA generally applies to agricultural employers, but it does not cover self-employed individuals or farms that employ only immediate family members. Congress has long included a provision in OSHA's annual appropriations act that limits OSHA's ability to enforce workplace safety regulations on farms with ten or fewer employees that have not operated a temporary labor camp within the previous twelve months. This provision restricts OSHA from using federal funds for enforcement activities against qualifying small farms. This limitation does not eliminate the legal requirements themselves, and it does not apply in the same way under Washington law, which is enforced by the Washington Department of Labor and Industries (L&I).

OSHA regulations applicable to agriculture include requirements related to tractor safety, such as rollover protective structures, guarding of farm equipment, and safe operation of machinery (29 C.F.R. Sections 1928.51-1928.57). Employers must also comply with field sanitation standards, including providing drinking water, handwashing facilities, and toilets for field workers (29 C.F.R. Section 1928.110).

Certain general industry standards apply to agricultural operations where incorporated or applicable, including requirements for temporary labor camps, hazard communication (chemical safety), anhydrous ammonia handling, and other workplace safety measures. Employers must also ensure that equipment operated on public roads displays appropriate slow moving vehicle signage.

Recordkeeping, reporting, and posting requirements

Employers must post notices informing employees of their rights under OSHA (29 C.F.R. Section 1903.2). Employers with more than ten employees must maintain records of work-related injuries and illnesses, while smaller employers are generally exempt from routine recordkeeping unless notified otherwise (29 C.F.R. Section 1904.1). All covered employers must report serious incidents to OSHA. These include any fatality, which must be reported within eight hours, and any inpatient hospitalization, amputation, or loss of an eye, which must be reported within twenty-four hours (29 C.F.R. Section 1904.39). Employers must also maintain injury and illness records for five years and annually review and certify their accuracy (29 C.F.R. Sections 1904.32-1904.33).

Washington Workplace Safety Laws and Regulations

In Washington, workplace safety is regulated by the Washington Industrial Safety and Health Act (WISHA) which is administered by the Washington Department of Labor and Industries (L&I) (RCW 49.17). Under Washington law, employers must report serious workplace incidents to L&I (WAC 296-27-031). Unlike federal OSHA, Washington does not follow the federal appropriations rider limiting enforcement on small farms. As a result, small agricultural employers in Washington may still be subject to inspection and enforcement by L&I, even if they have less than ten employees.

Washington also has its own recordkeeping requirements. While some small employers may be partially exempt from routine injury and illness recordkeeping, employers should not assume exemption based solely on size and should confirm their obligations under WAC

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296-27. In general, employers required to keep records must maintain injury and illness logs, review them annually, and retain them for multiple years.

Farm employers in Washington must comply with applicable state safety standards, including requirements related to equipment safety, worker protection, sanitation, and training. Employers should consult L&I resources or legal counsel to ensure compliance.

B. Federal Insecticide, Fungicide and Rodenticide Act

The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. Chapter 6 Subchapter II) governs the registration, distribution, and use of pesticides in the United States and authorizes the U.S. Environmental Protection Agency (EPA) to regulate agricultural chemicals. Pursuant to FIFRA, the EPA has adopted the Worker Protection Standard (WPS) (40 C.F.R. Part 170), which establishes requirements to protect agricultural workers and pesticide handlers from exposure to pesticides.

The WPS requires agricultural employers to provide pesticide safety training, maintain information about pesticide applications, and ensure that workers have access to this information. Employers must also take steps to protect workers from exposure, including complying with restricted entry intervals following pesticide applications, providing required notification of treated areas, and ensuring the use of appropriate personal protective equipment for handlers.

In addition, employers must provide decontamination supplies, including water, soap, and towels, and must ensure that emergency assistance is available if a worker is exposed to pesticides. The EPA provides guidance materials to assist employers in complying with the WPS.

Washington law also regulates pesticide use and worker safety. The Washington State Department of Agriculture (WSDA) administers pesticide licensing, registration, and enforcement under the Washington Pesticide Control Act, RCW 15.58, and the Washington Pesticide Application Act, RCW 17.21. Washington has adopted rules implementing pesticide safety requirements, including provisions that incorporate and enforce federal WPS standards (WAC 16-233).

III. MIGRANT AND SEASONAL WORKERS

The Migrant and Seasonal Worker Protection Act

The Migrant and Seasonal Worker Protection Act (MSWPA) (29 U.S.C. Chapter 20) and its regulations (29 C.F.R. Part 500) establish standards for the employment of migrant and seasonal agricultural workers. The Act imposes requirements on agricultural employers and farm labor contractors related to wages, disclosures, housing, transportation, and recordkeeping. The U.S. Department of Labor website has guidance, fact sheets, posters, and forms.

Hiring

Some direct farm businesses may choose to use a Farm Labor Contractor (FLC) to obtain migrant or seasonal workers. FLCs recruit, pay, and transport workers to the needed

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locations. In return, the direct farm business pays the FLC a fee. FLCs must register and obtain a Certificate of Registration with the U.S. Department of Labor pursuant to the MSWA (29 U.S.C. Sections 1801-1872; 29 C.F.R. § 500.1(c)). An employee of a registered farm labor contractor must obtain a Farm Labor Contractor Employee Certificate of Registration (29 C.F.R. § 500.40). The direct farm business must ensure that any FLC they use is properly registered. The MSPA Registered Farm Labor Contractor Listing can be found on the U.S. Department of Labor website.

Employers who recruit workers directly may qualify for exemptions from FLC registration if they meet either the family business exemption or the small business exemption, which is fewer than 500 man-days of labor in any quarter of the previous year (29 C.F.R. Section 500.30). These exemptions do not apply to entities that operate solely as farm labor contractors.

Wages and disclosures

The MSPA requires employers to pay migrant and seasonal workers when wages are due under the established pay period, and to comply with applicable wage laws (29 U.S.C. Section 1822(a). In addition, employers must provide detailed disclosures to workers at the time of recruitment, including the location and nature of the work, wage rates, period of employment, and any housing or transportation arrangements. Employers must also provide written terms of employment, post a Department of Labor notice outlining worker rights, and provide information in a language the worker understands when necessary (29 U.S.C. Section 1821(a);(g); 29 C.F.R. Sections 500.75-500.78).

Providing Housing or Transportation

Where housing is provided, if must meet applicable federal and state health and safety standards and be certified by an appropriate authority (29 U.S.C. § 1823; 29 C.F.R. Sections 500.130-135). Transportation the employer provides to workers must also meet safety standards and be properly insured (29 U.S.C. Section 1841; 29 C.F.R. §§ 500.100--121).

Recordkeeping

Employers are required to maintain records for each worker, including hours worked, wages earned, the basis of pay, deductions and net pay (29 U.S.C. § 1821(d); 29 C.F.R. § 500.80). These records must be retained for at least three years and workers must receive regular written statements of earnings.

H-2A Visa Program

The H-2A visa program is a program that allows farmers to hire nonimmigrant foreign agricultural workers if certain conditions are met. Employers seeking to hire under the H-2A visa program must first obtain a temporary labor certification form the U.S. Department of Labor. To receive certification, the employer must demonstrate that there are not sufficient U.S. workers who are able, willing, qualified, and available to perform the work, and that employing foreign workers will not adversely affect the wages and working conditions of similarly employed U.S. workers (8 U.S.C. § 1101(a)(15)(H)(ii)(a); 8 U.S.C. Section 1188; 20 C.F.R. Part 655.

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If certified, the employer must comply with several ongoing obligations, including continuing to recruit and hire U.S. workers, providing housing at no cost to H-2A workers who cannot reasonably return to their residence each day, providing transportation to and from the worksite (and inbound/outbound transportation under certain conditions), and complying with applicable wage requirements and other program conditions (20 C.F.R. Section 655.122(d), (h), and (i)).

Participation in the H-2A Visa program includes requirements for non-H-2A labor on the farm as well, including recruiting and hiring practices. It is important that a farmer considering this program understand all requirements, many of which are beyond the scope of this handbook. The Department of Labor website provides step-by-step instructions on how the H-2A program works, including links to webinars and other resources. Because both federal and Washington laws apply to the employment of migrant and seasonal workers, and laws and regulations are changing rapidly, farm businesses should carefully evaluate their options and consult the appropriate agencies and legal counsel when questions arise.

IV. EMPLOYMENT ELIGIBILITY VERIFICATION (FORM I-9)

Farm employers in Washington must comply with federal law requiring verification that all employees are authorized to work in the United States. This requirement applies to all agricultural employers, regardless of the size of the operation, type of commodity produced, or method of marketing.

Under the Immigration Reform and Control Act (IRCA), it is unlawful for an employer to hire an individual without verifying both identity and authorization to work (8 U.S.C. Section 1324a(a)(1)). To meet this obligation, employers must complete a form I-9 (Employment Eligibility Verification) for every employee at the time of hire. The employee must attest to their work authorization, and the employer must examine documents presented by the employee that establish identity and employment eligibility. The employer's responsibility is limited to reviewing documents to determine whether they reasonably appear to be genuine and relate to the employee; employers are not required to independently investigate an employee's immigration status beyond this process.

Federal law also imposes limits on how employers can carry out employment verification. Employers may not require employees to present specific documents, request more or different documents than necessary, or reject documents that reasonably appear to be valid. Employers are also prohibited from treating employees differently on the basis of citizenship or national origin in the verification process (8 U.S.C. Section 1324b).

Employment eligibility verification is governed primarily by federal law. Washington state does not maintain a separate system for verifying immigration status. However, state law limits the extent to which state and local agencies may participate in federal immigration and enforcement activities (RCW 10.93.160). These limitations do not affect an employer's independent obligation to comply with federal employment verification requirements.

For agricultural employers, the same I-9 requirements apply as in any other industry. Employers who hire workers through the H-2A temporary agricultural worker program are subject to additional federal requirements related to worker certification, visas, and

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recruitment. These requirements operate alongside, rather than in place of, the I-9 verification process.

V. UNPAID EMPLOYEES: INTERN AND STUDENT WORKER PROGRAMS

Many small farms use internship or student worker programs to provide hands-on training and mentorship. While these arrangements can benefit both the farm and the worker, they raise important legal issues under federal and state wage and hour laws.

Under federal law, whether an intern may be unpaid depends on whether the individual qualifies as a trainee rather than an employee. Courts and the U.S. Department of Labor apply a "primary beneficiary test," which examines whether the intern or the employer is the primary beneficiary in the relationship. If the intern primarily benefits (such as through educational training similar to that provided in an academic setting) the individual may be unpaid. However, if the intern performs productive work that primarily benefits the farm, the intern is likely considered an employee and must be paid in accordance with wage laws.

Although federal law provides a limited minimum wage exemption for certain small farms that use less than 500 man-days of agricultural labor in any calendar quarter, this exemption does not automatically permit unpaid internships 29 U.S.C. Section 213(a)(6)). Employers must still ensure that any unpaid arrangement satisfies applicable legal standards, including the primary beneficiary test.

Washington law is more restrictive. The Washington Minimum Wage Act applies broadly and generally requires that workers be paid at least the state minimum wage (RCW 49.46.020). Washington does not recognize a broad exemption for unpaid interns in for-profit agricultural businesses. As a result, most individuals performing work on a farm in Washington must be treated as employees and paid accordingly.

Washington does, however, offer a limited exception through its farm internship project, which allows certain small farms to host interns who may be paid less than the state minimum wage if the program requirements are met (RCW 49.12.471). the program is administered by the Washington Department of Labor & Industries Farm Internship Program and is intended to provide structured, educational training in agricultural practices. To participate, farms must apply for approval, meet eligibility requirements (including size limitations), and comply with restrictions on the number of interns, duration of the internship, and supervision provided. Because participation requires prior approval and strict compliance, most farms cannot rely on this program without formally enrolling.

Even where an unpaid internship program is lawful, employers must still comply with other employment laws. These include requirements related to workplace safety, pesticide safety, housing and transportation standards, and worker's compensation coverage addressed throughout this chapter.

Federal law permits limited student-learner and apprenticeship programs, which allow employers to pay less than minimum wage under specific circumstances. These programs generally require formal certification or registration and must be part of a structured training program, often connected to vocational or educational instruction (29 U.S.C. Section 214(a); 29 C.F.R. Part 520; 29 U.S.C. Section 50; 29 C.F.R. Part 29). Because these programs are narrowly defined and subject to strict requirements, they are not commonly used in small

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farm operations without coordination with an educational institution or formal training sponsor.

From a practical standpoint, farmers that use interns or student workers should take care to structure the program thoughtfully. Developing a written internship agreement that outlines expectations, hours, compensation, housing arrangements, and educational components can help clarify the relationship and reduce the risk of disputes. Maintaining accurate records of hours worked and activities performed is also important in the event of a regulatory inquiry. Because the legal distinction between an unpaid intern and an employee is highly fact-specific and closely scrutinized by regulators, farm businesses should consult legal counsel or appropriate agencies before implementing an unpaid internship program.

VI. EMPLOYER LIABILITY

Farming operations involve inherent risks, and injuries to employees or third parties can occur despite efforts to maintain safe conditions. Employers must take reasonable steps to provide a safe workplace and comply with applicable safety regulations. When injuries occur, an employer's liability may arise either through the worker's compensation system or, in limited circumstances, through civil liability under common law tort principles, which govern injuries or harm caused to others.

A. Worker's Compensation (Washington Industrial Insurance)

In Washington, most employers are required to provide worker's compensation coverage through the state's industrial insurance system, which is administered by the Washington Department of Labor & Industries (L&I) (RCW Title 51). This system includes compensation to employees for work-related injuries or occupational diseases without requiring proof of employer fault. In exchange for this coverage, employers are generally protected from lawsuits by employees for workplace injuries (RCW 51.04.010).

Coverage requirements apply broadly in Washington, and there is no general exemption for small farms. Although limited exemptions exist, such as for certain family members, business owners, or independent contractors, most agricultural employees must be covered (RCW 51.12.020; RCW 51.08.195). Because coverage applies broadly in Washington, agricultural employers should assume that worker's compensation obligations apply unless a specific exemption is confirmed. Failure to obtain required coverage can result in significant financial liability and penalties.

B. Employer Liability Outside the Worker's Compensation System

Although worker's compensation is generally the exclusive remedy for employee injuries, employers may still face liability in certain circumstances, particularly when injuries involve third parties or fall outside the scope of the worker's compensation system.

Negligence and Duty of Care

Employers have a duty to exercise reasonable care in maintaining a safe workplace. This includes maintaining equipment, addressing known hazards, and complying with safety

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regulations, including those enforced under the Washington Industrial Safety Act (WISHA) (RCW 49.17).

An employer may be liable for negligence if it knew or should have known of a hazard and failed to take reasonable steps to prevent harm. Washington follows a system of pure comparative fault, meaning that liability may be shared among parties based on their degree of responsibility (RCW 4.22.005).

Liability for Employees Injuring Third Parties

Employers may be held liable for injuries caused by employees under the doctrine of respondeat superior, which applies when an employee acts within the scope of employment. For example, if an employee causes a traffic accident while transporting farm goods as part of their job duties, the employer may be liable. However, if the employee was acting outside the scope of employment, such as during a personal errand, the employer may not be responsible.

Employers are generally not liable for the actions of independent contractors, although classification depends on the degree of control over the work and must be evaluated carefully.

Liability for Employees Injuring Other Employees

Although most workplace injuries are addressed through worker's compensation, employers may still face liability in limited situations, such as negligent hiring, supervision, or retention. An employer may be liable if it knew or should have known that an employee posed a risk of harm and failed to take appropriate action. Employers also have an ongoing responsibility to ensure that employees are properly trained and follow safety procedures. This responsibility cannot be avoided by delegating supervision to others.

VII. CHECKLIST

- If you hire employees, have you ensured they are paid at least the Washington minimum wage, that overtime is paid as required under Washington law, that employees are properly classified (agricultural v non-agricultural, and accurate payroll and time records are maintained?

- If you intend to employ minors, do you understand the restrictions on the hours and activities they may be employed in? Have you obtained necessary certificates for each minor?

- Have you obtained equipment and developed operational procedures necessary to comply with OSHA, FIFRA and other employee-protection laws?

- Have you complied with any necessary registration, licensing, and disclosure requirements for migrant workers you may employ? If provided, have you ensured any housing and transportation meet safety standards? Are all required employment and payroll records maintained?

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- If pursuing H-2A workers, have you obtained labor certification from the Department of Labor, conducted ongoing domestic recruitment, and provided housing, transportation, and appropriate wages?

- Have you ensured the workplace complies with Washington safety standards, equipment is properly maintained and guarded, field sanitation requirements are met, employees receive safety training, and serious injuries are reported on time?

- Have you ensured workers receive WPS training, restricted-entry intervals are followed, PPE and decontamination supplies are provided, and any pesticide use complies with WSDA rules?

- Do you have completed I-9 forms for every employee?

- If employing interns and student workers, have you ensured they meet the primary beneficiary test, or that they are paid? If you are participating in the Washington Farm Internship Program, is your farm approved by the Washington Department of Labor & Industries Farm Internship Program, and are written agreements and records maintained?

- Do you have worker's compensation insurance in place? Have you verified any exemptions (for family members, owners, etc.)? and that general liability insurance is adequate?

- Have you ensured that workplace hazards are addressed, employees are trained and supervised, independent contractors are properly classified, and insurance coverage matches operational risks?

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CHAPTER 7: SPECIAL TOPICS IN WASHINGTON AGRICULTURAL LAW

I. TRIBAL AND NATIVE AMERICAN AGRICULTURAL LAW IN WASHINGTON

Agricultural activities conducted by Tribal members on Tribal lands in Washington are governed by a unique legal framework that includes federal law, Tribal law, and, in some cases, state law. Federally recognized Tribes are sovereign governments, meaning they have the authority to regulate land use, agriculture, and business activities within their reservations and trust lands. As a result, laws that apply to non-Tribal farms in Washington may not apply in the same way (or not at all) on Tribal lands.

In general, Tribal law governs agricultural activities on Tribal trust land, while federal law applies broadly, particularly in areas such as environmental regulation, food safety, and federal agricultural programs. State law may apply in limited circumstances, depending on factors such as whether the land is held in trust or owned in fee and whether the activity involves Tribal members or nonmembers. Because jurisdiction varies, determining which laws apply often requires a case-specific analysis.

Taxation is one area where these jurisdictional differences are especially important. Tribal trust land is generally not subject to state property tax, and income earned by Tribal members on Tribal land is typically not subject to state income tax. However, non-Tribal businesses operating on reservations may be subject to certain state laws, such as fuel taxes (RCW 82.38.310).

Land status plays a critical role in how agricultural operations are regulated. Land within reservation boundaries may be held as trust land (owned by the federal government for the benefit of the Tribe or Tribal member) or fee land (privately owned). Trust land is generally not subject to state taxation and is often governed primarily by Tribal and federal law, while fee land may be subject to a broader range of state regulation.

Water rights are also a critical component of Tribal agriculture. Many Tribes in Washington hold federally reserved water rights arising from treaties and federal law which can provide significant water access for agricultural uses and may affect water availability for other users in the same watershed. For a more detailed discussion of Tribal water rights and their implications, see the Tribal Water Law section below.

For direct farm businesses, these overlapping legal systems mean that operations on or near Tribal lands may be subject to different regulatory, tax, and land use requirements than those that apply elsewhere in the state. Farmers should carefully determine the status of their land and consult with the relevant Tribal government, federal agencies, or legal counsel when questions arise. Because the legal landscape can be complex and highly fact-specific, early coordination with the appropriate authorities is often essential.

For additional information on the legal issues affecting agriculture in Indian Country, the following resources may be helpful:

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- Cohen's Handbook on Federal Indian Law is a leading treatise on federal Indian law, including Tribal sovereignty, land status, and taxation. This is especially useful for understanding jurisdictional issues that frequently arise in Washington.
- National Agricultural Law Center (NALC) Native American Law Resources provides articles and legal over views on agriculture in Indian Country, including topics such as land tenure, taxation, and federal program access relevant to Tribal producers.
- InterTribal Agriculture Council (IAC) provides support, policy advocacy and education for Native producers, with resources focused on improving access to agricultural markets and federal programs.
- USDA's Tribal Partnerships Guide for Tribal Nations has useful information on federal government programs. A website with more resources can be found here.
- 25 C.F.R. Part 162, Leases and Permits on Indian Land governs agricultural leasing of Tribal trust land, which is especially relevant in Washington where land tenure and leasing arrangements can significantly.

II. WATER LAW IN WASHINGTON

Water is a critical resource for agricultural operations in Washington, and its use is governed by a complex legal framework that includes state water rights law, federal law, and, in some cases, Tribal treaty rights. For direct farm businesses, it is important to understand that the right to use water is not automatic. Instead, water use is regulated through a system that allocates rights among users and prioritizes those rights during times of scarcity (the Water Code, RCW 90.03).

Washington follows the doctrine of prior appropriation, often described as "first in time, first in right." Under this system, water rights are ranked based on the date they were established, meaning that users with older (senior) rights are entitled to receive water before those with newer (junior) rights when water is limited (RCW 90.03.010).

Obtaining a water right

In most cases, a person wishing to use water for irrigation or other agricultural purposes must obtain a water right permit from the Washington Department of Ecology. To obtain a permit, the applicant must demonstrate that water is available, that the proposed use will not impair existing water rights, that the use is beneficial, and that it will not be detrimental to the public interest (RCW 90.03.290). If the application is approved, Department of Ecology will issue a permit stating the amount of water and the applicant is entitled to and the beneficial use or uses for which the water may be applied.

A central principal of Washington water law is that water must be put to beneficial use (RCW 90.03.010). Water rights that are not used for an extended period (generally five consecutive years) may be subject to relinquishment under the state's "use it or lose it" doctrine, unless a statutory exception applies (RCW 90.14.130, RCW 90.14.140).

Changing or transferring a water right

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Washington law strictly limits changes to an existing water right. A water right is tied to a specific point of diversion (where water is taken from), place of use, and purpose of use. In general, a water right is appurtenant to the land where it is used, rather than to the individual who holds it, meaning it typically transfers with the property unless lawfully changed or severed. A person may not change any of these elements without approval from the state (RCW 90.03.380).

A water right holder may apply to the Washington Department of Ecology (or, in some cases, a local authority) to change the location where water is withdrawn, the land where the water is used, or the type of use. The proposed change will be approved only if it does not impair existing (senior) water rights. The state will evaluate whether the change would reduce the quantity or reliability of water available to other users. Only the portion of the water right that has been put to beneficial use may be transferred or changed. If a water right has not been fully used, the unused portion generally cannot be transferred.

Watershed-specific restrictions on water use

In addition to statewide rules, water use in Washington is often subject to watershed-specific regulations, particularly instream flow requirements to protect fish, wildlife, and ecological values. The Washington Department of Ecology is authorized to adopt these flows by rule for individual watersheds (RCW 90.22.010-020 and RCW 90.54.020(3)(a)). Instream flows function as water rights with priority dates, meaning they can limit or prevent new water withdrawals that would impair those flows.

In many watersheds, once instream flows are established, they can effectively close the basin to new appropriations or severely restrict additional water use, especially during low-flow periods. This can significantly affect farmers seeking new water rights or expanding irrigation.

Tribal water rights

Water law in Washington is further shaped by Tribal treaty rights and federal law, which can significantly affect water availability for agricultural use. Many Tribes hold federally reserved water rights, which arise under federal law and are often senior to most non-Tribal water rights in a watershed. The recognition and quantification of Tribal water rights are grounded in federal law and treaties, including those negotiated in the Pacific Northwest in the mid-19th century (e.g. Treaty of Medicine Creek (1854), Treaty of Point Elliot 1855)). These treaties are the supreme law of the land under the U.S. constitution (see U.S. Const. art. VI, cl.2). These rights were further recognized by the U.S. Supreme Court in Winters v. United States, which held that when the federal government reserves land for a reservation, it also implicitly reserves sufficient water to fulfill the purposes of that reservation (see Winters v United States, 207 U.S. 564 (1908). In Washington, Tribal water rights are also closely tied to treaty rights, including rights to fish, hunt, and gather. Courts have interpreted these treaties to include sufficient water to support those resources (see

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United States v. Washington, 384 F. Supp. 312 (W.D. Wash. 1974), aff'd 520 F.2d 676 (9th Cir. 1975).

For Tribal members, these rights can provide important benefits. Tribal producers may have more reliable access to water, particularly during times of shortage, because senior rights are satisfied before junior users. In addition, agricultural activities on Tribal trust land are often governed by Tribal and federal law, rather than state permitting systems, which may affect how water use is authorized and managed.

At the same time, Tribal water rights can have significant implications for non-Tribal farmers. Because these rights are often senior, they can limit the availability of water for new uses and may reduce the water available to junior water right holders during drought conditions. Tribal rights may also affect decisions by the Washington Department of Ecology when reviewing new water right applications or changes to existing rights.

In many watersheds, Tribal water rights are still being quantified through adjudication or negotiated agreements, which can create uncertainty for both Tribal and non-Tribal water users. As these rights are defined and implemented, they may influence water allocation, regulatory decisions, and long-term planning for agricultural operations.

Overall, Tribal water rights are a foundational part of Washington water law and play a key role in supporting Tribal agriculture and natural resources, while also shaping water availability and regulatory conditions for all agricultural producers within a watershed.

Practical considerations for Direct Farm Businesses

Because water rights are highly regulated and fact-specific, direct farm businesses should take care to determine whether they have a valid water right or qualify for an exemption, understand the priority of their right, and ensure that their use remains within legal limits. Consulting with the Washington Department of Ecology or a qualified attorney is often advisable when questions arise, particularly before expanding agricultural operations or changing water use.

III. EASEMENTS

Agriculture easements are a tool used to preserve farmland by limiting non-agricultural development. In Washington, these are typically referred to as conservation easements or agricultural conservation easements. A conservation easement is a voluntary legal agreement between a landowner and a qualified entity (such as a land trust or a government entity) that permanently restricts certain uses of the land to protect its agricultural, environmental, or open space value (RCW 64.04.130). When a landowner grants an agricultural easement, they retain ownership of the land but give up certain development rights, such as the ability to subdivide or convert the land to non-agricultural uses. The easement "runs with the land," meaning it binds future owners as well.

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Landowners who donate a qualifying conservation easement may be eligible for federal tax benefits. A donated easement that meets federal requirements may be considered as a "qualified conservation contribution", allowing the landowner to claim a charitable deduction (26 U.S.C. Section 170(h)). The availability and value of this deduction depend on factors such as conservation purpose, appraisal of the easement, and the landowner's tax situation.

Washington supports farmland preservation through a combination or state funding programs, local initiatives, and nonprofit efforts. One of the primary state efforts is the Washington Wildlife and Recreation Program (WWRP) which provides grants to purchase conservation easements and protect land from development (RCW 79A.15). Through WWRP, state and local partners can acquire development rights from willing landowners, ensuring that the land remains available for specific interests including agriculture (RCW 84.34.020).

At the local level, counties and conservation districts often work with landowners to preserve farmland, frequently in partnership with nonprofit land trusts. Several organizations play a prominent role in agricultural land preservation in Washington, including the Washington Farmland Trust (formerly called PCC Farmland Trust) which works directly with farmers to secure agricultural easements and keep land in production. There are several regional land trusts that also participate in farmland preservation efforts depending on location.

Washington also supports agricultural land preservation through broader land-use planning tools. Under the Growth Management Act, counties are encouraged to designate and conserve agricultural lands of long-term commercial significance, which can complement easement-based conservation strategies (RCW 36.70A.170).

In practice, farmland preservation in Washington is typically achieved through a combination of state funding (such as WWRP), local government planning, and nonprofit land trust initiatives, all working together to maintain agricultural land for long-term agricultural use. Farmers interested in placing an easement on their land typically begin by contacting a local land trust or conservation district, which can help evaluate eligibility, explain program options, and guide the application process. In addition, federal programs administered by the USDA Natural Resources Conservation District (NRCS) may provide funding or cost share assistance for conservation practices, and, in some cases, agricultural land preservation efforts. Because easements are legally binding and complex, landowners should work with an attorney and tax advisor before entering into an agreement.

IV. CHECKLIST

Direct farm businesses should:

- Confirm whether you have a valid water right.

- Understand the priority date of your water right, as senior rights are satisfied first during shortages.

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- Ensure your water use remains within the scope of this right, including the approved place, purpose, and quantity of use.

- Check for watershed-specific restrictions, including instream flow rules or basin closures, before developing or expanding operations.

- Determine whether Tribal water rights exist in your watershed, as these may affect water availability and permitting decisions.

- Review whether your area is subject to active adjudication or negotiated water agreements, which may change water allocation over time.

- Consult the Washington Department of Ecology before applying for a new water right or modifying an existing one.

- If operating near Tribal lands, consult the relevant Tribal government or water authority regarding applicable rules.

- Plan for variability in water availability, particularly during drought or in highly regulated basins.

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SECTION II: REGULATION BY PRODUCT

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Agricultural products are subject to different regulatory requirements depending on the type of product being produced, processed, and sold. In Washington, these product-specific rules often determine what licenses are required, what food safety standards apply, and which agencies oversee production and sales. As a result, understanding how the law applies to a particular product is an essential step for any direct farm business.

This section provides an overview of regulatory frameworks for a range of common direct farm products in Washington, including dairy and eggs, fruits and vegetables, grains and cereals, honey, livestock and poultry, seeds and nursery products. Each subsection highlights the key legal considerations for producing and marketing these products, including applicable licensing, inspection, labeling, and food safety requirements, with relevant statutes explained in more detail in Section 1.

While many of these products are regulated at both the federal and state levels, Washington specific rules, often administered by the Washington State Department of Agriculture, play a central role in determining compliance obligations for direct market producers. In particular, the WSDA's Food Safety and Consumer Services Division provides extensive guidance, licensing support, and technical resources for farmers navigating food safety and product regulation requirements. WSDA also publishes the *Handbook for Small and Direct Marketing Farms* (commonly known as the "Green Handbook"), which provides detailed, practical guidance for a wide range of farm products. Because regulatory requirements can vary significantly by product and method of sale, producers should review the applicable subsection carefully and consult WSDA or other relevant agencies early in the planning process.

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1 – DAIRY

Food safety authorities impose more regulations on dairy than almost any other food product. Multiple and overlapping federal and state laws establish strict standards for the production, processing, and sale of milk and dairy products. These laws generally apply to milk from all dairy animals, including cows, goats, and sheep. As a result, dairy farmers in Washington must work closely with regulators to ensure compliance. Establishing a dairy business takes significant effort, time, and money. This chapter provides an overview of the key legal frameworks but is not a substitute for contacting the Washington Department of Agriculture before starting.

I. FEDERAL REGULATION

Federal law plays a central role in regulating dairy production and marketing, particularly where products enter interstate commerce or are subject to federal inspection or programs.

A. The Food and Drug Administration (FDA)

The Food and Drug Administration (FDA) regulates milk and dairy products under the Federal Food, Drug, and Cosmetic Act, which prohibits the introduction of adulterated or misbranded food into interstate commerce (21 U.S.C. § 331). Federal regulations generally require that all milk and milk products distributed in interstate commerce be pasteurized, subject to limited exceptions (21 U.S.C. Section 1240.61). Dairy products must also comply with FDA standards of identity, which define what products such as milk, cheese, and yogurt must contain and how they may be labeled (21 C.F.R. parts 131 and 133).

The FDA also publishes the Grade "A" Pasteurized Milk Ordinance (PMO), a comprehensive model ordinance that establishes detailed requirements for sanitation, production, processing, and transportation of milk. Although the PMO is not itself federal law, it is widely adopted and forms the basis of state dairy regulation, including in Washington. The PMO governs permitting and inspection of dairy operations, sanitation and facility standards, labeling requirements, and prevention of adulteration and misbranding. Producers interested in processing or selling dairy products should review PMO requirements carefully.

B. United States Department of Agriculture (USDA)

The USDA administers a variety of programs relevant to dairy producers, including grading services, milk marketing orders, and reporting requirements.

The USDA provides voluntary grading and inspection services to certify dairy product quality (7 C.F.R. Part 58). These services may be useful for producers seeking to sell to schools, institutions or other buyers that require standardized quality certification, but they are not required for most direct-to-consumer sales.

The USDA also administers Federal Milk Marketing Orders (FMMOs), which establish minimum pricing rules for certain milk sales in wholesale markets (7 U.S.C. Section 608c; 7 C.F.R. Parts 1000-1170). These rules primarily apply to processors and larger dairy

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operations. Most small direct-to-consumer dairies are not significantly affected, although farms that sell milk into wholesale markets or operate at a large scale should evaluate whether these requirements apply.

Certain dairy producers may also be subject to federal reporting requirements related to pricing and storage of dairy commodities (7 U.S.C. Section 1637b; 7 C.F.R. Part 1170). These requirements generally apply to larger manufacturers and are unlikely to affect small direct farm businesses.

II. WASHINGTON STATE LAWS AND REGULATIONS

Dairy production and processing in Washington are regulated primarily by WSDA under the Milk and Milk Products Act (RCW 15.36; WAC 16-101). Because dairy products present significant food safety risks, Washington imposes strict sanitation, permitting, and inspection requirements.

Permitting and inspection

In Washington, dairy farms and milk processors must obtain appropriate licenses from WSDA before selling milk or dairy products. To obtain a license, an applicant must submit an application to WSDA, pay the required fee, and undergo an initial inspection of the dairy farm or processing facility to verify compliance with sanitation, construction, and operational standards. WSDA will issue a license only after determining that the facility meets applicable requirement under state law and regulations.

WSDA has authority to inspect dairy facilities, enforce sanitation standards, investigate violations, detain or embargo unsafe products. Milk and dairy products may not be sold if they are adulterated or misbranded.

Production and Sanitation Standards

Washington has adopted dairy standards consistent with the PMO, which are implemented through state law and regulation (WAC 16-101). These rules govern milk cooling and storage temperatures; sanitation of equipment and facilities; animal health and cleanliness' water supply and waste management; and handling and transportation of milk. Dairy operators must maintain clean facilities, properly sanitize equipment, and ensure that milk is handled in a manner that prevents contamination.

Raw milk

Washington allows the sale of raw (unpasteurized) milk under limited conditions. Producers must obtain a dairy farm license from WSDA and comply with specific requirements for the production and sale of raw milk, including additional testing, labeling, and sanitation standards (RCW 15.36.021(1)). Because raw milk is closely regulated and subject to heightened safety concerns, producers should consult with WSDA before engaging in raw milk sales.

Food safety and processing

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Dairy processors and value-added operations (e.g. cheese, yogurt, ice cream) may also be subject to additional food safety regulations, including Washington's adaptation of the Food Code (WAC 246-215). These rules apply particularly to retail food establishments, on-farm processing facilities, and direct-to-consumer sales.

III. Organic Milk

Farmers interested in producing and marketing certified organic milk must follow USDA Agricultural Marketing Service (AMS) organic standards (7 CFR Part 205). The regulations generally require organic feed and management practices, certification by an accredited certifying agent, and compliance with labeling standards. For more information on organic management and certification, see the "Organic Marketing" chapter of this Guide.

IV. Milk Promotion (Checkoff Program)

Federal law requires dairy producers to contribute to national milk promotion programs through a checkoff assessment based on milk production (7 U.S.C. Section 4501). For most producers, the assessment is collected by the first purchaser. However, producers who process and market their own milk directly to consumers may be responsible for reporting production and submitting payments themselves. Because administration of the checkoff program depends on how milk is marketed, direct-market dairies should confirm their obligations with the USDA Agricultural Marketing Service or the applicable regional dairy promotion organization.

V. Labeling and Marketing Claims

Dairy product labeling is regulated primarily by the FDA under general prohibitions against misbranding (21 U.S.C. Section 331). For example, claims such as "hormone free" may be considered misleading because all milk naturally contains hormones. The FDA permits statements such as "from cows not treated with rBST," but often requires qualifying language to avoid misleading consumers. Producers should ensure that all labelling claims are accurate and comply with federal and state requirements.

VI. Non-Cow Dairy (Goat, Sheep, and other Dairy Animals)

Although dairy regulations generally apply to milk from all dairy animals, including goats and sheep, many regulatory standards (particularly cased on the PMO) were developed with cow's milk production in mind. As a result, producers of goat, sheep, or other non-cow dairy products should be aware that certain requirements may need to be adopted to their specific operations.

In Washington, the Milk and Milk Products Act applies broadly to "milk and milk products" without limiting regulation to a certain species. Accordingly, goat and sheep dairies are subject to the same general requirements related to permitting, sanitation, inspection, and labeling as cow dairies, and must work with the WSDA to ensure compliance.

However, differences in animal size, milking practices, housing, and production scale may affect how regulatory standards are implemented in practice. For example, equipment

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design, facility layout, and herd health management may differ significantly from traditional cow dairies. In addition, many non-cow dairies operate on a smaller scale and may focus on value added products such as cheese, which can trigger additional food safety requirements.

Because regulatory requirements may not always translate directly from cow-based systems, producers of goat or sheep dairy products should consult WSDA early in the planning process to ensure that facilities and practices meet applicable standards.

VII. CHECKLIST

Before starting a dairy operation, consider the following. Have you…?

- identified your dairy type and products?
- found land with adequate water that is properly zoned for dairy use?
- contacted the WSDA? Obtained required dairy licenses? Ensured your operations meets sanitation standards? If you are selling raw milk, have you obtained required approval?
- researched labeling and sales practices?

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2 – EGGS

Egg sales are subject to a combination of federal and state regulations designed to ensure food safety, proper handling, and accurate labeling. In Washington, the WSDA plays the primary role in regulating egg sales, and producers should be familiar with both federal and state requirements before entering the egg selling market.

I. FEDERAL OVERSIGHT OF EGGS

At the federal level, egg production and sales are regulated primarily by the USDA and the FDA. The USDA regulates egg products under the Egg Products Inspection Act, which focuses on preventing the sale of adulterated eggs and establishing inspection requirements for facilities that process eggs into liquid, frozen, or dried products (21 U.S.C. Sections 1031-1056; 9 C.F.R. Part 590). These requirements generally apply to processing operations rather than small farms selling shell eggs directly to consumers.

The USDA also offers voluntary grading services for shell eggs (7 C.F.R. Part 56). While grading is not required for all direct sales, it may be necessary for producers selling into wholesale or institutional markets.

The FDA regulates shell eggs under the Food, Drug and Cosmetic Act and associated regulations (21 U.S.C. Section 331). One of the most significant federal requirements is the Egg Safety Rule, which applies to producers with 3,000 or more laying hens that sell shell eggs into the table egg market (21 C.F.R. Part 118). Covered producers must implement Salmonella Enteritidis prevention measures, including biosecurity practices, environmental testing, refrigeration, and recordkeeping. Most small direct-market producers fall below this threshold, but larger operations must comply. Federal regulations also require that shell eggs be refrigerated at or below 45 degrees Fahrenheit. This requirement applies to all producers, including small farms.

II. WASHINGTON STATE REGULATION OF EGGS

At the state level, egg sales in Washington are regulated by WSDA under the Washington Wholesome Eggs and Egg Products Act (RCW 69.25), which establishes requirements for licensing, grading, labelling, storage, and sale of eggs.

In general, individuals who handle, pack, or sell eggs must obtain a license from WSDA (RCW 69.25.040). however, limited exceptions may apply to small producers selling eggs directly to consumers, depending on factors such as flock size and where the eggs are sold. Because these exemptions are narrow and fact specific, producers should confirm their obligations with WSDA before selling eggs.

Eggs sold in Washington must be clean, unbroken, fit for human consumption, and must meet applicable quality standards. Producers may sell eggs as graded or ungraded, but labeling requirements vary depending on how the eggs are marketed. Cartons must generally include the name and address of the producer or packer, and if eggs are graded, the applicable grade and size must be disclosed.

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Eggs must be properly stored and transported under refrigerated conditions to maintain safety and quality. Washington requirements align closely with federal standards, and producers are responsible for ensuring that eggs are handled in a way that prevents contamination and spoilage.

For direct farm businesses, regulatory requirements often depend on flock size, method of sale, and whether eggs are sold on-farm, at farmers markets, or through retail channels. While small producers selling directly to consumers may qualify for reduced regulatory requirements, they must still comply with basic safety, labeling and handling rules.

III. CHECKLIST

If you're going to sell eggs, make sure you have answered the following questions:

- How many laying hens to you have (e.g. above or below 3,000)?
- Who are your customers (end user, institutions, processors), and where will your sales take place (on or off the premises)?
- Have you confirmed whether you need a WSDA egg handler license? If claiming an exemption, have you verified that it applies to your operation?
- Are eggs clean, unbroken, and fit for human consumption? Are you properly storing and refrigerating eggs?
- Do cartons include required information (name/address of producer or packer)? If eggs are graded, are grade and size correctly labeled? Do cartons include safe handling instructions?

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3 – Fish, Shellfish and Other Aquatics

Aquaculture and the harvest of fish and shellfish are important components of Washington agriculture and food systems. These operations include a wide range of products, such as finfish, shellfish (including oysters, clams, and mussels), and other aquatic species. Because many aquatic products are highly perishable and present food safety risks, their production, harvesting, and sale are subject to a combination of federal and state regulations. Direct-to-consumer sales can provide important market opportunities for producers, but they also require careful attention to applicable regulatory requirements.

I. Federal Rules

At the federal level, aquatic products are regulated primarily by the FDA under the Federal Food, Drug and Cosmetic Act (21 U.S.C. Section 331). The FDA requires most seafood processors to implement Hazard Analysis and Critical Control Point (HAACP) plans to identify and control food safety risks (21 C.F.R. Part 123). "Processing" is defined broadly and includes activities such as packaging, storing, or otherwise preparing seafood for sale. Direct farm business that only harvest and sell whole, unprocessed fish may not be subject to full HACCP requirements, but any processing or value-added activity can trigger these rules.

II. Washington State Rules

At the state level, regulation of fish and shellfish in Washington is divided among several agencies, depending on the type of food and activity. The Washington Department of Fish and Wildlife (WDFW) regulates the harvest, possession, and sale of fish and shellfish, including licensing requirements for commercial harvest and aquaculture operations RCW 77.65; RCW 77.60). To engage in these activities, producers must obtain the specific license or registration required for the species and operation by submitting an application to WDFW and paying applicable fees. Licenses are issued on an activity and species specific basis, and producers must comply with rules governing species, harvest methods, seasons, and reporting requirements.

The WSDA regulates certain aspects of aquaculture and food safety, particularly where fish and shellfish enter commercial markets or are processed for sale. The Washington State Department of Health (DOH) plays a central role in regulating shellfish, especially oysters, clams, and mussels. DOH administers the state's shellfish sanitation program, including classification of growing areas, water quality monitoring, and certification of shellfish harvesters and processors to ensure products are harvested from safe waters.

For producers selling fish or shellfish directly to consumers, regulatory requirements will depend on the type of product and how it is handled. Whole, unprocessed fish sold directly by the producer may be subject to fewer requirements than processed or value-added products. However, once fish are filleted, smoked, frozen or otherwise processed, additional food safety regulations may apply, including HAACP requirements and potential licensing under state food processing laws.

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Shellfish operations are subject to particularly strict controls due to the risk of contamination from marine toxins and pathogens. Producers must ensure that shellfish are harvested only from approved areas and handled in accordance with state sanitation requirements. Because these rules are highly technical and closely enforced, shellfish producers should work closely with the DOH and other agencies when establishing or expanding operations.

III. Jurisdictional Considerations (Tribal and Local Health Authority)

Tribal treaty rights and jurisdiction play a significant role in fish and shellfish regulation in Washington. Federally recognized Tribes in Washington retain treaty-reserved rights to harvest fish and shellfish in usual and accustomed areas, and these rights are co-managed with the state. As a result, Tribal members harvesting under treaty rights are general regulated by Tribal law and federal law rather than state licensing requirements. Non-Tribal producers operating on or near Tribal lands, or in areas subject to Tribal co-management, may be subject to additional requirements or coordination with Tribal authorities. Because jurisdiction in this area is complex and highly fact-specific, producers should consult the appropriate Tribal government or legal counsel when Tribal lands or treaty rights may be involved.

Local health departments may also have jurisdiction over retail food establishments and prepared seafood products. For example, farmers selling cooked or ready-to-eat seafood products may be required to obtain local health permits and comply with the Washington Food Code (WAC 246-215).

Because regulation of aquatic products in Washington involves multiple agencies and depends heavily on the type of product and method of sale, producers should consult the appropriate agencies early in the planning process. Coordination with the WDFW, DOH, WSDA, and, where applicable, Tribal authorities, is often necessary to ensure compliance with applicable laws.

IV. Checklist

Have you…?

- identified the type of product (finfish, shellfish, aquaculture) and obtained the required licenses?
- ensured you are harvesting from approved waters or authorized sources? Are you complying with appropriate harvest rules (species, seasons, methods)?
- met all applicable food safety and sanitation requirements?
- checked whether additional requirements apply based on your sales channel?
- obtained required local health permits if selling prepared or ready-to-eat seafood?

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- determined whether Tribal law or federal treaty rights affect harvest, licensing, or sales? Have you coordinated with the appropriate Tribal government or authority, if applicable?

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4 – Fruits and Vegetables

Fresh fruits and vegetables are among the most common products sold by direct farm businesses and are generally subject to fewer regulatory requirements than many processed foods. However, once produce is processed or transformed into value-added products, additional state and federal regulations apply. As a result, understanding the distinction between raw and processed products is critical for compliance.

I. Unprocessed Fruits and Vegetables

In general, raw agricultural commodities (such as whole fruits and vegetables) are subject to relatively limited regulation when sold directly to consumers. These products must still be safe, unadulterated, and properly handled, but they are not typically subject to licensing or facility requirements in the same way as processed foods. Certain Washington commodities, however, are subject to additional inspection and grading requirements, as discussed below.

Washington imposes additional inspection and grading requirements on certain fruits and vegetables that are important to the state's agricultural industry. These requirements apply to specified commodities (sometimes referred to as Washington "signature" crops) and may be triggered when a producer sells more than a specified quantity or sells through a wholesale channel. Depending on the commodity, WSDA inspection may address factors such as grade, size, maturity, condition, packaging, or other quality standards. As a result, direct-market producers should not assume that all unprocessed fruits and vegetables are exempt from inspection or grading requirements simply because they are sold in their raw form. Producers growing these commodities should review WSDA's Fruit and Vegetable Inspection requirements to determine whether their crop, quantity, and method of sale trigger inspection or grading requirements.

Under federal law, food is considered "adulterated" if it consists in whole or in part of any filthy, putrid, or decomposed substance or is otherwise unfit for food (21 U.S.C. Section 342). In practice, this means that produce should not be spoiled, contaminated, or unsafe for consumption.

Although raw produce is less regulated, it is still subject to federal pesticide residue standards established by the EPA (21 U.S.C. Section 346a; 40 C.F.R. Part 180). These standards establish allowable tolerance levels for pesticide residues on specific crops. In Washington, pesticide use is regulated and enforced by the WSDA under state pesticide laws (RCW 15.58; RCW 17.21). Producers must follow label directions and applicable regulations when applying pesticides.

In addition, certain produce operations may be subject to the FDA Food Safety Modernization Act (FSMA) Produce Safety Rule, which establishes standards for growing, harvesting, packing, and holding produce to minimize contamination risks (21 C.F.R. Part 112). These requirements may apply depending on the size of the operation, the type of produce, and how it is marketed. Some small farms or direct-to-consumer operations may

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qualify for exemptions or modified requirements, so producers should evaluate whether the rule applies to their operation.

II. Processed Fruits and Vegetables

The regulatory framework changes significantly when fruits and vegetables are processed. Processing generally includes activities such as cutting, drying, cooking, canning, fermenting, or otherwise altering the product from its raw state. For example, a whole head of lettuce is considered raw, while bagged salad mix, cut fruit, or packaged greens may be considered processed and subject to additional regulation.

In Washington, processed foods are regulated primarily by WSDA and, in some cases, by local health departments. Facilities that process, pack, or hold for sale may be required to obtain a food processor license from WSDA (RCW 69.07). These facilities must comply with sanitation, labeling, and inspection requirements. In addition, operations selling directly to consumers may qualify for the cottage food exemption, which allows certain low-risk foods to be produced in a home kitchen subject to specific limitations (RCW 69.22).

Many processed fruit and vegetable products, such as jams, pickles, and canned goods, require careful control of acidity and other factors to prevent the growth of harmful bacteria such as *Clostridium botulinum*. As a result, producers may need to follow specific processing requirements, including approved recipes or methods, and may need to work with regulators to ensure safety.

Juice and cider production are subject to additional federal requirements. Under FDA regulations, juice processors must comply with Hazard Analysis and Critical Control Point (HACCP) requirements (21 C.F.R. Part 120). These rules require producers to identify potential hazards and implement controls to ensure product safety. Some direct-to-consumer juice operations may qualify for limited exemptions but must still comply with applicable labeling and safety requirements. Unpasteurized juice products must include a warning label informing consumers of potential health risks (21 C.F.R. Section 101.17(g)).

Local health departments may also play a role in regulating processed foods and retail sales. Operations that sell prepared or ready-to-eat foods, or that operate as retail food establishments, may be subject to permitting and inspection under the Washington Food Code (WAC 246-215).

III. Checklist

Before selling fruits or vegetables, confirm the following:

- For raw produce, are you complying with pesticide use requirements? Does your operation trigger the FSMA Produce Safety Rule?

- For processed and value-added products, do you need a WSDA Food Processor License? Have you evaluated whether your product qualifies for the WSDA Cottage Food Permit?

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Are you using an approved facility or kitchen, if required? Have you confirmed sanitation and inspection requirement with WSDA or local health authorities? Are packaged products properly labeled with required information (ingredients, producer, quantity)?

- For juice and cider, do you need to comply with HAACP requirements? If unpasteurized, does your product include the required warning label?

- For prepared, ready-to-eat foods, have you obtained required local health permits?

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5 – Grains and Cereals

I. Overview and Marketing Channels

Grains and cereals are commonly grown by farms in Washington and may be sold directly to consumers in a variety of forms, including whole grains, flour, and baked goods. While traditional grain marketing often involves commodity markets and complex contracting decisions, direct-to-consumer sales allow producers to retain more control over pricing and distribution. However, direct marketing introduces additional considerations related to processing, storage, labeling, and food safety.

Grain producers often market their products through local or regional cooperatives rather than selling directly to consumers. Agricultural cooperatives are member-owned organizations that aggregate, store, and market grain on behalf of their members. In Washington, many cooperatives are organized under the Agricultural Cooperative Associations Act (RCW 23.86). Participation in a cooperative may involve membership agreements, delivery obligations, and payment structures that differ from direct sales. Producers should review cooperative bylaws and marketing agreements carefully to understand pricing, pooling arrangements, and their rights and responsibilities as members. Additional discussion of cooperatives is provided in Section 1.

II. Federal Grain Standards and Warehouse Regulation

At the federal level, grain quality and inspection are governed by the U.S. Grain Standards Act, which authorizes the USDA to establish standards for grain inspection and grading (7 U.S.C. Section 71 et seq.). These standards are primarily relevant for wholesale and export markets, and inspection for domestic sales is generally voluntary. Most direct farm businesses selling grain directly to consumers will not be required to obtain federal inspection but may choose to do so to demonstrate quality.

The United Staes Warehouse Act Provides for voluntary federal licensing of grain warehouses (7 U.S.C. Section 241 et seq.). Licensed warehouses must meet bonding, recordkeeping, and inspection requirements. While federal licensing is not required, producers storing grain in third-party facilities should confirm that the facility is properly licensed or otherwise reputable.

III. Processing vs. Handling

For direct farm businesses, the most important regulatory distinction is between unprocessed grain and grain products. Whole grains sold in the same form as harvested are generally subject to fewer regulatory requirements. However, once grain is processed (such as by grinding into flour, milling, roasting, sprouting, or incorporating into other food products) it becomes subject to additional food safety regulations.

It is important to note that not all handling activities constitute processing. Basic cleaning, drying, or packaging of whole grain may not trigger licensing requirements, but grinding, milling, or combining grain with other ingredients generally will. Because the line between

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handling and processing can be fact-specific, producers should confirm requirements with WSDA before beginning value-added operations.

IV. Washington Food Processing Requirements

In Washington, food processing is regulated by WSDA. Producers who process grain into products such as flour or baked goods may be required to obtain a food processor license (RCW 69.07). These operations must comply with sanitation, inspection, and labeling requirements.

In some cases, producers may qualify for the cottage food exemption, which allows certain low-risk foods to be produced in a home kitchen subject to specific limitations (RCW 69.22).

V. Labeling and Weights and Measures

All grain products sold to consumers must comply with labelling requirements under federal and state law. Packaged products must generally include the product name, net quantity, ingredient list (if applicable), and the name and address of the producer or processor (21 U.S.C. Section 343).

In addition, Washington enforces weights and measures requirements, which require accurate measurement and labeling of product quantities (RCW 19.94).

VI. Food Safety Standards

Grain products are also subject to federal standards regarding food defects, including allowable levels of naturally occurring contaminants such as mold or insect fragments (21 C.F.R. Section 110.110). While these standards are rarely enforced in small direct-market operations, they establish baseline expectations for food safety and quality.

VII. Value-Added Products and Retail Food Regulation

If a producer uses grain to produce bakes goods, additional regulations may apply. Depending on how and where the products are sold, producers may need to use a licensed food processing facility or comply with cottage food rules. Retail food establishments and prepared foods may also be subject to regulation by local health departments under the Washington Food Code (WAC 246-215).

VIII. Checklist

Are you…

- selling grain in its whole, unprocessed form, or as a processed product? Where are you selling? If you are processing, do you need a WSDA food processor license? Does your product qualify for the cottage food exemption?
- using an approved facility of required? Have you confirmed sanitation and inspection requirements with WSDA or local health authorities?

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- ensuring that packaged products are properly labeled? Are you complying with weights and measures requirements?
- ensuring you are storing grain to prevent moisture, mold, or contamination?
- evaluating additional food safety and licensing requirements if you are producing flour or baked goods? If selling prepared foods, do you need a local health permit?

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6 – Honey and Maple Syrup

Honey is a common value-added product for direct farm businesses in Washington, while maple syrup production is relatively uncommon in Washington. Both are generally considered a low-risk food compared to many other processed products, however, they are subject to state and federal regulations related to production, processing, labeling, and marketing. In Washington, WSDA plays the primary role in honey production and sales.

I. Beekeeping

Beekeeping in Washington is regulated under state apiary laws administered by USDA (RCW 15.60). These laws are designed to protect honeybee health and prevent the spread of pests and diseases that can affect agricultural production. Beekeepers may be required to register apiaries and comply with inspection and disease control requirements. WSDA has authority to inspect apiaries, restrict movement of infected colonies, and take measures to prevent the spread of bee diseases.

Local governments may also regulate beekeeping through zoning or nuisance ordinances, particularly in urban or residential areas. As a result, producers should confirm local requirements before establishing hives.

II. Selling Honey

Honey sold directly to consumers is regulated as a food product. Honey is generally considered a low-risk food because of its natural antimicrobial properties, and it does not require pasteurization under most circumstances. However, producers must still comply with applicable food safety and labeling requirements.

In Washington, honey processors may be subject to licensing requirements under the state food processing laws (RCW 69.07). Small producers may qualify for the cottage food exemption, which allows certain non-potentially hazardous foods, including honey, to be produced in a home kitchen subject to specific limitations (RCW 69.22). In general, honey that is simply extracted and filtered does not need food safety licensing. Any honey that is further processed (creamed, flavored, etc.) does need food safety licensing.

Honey sold to consumers must be properly labeled in accordance with federal or state law. At a minimum, labels must include the product name, net quantity, and the name and address of the producer or distributer (21 U.S.C. Section 343). Producers should also avoid making unapproved health claims. Although some consumers believe that raw honey can alleviate allergies, the FDA has not approved such claims and including them on labels or in marketing materials may violate federal law (21 C.F.R. Section 101.14).

Producers who sell honey or maple syrup products as part of prepared or ready-to-eat foods may be subject to additional requirements under the Washington Food Code (WAC 246-215).

III. Checklist

Have you…?

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- confirmed that beekeeping is allowed under local zoning or ordinances?
- registered your apiary if required under Washington law?
- developed a plan for monitoring for bee diseases and pests? Are you complying with any WSDA inspection or movement restrictions if disease is present?
- determined if you are selling honey in its basic form, or further processing it? If processing, do you need a WSDA food processor license? Does your product qualify for the cottage food exemption?
- ensured you are you handling, storing, and bottling honey in a sanitary manner?
- created product labels that include product name, net quantity, producer name and address? Are you avoiding unapproved health claims?

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7 – LIVESTOCK AND POULTRY

Livestock and poultry production remains an important component of many direct farm businesses in Washington. Selling meat and poultry products directly to consumers can provide valuable market opportunities, particularly as consumer demand for locally raised food continues to grow. However, these products are among the most heavily regulated foods, and producers must comply with a complex set of federal and state laws governing animal health, slaughter, processing, and sale.

I. ANIMAL HEALTH

At the production stage, livestock and poultry are subject to animal health and disease control requirements administered by the WSDA (RCW 16.36). These laws are designed to prevent the spread of disease and may include testing, movement restrictions, and quarantine authority. Washington also regulates animal identification and traceability for certain species (RCW 16.57). Livestock producers must also comply with Washington animal welfare laws, which prohibit animal cruelty and require that animals be provided with adequate food, water, and care (RCW 16.52).

Local governments must also regulate livestock operations through zoning and nuisance ordinances. Producers should confirm that their operations comply with local requirements before starting or expanding production.

II. SLAUGHTERING & PROCESSING

The most significant regulatory requirements arise at the slaughter and processing stage. Under federal law, the Federal Meat Inspection Act and the Poultry Products Inspection Act require that meat and poultry sold to consumers be slaughtered and processed at an inspected facility (21 U.S.C. Sections 601- 695; 21 U.S.C. Sections 451-471). Facilities must comply with sanitation standards and implement HACCP systems to ensure food safety (9 C.F.R. Parts 304, 381, 416, 417).

One alternative marketing method is custom slaughter, in which a consumer purchases a live animal and has it processed for their personal use. Custom slaughter facilities are not required to provide continuous inspection, but the resulting meat cannot be resold and must be labeled as "not for sale" (9 C.F.R. Section 303.1). Producers using this model must ensure that ownership of the animal is transferred before slaughter.

III. POULTRY EXCEPTIONS

Poultry producers may qualify for certain federal exemptions from continuous inspection if they meet specific criteria, including limits on the number of birds processed and restrictions on how the product is sold (21 U.S.C. Section 464; 9 C.F.R. Section 381.10). These exemptions are commonly used by small direct-market poultry operations but are subject to detailed conditions, and producers should confirm eligibility before relying on them. Poultry processed under these federal exemptions generally may not be sold in interstate commerce.

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Importantly, an exemption from federal inspection does not exempt a Washington poultry producer from state oversight. In Washington, producers processing fewer than 1,000 poultry per calendar year may be eligible for WSDA's Special Poultry Permit, which allows qualifying producers to slaughter and prepare their own poultry for sale directly to consumers without obtaining a WSDA Food Processor License. Producers must meet the conditions of the permit, including applicable processing, sanitation, labeling, recordkeeping, and sales requirements.

Producers processing poultry under a federal exemption but who do not qualify for the Special Poultry Permit—including operations processing up to 20,000 birds annually under an applicable federal exemption—generally must obtain a WSDA Food Processor License and comply with applicable state food processing requirements. Accordingly, producers should evaluate federal inspection requirements and Washington licensing or permitting requirements separately: qualifying for a federal poultry inspection exemption does not, by itself, authorize poultry processing or sales in Washington.

IV. Animal Disease Traceability

The USDA's Animal Plant Health Inspection Service (APHIS) previously operated the National Animal Identification System (NAIS), a voluntary program intended to improve animal disease traceback. NAIS was discontinued following significant opposition from producers and states.

In 2013, USDA replaced NAIS with the Animal Disease Traceability (ADT) program, which applies to certain livestock moving in interstate commerce (9 C.F.R. Part 86). Under ADT, covered livestock moved interstate generally must be officially identified and accompanied by an interstate certificate of veterinary inspection or other approved documentation.

In Washington, animal identification and movement are also regulated under state law. The Washington State Department of Agriculture administers animal health and disease control laws under RCW 16.36, and Washington relies on brand inspection as a key component of livestock identification and traceability under RCW 16.57. Brand inspection certificates may serve as official documentation for interstate movement where permitted.

Farmers moving livestock across state lines should consult WSDA and USDA APHIS guidance to determine applicable identification and documentation requirements.

V. Labeling

All meat and poultry products sold to consumers must comply with labeling requirements administered by the USDA Food Safety and Inspection Service (FSIS). Labels must include required information such as product name, net weight, inspection, legend, and producer information (9 C.F.R. Parts 317 (meat) and Part 381 (poultry)). Certain claims (such as "grass fed," or "no antibiotics") may require additional documentation or approval.

Specialty products, including organic, kosher, and halal meats, are subject to additional certification or verification requirements. Organic meat must comply with the USDA National Organic Program standards (7 C.F.R. Part 205). Kosher and *halal* labeling requires

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adherence to religious standards and appropriate third-party oversight, although USDA does not certify these claims directly.

VI. Other Considerations

Local health departments may also have jurisdiction over retail food establishments and prepared meat products under the Washington Food Code (WAC 246-215). A retail exemption allows meat from animals slaughtered under USDA inspection to be further cut and processed without additional inspection for retail-only sales, subject to limitations on how the products may be sold. In Washington, this exemption is permitted through local health jurisdictions. Producers operating retail facilities or selling ready-to-eat foods may also be subject to additional permitting and inspection requirements. For more information on the retail exemption, see the USDA FSIS Guideline for Determining Whether a Livestock Slaughter or Processing Firm is Exempt from Inspection Requirements of the Federal Meat Inspection Act.

Tribal governments may also have jurisdiction over livestock-related activities on Tribal lands or involving Tribal members. Producers operating in these circumstances should consult the appropriate Tribal government to determine what requirements apply.

Access to USDA-inspected slaughter and processing facilities can be a major constraint for direct-market producers in Washington and should be evaluated early in the business planning process. The WSDA Regional Markets Program can provide producers with information about processing options, regulatory requirements, and infrastructure development opportunities and can help producers identify processing capacity and understand potential pathways for entering direct and regional markets.

Meat and poultry regulation involves overlapping federal, state, and, in some circumstances, local or Tribal requirements. The regulatory pathway also depends heavily on how an animal is slaughtered and processed and how the resulting product will be sold. Producers should therefore determine their intended processing and marketing model early and consult WSDA, USDA, and the appropriate local or Tribal authorities before beginning operations.

VII. Checklist

Before producing or selling meat and poultry, confirm the following:

- Are you complying with animal health laws? Are you meeting animal welfare requirements?

- Will your animals be processed at a USDA or WSDA inspected facility? Are you relying on a custom slaughter model, and if so, is ownership transferred properly? If processing poultry that is exempt from federal inspection, do you have the right permit or license from WSDA?

- Are your products properly labeled in compliance with FSIS requirements? Are any specialty claims (organic, grass-fed, etc.) properly supported?

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- Do you need a food Establishment Permit from your local health jurisdiction? Are there Tribal or local jurisdictional considerations?

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8 – SEEDS

Washington is a significant producer of a variety of seeds, including vegetable, flower, and specialty crop seeds, and seed production plays an important role in the state's agricultural economy. Both large commercial producers and small direct-market farms may engage in seed sales, making it important to understand the applicable regulations before entering the market.

The sale of seeds is subject to a district regulatory framework focused on accurate labeling, seed quality, and preventing the spread of noxious weeds. Unlike most products covered in this section, seeds are regulated primarily as an agricultural input rather than a food product, unless they are intended for consumption, such as seeds sold for sprouting.

Seed growers should also be aware that some seed varieties may be protected by intellectual property rights. The federal Plant Variety Protection Act provides intellectual property protection for qualifying plant varieties, and plant varieties, seeds, traits, or other plant-related inventions may also be protected by patents. These protections can affect whether seed may be reproduced or sold. Producers who intend to save, reproduce, or sell seed should determine whether any intellectual property restrictions apply to the variety.

I. FEDERAL RULES

At the federal level, seed sales are regulated under the Federal Seed Act, which governs labeling and interstate shipment of agricultural and vegetable seeds (7 U.S.C. Section 1551 et seq.). The Act establishes labeling and other requirements intended to ensure that seed moving in interstate commerce is accurately represented.

For many direct farm businesses selling seed only within Washington, Washington's seed laws will be particularly important. Producers who sell or ship seed across state lines should determine whether the Federal Seed Act applies to their activities.

Seeds intended for sprouting may also be regulated as a food product and subject to food safety requirements under FSMA. In these cases, producers should review the Fruits and Vegetables section of this handbook and applicable FDA requirements.

II. WASHINGTON STATE RULES

Washington regulates agricultural seed through the Washington Seed Act (RCW 15.49) which is administered by the Washington State Department of Agriculture (WSDA). Washington's seed laws address matters including seed labeling, germination, seed quality, noxious weed seeds, licensing, and seed labeling permits. WSDA also administers seed testing and a voluntary seed certification program. Washington's seed certification requirements are contained in WAC 16-302.

Washington has separate requirements for selling seed and labeling seed. A person who distributes seed generally must obtain a Seed Dealer License for each regular place of business. However, a grower who sells exclusively seed of their own production is exempt from the Seed Dealer License requirement. A dealer license is also not required for a person

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who distributes seed only in sealed packages of eight ounces or less when the packages were packed by a seed labeling registrant and bear the registrant's name and address. Seed sold by an exempt grower must still be properly labeled in accordance with the Washington Seed Act (RCW 15.49.380).

A Seed Labeling Permit is a separate requirement. A person may not label seed for distribution in Washington without first obtaining a Seed Labeling Permit from WSDA. The person holding the permit is responsible for the label and the contents of the seed (RCW 15.49.400). Thus, a farmer who grows and sells only their own seed may be exempt from the Seed Dealer License requirement but still need a Seed Labeling Permit if the farmer labels that seed for distribution.

Washington law also regulates seed quality and noxious weed seed. Agricultural, vegetable, and flower seed generally may not be sold in Washington unless its germination test is current, and seed may not be sold if it is improperly labeled or contains prohibited noxious weed seeds or restricted noxious weed seeds above the amount declared on the label (RCW 15.49.051). The Washington State Noxious Weed Control Board has more information, including noxious weed lists.

III. Direct Sales Considerations

Direct farm businesses may sell seeds as a secondary product line, such as saved seed or seed packets offered at farmers markets or farm stands. Farmers should not assume that small-scale or direct-to-consumer seed sales are exempt from Washington's seed requirements.

A farmer selling exclusively seed grown on their own farm does not need a Seed Dealer License, but the seed must still be properly labeled. If the farmer labels the seed for distribution, the farmer must obtain a Seed Labeling Permit from WSDA (RCW 15.49.380; RCW 15.49.400).

Because labeling requirements vary depending on seed types (e.g. agricultural vs. vegetable vs. flower seeds), producers should review the applicable category carefully. Even small-scale or direct-to-consumer sales may be subject to these requirements.

Finally, farmers who save or reproduce seed for sale should determine whether the variety is protected by intellectual property rights. Purchasing or growing a particular seed variety does not necessarily give a producer the unrestricted right to reproduce that seed for sale. Producers should review any restrictions associated with the particular variety before saving, reproducing, or marketing seed.

IV. Checklist

Before selling seeds, confirm the following:

- Are you selling seed for planting or for consumption (e.g. sprouting)? Does your seed label include required information?

- Have you ensured your seed does not contain certain prohibited noxious weeds?

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- Do you need a WSDA seed dealer license or do you qualify for an exemption?

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9 – Nursery Products

Nursery products include live plants such as trees, shrubs, perennials, annuals and other plants sold for propagation or landscaping. In Washington, nursery production and sales are an important part of the agricultural economy, and many direct farm businesses sell plant starts, transplants, or potted plants as part of their operations.

I. Federal Rules

Federal regulation of nursery products focuses primarily on plant health and the prevention of invasive pests and diseases. The Plant Protection Act authorizes the USDA to regulate the interstate movement of plants and materials (7 U.S.C. Section 7701 et seq.).

Under this framework, the USDA Animal and Plant Health Administration (APHIS) may restrict movement of certain plants, require inspections and or certifications, and impose quarantines to prevent the spread of plants and diseases. These requirements are most relevant for producers shipping nursery products across state lines.

II. Washington State Rules

In Washington, nursery products are regulated by WSDA under the Washington Nursery Inspection Act (RCW 15.13; WAC 16-401). This law is designed to prevent the spread of pests and pest diseases and ensure that nursery stock is healthy and properly identified.

Most individuals or businesses that grow, sell, or distribute nursery stock must obtain a nursery dealer license or related license from WSDA (RCW 15.13.250). Depending on the operation, this may include growers selling their own plants, retailers selling plants produced by others, and businesses distributing nursery stock. Because licensing requirements depend on the nature of the activity, producers should confirm their obligations with WSDA before selling plants.

WSDA may inspect nursery stock to ensure compliance with plant health standards. Licensed nurseries are typically subject to periodic inspection to verify that plants are free form regulated pests and diseases. The movement of certain plants may also be restricted or subject to quarantine requirements.

III. Checklist

Before selling nursery products, confirm the following:

- Are you selling live plants, transplants, or nursery stock?
- Do you need a WSDA dealer license?
- Are your plants free from pests and disease? Are you complying with applicable quarantine or inspection requirements?

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GLOSSARY OF TERMS

Adulterated: The full legal concept of adulteration is complex, but essentially, a food is "adulterated" if it contains any poisonous or added deleterious substance which may render it injurious to health or if it consists of or has been exposed to a diseased, contaminated, filthy, putrid, or decomposed substance during production, preparation, or packaging, or if held under unsanitary conditions.

Agency (agent): A fiduciary relationship created by express or implied contract or by law, in which one party (the agent) may act on behalf of another party (the principal) and bind that other party by words or actions.

Agricultural Enterprise: Agriculturally-related activities performed by any person(s) for a common business purpose. This includes all such activities whether performed in one or more establishments or by one or more corporate or other organizational units. This could include a leasing of a department of another establishment.

Agronomic Rate: A specific rate of application that provides the precise amount of water and nutrient loading, which selected grasses/crops require without having any excess water or nutrient percolate beyond the root zone.

Amortization: The paying off of debt in regular installments over time; the deduction of capital expenses over a specific period of time.

Annex: To incorporate territory into the domain of a city, county, or state.

Articles of Incorporation: A document that dictates the management of the affairs of a corporation, including the purpose and duration of the corporation and the number and classes of shares to be issued by the corporation.

Assumed Name: (also known as "doing business as" or "d/b/a"): The name under which a business operates or by which it is commonly known.

Assumption of Risk: A legal concept in negligence (tort) law wherein an individual knows of or is otherwise aware of a risk posed by a particular activity and nonetheless engages in the activity. The doctrine thus limits that individual's right to hold others liable for injuries incurred as a result of engaging in the activity. Assumption of risk most commonly arises in the context of employer-employee relationships and agritourism.

Business Plan: The business plan helps guide the business owner through a proposed business' goals, objectives, and marketing and financial strategies. It also may serve as an introduction to potential investors if outside financing is required.

Candling (egg): The use of a bright light source behind the egg to show details of the embryo through the shell.

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Case Study: An intensive analysis of an individual unit (such as a person, business, or community) within its real-world context.

Checkoff: A mandatory fee for all producers of a particular commodity that is used to fund commodity-specific research or marketing.

Commercially Available: Under the National Organic Program, the ability to obtain a production input in an appropriate form, quality, or quantity to fulfill an essential function in a system of organic production or handling as determined by the certifying agent in the course of reviewing the organic plan.

Commodity: A tangible item that may be bought or sold; something produced for commerce.

Commodity Agriculture: The large-scale production of standardized agricultural products (such as grains, livestock, or fiber crops) that are grown primarily for sale on regional, national, or global markets, where products are largely interchangeable regardless of producer.

Common Law: The body of laws and rules that courts create as they issue decisions.

Consideration: A vital element in contract law, consideration is something (i.e., an act, forbearance, or return promise) bargained for and received by a promisor from a promisee. It is typically the underlying purpose for entering into a contract.

Contract: A legally enforceable agreement between two or more persons involving an offer, acceptance, and consideration. It may be oral or written.

Cooperative: A user-owned and controlled business that generates benefits for its users and distributes these benefits to each member based on the amount of usage.

Copyright: (1) The right to copy a work, specifically an original work of authorship (including a literary, dramatic or other work) fixed in any tangible meaning of expression, giving the holder exclusive right to reproduce, distribute, perform, or otherwise control the work. (2) The body of law related to such works.

Corporation: a separate legal entity in which the owners (shareholders) are not personally responsible for the liability of business.

- **S-corporations** elect to pass corporate income, losses, deductions and credit through to their shareholders for federal tax purposes to avoid double taxation.
- **C-corporations** are separate taxpaying entities that conduct business, realize net income or loss, pay taxes, and distribute profits to shareholders.

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Cow-share Program: A program in which consumers sign a contract to purchase a "share" in a cow or herd and pay the farmer to care for and milk the cows. The consumer then receives the milk from "their" cow without technically "purchasing" the milk.

***De Minimis*:** something so small that it would be inconvenient and unreasonable to keep an account of; the impact is insubstantial.

Depreciation: A decline in an asset's value due to use, wear, obsolescence, or age.

Double Taxation: The government taxes the corporation on its profits and the owners/shareholders also pay individual income tax on profits distributed as dividends from the same corporation.

Estate Plan: The preparation of a plan to carry out an individual's wishes as to the administration and disposition of his/her property before or after death.

Excise Tax: A tax levied on the purchase of a specific good as opposed to a tax that generally applies to the sale of all goods.

Farm Labor Contractor (FLC): Any person, other than an agricultural employer, an agricultural association, or an employee of an agricultural employer or agricultural association, who, for any money or other consideration, performs recruiting, soliciting, hiring, employing, furnishing, or transporting of any migrant or seasonal agricultural worker.

Feasibility Study: a process used to analyze an existing business opportunity or new venture. The questions on a feasibility checklist concentrate on areas one must seriously consider to determine if an idea represents a real business opportunity.

Good Faith: Acting honestly, fairly, and with a lawful purpose without malice or any intent to defraud or take unfair advantage. Whether a party has acted in good faith is often an issue that the court or the jury has to decide in a lawsuit.

Grading: USDA certification that a product is of a particular quality.

Grandfather Clause: A portion of a statute that provides that the law is not applicable in certain circumstances due to preexisting facts.

Gross receipts: All considerations received by the seller, except trades in personal property.

Halal: an Islamic term that refers to something lawful or acceptable.

Hazardous Positions: In the employment context, hazardous positions include, but are not limited to, operating large farm machinery, working in enclosed spaces with dangerous animals (studs and new mothers), working from a ladder or scaffold more than 20 feet high, working inside certain spaces such as manure pits, and handling hazardous chemicals.

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Health Claim: a health claim describes a relationship between the food (or component of it) and the reduction of the risk of a disease or health-related condition.

Hold Harmless: A provision in an agreement under which one or both parties agree not to hold the other party responsible for any loss, damage, or legal liability.

Injunction (prohibitory): An order of a court commanding a person, corporation, or government entity to stop doing something and/or refrain from doing such actions in the future.

Intellectual Property: Creations of the mind; inventions, literary and artistic works, and symbols, names, images, and designs used in commerce, as well as the body of law (trademark, patent, copyright, trade secret) used to protect such works.

Interstate Commerce: the buying and selling of products and services between people and entities located in different states or territories.

Intrastate Commerce: The buying and selling of products and services within a single state.

Joint and Several Liability: A legal doctrine under which each of multiple liable parties may be held responsible for the full amount of a judgement, allowing the injured party to recover the entire amount from any one of them, regardless of each party's proportion of fault.

Karst Area: area(s) where surface water easily flows through rock formations to ground water, posing potential risks for contamination of groundwater.

Kosher: The term for foods that comply with Jewish dietary laws.

Livestock Management Facility: Any animal feeding operation, livestock shelter, or on-farm milking and accompanying milk-handling area.

Man-day: Any day where an employee performs agricultural labor for at least one hour.

Material Representation: A convincing statement made to induce someone to enter into a contract to which the person would not have agreed without that assertion.

Migrant Agricultural Worker: An individual who is employed in agricultural employment of a seasonal or other temporary nature, and who is required to be absent overnight from his or her permanent place of residence.

Misbranding: The label, brand, tag or notice under which a product is sold is false or misleading in any particular as to the kind, grade or quality or composition.

Negligence: a tort law concept; the failure to exercise the standard of care that an ordinary, prudent and reasonable person would exercise under the circumstances.

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Notice-and-Comment Rulemaking: A rulemaking process by which government agencies provide the public with an opportunity to participate in the interpretation of laws by giving feedback on draft regulations.

Nuisance: A substantial interference, either by act or omission, with a person's right to use and enjoy their property.

- **Public Nuisance**: An interference or invasion that affects a substantial number of people, or an entire neighborhood or community
- **Private Nuisance**: An interference or invasion that affects a single party, or a definite, small number of individuals in the use or enjoyment of private rights.

Nutrient Content Claims: These claims characterize the level of a nutrient in a food; they must be approved by FDA.

Organic: A system of food production that is managed in accordance with the Organic Foods Production Act of 1990 to respond to site-specific conditions by integrating cultural, biological, and mechanical practices that promote biodiversity and ecological balance. Organic certification is managed by the Agricultural Marketing Service (AMS) division of the U.S. Department of Agriculture.

Output Contract: A written agreement in which a producer agrees to sell its entire production to the buyer, who in turn agrees to purchase the entire output.

Partnership: A partnership (also known as general partnership) is an association of two or more persons who combine their labor, skill, and/or property to carry on as co-owners of a business for profit.

Patent: a patent grants the inventor the right to exclude others from making, using, or selling the invention in the United States or 'importing' the invention into the United States for a limited period, generally 20 years.

Piecework: a method of compensation in which workers are paid based on the quantity of crops harvested or tasks completed, rather than by time worked.

***Prima-facie*:** (Latin for "at first sight"): An evidentiary standard that presumes particular evidence proves a particular fact; however, the fact may be disproven by providing contradictory evidence.

Processing: The manufacturing, compounding, intermixing, or preparing food products for sale or for service to customers.

Procurement Contract: A term that refers to contracts used by governments and institutions to acquire products.

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Properly Implemented: An administrative law concept that requires agencies to issue rules according to state or federal administrative procedure.

Qualified Health Claim: A health claim where emerging scientific evidence suggests the claim may be valid, but the evidence is not strong enough to meet the standard necessary to be a health claim; must be pre-approved by FDA.

Raw Agricultural Commodity: Any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form before marketing.

Real Property: Land and anything growing on, attached to, or erected upon it, excluding anything that may be severed without injury to the land.

Requirements Contract: A contract in which buyer promises to buy and a seller promises to supply all the goods or services that a buyer needs during a specified period. The quantity term is measured by the buyer's requirements.

Respondeat Superior: In tort law, the doctrine holding an employer or principal liable for an employee's or agent's wrongful acts committed within the scope of the employment or agency.

Retailers' Occupation Tax: A tax upon persons engaged in this State in the business of selling tangible personal property to purchasers for use or consumption.

Sales Tax: A combination of occupation taxes (imposed on a business' receipts from the sale of goods used or consumed) and use taxes (imposed on consumers that purchase items for personal use or consumption from a business).

Seasonal Agricultural Worker: An individual who is employed in agricultural employment of a seasonal or other temporary nature and is not required to be absent overnight from his permanent place of residence-

1. When employed on a farm or ranch performing field work related to planting, cultivating, or harvesting operations; or
2. when employed in canning, packing, ginning, seed conditioning or related research, or processing operations, and transported, or caused to be transported, to or from the place of employment by means of a day-haul operation.

Setback: The distance a facility must be from property lines or neighboring residences.

Sole Proprietorship: A business owned and operated by one individual.

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Statute: a federal or state written law enacted by the Congress or state legislature, respectively. Local statutes or laws are usually called "ordinances." Regulations, rulings, opinions, executive orders and proclamations are not statutes.

Tangible Personal Property: A term describing personal property that can be physically relocated. The opposite of real property, in a sense, as real property is immovable.

Technical Bulletins: Non-binding guidance documents published by agencies that facilitate consistent interpretation and application of the regulations issued by the agency.

Three-Tier Distribution System: In the alcohol supply chain, a system that requires manufacturers to sell with distributors, who sell with retailers, who then may sell the product to the end consumer.

Tort: An injury or harm to another person or person's property that the law recognizes as a basis for a lawsuit.

Trade Dress: A design, packaging, or other element of appearance that is both nonfunctional and distinctive.

Trademark: An identification used to distinguish goods and services from those manufactured or sold by others – it is the symbol that customers use to identify a product and equate with goodwill.

Trade Name: A name used to identify a person's business or vocation (see also ASSUMED NAME).

Trade Secret: Information companies make an effort to keep secret in order to give them an economic advantage over their competitors

Use Tax: A privilege tax imposed on the privilege of using, in this State, any kind of tangible personal property that is purchased anywhere at retail from a retailer.

Veterinary Biologics: Products of biological origin that are used to diagnose and treat animal diseases.

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APPENDIX: KEY RESOURCES FOR WASHINGTON DIRECT FARM BUSINESSES

Direct farm businesses in Washington must navigate a combination of federal, state, and local regulations. The following agencies and organizations provide guidance, tools, and technical assistance to help producers understand and comply with applicable requirements.

Washington State Department of Agriculture (WSDA)

WSDA is the primary regulatory agency for many direct farm products in Washington, including food processing, dairy, eggs, produce safety, apiary operations, seeds, custom exempt meat, etc.

Key Resources:

- **WSDA Regional Markets Program**
- **Handbook for Small and Direct Marketing Farms (“Green Handbook”)**
  Comprehensive guide to licensing, food safety, and direct marketing requirements.
- **Food Safety Program**
  Guidance on food processor licensing, inspections, and compliance.
- **MeatUp WA (WSDA and WSU partnership)**

  MeatUp WA is an online resource hub designed to support Washington meat producers.

Washington State Department of Health (DOH)

DOH regulates food safety in retail settings and oversees shellfish safety programs.

Key Resources:

- **Shellfish Program**
  Guidance on harvesting, sanitation, and approved growing areas
- **Washington Food Code (WAC 246-215)**
  Rules for retail food establishments and prepared foods

Washington Department of Fish and Wildlife (WDFW)

WDFW regulates the harvest and sale of fish and certain aquatic products.

Provides:

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- Licensing for commercial harvest and aquaculture
- Rules on species, harvest methods, and seasons

Washington State Farmers Market Association (WSFMA)

WSFMA supports farmers markets and vendors across the state.

Provides:

- Vendor guidance and market rules
- Best practices for direct-to-consumer sales

Washington Small Business Development Center (SBDC)

SBDC provides business and marketing support for farm enterprises.

Services include:

- Business planning assistance
- Financial analysis and marketing strategy
- One-on-one advising

Washington State University Extension

WSU Extension is Washington State University's statewide outreach and education system.

Provides:

- Education and technical support in agriculture, food systems, forestry, and natural resources.
- Connects local communities with university research through county extension offices, workshops, publications, and on-farm assistance.

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