



IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XLVII
July 24, 2024

NUMBER 3
Pages 305 to 590

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PREFACE

The Iowa Administrative Bulletin is published biweekly pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and other items required by statute to be published in the Bulletin.

PLEASE NOTE: Underscore indicates new material added to existing rules; ~~strike through~~ indicates deleted material.

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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, paragraph, subparagraph, or numbered paragraph).

This citation format applies only to external citations to the Iowa Administrative Code or Iowa Administrative Bulletin and does not apply to citations within the Iowa Administrative Code or Iowa Administrative Bulletin.

441 IAC 79	(Chapter)
441 IAC 79.1	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)“a”	(Paragraph)
441 IAC 79.1(1)“a”(1)	(Subparagraph)
441 IAC 79.1(1)“a”(1)“1”	(Numbered paragraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

Note: In accordance with Iowa Code section 2B.5A, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

Schedule for Rulemaking 2024

NOTICE† SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Jan. 3 '24	Jan. 24 '24	Feb. 13 '24	Feb. 28 '24	Mar. 1 '24	Mar. 20 '24	April 24 '24	Jul. 22 '24
Jan. 19	Feb. 7	Feb. 27	Mar. 13	Mar. 15	April 3	May 8	Aug. 5
Feb. 2	Feb. 21	Mar. 12	Mar. 27	Mar. 29	April 17	May 22	Aug. 19
Feb. 16	Mar. 6	Mar. 26	April 10	April 12	May 1	June 5	Sep. 2
Mar. 1	Mar. 20	April 9	April 24	April 26	May 15	June 19	Sep. 16
Mar. 15	April 3	April 23	May 8	**May 8**	May 29	Jul. 3	Sep. 30
Mar. 29	April 17	May 7	May 22	May 24	June 12	Jul. 17	Oct. 14
April 12	May 1	May 21	June 5	June 7	June 26	Jul. 31	Oct. 28
April 26	May 15	June 4	June 19	**June 19**	Jul. 10	Aug. 14	Nov. 11
May 8	May 29	June 18	Jul. 3	Jul. 5	Jul. 24	Aug. 28	Nov. 25
May 24	June 12	Jul. 2	Jul. 17	Jul. 19	Aug. 7	Sep. 11	Dec. 9
June 7	June 26	Jul. 16	Jul. 31	Aug. 2	Aug. 21	Sep. 25	Dec. 23
June 19	Jul. 10	Jul. 30	Aug. 14	**Aug. 14**	Sep. 4	Oct. 9	Jan. 6 '25
Jul. 5	Jul. 24	Aug. 13	Aug. 28	Aug. 30	Sep. 18	Oct. 23	Jan. 20 '25
Jul. 19	Aug. 7	Aug. 27	Sep. 11	Sep. 13	Oct. 2	Nov. 6	Feb. 3 '25
Aug. 2	Aug. 21	Sep. 10	Sep. 25	Sep. 27	Oct. 16	Nov. 20	Feb. 17 '25
Aug. 14	Sep. 4	Sep. 24	Oct. 9	Oct. 11	Oct. 30	Dec. 4	Mar. 3 '25
Aug. 30	Sep. 18	Oct. 8	Oct. 23	**Oct. 23**	Nov. 13	Dec. 18	Mar. 17 '25
Sep. 13	Oct. 2	Oct. 22	Nov. 6	**Nov. 6**	Nov. 27	Jan. 1 '25	Mar. 31 '25
Sep. 27	Oct. 16	Nov. 5	Nov. 20	**Nov. 20**	Dec. 11	Jan. 15 '25	April 14 '25
Oct. 11	Oct. 30	Nov. 19	Dec. 4	**Dec. 4**	Dec. 25	Jan. 29 '25	April 28 '25
Oct. 23	Nov. 13	Dec. 3	Dec. 18	**Dec. 18**	Jan. 8 '25	Feb. 12 '25	May 12 '25
Nov. 6	Nov. 27	Dec. 17	Jan. 1 '25	**Jan. 2 '25**	Jan. 22 '25	Feb. 26 '25	May 26 '25
Nov. 20	Dec. 11	Dec. 31	Jan. 15 '25	Jan. 17 '25	Feb. 5 '25	Mar. 12 '25	June 9 '25
Dec. 4	Dec. 25	Jan. 14 '25	Jan. 29 '25	Jan. 31 '25	Feb. 19 '25	Mar. 26 '25	June 23 '25
Dec. 18	Jan. 8 '25	Jan. 28 '25	Feb. 12 '25	Feb. 14 '25	Mar. 5 '25	April 9 '25	Jul. 7 '25
Dec. 20 '23	Jan. 10	Jan. 30	Feb. 14	Feb. 16	Mar. 6	April 10	Jul. 8

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
4	Friday, August 2, 2024	August 21, 2024
5	Wednesday, August 14, 2024	September 4, 2024
6	Friday, August 30, 2024	September 18, 2024

PLEASE NOTE:

Rules will not be accepted by the Publications Editing Office after **12 o'clock noon** on the filing deadline unless prior approval has been received from the Administrative Rules Coordinator and the Administrative Code Editor.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

†To allow time for review by the Administrative Rules Coordinator prior to the Notice submission deadline, Notices should generally be submitted in RMS four or more working days in advance of the deadline.

****Note change of filing deadline****

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, August 13, 2024, at 11 a.m. in Room 116, State Capitol, Des Moines, Iowa. For more information, contact Jack Ewing at jack.ewing@legis.iowa.gov. The following rules will be reviewed:

AGING, DEPARTMENT ON[17]

Waivers from administrative rules; rules and practices in contested cases; petition for rule making; declaratory orders, rescind chs 11, 13, 17, 18 Filed **ARC 8107C** 7/10/24

CULTURAL AFFAIRS DEPARTMENT[221]

Agency reorganization, rescind chs 1 to 4 Filed **ARC 8100C** 7/10/24

ECONOMIC DEVELOPMENT AUTHORITY[261]

STEM BEST appropriation, division responsibilities, Iowa targeted small business procurement program, mission and responsibilities, Iowa innovation council, rescind chs 15, 21, 50, 54, 101, 114, 163 Notice **ARC 8142C** 7/24/24
 Iowa targeted small business certification program, ch 52 Notice **ARC 8144C** 7/24/24
 Targeted small business financial assistance program, ch 55 Notice **ARC 8143C** 7/24/24
 Enterprise zone (EZ) program; entrepreneurial ventures assistance (EVA) program; high quality jobs program (HQJP); environmental law compliance; violations of law; standard definitions; wage, benefit, and investment requirements; application review and approval procedures; contracting; contract compliance and job counting; annual reporting, rescind chs 59, 60, 172 to 175, 187 to 189; adopt ch 68 Filed **ARC 8145C** 7/24/24
 Agency procedure for rulemaking, ch 196 Filed **ARC 8146C** 7/24/24

EDUCATION DEPARTMENT[281]

Dates certain; school bus construction standards; special education mediation, amendments to chs 12, 21, 41, 43, 44, 98 Notice **ARC 8140C** 7/24/24
Filed **ARC 8147C** 7/24/24
 Charter schools; Iowa public charter and innovation zone schools, adopt ch 19; rescind ch 68 Notice **ARC 8139C** ... 7/24/24

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CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"
 Agency reorganization, rescind chs 3 to 6, 46 Filed **ARC 8101C** 7/10/24

HUMAN SERVICES DEPARTMENT[441]

Contracting out department of human services employees and property, rescind ch 2 Filed **ARC 8108C** 7/10/24
 Disability services management, amendments to ch 25 Filed **ARC 8109C** 7/10/24
 Adoption services, ch 200 Filed **ARC 8110C** 7/10/24
 Subsidized guardianship program, ch 204 Filed **ARC 8111C** 7/10/24

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"
 Posting, inspections, citations and proposed penalties, ch 3 Filed **Emergency After Notice** **ARC 8112C** 7/10/24
 Recording and reporting occupational injuries and illnesses, ch 4 Filed **Emergency After Notice** **ARC 8113C** 7/10/24

NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"
 Certified professional midwives, ch 16 Filed **Emergency After Notice** **ARC 8114C** 7/10/24

PROFESSIONAL LICENSING AND REGULATION BUREAU[193]

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 Organization and operation, ch 1 Filed **ARC 8085C** 7/10/24
 Allocation of disciplinary fees and costs, ch 2 Filed **ARC 8086C** 7/10/24
 Vendor appeals, ch 3 Filed **ARC 8087C** 7/10/24
 Social security numbers and proof of legal presence, ch 4 Filed **ARC 8088C** 7/10/24
 Waivers, rescind ch 5 Filed **ARC 8089C** 7/10/24
 Investigatory subpoenas, ch 6 Filed **ARC 8090C** 7/10/24
 Contested cases, ch 7 Filed **ARC 8091C** 7/10/24
 Denial of issuance or renewal, suspension, or revocation of license for nonpayment of child support or state debt, rescind ch 8 Filed **ARC 8092C** 7/10/24
 Petition for rule making, rescind ch 9 Filed **ARC 8093C** 7/10/24
 Declaratory orders, rescind ch 10 Filed **ARC 8094C** 7/10/24
 Sales and leases of goods and services, ch 11 Filed **ARC 8095C** 7/10/24
 Impaired licensee review committees, ch 12 Filed **ARC 8096C** 7/10/24

Public records and fair information practices, rescind ch 13 Filed **ARC 8097C** 7/10/24
 Licensure by verification or work experience, ch 14 Filed **ARC 8098C** 7/10/24
 Use of criminal convictions in eligibility determinations and initial licensing decisions, ch 15 Filed **ARC 8099C** 7/10/24

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Petitions for rule making, rescind ch 6 Filed **ARC 8115C** 7/10/24
 Agency procedure for rule making, rescind ch 7 Filed **ARC 8116C** 7/10/24
 Declaratory orders, rescind ch 8 Filed **ARC 8117C** 7/10/24
 Public records and fair information practices, rescind ch 10 Filed **ARC 8118C** 7/10/24
 Informal settlement, rescind ch 12 Filed **ARC 8119C** 7/10/24
 Impaired practitioner review committee; adoption of uniform and model rules, rescind ch 16; adopt chs 34, 46, 66,
 84, 106, 125, 135, 145, 184, 210, 226, 245, 266, 284, 305, 330, 354, 364 Filed **ARC 8148C** 7/24/24
 Materials for board review, rescind ch 17 Filed **ARC 8120C** 7/10/24
 Waivers or variances from administrative rules, rescind ch 18 Filed **ARC 8121C** 7/10/24
 Military service and veteran reciprocity, rescind ch 20 Filed **ARC 8122C** 7/10/24
 Prescribing psychologists, ch 244 Filed **ARC 8149C** 7/24/24

PUBLIC HEALTH DEPARTMENT[641]

Hepatitis programs, ch 2 Filed **ARC 8123C** 7/10/24
 Medical cannabidiol program, ch 154 Filed **ARC 8124C** 7/10/24
 Criteria for awards or grants, rescind ch 176 Filed **ARC 8125C** 7/10/24
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 Nonpayment of state debt, ch 194 Filed **ARC 8127C** 7/10/24
 Emergency medical services—military service, veteran reciprocity, and spouses of active duty service members,
 ch 196 Filed **ARC 8128C** 7/10/24

PUBLIC SAFETY DEPARTMENT[661]

Educator professional permit to carry a weapon; private school security officer firearms training, amendments to
 chs 91, 121 Notice **ARC 8141C** 7/24/24

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Professional Licensing and Regulation Bureau[193]

INSURANCE AND FINANCIAL SERVICES DEPARTMENT[181]"umbrella"

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Sales and use tax permits, ch 201 Filed **ARC 8150C** 7/24/24
 Filing returns and payment of tax; streamlined sales and use tax agreement; exemption certificates; determination
 of a sale and sale price, amend chs 202, 204; adopt ch 209; rescind ch 288 Filed **ARC 8151C** 7/24/24
 Elements included in and excluded from a taxable sale and sales price, ch 203 Filed **ARC 8152C** 7/24/24
 Bundled transactions, ch 206 Filed **ARC 8153C** 7/24/24
 Multilevel marketer agreements, ch 208 Filed **ARC 8154C** 7/24/24
 Purchases by businesses, ch 210 Filed **ARC 8155C** 7/24/24
 Taxable services, ch 211 Filed **ARC 8156C** 7/24/24
 Governments and nonprofits; exempt sales; taxable and exempt sales determined by method of transaction or
 usage, adopt chs 212, 285; rescind ch 284 Filed **ARC 8157C** 7/24/24
 Miscellaneous taxable sales, ch 213 Filed **ARC 8158C** 7/24/24
 Agricultural rules, ch 214 Filed **ARC 8159C** 7/24/24
 Exemptions primarily benefiting manufacturers and other persons engaged in processing, ch 215 Filed **ARC 8160C** 7/24/24
 Sales and use tax on construction activities, ch 219 Filed **ARC 8161C** 7/24/24
 Exemptions primarily of benefit to consumers, ch 220 Filed **ARC 8162C** 7/24/24
 Miscellaneous nontaxable transactions, ch 221 Filed **ARC 8163C** 7/24/24
 Resale and processing exemptions primarily of benefit to retailers, ch 225 Filed **ARC 8164C** 7/24/24
 Flood mitigation program, ch 272 Filed **ARC 8165C** 7/24/24
 Reinvestment districts program, ch 273 Filed **ARC 8166C** 7/24/24
 Local option sales tax urban renewal projects, ch 274 Filed **ARC 8167C** 7/24/24
 Underground storage tank rules incorporated by reference, rescind ch 289 Filed **ARC 8168C** 7/24/24

TRANSPORTATION DEPARTMENT[761]

Organization of the department of transportation; provisions applicable to all rules, rescind chs 1, 2 <u>Notice</u> ARC 8133C	7/24/24
Iowa transportation map; secondary road fund distribution committee; Iowa byways program; highway bridge program for cities and counties; allocation of farm-to-market road funds; availability of instructional memorandums to local public agencies; preparation of secondary road construction programs, budgets, and county annual reports; reimbursable services and supplies, rescind chs 28, 102, 132, 161, 170, 172 to 174 <u>Notice</u> ARC 8135C	7/24/24
Promotion of Iowa agricultural products at rest areas; adopt-a-highway program; highway helper sponsorship program, rescind chs 106, 121, 124 <u>Notice</u> ARC 8134C	7/24/24
TREASURER OF STATE[781]	
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Iowa educational savings plan trust—529 savings accounts, 16.2 to 16.13 <u>Notice</u> ARC 8104C	7/10/24
UTILITIES COMMISSION[199]	
Organization and operation, ch 1 <u>Notice</u> ARC 8105C	7/10/24
Electronic filing, ch 14 <u>Notice</u> ARC 8106C	7/10/24
Renewable energy percentage verification, rescind ch 30 <u>Notice</u> ARC 8136C	7/24/24
Crossing of railroad rights-of-way, ch 42 <u>Notice</u> ARC 8103C	7/10/24
WORKFORCE DEVELOPMENT DEPARTMENT[871]	
Administration, ch 1 <u>Notice</u> ARC 8130C	7/10/24
Customer and administrative services division, rescind ch 2 <u>Notice</u> ARC 8131C	7/10/24
New employment opportunities fund, rescind ch 13 <u>Notice</u> ARC 8137C	7/24/24
New Iowan centers, rescind ch 14 <u>Notice</u> ARC 8132C	7/10/24
Employer innovation fund, rescind ch 16 <u>Notice</u> ARC 8138C	7/24/24

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular, statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

Senator Mike Klimesh
Chair
Senate District 32

Senator Nate Boulton
Senate District 20

Senator Mike Bousset
Senate District 21

Senator Chris Cournoyer
Senate District 35

Senator Cindy Winckler
Senate District 49

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Vice Chair
House District 63

Representative Amy Nielsen
House District 85

Representative Rick Olson
House District 39

Representative Mike Sexton
House District 7

Representative David Young
House District 28

Steve Blankenship
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 18
Des Moines, Iowa 50319
Telephone: 515.281.5211

ECONOMIC DEVELOPMENT AUTHORITY[261]

Iowa targeted small business certification program, ch 52 IAB 7/24/24 ARC 8144C	1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review/	August 13, 2024 9 to 9:15 a.m. August 15, 2024 1:30 to 1:45 p.m.
Targeted small business financial assistance program, ch 55 IAB 7/24/24 ARC 8143C	1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review/	August 13, 2024 9:15 to 9:30 a.m. August 15, 2024 1:15 to 1:30 p.m.

EDUCATION DEPARTMENT[281]

Charter schools; Iowa public charter and innovation zone schools, adopt ch 19; rescind ch 68 IAB 7/24/24 ARC 8139C	Room B50 Grimes State Office Building Des Moines, Iowa	August 13, 2024 9 to 10 a.m.
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PUBLIC SAFETY DEPARTMENT[661]

Educator professional permit to carry a weapon; private school security officer firearms training, amendments to chs 91, 121 IAB 7/24/24 ARC 8141C	Conference Room 125 Oran Pape State Office Building Des Moines, Iowa	August 13, 2024 8:30 to 9:30 a.m.
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TRANSPORTATION DEPARTMENT[761]

Organization of the department of transportation; provisions applicable to all rules, rescind chs 1, 2 IAB 7/24/24 ARC 8133C	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 970 639 09# Microsoft Teams link Or dial: 515.817.6093 Conference ID: 399 906 461#	August 15, 2024 10:30 to 11 a.m. August 15, 2024 2:30 to 3 p.m.
Promotion of Iowa agricultural products at rest areas; adopt-a-highway program; highway helper sponsorship program, rescind chs 106, 121, 124 IAB 7/24/24 ARC 8134C	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 307 186 340# Microsoft Teams link Or dial: 515.817.6093 Conference ID: 141 207 268#	August 15, 2024 1 to 1:30 p.m. August 16, 2024 10 to 10:30 a.m.

TRANSPORTATION DEPARTMENT[761](cont'd)

Iowa transportation map; secondary road fund distribution committee; Iowa byways program; highway bridge program for cities and counties; allocation of farm-to-market road funds; availability of instructional memorandums to local public agencies; preparation of secondary road construction programs, budgets, and county annual reports; reimbursable services and supplies, rescind chs 28, 102, 132, 161, 170, 172 to 174 IAB 7/24/24 ARC 8135C	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 616 455 141# Microsoft Teams link Or dial: 515.817.6093 Conference ID: 931 936 951#	August 15, 2024 11 to 11:30 a.m. August 16, 2024 2 to 2:30 p.m.
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Special mobile equipment, ch 410 IAB 7/24/24 Regulatory Analysis	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 219 164 344#	August 15, 2024 3 to 3:30 p.m.
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Transportation network companies, ch 540 IAB 7/24/24 Regulatory Analysis	Microsoft Teams link Or dial: 515.817.6093 Conference ID: 464 672 77#	August 16, 2024 3 to 3:30 p.m.
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UTILITIES COMMISSION[199]

Renewable energy percentage verification, rescind ch 30 IAB 7/24/24 ARC 8136C	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa	August 13, 2024 9 to 11 a.m. August 27, 2024 9 to 11 a.m.
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WORKFORCE DEVELOPMENT DEPARTMENT[871]

New employment opportunities fund, rescind ch 13 IAB 7/24/24 ARC 8137C	Microsoft Teams Meeting ID: 275 416 053 543 Passcode: 9uPceZ Microsoft Teams Meeting ID: 227 932 730 594 Passcode: BPHYzk	August 13, 2024 9:30 to 10 a.m. August 13, 2024 1:30 to 2 p.m.
Employer innovation fund, rescind ch 16 IAB 7/24/24 ARC 8138C	Microsoft Teams Meeting ID: 290 932 388 314 Passcode: NQqSpx Microsoft Teams Meeting ID: 278 873 881 802 Passcode: fxvGVp	August 13, 2024 10 to 10:30 a.m. August 13, 2024 2 to 2:30 p.m.

The following list will be updated as changes occur.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies are included alphabetically in SMALL CAPITALS at the left-hand margin.

ADMINISTRATIVE SERVICES DEPARTMENT[11]
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Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 410
“Special Mobile Equipment”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 307.12(1)“j” and 321E.15
State or federal law(s) implemented by the rulemaking: Iowa Code sections 321.1, 321.18, 321.20
and 321E.12

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

August 15, 2024
3 to 3:30 p.m.

[Microsoft Teams Link](#)
Or dial: 515.817.6093
Conference ID: 219 164 344#

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Transportation no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Sara Siedsma
6310 SE Convenience Boulevard
Ankeny, Iowa 50021
Email: sara.siedsma@iowadot.us

Purpose and Summary

The purpose of the proposed chapter is to provide information on special mobile equipment (SME) for customers in two main areas: (1) titling and registering SME and (2) requirements when transporting SME on a registered vehicle. These rules provide transparency on some of the common scenarios that arise for customers who own or transport SME.

Analysis of Impact

1. Persons affected by the proposed rulemaking:
 - Classes of persons that will bear the costs of the proposed rulemaking:

There are no costs expected as a result of this proposed rulemaking. Rather, the rules provide the option for certain SMEs to obtain title and registration, which greatly benefits a customer seeking to transfer ownership of the SME or operate the SME in another state. The rules also clarify the statutory size and weight requirements for customers transporting SME, which helps customers avoid unnecessary enforcement actions.

- Classes of persons that will benefit from the proposed rulemaking:

Persons seeking to title and register SME permanently attached to a motor truck, trailer, or semitrailer to obtain registration and title for the motor truck, trailer, or semitrailer will benefit from this chapter. Allowing registration and title for this type of SME benefits customers because some states require title and registration for SME to transfer ownership or operate in the other state.

Additionally, the rules give clear guidance to customers and law enforcement on the interaction between Iowa Code section 321E.12 and Iowa Code chapter 321 when SME is being transported on a vehicle registered according to the gross weight of the registered vehicle, not including the load.

Clearly specifying that the size and weight limitations in Iowa Code chapter 321 continue to apply unless a permit is obtained under chapter 321E and requiring a copy of the lease agreement (if applicable) to be carried in the vehicle helps avoid unnecessary enforcement actions.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

Although the volume of titles and registrations issued for SME under these rules is quite small, less than 20 annually, it is a valuable option for the customers who need it. Any impacts regarding permits for exceeding size and weight when transporting SME are attributable to the statute.

- Qualitative description of impact:

Reorganizing, streamlining, and reducing redundancy in the proposed chapter will create a positive impact by producing a more reader-friendly version of the information the public relies on for understanding how to register and title SME and what the statutory size and weight requirements are when transporting SME.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:

There are no additional implementation or enforcement costs resulting from the proposed rules that were not already required as a result of the underlying statutes. While the permit issuance and title and registration processes in general do require staff time, those costs are already required by statute.

Law enforcement agencies will incur fewer costs to enforce the rules since it clearly specifies expectations when transporting SME.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues beyond those resulting from the underlying statute.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The benefit of the proposed rules is that customers will have increased ability to operate or transfer ownership of SME to another state without incurring barriers due to lack of title or registration and will be less likely to encounter enforcement actions due to knowing the statutory size and weight limitations when transporting SME. The cost of the proposed rules is negligible since the underlying statutes already require the Department to issue titles, registration and permits.

The cost of inaction is the inability for customers to obtain title and registration for SME, which could complicate the customer's ability to operate in or transfer ownership of SME to another state. Inaction may also result in increased enforcement actions if customers are unable to readily understand that the statutory size and weight limitations continue to apply when transporting SME unless a permit is obtained.

There is no benefit of inaction.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There are no less costly or less intrusive methods to achieve the purpose of the proposed chapter, which is to provide the option for certain SMEs to obtain title and registration and to quickly and efficiently provide information to the public regarding statutory size and weight requirements for customers transporting SME, which helps customers avoid unnecessary enforcement actions.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:

The Department did not consider alternative methods for the proposed rules.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

No alternatives were considered for the proposed rules.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

There is no impact on small business. The proposed rules provide the option to title and register SME, which may benefit those customers seeking to operate in or transfer ownership to another state and explain the size and weight requirements when transporting SME, which applies equally to all under the statute.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 410 and adopt the following **new** chapter in lieu thereof:

CHAPTER 410
SPECIAL MOBILE EQUIPMENT

761—410.1(321) General.

410.1(1) “Special mobile equipment” means the same as defined in Iowa Code section 321.1.

410.1(2) Special mobile equipment is exempt from titling and registration pursuant to Iowa Code sections 321.18 and 321.20. However, a certificate of title and registration may be obtained in accordance with Iowa Code chapter 321 for a motor truck, trailer or semitrailer with special mobile equipment permanently attached.

410.1(3) Questions about special mobile equipment may be directed by mail to the Motor Vehicle Division, Iowa Department of Transportation, P.O. Box 10382, Des Moines, Iowa 50306-0382; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at 515.237.3268; or by email at omcs@iowadot.us.

This rule is intended to implement Iowa Code sections 321.1, 321.18 and 321.20.

761—410.2(321E) Special mobile equipment transported on a registered vehicle. The movement of special mobile equipment or component parts of special mobile equipment transported on a vehicle registered for the gross weight of the vehicle without load, as provided in Iowa Code section 321E.12, is subject to the following:

410.2(1) If the special mobile equipment is leased, the lease agreement or a certified copy of the lease agreement is to be carried in the cab of the transporting vehicle.

410.2(2) The size and weight limits in Iowa Code chapter 321 are applicable unless a permit to exceed these limits is obtained in accordance with Iowa Code chapter 321E.

This rule is intended to implement Iowa Code sections 321E.12 and 321E.15.

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 761—Chapter 540
“Transportation Network Companies”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 321N.2

State or federal law(s) implemented by the rulemaking: Iowa Code sections 321.515 and 321.519
and chapter 321N

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

August 16, 2024
3 to 3:30 p.m.

[Microsoft Teams Link](#)
Or dial: 515.817.6093
Conference ID: 464 672 77#

Public Comment

Any interested person may submit written comments concerning this Regulatory Analysis. Written comments in response to this Regulatory Analysis must be received by the Department of Transportation no later than 4:30 p.m. on the date of the public hearing. Comments should be directed to:

Sara Siedsma
6310 SE Convenience Boulevard
Ankeny, Iowa 50021
Email: sara.siedsma@iowadot.us

Purpose and Summary

The purpose of proposed Chapter 540 is to implement Iowa Code chapter 321N by outlining the procedures for transportation network companies (TNCs) to obtain a permit to offer rideshare services in Iowa. A TNC permit allows the company to provide transportation by a TNC driver to a TNC rider through a digital network controlled by the TNC. TNCs offer Iowans the ability to receive transportation services other than by driving their own personal vehicle, taking public transportation, or using a taxicab service.

Analysis of Impact

1. Persons affected by the proposed rulemaking:

- Classes of persons that will bear the costs of the proposed rulemaking:

There are no costs or fees associated with this chapter beyond what is already required by statute. Iowa Code section 321N.2(2)“b” requires a TNC to submit a \$5,000 application fee to the Department. TNC riders pay fees to the TNC company when using its services.

- Classes of persons that will benefit from the proposed rulemaking:

Persons seeking to obtain a TNC permit will benefit from this chapter by knowing the application, issuance, renewal, and revocation process for the permits.

2. Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:

- Quantitative description of impact:

There are no additional quantitative impacts that were not already anticipated as a result of the underlying statute, which requires the Department to issue TNC permits to qualified applicants.

- Qualitative description of impact:
Reorganizing, streamlining, and reducing redundancy in the proposed chapter will create a positive impact by producing a more reader-friendly version of information on which the public relies for understanding how to obtain a TNC permit.

3. Costs to the State:

- Implementation and enforcement costs borne by the agency or any other agency:
There are no additional implementation or enforcement costs in the proposed rules that were not already required as a result of the underlying statute. The statute requires the Department to issue TNC permits to qualified applicants.

- Anticipated effect on state revenues:

There are no anticipated effects on state revenues beyond the underlying statute.

4. Comparison of the costs and benefits of the proposed rulemaking to the costs and benefits of inaction:

The benefit of the proposed chapter is consistency and transparency related to the processes and requirements for obtaining a TNC permit in Iowa.

The cost of inaction is the inability of TNCs to understand quickly and efficiently what is required to obtain and maintain a TNC permit in Iowa.

There is no benefit of inaction.

5. Determination whether less costly methods or less intrusive methods exist for achieving the purpose of the proposed rulemaking:

There are no less costly or less intrusive methods to achieve the purpose of the proposed chapter, which is to quickly and efficiently provide information to qualified TNCs related to what is required to obtain and maintain a TNC permit in Iowa.

Establishing the basic application, issuance, renewal, and revocation process in the rules helps ensure the process is clear for applicants and is consistently applied.

6. Alternative methods considered by the agency:

- Description of any alternative methods that were seriously considered by the agency:
The Department did not consider alternatives for the proposed rules. The Department is required by the Iowa Code to issue a TNC permit to qualified applicants.

- Reasons why alternative methods were rejected in favor of the proposed rulemaking:

No alternatives were considered for the proposed rules.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.

- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.

- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.

- Establish performance standards to replace design or operational standards in the rulemaking for small business.

- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

There is no small business impact beyond what was already anticipated under the statute.

Text of Proposed Rulemaking

ITEM 1. Rescind 761—Chapter 540 and adopt the following **new** chapter in lieu thereof:

CHAPTER 540
TRANSPORTATION NETWORK COMPANIES

761—540.1(321N) Purpose and applicability. This chapter implements the permitting and regulation requirements of Iowa Code chapter 321N and applies to transportation network companies and transportation network company drivers.

761—540.2(321N) Definitions. The definitions in Iowa Code section 321N.1 are hereby incorporated in this chapter.

761—540.3(321N) General information.

540.3(1) Information and location. Applications, forms, and information regarding transportation network company permits are available by mail from the Motor Vehicle Division, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at 515.237.3156; by email at central.vehicle@iowadot.us; or on the department's website at www.iowadot.gov/mvd/paid-rideshare.

540.3(2) Complaints. Complaints against transportation network companies pertaining to the provisions of Iowa Code chapter 321N and this chapter that are within the regulation and jurisdiction of the department may be submitted in writing to the motor vehicle division via the methods listed in subrule 540.3(1).

761—540.4(321N) Application for transportation network company permit and supporting documents.

540.4(1) Application. An application for a transportation network company permit is to be made to the motor vehicle division using Form 432070 and is to contain the information required in Iowa Code section 321N.2, as well as the following:

a. If incorporated or otherwise organized, the transportation network company's state of incorporation or organization and a statement confirming the transportation network company is in good standing with the transportation network company's state of incorporation or organization.

b. A statement confirming the transportation network company's agreement to comply with all applicable requirements of Iowa Code chapter 321N and this chapter, signed by the transportation network company's authorized representative.

c. The name by which the transportation network company will do business in the state of Iowa, if different from the transportation network company's full legal name.

d. A description of the transportation network company's digital network and the means or manner by which the network may be accessed by the transportation network company's drivers and riders. This paragraph is not intended to and shall not be construed as requiring the disclosure of information proprietary to the transportation network company.

e. A description of how the transportation network company has established a means of informing persons seeking approval to serve as transportation network company drivers of the driver's notification obligations under Iowa Code section 321N.3(2).

f. A description of how the transportation network company has established a means of making the automobile insurance disclosures required by Iowa Code section 321N.5 to persons serving as transportation network company drivers.

g. A description of how the transportation network company has established a means of making the driver and vehicle disclosures required by Iowa Code section 321N.7 to transportation network company riders.

h. A description of how the transportation network company has established a means of transmitting an electronic receipt to transportation network company riders as required by Iowa Code section 321N.8.

i. Such other information as may be required by the department.

540.4(2) *Application fee.* The application fee in Iowa Code section 321N.2(2) shall be made payable to the Iowa Department of Transportation in the form and manner prescribed by the department.

540.4(3) *Supporting documents.* The proof required in Iowa Code section 321N.2(2) includes the following:

a. Proof under Iowa Code section 321N.2(2)“a”(4): a valid certificate of coverage from an insurer governed by Iowa Code chapter 515 or from a surplus lines insurer governed by Iowa Code chapter 515I. An acceptable certificate of coverage will demonstrate coverage in the amounts and circumstances required by Iowa Code section 321N.4 and will certify that, if insurance maintained by a transportation network company driver under Iowa Code chapter 321N lapses or does not provide coverage in the amounts or types required by Iowa Code section 321N.4(2) or 321N.4(3), the insurance certified in the certificate of coverage will provide coverage in the amounts and types required by Iowa Code section 321N.4(2) or 321N.4(3), beginning with the first dollar of the claim, and the insurer providing such coverage shall defend the claim. An acceptable certificate of coverage will also certify that the coverage therein is not dependent on the insurer of a transportation network company driver’s personal vehicle first denying a claim, and does not require the insurer of a personal automobile insurance policy to first deny a claim to trigger coverage and defense under the coverage certified.

b. Proof under Iowa Code section 321N.2(2)“a”(5): a written copy of the applicable policy and an explanation of the manner or means by which the policy is made known to transportation network company drivers and the manner or means by which the policy is enforced.

c. Proof under Iowa Code section 321N.2(2)“a”(7): a written copy of each applicable policy and an explanation of the manner or means by which the policy is made known to transportation network company drivers and the manner or means by which the policy is enforced. As used herein, “nondiscrimination policy” means a policy that prohibits discrimination against transportation network company riders on the basis of race, age, disability, religion, color, sex, or national origin. “Accessibility policy” means a policy that prohibits discrimination against and ensures equal opportunity and access to transportation network company riders who are persons with disabilities under the Americans with Disabilities Act of 1990 (ADA) as amended by the ADA Amendments Act of 2008 (P.L.110-325), codified at 42 U.S.C. 12101 et seq.

d. Proof under Iowa Code section 321N.2(2)“a”(8): a written copy of the applicable policy and an explanation of the manner or means by which the policy is made known to the designated records retention officer or responsible staff and the manner or means by which the policy is enforced.

e. All applicable documents identified in 761—subrule 380.7(2) and any other documentation, if required by the department, necessary to assess the operational capabilities of any driverless-capable vehicles the transportation network company intends to operate, including for the purpose of determining whether to impose operational restrictions as authorized under rule 761—400.21(321).

761—540.5(321N) Issuance of permit. Upon submission of a completed application as set forth in rule 761—540.4(321N), the department shall process the application and inform the transportation network company of the package’s status no later than 30 days after the department receives the application. Application statuses for the purpose of this rule are as follows: “in process,” “granted,” and “denied.” If the department informs a transportation network company that the application is “in process,” then the department shall also inform the transportation network company of the reason for the status.

761—540.6(321N) Amendment to transportation network company permit. If during the period the permit is valid any information required and presented in the application under subrule 540.4(1) changes, the transportation network company is to notify the motor vehicle division of the change in writing within 30 days after the change. Notification is to include the permit number and a description of the information that has changed and needs to be updated in the department's records. Submission of amended information is not a request for a new permit or for permit approval and does not extend the period the permit is valid. Upon determination that the information submitted is complete and correct, the department shall update its records and issue an amended permit, if the department determines it is necessary.

761—540.7(321N) Suspension and revocation procedures.

540.7(1) *Suspension.* If the department determines that the transportation network company has violated Iowa Code chapter 321N or this chapter, the department may issue to the transportation network company a written notice of the violation. The written notice shall specify the violation and advise the transportation network company that failure to remedy the violation and to comply with the applicable requirements within 30 days will result in suspension of the permit and the privilege to operate or conduct business as a transportation network company in the state of Iowa. If the transportation network company fails to remedy the violation within 30 days, the department shall issue to the transportation network company a written notice of suspension of the permit and the privilege to operate or conduct business as a transportation network company in the state of Iowa, which will take effect 30 days after service of the written notice of suspension. Once effective, the suspension will remain in effect until the transportation network company demonstrates to the department that the transportation network company is in compliance with the applicable requirements or the permit is revoked or expires, whichever occurs first.

540.7(2) *Revocation.* If the department determines that the transportation network company is in continued noncompliance with Iowa Code chapter 321N or this chapter, the department shall revoke the transportation network company's permit and the privilege to operate or conduct business as a transportation network company in the state of Iowa for a minimum of 90 days. Notice of revocation shall be in writing and specify the continued noncompliance. The revocation will take effect 30 days after service of the written notice of revocation and will remain effective until the following criteria are satisfied:

a. The transportation network company submits a new application, application fee, and supporting documents under rule 761—540.4(321N).

b. The department determines a new permit should be issued under this chapter.

540.7(3) *Continued noncompliance.* As used in this rule, "continued noncompliance" means a violation of Iowa Code chapter 321N or this chapter for which a notice of suspension has become effective and has remained in effect for a period of at least 180 days.

761—540.8(321N) Appeal.

540.8(1) A transportation network company whose permit has been suspended, revoked, or denied may request an informal settlement or a contested case proceeding as provided in 761—Chapter 13.

540.8(2) To be timely, the request must be submitted within 20 days of service of the notice of suspension or revocation. A request to appeal a denial may be submitted at any time.

540.8(3) The department will stay the suspension or revocation pending resolution of the informal settlement, contested case, or appeal.

761—540.9(321N) Renewal.

540.9(1) A transportation network company that holds a valid permit may renew the permit by submitting, at minimum, the following: (1) the application, (2) the application fee, (3) current proof of insurance as specified in subrule 540.4(3), and (4) any supporting documents as set forth in rule

761—540.4(321N) that have changed since the documents were last approved by the department. Any required documentation that has not changed, other than current proof of insurance, does not need to be resubmitted for a permit renewal. The application for renewal must be submitted no more than 60 days before the expiration date of the existing permit and no fewer than 30 days before the expiration date of the existing permit.

540.9(2) Pursuant to Iowa Code section 17A.18(2), when a transportation network company has made a timely and sufficient application for the renewal of a valid permit, the existing permit does not expire until the application has been finally determined by the department and, in case the application is denied or the terms of the new permit are limited, until the last day for seeking judicial review of the department's order or a later date fixed by order of the department or the reviewing court.

540.9(3) If the application for renewal is submitted fewer than 30 days before the expiration date of the existing permit, then the application will be considered a new application and Iowa Code section 17A.18(2) shall not apply. If a transportation network company does not file a renewal application pursuant to this rule, then the original application will expire on the expiration date set forth on the original permit.

540.9(4) If a transportation network company initiates an appeal, informal settlement, or contested case proceeding pursuant to rule 761—540.8(321N) and the original application expires pursuant to the expiration date of the application, then the transportation network company is required to submit a renewal application pursuant to subrule 540.9(1) if the transportation network company intends to hold a valid permit under this chapter once the appeal, informal settlement, or contested case proceeding has been finally determined.

761—540.10(321N) Record review.

540.10(1) When the department examines the records of a transportation network company as authorized under Iowa Code section 321N.2(5), the department may request the transportation network company to provide a list of all prearranged rides for a seven-day period or all transportation network company drivers in Iowa for a specific date. The transportation network company shall provide the required information to the department within 30 days of the request.

540.10(2) For the records provided under subrule 540.10(1), the department may identify a random sample of rides or drivers, or rides and drivers, for review for the specified period. The transportation network company must provide additional information for each driver and each rider for each ride as requested by the department. The department may also require:

- a.* A copy of the driver's license for the transportation network company driver.
- b.* A copy of the driver's state-issued vehicle registration, including year, make, model, VIN and license plate number.
- c.* A copy of proof of the driver's financial liability coverage, including the driver's insurance company name, address, and policy number. In addition, a copy of proof of financial liability coverage maintained to comply with Iowa Code sections 321N.4(2) and 321N.4(3) that includes coverages and limits may be satisfied by any of the following:
 - (1) Insurance maintained by the transportation network company driver.
 - (2) Insurance maintained by the transportation network company.
 - (3) A combination of subparagraphs 540.10(2) "c"(1) and (2).
- d.* A copy of or a verification that all necessary disclosures were supplied to the driver by the transportation network company, including the lienholder, vehicle owner, insurance and motor vehicle equipment requirements.
- e.* A copy of all complaints received by the transportation network company from any rider who received a ride from the driver. This includes but is not limited to complaints related to drug or alcohol use, vehicle safety, motor vehicle equipment safety, driver behavior, driver ability or operation of the vehicle.
- f.* A summary or other documentation that shows how the transportation network company resolved any complaint from a rider.

g. Documentation or verification of the background and sex offender registry check on the driver.

h. The electronic ride receipt provided to each rider.

540.10(3) Notwithstanding any provision of subrule 540.10(1) to the contrary, the department and the transportation network company may agree to an alternative process or format for the transportation network company to provide the requested records if the records otherwise include the information required in subrule 540.10(2).

540.10(4) Records submitted by the transportation network company to the department pursuant to this rule shall maintain the same status, including confidentiality and disclosure requirements as provided in Iowa Code section 321N.2(5).

These rules are intended to implement Iowa Code sections 321.515 and 321.519 and chapter 321N.

ARC 8142C

ECONOMIC DEVELOPMENT AUTHORITY[261]**Notice of Intended Action****Proposing rulemaking related to rescission of chapters
and providing an opportunity for public comment**

The Economic Development Authority hereby proposes to rescind Chapter 15, “STEM BEST Appropriation,” Chapter 21, “Division Responsibilities,” Chapter 50, “Division Responsibilities,” Chapter 54, “Iowa Targeted Small Business Procurement Program,” Chapter 101, “Mission and Responsibilities,” Chapter 114, “Iowa Innovation Council,” and Chapter 163, “Division Responsibilities,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 15.106A.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 73 and sections 15.106A, 15.117A and 17A.3; 2021 Iowa Acts, House File 871; and 2022 Iowa Acts, House File 2564.

Purpose and Summary

Pursuant to Part IV of Executive Order 10, the Authority has been directed to propose this Notice of Intended Action. The Authority proposes to rescind the following chapters:

- Chapter 15, regarding the STEM BEST appropriation. The Authority has transferred all funds to the current program administrator, the Department of Education.
- Chapters 21, 50, 101, and 163, which describe the following divisions and activities of the Authority: the Community Development Division (Chapter 21), the Business Development Division (Chapter 50), innovation and commercialization activities (Chapter 101), and the Administration Division (Chapter 163). The Authority’s responsibilities are sufficiently described in the Iowa Code sections relating to the Authority and in 261—Chapter 1 relating to the overall organization of the Authority. Additionally, 2024 Iowa Acts, Senate File 2370, strikes Iowa Code section 17A.3(1)“a,” which required each agency to adopt rules describing its organization.
- Chapter 54, regarding the Iowa Targeted Small Business (TSB) Procurement Program. The Authority intends to include relevant information about the Authority’s role in TSB procurement in 261 — Chapter 52 regarding TSB certification.
- Chapter 114, regarding the Iowa Innovation Council. The Council is sufficiently described in Iowa Code section 15.117A.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Authority no later than 4:30 p.m. on August 13, 2024. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Phone: 515.348.6163
Email: lisa.connell@iowaeda.com

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rulemaking may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

- ITEM 1. Rescind and reserve **261—Chapter 15.**
- ITEM 2. Rescind and reserve **261—Chapter 21.**
- ITEM 3. Rescind and reserve **261—Chapter 50.**
- ITEM 4. Rescind and reserve **261—Chapter 54.**
- ITEM 5. Rescind and reserve **261—Chapter 101.**
- ITEM 6. Rescind and reserve **261—Chapter 114.**
- ITEM 7. Rescind and reserve **261—Chapter 163.**

ARC 8144C

ECONOMIC DEVELOPMENT AUTHORITY[261]**Notice of Intended Action****Proposing rulemaking related to the Iowa targeted small business certification program and providing an opportunity for public comment**

The Economic Development Authority hereby proposes to rescind Chapter 52, “Iowa Targeted Small Business Certification Program,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 15.106A and 15.108(6).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 73 and sections 12.44 and 15.108(6).

Purpose and Summary

Pursuant to Executive Order 10 (January 10, 2023), the Authority proposes to rescind Chapter 52 and adopt a new chapter in lieu thereof. The proposed chapter describes the policies and procedures by which the Authority certifies targeted small businesses.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on May 15, 2024. A public hearing was held on the following date(s):

- June 6, 2024

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Authority no later than 4:30 p.m. on August 13, 2024. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Phone: 515.348.6163
Email: lisa.connell@iowaeda.com

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

August 13, 2024 9 to 9:15 a.m.	1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review
August 15, 2024 1:30 to 1:45 p.m.	1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Authority and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 261—Chapter 52 and adopt the following **new** chapter in lieu thereof:

CHAPTER 52
IOWA TARGETED SMALL BUSINESS CERTIFICATION PROGRAM

261—52.1(15) Definitions.

“*Act*” means the Iowa targeted small business procurement Act codified in Iowa Code chapter 73, subchapter III.

“*Authority*” means the same as defined in Iowa Code section 15.102(1).

“*Certification*” means the process that identifies small businesses as targeted small businesses and as eligible for technical assistance.

“*Disability*” means the same as defined in Iowa Code section 15.102.

“*Minority person*” means the same as defined in Iowa Code section 15.102.

“*Program*” means the targeted small business certification program described in this chapter and 261—Chapter 54.

“*Service-disabled veteran*” means a veteran who provides written verification from the U.S. Department of Veterans Affairs or the U.S. Department of Defense of a disability that was incurred or aggravated in the line of duty in active military, naval, air, or space service.

“*Targeted group person*” means a minority person, woman, person with a disability, or service-disabled veteran who is either an Iowa resident or a resident of a contiguous state who lives within 50 miles of the targeted small business the person owns, operates, and actively manages.

“*Targeted small business*” or “*TSB*” means the same as defined in Iowa Code section 15.102.

“*Woman*” means any female 18 years of age or older.

261—52.2(15) Certification.

52.2(1) A business must be certified as a targeted small business by the authority to participate in the program. Businesses seeking certification shall submit an application to the authority in the form and content required by the authority. The application will include information to establish whether a business meets the eligibility criteria of the program. An authorized representative of the business shall sign the application and an authorization to release information. Applications may be requested by contacting the authority or by visiting the authority's website.

52.2(2) The authority reviews applications to determine whether a business is eligible to participate in the program pursuant to this chapter as in effect as of the date of application for certification. The authority will notify applicants in writing of its decision.

52.2(3) Certified businesses shall submit verification of continued eligibility to the authority at least every two years. The application for recertification will be provided by the authority. The authority will determine whether a certified business is eligible for recertification pursuant to this chapter as in effect as of the date of application for recertification.

52.2(4) A business that fails to provide any supplemental information requested by the authority may be denied certification or recertification.

52.2(5) Any business that is denied certification or decertified may reapply. The business bears the burden of demonstrating eligibility.

52.2(6) A certified business shall notify the authority within 30 days following a change in ownership or control of a certified business or if the targeted group person no longer actively manages the business. The notice must be accompanied by sufficient documentation to determine whether the business continues to be eligible for certification. The authority may require a business to submit a new application following a change in ownership, control, or management.

261—52.3(15) Eligibility. The authority will consider the following to determine whether a business is a targeted small business pursuant to Iowa Code section 15.102(12) and eligible for certification. Documentation may be required to prove each eligibility requirement. The authority may conduct on-site audits to evaluate eligibility.

52.3(1) Ownership. The authority will evaluate the following factors that indicate independent ownership by a targeted group person.

a. The business shall not be a subsidiary of any other business. If another business that is not a TSB has an interest in a TSB applying for certification, the authority will scrutinize the relationship between the businesses to determine the independence of the TSB. Recognition of the business as a separate entity for tax or corporate purposes is not solely sufficient to demonstrate independence.

b. The targeted group person owner(s) shall enjoy the customary incidents and profits of ownership and share in the risks commensurate with the owner's ownership interest. The authority will consider the substance rather than the form of the arrangements. Business arrangements that deviate from common industry practice may indicate an owner other than the targeted group person owns, operates, and actively manages a business.

c. At least 51 percent of the members of the business's board of directors must be targeted group persons.

d. At least 51 percent of the shares or other units of ownership of the business must be owned by one or more targeted group persons.

e. The business should be compensated for facilities, inventory, equipment, labor, or other items it owns and shares with any other business. Compensation shall not vary from common industry practice. If an applicant business is operated from the owner's residence, the residence and any adjacent outbuildings used by the applicant business may be owned jointly with other family members.

52.3(2) Decision-making authority. The targeted group person owner(s) shall have authority to incur liability and to decide financial and policy questions without any restrictions, either formal or informal.

a. The authority may review documents, including but not limited to minutes of board or owners meetings, bylaw provisions, operating agreements, certificates of organization, partnership agreements, charter requirements for cumulative voting rights, or employment agreements to determine the targeted group person's authority.

b. The targeted group person owner(s) shall make day-to-day decisions as well as major decisions on management policy and operation of the business. Authority to hire and to fire all personnel shall be vested in the targeted group person owner(s).

c. The authority will consider particular positions to determine who has major responsibility in a company. These people include but are not limited to those who:

- (1) Hold any applicable license;
- (2) Devote substantial time to the business;
- (3) Supervise or direct the supervision of management and field operations;
- (4) Manage financial affairs;
- (5) Prepare or approve bids or estimates;
- (6) Participate in price and bidding negotiations;
- (7) Make final decisions about staff and personnel;

(8) Sign contracts and checks or authorize action on behalf of the business.

52.3(3) Expertise. The targeted group person owner(s) must have an overall understanding of, managerial and technical competence in, and expertise directly related to the type or nature of business in which the business is engaged and in the business's operations. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the activities of the business is insufficient to demonstrate control of the business.

52.3(4) Capital contributions. Capital contributions by the targeted group person owner(s) to acquire interest in the business shall be real and substantial and reflected in documents such as stock certificates, articles of incorporation, minutes of board or owners meetings, partnership agreements, or income tax returns.

52.3(5) Capital contribution, expertise, and experience in an inherited business are not required. All other requirements apply.

52.3(6) Businesses that are owned and operated by one or more members of the same family will be closely scrutinized to determine whether the targeted group person identified as the owner of 51 percent or more of the business sets policy and makes day-to-day and long-term decisions for the operation and management of the business.

52.3(7) A previous or continuing employer-employee relationship between present owners will be closely scrutinized to ensure that the employee-owner has substantial management and decision-making responsibilities.

52.3(8) A disabled targeted group person must provide certification of the disability from a licensed medical physician, physician assistant, or nurse practitioner with relevant expertise or must have been found eligible for vocational rehabilitation services by the department of workforce development, division of vocational rehabilitation services, or by the department for the blind.

52.3(9) The authority will calculate an applicant's gross income as follows: the total sales less the cost of goods sold plus any income from investments and from incidentals or outside operations or sources.

261—52.4(15) Decertification.

52.4(1) If the authority determines there is reasonable cause to believe a business does not comply with the requirements of the program, the authority shall provide written notice of the intent to revoke certification to the business. Notice shall be sent at least 20 days before decertification is effective.

52.4(2) The authority shall revoke certification of a TSB if the authority determines that a fraudulent practice related to the program has occurred. The authority or its representative may investigate allegations or complaints of fraudulent practices. A person is considered to have engaged in a fraudulent practice related to the program if the person does any of the following:

a. Knowingly transfers or assigns assets, ownership, or equitable interest in property of a business to a targeted group person primarily for the purpose of obtaining benefits afforded only to TSBs if the transferor would otherwise not be qualified for such programs.

b. Solicits and is awarded a state contract on behalf of a TSB for the purpose of transferring the contract if the person transferring or intending to transfer the work had no intention of performing the work.

c. Knowingly falsifies information on an application for the purpose of obtaining benefits afforded only to TSBs.

52.4(3) A TSB may be decertified if the authority sends a letter by first-class mail to the last-known address provided to the authority by the TSB and it is returned as undeliverable.

52.4(4) Eligibility to participate in the program continues until the authority issues a final decision regarding decertification of a TSB.

261—52.5(15) Waivers. A targeted small business may seek a satisfaction, performance, surety, or bid bond waiver from a state agency pursuant to Iowa Code section 12.44. A TSB must provide a sworn statement and documentation from surety companies verifying that the TSB is entitled to a waiver pursuant to Iowa Code section 12.44.

52.5(1) The authority reviews all requests for waivers. The authority may request information to assist the review process from the state agency requiring a bond. An applicant for a waiver pursuant to this rule and the agency requiring a bond will be notified of the decision in writing.

52.5(2) Waivers will be reviewed and renewed at the time of TSB recertification.

261—52.6(15) TSB procurement.

52.6(1) *TSB directory and purchases.* The authority compiles and regularly updates a TSB directory that contains a listing of TSBs that have been certified by the authority. Entities required to make purchases from TSBs pursuant to the Act utilize the directory to identify TSBs for purchases. By certifying a business, the authority does not represent that the business can perform any contract entered into by the business.

52.6(2) *Authority administration.* The authority may conduct a review of entities subject to the Act where there is evidence of little or no progress toward reaching its established TSB goal. The purpose of the review will be to identify the barriers encountered, evaluate the efforts taken to reach the goal, and provide available assistance.

52.6(3) *Reporting requirements.* The director of each state agency or department shall submit quarterly reports of TSB purchases to the authority in the format and by the due date specified by the authority. Reports provided to the department of education by community colleges, area education agencies, and school districts pursuant to Iowa Code section 73.17(2) shall be forwarded to the authority. Pursuant to Iowa Code section 73.17, the authority may require modifications from the agencies and departments based on the information reported pursuant to that Iowa Code section and this rule.

52.6(4) *Maintenance of records.* Entities subject to the Act shall develop a recordkeeping system that identifies and assesses TSB contract awards and progress in achieving a TSB goal. Records should demonstrate procedures adopted to comply with Iowa Code chapter 73 and this chapter and awards to TSBs. Records shall be available upon the request of the authority or the state auditor.

These rules are intended to implement Iowa Code sections 12.44 and 15.108(6) and chapter 73, subchapter III.

ARC 8143C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Notice of Intended Action

Proposing rulemaking related to the targeted small business financial assistance program and providing an opportunity for public comment

The Economic Development Authority hereby proposes to rescind Chapter 55, “Targeted Small Business Financial Assistance Program,” Iowa Administrative Code, and to adopt a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 15.106A.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 15.108(6) and 2013 Iowa Acts, House File 324.

Purpose and Summary

Pursuant to Executive Order 10 (January 10, 2023), the Authority proposes to rescind Chapter 55 and adopt a new chapter in lieu thereof. The proposed chapter describes the policies and procedures by which the Authority provides financial assistance to targeted small businesses.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on May 15, 2024. A public hearing was held on the following date(s):

- June 6, 2024

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Authority no later than 4:30 p.m. on August 13, 2024. Comments should be directed to:

Lisa Connell
Iowa Economic Development Authority
1963 Bell Avenue, Suite 200
Des Moines, Iowa 50315
Phone: 515.348.6163
Email: lisa.connell@iowaeda.com

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

August 13, 2024 9:15 to 9:30 a.m.	1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review
August 15, 2024 1:15 to 1:30 p.m.	1963 Bell Avenue Des Moines, Iowa Registration information for online participation may be found at www.iowaeda.com/red-tape-review

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Authority and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 261—Chapter 55 and adopt the following **new** chapter in lieu thereof:

CHAPTER 55
TARGETED SMALL BUSINESS FINANCIAL ASSISTANCE PROGRAM

261—55.1(15) Targeted small business financial assistance program. The purpose of the program is to assist targeted group persons to establish or expand small business ventures in Iowa.

261—55.2(15) Definitions. As used in this chapter, unless the context otherwise requires:

“*Authority*” means the same as defined in Iowa Code section 15.102.

“*Disability*” means the same as defined in Iowa Code section 15.102.

“*Minority person*” means the same as defined in Iowa Code section 15.102.

“*Place of abode*” means a place of stay, permanent or for some time, for which consideration is paid.

“*Program*” means the targeted small business financial assistance program established pursuant to this chapter.

“*Review committee*” means a committee established by the authority to review program applications pursuant to subrule 55.3(8).

“*Service-disabled veteran*” means a veteran who provides written verification from the U.S. Department of Veterans Affairs or the U.S. Department of Defense of a disability that was incurred or aggravated in the line of duty in active military, naval, air, or space service.

“*Targeted group person*” means a minority person, woman, person with a disability, or service-disabled veteran who is either an Iowa resident or a resident of a contiguous state who lives within 50 miles of the targeted small business the person owns, operates, and actively manages.

“*Targeted small business*” or “*TSB*” means the same as defined in Iowa Code section 15.102.

“*Woman*” means any female 18 years of age or older.

261—55.3(15) Application and approval.

55.3(1) Application procedures. Application materials may be obtained from the authority.

55.3(2) Maximum funding. The maximum loan amount is \$50,000. The interest rate charged shall not exceed 5 percent per annum or be less than 0 percent per annum. A targeted small business shall not receive a loan under the program that provides more than 90 percent of the funding for a project. All applicants must invest at least 10 percent of the total project budget in cash.

55.3(3) Term. The term of a loan shall not exceed five years.

55.3(4) Eligible uses of funds. Program funds shall be used for legitimate business expenses, including but not limited to purchase of equipment and furnishings, inventory, purchase of and improvements to land and buildings and specific operating expenses.

55.3(5) Ineligible uses of funds. Program funds shall not be used to refinance existing debt. For the purposes of this subrule, existing debt does not include interim financing for allowable program purposes intended as a bridge loan obtained after the date a program loan is approved. Program funds shall not be used to facilitate financing of a project that would consist solely of relocation of an existing business within Iowa.

55.3(6) Threshold criteria. Applicants for funds under the program must meet the following minimum criteria before their applications will be considered complete and eligible for evaluation:

a. The business must be eligible for certification as a targeted small business pursuant to 261—Chapter 52 at the time of application. The authority will educate applicants about the benefits of such certification and encourage applicants to seek certification.

b. An applicant must be a resident of Iowa for at least six months to be eligible to apply for assistance. Applicants may be asked to provide necessary documentation to prove legal residency. An applicant who has not established a permanent place of abode in Iowa or who has not abandoned a permanent place of abode in another state shall be presumed to not be a resident of Iowa. A place of

abode that is leased or rented shall be deemed permanent if leased or rented for a period of at least one year.

c. All applicants shall make a report regarding violations of law and address generation of solid or hazardous waste consistent with the requirements of Iowa Code section 15A.1(3).

55.3(7) Submittal. Applicants shall submit an application to the authority in the form and content prescribed by the authority.

55.3(8) Review.

a. Applications are reviewed for completeness. If additional information is required, the authority will notify the applicant. If the requested information is not provided by the deadline indicated in the notice, the application may be considered incomplete or ineligible.

b. The authority will establish a committee of at least three individuals to review all applications.

55.3(9) Evaluation. Applications are evaluated according to the following criteria:

a. Applicant credit score and outstanding liabilities.

b. Source(s) of the applicant's income.

c. Debt service coverage ratio.

55.3(10) Negotiations.

a. The authority reserves the right to negotiate the amount, term, interest rate, and other conditions of the loan prior to or after award.

b. The authority may decline to award funds to a business if there is a negative credit report (e.g., bankruptcy, foreclosure, tax liens, or unpaid or past due child support).

55.3(11) Award decision. If an application is approved by the review committee, the applicant business will receive an award letter that states the amount of the award, conditions of the award, any required security agreements, and the amount of monthly loan repayments. If an application is denied by the review committee, the applicant will receive a denial letter stating the reasons for denial.

55.3(12) Reapplication. An applicant whose application is denied by the review committee cannot resubmit an application for the program for 90 days from the date of the denial letter.

261—55.4(15) Monitoring.

55.4(1) The authority will monitor the recipient's records to ensure compliance with the terms of the award. The authority may request information on the condition of the business at any time during the life of the loan to determine the status of the project.

55.4(2) The authority may require a program recipient to consult with designated small business service providers for assistance with various aspects of the management and operation of the business.

55.4(3) If the authority determines that a borrower is in default, the authority may seek recovery of the loan plus interest or other penalties; negotiate alternative payment schedules; initiate, suspend or discontinue collection efforts; and take other action as the authority deems necessary.

261—55.5(15) Disbursement of funds. An approved applicant shall acknowledge and agree to the terms proposed by the authority prior to disbursement of funds. Requests for disbursement and loan documents shall be in the form and content specified by the authority.

These rules are intended to implement Iowa Code section 15.108 and 2013 Iowa Acts, House File 324.

ARC 8140C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rulemaking related to technical corrections and providing an opportunity for public comment

The State Board of Education hereby proposes to amend Chapter 12, “General Accreditation Standards,” Chapter 21, “Community Colleges,” Chapter 41, “Special Education,” Chapter 43, “Pupil Transportation,” Chapter 44, “School Buses,” and Chapter 98, “Financial Management of Categorical Funding,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 256.7.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Executive Order 10 and Iowa Code section 17A.6(5).

Purpose and Summary

This is a technical correction rulemaking. This proposed rulemaking adds dates certain for standards incorporated by reference, as required by Iowa Code section 17A.6, adds content to school bus construction standards that was inadvertently omitted in the Executive Order 10 review, and removes surplus language regarding special education mediation that was inadvertently retained during the Executive Order 10 review.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on August 13, 2024. Comments should be directed to:

Thomas A. Mayes
Department of Education
Grimes State Office Building, Second Floor
400 East 14th Street
Des Moines, Iowa 50319-0146
Phone: 515.281.8661
Email: thomas.mayes@iowa.gov

Public Hearing

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)“b,” an oral presentation regarding this rulemaking may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Amend subrule 12.3(4) as follows:

12.3(4) *Student records.* Each board will establish and maintain a system of student records, which will include for each student a permanent office record and a cumulative record.

The permanent office record serves as a historical record of official information concerning the student's education. The permanent office record is to be recorded and maintained under the student's legal name. At a minimum, the permanent office record will contain evidence of attendance and educational progress, serve as an official transcript, contain other data for use in planning to meet student needs, and provide data for official school and school district reports. This record is to be permanently maintained and stored in a fire-resistant safe or vault or can be maintained and stored electronically with a secure backup file.

The cumulative record provides a continuous and current record of significant information on progress and growth. It should reflect information such as courses taken, scholastic progress, school attendance, physical and health record, experiences, interests, aptitudes, attitudes, abilities, honors, extracurricular activities, part-time employment, and future plans. It is the "working record" used by the instructional professional staff in understanding the student. At the request of a receiving school or school district, a copy of the cumulative record will be sent to officials of that school when a student transfers.

For the sole purpose of implementing an interagency agreement with state and local agencies in accordance with Iowa Code section 280.25, a student's permanent record may include information contained in the cumulative record as defined above.

The board is to adopt a policy concerning the accessibility and confidentiality of student records that complies with the provisions of the federal Family Educational Rights and Privacy Act of 1974, as effective on February 7, 2024, and Iowa Code chapter 22.

ITEM 2. Amend subrule 12.5(13) as follows:

12.5(13) *Unit.* A unit is a course that meets one of the following criteria: it is taught for at least 200 minutes per week for 36 weeks; it is taught for the equivalent of 120 hours of instruction; it requires the demonstration of proficiency of formal competencies associated with the course according to the State Guidelines for Competency-Based Education or its successor organization, as effective on February 7, 2024; or it is an equated requirement as a part of a flexible student and school support program filed as prescribed in rule 281—12.9(256). A fractional unit will be calculated in a manner consistent with this subrule. Unless the method of instruction is competency-based, multiple-section courses taught at the same time in a single classroom situation by one teacher do not meet this unit definition for the assignment of a unit of credit, unless otherwise provided by Iowa Code section 256.11.

ITEM 3. Amend subparagraph **12.8(1)“c”(2)** as follows:

(2) Content standards and benchmarks. The board will adopt clear, rigorous, and challenging content standards and benchmarks in reading, mathematics, and science to guide the learning of students from the date of school entrance until high school graduation. Included in the local standards and benchmarks are the core content standards from Iowa's approved standards and assessment system under the applicable provisions of the federal Elementary and Secondary Education Act, as effective on February 7, 2024. Standards and benchmarks may be adopted for other curriculum areas defined in rule 281—12.5(256).

ITEM 4. Amend numbered paragraph **21.2(11)“b”(5)** as follows:

3. The individual is a covered person under Section 702 of the Veterans Access, Choice and Accountability Act of 2014 or subsequent legislation, as effective on February 7, 2024.

ITEM 5. Amend rule **281—21.41(260C)**, definitions of “Apprenticeship program” and “Certification,” as follows:

“*Apprenticeship program*” means a plan containing all terms and conditions for the qualification, recruitment, selection, employment and training of apprentices, including such matters as required under 29 CFR Parts 29 and 30, as effective on February 7, 2024, including the requirement for a written apprenticeship agreement.

“*Certification*” or “*certificate*” means documentary evidence that at least one of the following has been met:

1. The Office of Apprenticeship has approved a set of National Guidelines for Apprenticeship Standards developed by a national committee or organization, joint or unilateral, or policy or guideline used by local affiliates, as conforming to the standards of apprenticeship set forth in 29 CFR Section 29.5, as effective on February 7, 2024;

2. A registration agency has established that an individual is eligible for probationary employment as an apprentice under a registered apprenticeship program;

3. A registration agency has registered an apprenticeship program as evidenced by a certificate of registration or other written indicia;

4. A registration agency has determined that an apprenticeship has successfully met the requirements to receive an interim credential; or

5. A registration agency has determined that an individual has successfully completed an apprenticeship.

ITEM 6. Amend rule 281—21.42(260C) as follows:

281—21.42(260C) Apprenticeship programs. For an apprenticeship program to be offered by a community college or a local educational agency, the program must be approved by the U.S. Department of Labor, Office of Apprenticeship, and meet all requirements outlined in the National Apprenticeship Act, 29 U.S.C. §50, 29 CFR Parts 29 and 30, all as effective on February 7, 2024, or as specified in Iowa Code chapter 84D.

ITEM 7. Adopt the following **new** subrule 21.62(10):

21.62(10) Effective dates of federal law. All references to federal law in this rule are to those versions in effect on February 7, 2024.

ITEM 8. Amend subrule 41.1002(1), introductory paragraph, as follows:

41.1002(1) Procedures. The parent, the LEA or the AEA may request a special education mediation conference on any ~~decision relating to the identification, evaluation, educational placement, or the provision of FAPE without the need for filing a due process complaint issue under this chapter.~~ The mediation conference shall comply with rule 281—41.506(256B,34CFR300).

ITEM 9. Amend rule 281—41.1100(256B,34CFR300) as follows:

281—41.1100(256B,34CFR300) References to federal law. ~~All~~ Unless otherwise specified, all references in this chapter to the United States Code or to the Code of Federal Regulations are to those provisions in effect on February 7, 2024.

ITEM 10. Amend subrule 43.12(1) as follows:

43.12(1) General. Except for insulin-dependent diabetics, an applicant for a school bus driver’s authorization is to undergo a biennial physical examination by a certified medical examiner who is listed on the National Registry of Certified Medical Examiners. The applicant will submit annually to the applicant’s employer the signed medical examiner’s certificate pursuant to Federal Motor Carrier Safety Administration regulations 49 CFR Sections 391.41 to 391.49, all as effective on February 7, 2024, indicating, among other requirements, sufficient physical capacity to operate the bus effectively and to render assistance to the passengers in case of illness or injury and freedom from any communicable

disease. At the discretion of the chief administrator or designee of the employer or prospective employer, the chief administrator or designee shall evaluate the applicant's ability in operating a school bus, including all safety equipment, in providing assistance to passengers in evacuation of the school bus, and in performing other duties required of a school bus driver.

ITEM 11. Amend rule 281—44.1(285), introductory paragraph, as follows:

281—44.1(285) Requirements for manufacturers. In order to protect both the boards of education and manufacturers of school transportation vehicles and equipment from misunderstanding and confusion, all manufacturers shall provide equipment meeting all Iowa vehicle construction requirements described in this chapter as well as all federal statutes, regulations, industry standards, and technical documents incorporated in this chapter by reference that are in effect on February 7, 2024, and all applicable federal motor vehicle safety standards (FMVSS) that are in effect on February 7, 2024, which include the following:

ITEM 12. Amend paragraph **44.5(1)“c”** as follows:

c. Alteration of a vehicle, following manufacture by the OEM, is prohibited. This includes the addition or removal of seats, ~~wheelchair securement devices, and power lifts. Ramps are allowed on the passenger side of the vehicle only and will comply with all applicable FMVSS and ADA requirements and the addition of wheelchair lifts.~~ The following exceptions apply:

(1) OEM options or other manufacturer's accessories not in violation of these standards may be installed.

(2) Seats may be added or removed as long as the seating capacity does not exceed the capacity as certified by the OEM or on the label installed according to paragraph 44.5(1)“b.”

(3) Wheelchair ramps are allowed to be added to the passenger side of the vehicle only and will comply with all applicable FMVSS and ADA requirements. When wheelchair ramps are added, the vehicle must also be equipped with the appropriate wheelchair securement system, which must also meet all applicable FMVSS and ADA requirements.

ITEM 13. Amend subrule 98.2(7) as follows:

98.2(7) *Commingling prohibited.* Categorical funding shall not be commingled with other funding. All categorical funding will be accounted for separately from other funding. School districts and area education agencies will use a project code and program code as defined by Uniform Financial Accounting for Iowa School Districts and Area Education Agencies, as effective on February 7, 2024, as appropriate or required.

ITEM 14. Amend paragraph **98.62(3)“e”** as follows:

e. Transfer to a trust fund for other postemployment benefit (OPEB) cost or estimated cost calculated pursuant to Governmental Accounting Standards Board (GASB) Statement 45, as effective on February 7, 2024.

ITEM 15. Amend rule 281—98.66(257,279,298A,565), introductory paragraph, as follows:

281—98.66(257,279,298A,565) District support trust fund. The district support trust fund is used to account for moneys received in trust where those moneys, both principal and interest, are to benefit the school district. The school district or area education agency will not transfer its own resources to a district support trust fund. If the school district or area education agency has more than one district support trust, it will use locally assigned project codes pursuant to Uniform Financial Accounting for Iowa School Districts and Area Education Agencies, as effective on February 7, 2024, to identify the different trusts in the same fund. The district support trust fund is not an irrevocable trust. The board of directors of the school district must take action to accept or establish each gift, devise, or bequest in the district support trust fund. It is the board's responsibility to ensure that the terms of the gift, devise, or bequest are compatible with the mission of and legal restrictions on the school district. Once accepted, gifts, devises, and bequests become public funding under the stewardship of the school district. If the

purpose for which the moneys are to be spent is not in keeping with the overall objectives of the school district or legal authority of the school district, the board shall not assume responsibility as the trustee.

ITEM 16. Amend rule 281—98.70(279,280,298A), introductory paragraph, as follows:

281—98.70(279,280,298A) Student activity fund. The student activity fund must be established in any school district receiving moneys from student-related activities, such as admissions, activity fees, student dues, student fund-raising events, or other student-related cocurricular or extracurricular activities. Moneys collected through school activities are public funds that are the property of the school district and are under the financial control of the school board. Upon dissolution of an activity, such as a graduating class or student club, the surplus must be used to support other student activities in the student activity fund. Prudent and proper accounting of all receipts and expenditures in these accounts is the responsibility of the board secretary pursuant to Iowa Code section 291.6. School districts may maintain subsidiary records for student activities if those records are reconciled to the official records on a monthly basis; however, all official accounting records of the student activity fund shall be maintained within the school district's chart of account pursuant to Uniform Financial Accounting for Iowa School Districts and Area Education Agencies, as effective on February 7, 2024.

ITEM 17. Amend rule 281—98.92(257,279,298A,565), introductory paragraph, as follows:

281—98.92(257,279,298A,565) Private purpose trust funds. Private purpose trust funds are fiduciary funds established to account for gifts the school district receives to be used for a particular purpose or to account for moneys and property received and administered by the school district as trustee. These trust funds are not irrevocable trusts and are used to account for assets held by a school district in a trustee capacity to benefit individuals, private organizations, or other governments, and therefore cannot be used to support the school district's own programs. These trust funds include both those that allow use of only the interest on the investments and those that allow use of both principal and interest. Scholarship trust funds are an example of private purpose trust funds. If a school district has more than one scholarship trust, the school district will use project codes in accordance with Uniform Financial Accounting for Iowa School Districts and Area Education Agencies, as effective on February 7, 2024, to separately account for the trusts. The district or area education agency will not transfer its own resources to a private purpose trust fund.

ARC 8139C

EDUCATION DEPARTMENT[281]

Notice of Intended Action

Proposing rulemaking related to charter schools and providing an opportunity for public comment

The State Board of Education hereby proposes to rescind Chapter 19, "Charter Schools," Iowa Administrative Code, and to adopt a new chapter with the same title, and to rescind Chapter 68, "Iowa Public Charter and Innovation Zone Schools," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapters 256E and 256F.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 256E and 256F.

Purpose and Summary

As part of the Department's review of rules under Executive Order 10, the Department determined that several of the rules in both Chapters 19 and 68 recite statutory text, are obsolete, or are aspirational in nature. Because Chapter 68 only applies to two legacy charter schools and none in the future, the Department proposes consolidating these two chapters into one for monitoring purposes. This matter was originally published in the Iowa Administrative Bulletin as **ARC 7092C**, on October 4, 2023. The period of public comment closed on October 24, 2023.

Based on the nature of the public comment received, the Department decided to allow **ARC 7092C** to expire and to provide a new Notice of Intended Action to receive public comment on additional proposed changes.

The Department received several public comments from individuals affiliated with a particular charter school. The Department also received oral and written comments from an organization that provides support to and advocacy for Iowa's public charter schools. Those comments, and the Department's response, are provided below.

Proposed subrule 19.5(5): Application timelines. Because of the tight timeline to review charter school applications, one commenter proposed establishing a second application window. The Department is unable to do so at this time based on the underlying statutory language. The Department deleted an unnecessary reference to school years from this subrule.

New proposed subrule 19.5(6): Sample applications and contracts. Based on feedback in the most recent application cycles, both from applicants and the State Board, a new subrule is proposed that would authorize either the Department or the State Board to prepare sample or template applications or contracts for the convenience of the applicants, which applicants would be encouraged to use.

Proposed paragraph 19.11(2)“a”: *Payment to charter schools.* Several commenters requested that the initial payment to a charter school in the first year be based on enrollment on September 1, rather than enrollment on August 5. No change in the proposed paragraph has been made. The August deadline is designed to ensure that each new charter school receives some funding in its first month of operation. Delaying the estimates to September will delay the initial payment that a new charter school would receive. Note that payment amounts are reconciled throughout the school year.

Proposed subrule 19.11(3): Eligibility for federal funding. Several commenters requested that the specific federal funds for which charter schools are eligible be codified or the reference be eliminated, based on inconsistent information a particular charter school received during its first year of operation. In this Notice of Intended Action, the Department has removed the subrule and renumbered accordingly any reference to available federal funds since this funding eligibility is entirely based on federal law. The subrule adds no value.

Proposed subrule 19.11(4): Notifications to districts of residence. Several commenters requested that the reporting to districts of residence be only for new students and not every student for every year. The commenters stated that the Department already has access to this information, and it is unduly burdensome. Preparing a student count, by its nature, is burdensome for any entity involved, and it is important to both charter schools and districts of residence that certified enrollment counts be accurate. Furthermore, the Department does not submit counts; districts do. No change has been made; however, the subrule is renumbered because the preceding subrule has been removed.

New proposed subrule 19.11(4): Activities participation. This new subrule incorporates a new statutory provision contained in 2024 Iowa Acts, House File 2368, regarding activities participation for students in virtual charter schools in their districts of residence.

Proposed rule 281—19.14(256E): Annual report. Several commenters requested that the annual report to be filed with the Department be filed with the State Board instead. No change has been made since this is a statutory requirement.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on July 12, 2023. A public hearing was held on the following date(s):

- August 1, 2023

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on August 13, 2024. Comments should be directed to:

Thomas A. Mayes
 Department of Education
 Grimes State Office Building, Second Floor
 400 East 14th Street
 Des Moines, Iowa 50319-0146
 Phone: 515.281.8661
 Email: thomas.mayes@iowa.gov

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

August 13, 2024	Room B50
9 to 10 a.m.	Grimes State Office Building
	Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.281.5295.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind 281—Chapter 19 and adopt the following **new** chapter in lieu thereof:

CHAPTER 19
 CHARTER SCHOOLS

281—19.1(256E) General. All charter schools in Iowa are a part of the state’s program of public education. Charter schools established on or after July 1, 2021, are subject to Iowa Code chapter 256E and Division I of this chapter. Charter schools established prior to July 1, 2021, continue to operate under and are subject to the provisions of Iowa Code chapter 256F and Division II of this chapter. The department monitors the effectiveness of charter schools and implements the applicable provisions of this chapter.

DIVISION I

CHARTER SCHOOLS ESTABLISHED ON OR AFTER JULY 1, 2021

281—19.2(256E) Establishment of charter schools. A charter school may be established by either of the following methods: a school board-state board model, pursuant to Iowa Code section 256E.4, or a founding group-state board model, pursuant to Iowa Code section 256E.5. The state board of education is the only authorizer of charter schools under this division.

281—19.3(256E) Purpose of a charter school. A charter school established under this division must intend to accomplish one or more of the purposes set forth in Iowa Code section 256E.1(3).

281—19.4(256E) Definitions. The definitions set forth in Iowa Code section 256E.2 apply to this division. In addition, “parent” includes a child’s biological or adoptive parent, as well as anyone authorized by state or federal law or court order, judgment, or decree to make educational decisions for the child.

281—19.5(256E) General application provisions. The following general application provisions apply to both the school board-state board and founding group-state board charter establishment models.

19.5(1) Instructions. The instructions for completing an application includes or otherwise informs applicants of the content listed in Iowa Code sections 256E.4(3) and 256E.5(3).

19.5(2) Review. In reviewing and evaluating charter school applications, the state board employs procedures, practices, and criteria consistent with nationally recognized principles and standards for reviewing charter school applications. Each application review includes:

- a. A thorough evaluation of the written application.
- b. An in-person interview with the founding group.
- c. An opportunity in a public forum for local residents to learn about and provide input on each application.

19.5(3) State board actions following review. Following review of a charter school application and completion of the process under subrule 19.5(2), the state board does all of the following:

- a. Approves a charter school application only if the founding group has demonstrated competence in each element of the approval criteria and if the founding group is likely to open and operate a successful charter school.
- b. Makes application decisions on documented evidence collected through the application review process.
- c. Adheres to the policies and criteria that are transparent, are based on merit, and avoid conflicts of interest or any appearance thereof.

19.5(4) Application approval. The state board approves a charter school application if the application satisfies this division.

- a. The state board will approve or deny a charter school application no later than 75 calendar days after the application is received.
- b. If the state board denies an application, the state board will provide notice of denial to the founding group in writing within 30 days after the state board’s action, specifying the exact reasons for denial and providing documentation supporting those reasons.

- c. An approval decision may include, if appropriate, reasonable conditions that the founding group meet before a charter school contract may be executed pursuant to Iowa Code section 256E.6.
- d. An approved charter application does not serve as a charter school contract.
- e. A decision of the state board relating to an application under this rule is not appealable.
- f. An unsuccessful applicant under this rule may subsequently reapply to the state board.

19.5(5) *Application deadlines and timelines.* Applications submitted to the state board on or before November 1 of the preceding school year will be considered for approval for the establishment of the charter school for the next school year.

19.5(6) *Sample applications and contracts.* The department or the state board may prepare sample or template applications and contracts for the convenience of future applicants. Use of these samples or templates is encouraged.

281—19.6(256E) School board-state board model. Iowa Code section 256E.4 governs charter schools founded under this model.

19.6(1) *School board-state board model application.* An application submitted under this rule includes all of the items related to the proposed charter school that are set forth in Iowa Code section 256E.4(4).

19.6(2) *Conversion of existing attendance center.* If the founding group proposes to establish a charter school by converting an existing attendance center of the school district, Iowa Code section 256E.4(5) governs such proposal.

281—19.7(256E) Founding group-state board model. Iowa Code section 256E.5 governs charter schools founded under this model. An application submitted under this rule includes all of the items related to the proposed charter school that are set forth in Iowa Code section 256E.5(4).

281—19.8(256E) Charter school contract. Iowa Code section 256E.6 governs contracts with approved charter schools. A contract may be amended by the founding group and the state board after the founding group complies with subrule 19.5(2) with reference to the proposed amendment.

281—19.9(256E) Performance framework. The performance provisions within each charter school's contract are governed by Iowa Code section 256E.9. This framework includes the items in Iowa Code section 256E.9(1), including student academic growth and proficiency in English language arts on statewide outcome assessments, student academic growth and proficiency in mathematics on statewide outcome assessments, and conditions for learning data (as mandated by Iowa's state plan under the Every Student Succeeds Act).

281—19.10(256E) General operating powers and duties. In order to fulfill the charter school's public purpose, a charter school established under this division is organized as a nonprofit education organization. It has the powers, duties, and exemptions specified in Iowa Code section 256E.7. For purposes of "applicable federal, state, and local health and safety requirements," that term includes mandatory reporting of child abuse under Iowa Code section 232.69, investigation of abuse by school employees under 281—Chapter 102, and seclusion and restraint under 281—Chapter 103.

281—19.11(256E) Funding.

19.11(1) *General.* Charter school funding is governed by Iowa Code section 256E.8.

19.11(2) *Enrollment estimates.* If necessary, and pursuant to paragraph 19.11(2)"a," funding amounts determined under this rule for the first school year of a new charter school are to be based on enrollment estimates for the charter school included in the charter school contract. The process set out in paragraph 19.11(2)"b" is to be used for determining estimated enrollments for charter school funding purposes in school years after the first year of a charter school. Amounts paid using estimated enrollments are to be reconciled during subsequent payments based on actual enrollment of the charter school during each school year pursuant to paragraph 19.11(2)"c."

a. Enrollment estimates for the first school year are to be based on the number of enrolled students reported to the department through the student information system by August 5 of the school year.

b. Enrollment estimates for school years following the first school year are to be based on the number of enrolled students reported to the department through the student information system by August 5 of the school year.

c. Estimated payments will be reconciled, at minimum, based on actual enrollment information reported by the charter school pursuant to Iowa Code sections 256.9(44) and 257.6.

19.11(3) *Notification to districts of residence.* For purposes of this rule, each charter school notifies the district of residence of each child in a time and manner that allow the district of residence to include the child in the district's certified enrollment and any other relevant enrollment data.

19.11(4) *Students receiving instruction over the Internet—participation in activities in district of residence.* Students receiving instruction over the Internet from a charter school authorized under this chapter are eligible to participate in activities in their resident districts under the terms of Iowa Code section 256E.13.

281—19.12(256E) Oversight—corrective action—contract renewal—revocation.

19.12(1) *General.* The state board's monitoring, oversight, remedial actions, and enforcement actions (up to and including revocation) are governed by Iowa Code section 256E.10.

19.12(2) *Renewal guidance.* The state board's renewal application guidance will, at a minimum, include the criteria that will be used when assessing charter school contract renewal decisions and provide an opportunity for the charter school to:

a. Present additional evidence beyond the data contained in the performance report.

b. Describe improvements undertaken or planned for the charter school.

c. Describe the charter school's plans, including any proposed modifications, for the next charter school contract term.

19.12(3) *Revocation or nonrenewal.*

a. A charter school contract may be revoked at any time or not renewed if the state board determines that the charter school did any of the following:

(1) Committed a material violation of any of the terms, conditions, standards, or procedures under the charter school contract or this division.

(2) Failed to meet or make sufficient progress toward the performance expectations set forth in the charter school contract.

(3) Failed to meet generally accepted standards of fiscal management.

(4) Violated a provision of law from which the charter school was not exempted.

b. A decision to revoke or to not renew a charter school contract may only be by resolution of the state board and is to clearly state the reasons for the revocation or nonrenewal.

19.12(4) *Contract revocation and nonrenewal standards and procedures.* The state board will develop charter school contract revocation and nonrenewal standards and procedures that do all of the following:

a. Provide the charter school with a timely notice of the possibility of revocation or nonrenewal and of the reasons therefor.

b. Allow the charter school a reasonable period of time in which to prepare a response to any notice received.

c. Provide the charter school an opportunity to submit documents and give testimony challenging the decision to revoke the charter school contract or the decision to not renew the contract.

d. Allow the charter school the opportunity to hire legal representation and to call witnesses.

e. Permit the audio or video recording of such proceedings described in paragraphs 19.12(4) "c" and "d."

f. Require a final decision to be conveyed in writing to the charter school.

281—19.13(256E) Procedures for charter school closure—student enrollment. Charter school closures are governed by Iowa Code section 256E.11. Prior to any charter school closure decision, the state board will develop a charter school closure protocol to ensure timely notice to parents and guardians, provide for the orderly transition of students and student records to new schools, and provide proper disposition of school funds, property, and assets in accordance with this division. The protocol specifies necessary actions and timelines and identifies responsible parties for each such action.

281—19.14(256E) Reports.

19.14(1) Annual report. Each charter school prepares and files an annual report with the department, on or before October 1 and including data from the prior school year, pursuant to Iowa Code section 256E.12(1) that includes:

- a. The charter school’s mission statement, including a vision statement and goals, as well as data measuring goal attainment.
- b. Student demographics, disaggregated by grade level and protected characteristics.
- c. Attendance statistics and dropout rate (average daily attendance, dropout rate, student mobility).
- d. Graduation data, including four-year and five-year graduation rates, credit accrual, and number of students on track for graduation.
- e. Student achievement, including annual academic growth and proficiency, including Iowa statewide assessment of student progress (ISASP) data, other assessment data, and aggregate assessment test scores.
- f. Financial performance, including projections of financial stability.
- g. The number and qualifications of teachers and administrators.
- h. Sustainability data, including enrollment trends, staff satisfaction, and parent and student satisfaction.

19.14(2) Annual financial report. Each charter school submits a Certified Annual Report consistent with 281—Chapter 99. The annual financial report is due to the department by September 15.

19.14(3) Report to general assembly. The state board will prepare and file a report with the general assembly annually by December 1 as required by Iowa Code section 256E.12(2).

281—19.15(256E) Operation of existing charter schools. Charter schools established pursuant to Iowa Code chapter 256F continue to operate pursuant to that Iowa Code chapter and are not subject to the requirements of this division or Iowa Code chapter 256E.

These rules are intended to implement Iowa Code chapter 256E.

DIVISION II

CHARTER SCHOOLS ESTABLISHED BEFORE JULY 1, 2021

281—19.16(256F) Definitions. The definitions in Iowa Code section 256F.2 apply to this division. In addition, “advisory council” means a council appointed by the school board of a charter school. With respect to a charter school, no more than one member of the council may be a member of the school board; a district’s school improvement advisory committee may also serve as its advisory council. All advisory councils are subject to the provisions of Iowa Code chapters 21 and 22.

“*Family unit*” means a household in which resides one or more students enrolled at the existing public school that is the subject of a charter school application.

281—19.17(256F) Operating requirements. Charter schools are governed by Iowa Code sections 256F.4(2) through (8), 256F.6, and 256F.7.

281—19.18(256F) Ongoing review by the department. The department periodically reviews each charter school to ensure continuing compliance with the charter school’s contract. The department may

schedule mandatory meetings with the administrators of all charter schools at the department's sole discretion. Iowa Code section 256F.10 governs necessary reports under this division.

281—19.19(256F) Renewal of charter. The school board that established the charter school, in the absence of revoking the charter pursuant to rule 281—19.20(256F), takes affirmative action to renew a charter school contract after the initial four-year contract for a charter school and at the end of each renewal period. The school board shall hold a public hearing on the issue of renewal and submit to the department a copy of the minutes of the public hearing showing that a majority of the school board members voted in favor of renewal of the charter. Any action to renew a charter specifies the number of years, which may only be four years or less, for which the charter was renewed by the school board.

A school board will submit a new application to the department if the board modifies any of the terms of the original charter.

281—19.20(256F) Revocation or nonrenewal of charter. Iowa Code sections 256F.8 and 256F.9 govern revocation or nonrenewal of a charter under this division.

281—19.21(256F) Transition—operation of existing charter schools. Charter schools established pursuant to this division and Iowa Code chapter 256F prior to July 1, 2021, may continue to operate pursuant to those terms and are not subject to Iowa Code chapter 256E or Division I of this chapter. No new charter or innovation zone school may be created under this division.

These rules are intended to implement Iowa Code chapter 256F.

ITEM 2. Rescind and reserve **281—Chapter 68**.

ARC 8141C

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

Proposing rulemaking related to educator professional permit to carry a weapon and private school security officer firearms training and providing an opportunity for public comment

The Public Safety Department hereby proposes to amend Chapter 91, “Weapons and Iowa Professional Permits to Carry Weapons,” and Chapter 121, “Bail Enforcement, Private Investigation, and Private Security Businesses,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 724.6 as enacted by 2024 Iowa Acts, House File 2586, and as amended by 2024 Iowa Acts, House File 2652.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 724.6 as enacted by 2024 Iowa Acts, House File 2586, and as amended by 2024 Iowa Acts, House File 2652.

Purpose and Summary

This proposed rulemaking establishes training and curriculum requirements for a school employee to obtain an educator professional permit to carry a weapon on school grounds in accordance with 2024 Iowa Acts, House File 2652. This rulemaking includes an outline of requirements for persons or organizations interested in providing training(s) to be approved by the Department. Additionally, this rulemaking sets forth the requirement for a private school security officer who is employed or retained by a school district to participate in annual and quarterly firearms training.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on June 12, 2024. A public hearing was held on the following date(s):

- July 2, 2024

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the provisions of rule 661—10.222(17A).

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on August 13, 2024. Comments should be directed to:

Josie Wagler
Department of Public Safety
Oran Pape State Office Building
215 East 7th Street
Des Moines, Iowa 50319
Phone: 515.725.6185
Email: wagler@dps.state.ia.us

Public Hearing

A public hearing at which persons may present their views orally or in writing will be held as follows:

August 13, 2024
8:30 to 9:30 a.m.

Conference Room 125
Oran Pape State Office Building
Des Moines, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Adopt the following **new** definitions of “Annual,” “Approved educator professional permit training,” “Educator professional permit,” “Initial familiarization firearm and course of fire training,” “Qualification course of fire,” “Qualifying on a firing range for educator professional permits” and “Quarterly” in rule **661—91.1(724)**:

“*Annual*” means once per calendar year.

“*Approved educator professional permit training*” means any training that has satisfied the requirements to provide educational-setting training in Iowa for the purpose of obtaining an Iowa educator professional permit and has been approved by the commissioner.

“*Educator professional permit*” means a permit issued to a school employee pursuant to Iowa Code section 724.6(1) “a”(3) as enacted by 2024 Iowa Acts, House File 2586, and as amended by 2024 Iowa Acts, House File 2652, to allow for the concealed carry of a firearm.

“*Initial familiarization firearm and course of fire training*” means a training course of fire with a handgun, which is intended to familiarize, exercise, and improve a person’s judgment, reaction, and firearms proficiency under stress when various conditions are present. A variety of scenarios and exercises may be utilized during familiarization course exercises.

“*Qualification course of fire*” means a specifically designated course of fire with the firearm the person will carry in the person’s capacity as an educator professional permit holder that measures and documents the firearms proficiency level of the person. A pre-established qualifying score determines the proficiency that impacts the educator professional permit holder’s authorization to carry the firearm in the course of the person’s duties as an educator professional permit holder. The qualification course of fire standards are the standards adopted by the Iowa law enforcement academy for certified law enforcement in-service handgun qualification.

“*Qualifying on a firing range for educator professional permits*” means successful completion of an approved initial familiarization firearm and course of fire training and subsequent quarterly requirements of live fire on a firing range.

“*Quarterly*” means a period of three calendar months ending on March 31, June 30, September 30, or December 31.

ITEM 2. Amend rule **661—91.1(724)**, definitions of “Firearm training documentation,” “Firearm training program,” “New application,” “Professional permit to carry weapons” and “Qualifying on a firing range,” as follows:

“*Firearm training documentation for professional permit*” means a photocopy of a certificate of completion or any similar document indicating completion of any firearm training program course; an affidavit from the instructor, school, organization or group that conducted or taught a firearm training program; a copy of or the display of an honorable discharge or general discharge under honorable conditions or Form DD-214 for personnel released or retired from active duty with the armed forces of the United States; or possession of a certificate of completion of basic training with a service record of successful completion of small arms training and qualification for active duty personnel in the armed forces of the United States.

“*Firearm training program*” means any National Rifle Association handgun safety training course; any handgun safety training course available to the general public utilizing instructors certified by the National Rifle Association, an organization approved by the Iowa department of public safety pursuant to Iowa Code section 724.9A as enacted by 2021 Iowa Acts, House File 756, section 20, or the Iowa law enforcement academy or another state’s department of public safety, state police department, or similar certifying body; any handgun safety training course offered for security guards, investigators, special deputies, or any division or subdivision of a law enforcement or security enforcement agency approved by the Iowa department of public safety; or completion of small arms training while serving with the armed forces of the United States. Any person or entity seeking approval by the Iowa department of public safety for a handgun safety training course offered for security guards, investigators, special deputies, or any division or subdivision of a law enforcement or security enforcement agency, other than those certified by the National Rifle Association, the Iowa department of public safety, or the Iowa law enforcement academy or courses conducted by instructors certified by the National Rifle Association or the Iowa law enforcement academy, shall submit a detailed description of the course content to the

commissioner for review. Any handgun safety training course submitted for review shall be reviewed by the commissioner.

“New application” means an application for an Iowa professional permit to carry weapons or an educator professional permit that is filed when the applicant does not currently hold an Iowa permit to carry weapons or an educator professional permit or when the applicant does not file the application at least 30 days prior to the expiration of a currently held Iowa permit to carry weapons.

“Professional permit to carry weapons” means a permit to carry weapons issued to a person whose employment in a private investigation business or private security business licensed under Iowa Code chapter 80A, or whose employment as a peace officer, correctional officer with the Iowa department of corrections, private security officer, bank messenger or other person transporting property of a value requiring security, or whose employment in police work reasonably justifies that person’s going armed. Property of value includes large quantities of cash transported in an armored car, negotiable instruments, gems, other high-value items transported by couriers, and other high-value property that may be vulnerable. Such a permit is valid only while the permitted person is engaged in the employment stated on the permit and while the person is traveling to and from that employment. A professional permit to carry weapons does not include an educator professional permit.

“Qualifying on a firing range for professional permits to carry weapons” means successful completion of a course of live fire on a firing range under the supervision of an instructor certified by the National Rifle Association, the Iowa law enforcement academy, or another state’s department of public safety, state police department, or similar certifying body.

ITEM 3. Amend rule 661—91.2(724) as follows:

661—91.2(724) Forms. The following forms, the use of which is required by provisions of this chapter, are provided by the commissioner to Iowa sheriffs:

1. Form WP1. Professional Permit to Carry Weapons.
2. Form WP2. Nonprofessional Permit to Carry Weapons.
3. Form WP3. Application for Annual Permit to Acquire Pistols or Revolvers.
4. Form WP4. Annual Permit to Acquire Pistols or Revolvers.
5. Form WP5. Application for Permit to Carry Weapons.
6. Form WP6. Revocation/Cancellation of Permit to Carry/Permit to Acquire Weapons.
7. Form WP7. Certified Peace Officer Permit to Carry Weapons.
8. Form WP8. Reserve Peace Officer Permit to Carry Weapons.
9. to 11. No change.
12. Form WP12. Educator Professional Permit.
13. Form WP13. Application for Educator Professional Permit.
14. Form WP14. Notification of Completion of Required Quarterly Training Recruitments for Educator Professional Permit.
15. Form WP15. Application for Approval of Educator Professional Permit Curriculum.
16. Form WP16. Handgun Marksmanship Training Drills.

ITEM 4. Amend paragraph **91.4(1)“b”** as follows:

b. Submit firearm training documentation for a professional permit. For a new application, training may have occurred at any time prior to the submission of the application. For a renewal application, training must have occurred within the 12-month period prior to the expiration date displayed on the applicant’s current permit.

ITEM 5. Amend subrule 91.5(1) as follows:

91.5(1) Upon receipt of a completed application for a permit to carry weapons, a professional permit to carry weapons, or an educator professional permit, the commissioner shall conduct a background check to determine that issuance of a permit to the applicant is not prohibited pursuant to rule 661—91.3(724).

ITEM 6. Amend subrule 91.7(1) as follows:

91.7(1) If the commissioner denies, suspends or revokes a professional permit to carry weapons or an educator professional permit for any reason other than the federal disqualifiers in subrule 91.3(1) or 91.3(2) or the reasons in paragraph 91.3(3) “e” or “f,” the applicant or permit holder may file an appeal with an administrative law judge by filing a copy of the denial, suspension, or revocation notice with a written statement that clearly states the applicant’s reasons rebutting the denial, suspension, or revocation.

ITEM 7. Amend rule 661—91.10(724), catchwords, as follows:

661—91.10(724) Application for approved training organization for permits to carry weapons.

ITEM 8. Adopt the following new rule 661—91.11(724):

661—91.11(724) Application procedures for an Iowa educator professional permit.

91.11(1) A person who is an employee of a school district, a private school, or an institution of higher education as defined in Iowa Code section 722.11 may apply to the commissioner for an educator professional permit. The applicant shall comply with all of the following:

a. Submit a fully and accurately completed and signed application for a permit to carry weapons or proof of a current permit to carry weapons, including documentation of the firearm safety training course offered pursuant to Iowa Code section 724.9(1).

b. Submit firearm training documentation from the initial live familiarization firearm and course of fire training. For a new application, training must have occurred within the 12-month period prior to the application.

c. Submit documentation of the training required by Iowa Code section 724.6(1) “a”(3) as enacted by 2024 Iowa Acts, House File 2586, and as amended by 2024 Iowa Acts, House File 2652.

d. Submit the required fee of \$50 per application.

e. Display identification documentation as defined in rule 661—91.1(724) or provide a photocopy thereof.

91.11(2) The commissioner will return an incomplete application to the applicant.

ITEM 9. Adopt the following new rule 661—91.12(724):

661—91.12(724) Suspension or revocation of an educator professional permit.

91.12(1) When the commissioner finds that a person who has been issued an educator professional permit has been arrested for a disqualifying offense or is the subject of proceedings that could lead to the person’s ineligibility for such permit, the commissioner may immediately suspend the permit.

a. If the arrest or proceeding does not result in a disqualifying conviction or finding against the permit holder, the commissioner shall immediately reinstate the educator professional permit upon proof of the matter’s final disposition and shall return the permit to the permit holder.

b. If the arrest or proceeding results in a disqualifying conviction or finding against the permit holder, the commissioner shall revoke the permit.

91.12(2) When the commissioner discovers that a person has failed to provide the required annual and quarterly training records in a timely manner, the commissioner will suspend the educator professional permit and may, at the commissioner’s discretion, provide the person seven days to provide the required training documentation. If training documentation is not received after the seventh day, the commissioner shall revoke the educator professional permit.

a. If the suspension was for failing to provide training records, and training records indicating training was completed in accordance with Iowa Code section 724.6 as enacted by 2024 Iowa Acts, House File 2586, and as amended by 2024 Iowa Acts, House File 2652, are subsequently provided to the Iowa department of public safety within seven days after the educator professional permit holder was notified of the suspension, the commissioner will immediately reinstate the educator professional permit and return the permit to the permit holder.

b. If the educator professional permit holder fails to complete the training required under these rules or fails to provide training documentation to the Iowa department of public safety, the commissioner will revoke the permit.

91.12(3) An educator professional permit holder will be notified immediately of such suspension by personal service or certified mail. The suspension becomes effective upon the educator permit holder's receipt of such notice. If notified by personal service, the educator professional permit will be surrendered to the person serving such notice for return to the commissioner. If notified by certified mail, the educator professional permit holder will be instructed to return the permit to the commissioner.

91.12(4) Notification of an educator professional permit suspension or revocation will be provided to the superintendent of the school in which the educator professional permit holder is employed.

ITEM 10. Adopt the following **new** rule 661—91.13(724):

661—91.13(724) Approval of required training for educator professional permit. Persons or organizations may provide one or more of the trainings required for an educator professional permit. Persons or organizations seeking approval by the Iowa department of public safety to provide training required by Iowa Code section 279.84(2), 279.84(3), or 724.6(1) "a"(3) as enacted by 2024 Iowa Acts, House File 2586, and as amended by 2024 Iowa Acts, House File 2652, will submit the following on department of public safety Form WP15:

91.13(1) The course syllabi or lesson plans and the goals or objectives for student courses as outlined, which demonstrate that students will receive the basic requirements for the required course.

91.13(2) Identification of the person providing the training and sufficient information to determine that the person is competent to provide the training.

ITEM 11. Adopt the following **new** rule 661—91.14(724):

661—91.14(724) Educator professional permit training requirements.

91.14(1) To receive an educator professional permit, the applicant must submit proof of successful completion of the following training courses:

- a. One-time, in-person legal training as described in rule 661—91.15(724).
- b. In-person emergency medical training as described in rule 661—91.16(724).
- c. In-person communication training as described in rule 661—91.17(724).
- d. In-person live scenario training as described in rule 661—91.18(724).
- e. Initial live familiarization firearm and course of fire training as described in rule 661—91.19(724).

91.14(2) To maintain an educator professional permit, the permit holder must submit proof of successful completion of the following annual training courses:

- a. Annual in-person emergency medical training as described in rule 661—91.16(724).
- b. Annual in-person communication training as described in rule 661—91.17(724).
- c. Annual in-person live scenario training as described in rule 661—91.18(724).

91.14(3) To maintain an educator professional permit, in addition to the above requirements, the permit holder must submit proof of successful completion of quarterly live firearm training, including successful completion of the prescribed qualification course.

91.14(4) All trainings shall be submitted to the Iowa department of public safety program services bureau via email at wpinfo@dps.state.ia.us.

ITEM 12. Adopt the following **new** rule 661—91.15(724):

661—91.15(724) Curriculum for one-time legal training for an educator professional permit. The one-time, in-person legal training for an educator professional permit shall be at minimum three hours and shall include all of the following information:

1. Parameters and limitations of the educator professional permit, including areas of potential liability, and requirements to maintain the permit.

2. State and federal law regarding legal principles of use of force and use of force generally, including modern principles of continuum of force.
3. State and federal laws regarding qualified immunity.
4. State law regarding the Iowa municipal tort claims Act.
5. Workers' compensation law with regard to school critical incidents.

ITEM 13. Adopt the following **new** rule 661—91.16(724):

661—91.16(724) Curriculum for annual emergency medical training for an educator professional permit.

91.16(1) Annual live, in-person emergency medical training for an educator professional permit shall be at minimum three hours and will include all of the following information and practical experience:

- a. Cardiopulmonary resuscitation (CPR) and cardiac arrest management, including the use of an automated external defibrillator (AED).
- b. Basic knowledge of first aid and trauma care, including casualty assessment, hemorrhage control, and assessment and initial treating of penetrating chest and abdominal wounds.
- c. Basic knowledge and skills necessary to stop/slow life-threatening blood loss.

91.16(2) A current certification for CPR and first aid shall satisfy two hours of the required training.

ITEM 14. Adopt the following **new** rule 661—91.17(724):

661—91.17(724) Curriculum for annual communication training for an educator professional permit. The annual in-person communication training for an educator professional permit shall be at minimum two hours and shall include all of the following information:

1. De-escalation techniques, crisis intervention techniques, and the applicability and limitations of those techniques.
2. Communication capabilities and coordination, including principles of proper communication to first responders, such as communication of location, condition(s), actions, and needs.
3. Reporting of potential school threats, including to the governor's school safety bureau of the department of public safety and the Safe+Sound app.

ITEM 15. Adopt the following **new** rule 661—91.18(724):

661—91.18(724) Curriculum for annual live scenario training for an educator professional permit. The annual in-person live scenario training for an educator professional permit shall be at minimum 12 hours and will include all of the following information and practical experience:

1. Psychology of critical incidents.
2. Tactics of responding to critical incidents in schools.
3. Weapon retention.
4. Scenario-based or simulated training exercises, including both close-quarters and hallway scenarios.

ITEM 16. Adopt the following **new** rule 661—91.19(724):

661—91.19(724) Curriculum for firearms training for an educator professional permit. In-person firearms training for an educator professional permit shall consist of an initial live familiarization firearm and course of fire training for new educator professional permit applicants and quarterly continued training after the completion of the initial training.

91.19(1) Educator professional permit holders shall meet the minimum level of proficiency as established by Iowa department of public safety rules in the use of any weapon used in the capacity as an educator professional permit holder.

91.19(2) Initial live familiarization firearms and course of fire training, not including the qualification course of fire, will be at minimum 20 hours and will include all of the following:

- a. Weapon safety, including but not limited to:
 - (1) Treating all firearms as if they are loaded,
 - (2) Pointing the muzzle in a safe direction at all times,
 - (3) Keeping fingers outside the trigger guard until the person's aim is on target and the person has decided to fire, and
 - (4) Being sure of the target and what is beyond.
- b. Principals of good marksmanship, including but not limited to:
 - (1) Sight picture,
 - (2) Trigger squeeze,
 - (3) Proper stance,
 - (4) Drawing of the weapon,
 - (5) Grip of the weapon,
 - (6) Breathing,
 - (7) Follow-through, and
 - (8) Recovery.
- c. Dry drills, including but not limited to:
 - (1) Administrative load,
 - (2) Combat load,
 - (3) Tactical load,
 - (4) Temporary stoppage drill,
 - (5) Double feed drill, and
 - (6) Holstering and reholstering.
- d. Handgun marksmanship training, including but not limited to the drills prescribed by the Iowa department of public safety on Form WP16.

91.19(3) The qualification course of fire will be completed at the end of the initial live familiarization course and at each subsequent quarterly firearms training. This course must be completed utilizing the firearm that will be used in the person's capacity as an educator professional permit holder. The qualification course consists of the standards adopted by the Iowa law enforcement academy for the certified officer in-service handgun qualification course.

91.19(4) If a person fails to successfully satisfy the qualification course of fire after the second attempt, the person must retake the initial familiarization firearm and course of fire training and attempt the qualification course of fire again. If the person fails to successfully satisfy the qualification course of fire after the remedial training, the person must wait until the following quarter and may attempt again as if the person is a first-time applicant.

ITEM 17. Adopt the following **new** definition of "Private school security officer" in rule **661—121.2(80A)**:

"Private school security officer" means the same as described in Iowa Code section 279.84 as enacted by 2024 Iowa Acts, House File 2586, and as amended by 2024 Iowa Acts, House File 2652.

ITEM 18. Adopt the following **new** rule **661—121.25(80A)**:

661—121.25(80A) Private school security officer training requirements. A private school security officer shall participate in annual live scenario training as described in rule 661—91.18(724) and shall participate in an initial familiarization firearm and course of fire training and subsequent quarterly live firearm training as described in rule 661—91.19(724).

ARC 8133C**TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action****Proposing rulemaking related to rescission of chapters
and providing an opportunity for public comment**

The Transportation Department hereby proposes to rescind Chapter 1, “Organization of the Department of Transportation,” and Chapter 2, “Provisions Applicable to All Rules,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 307.12(1)“j.”

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 307.

Purpose and Summary

Chapter 1 describes the organization of the Department as required by Iowa Code section 17A.3(1) “a.” This proposed rulemaking rescinds Chapter 1 because 2024 Iowa Acts, Senate File 2370, section 4, strikes Iowa Code section 17A.3(1)“a.” The Department’s website, www.iowadot.gov, provides the public with this information.

Chapter 2 defines “commission,” “department,” and “director” or “director of transportation.” This proposed rulemaking rescinds Chapter 2 because these definitions are included in the Department’s chapters, as needed. A separate chapter is not necessary.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on August 15, 2024. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Government and Community Relations
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

Public hearings at which persons may present their views orally will be held as follows:

August 15, 2024 10:30 to 11 a.m.	Microsoft Teams Link Or dial: 515.817.6093 Conference ID: 970 639 09#
August 15, 2024 2:30 to 3 p.m.	Microsoft Teams Link Or dial: 515.817.6093 Conference ID: 399 906 461#

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy George and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

- ITEM 1. Rescind and reserve **761—Chapter 1.**
- ITEM 2. Rescind and reserve **761—Chapter 2.**

ARC 8135C**TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action****Proposing rulemaking related to rescission of chapters
and providing an opportunity for public comment**

The Transportation Department hereby proposes to rescind Chapter 28, "Iowa Transportation Map," Chapter 102, "Secondary Road Fund Distribution Committee," Chapter 132, "Iowa Byways Program," Chapter 161, "Highway Bridge Program for Cities and Counties," Chapter 170, "Allocation of Farm-to-Market Road Funds," Chapter 172, "Availability of Instructional Memorandums to Local Public Agencies," Chapter 173, "Preparation of Secondary Road Construction Programs, Budgets, and County Annual Reports," and Chapter 174, "Reimbursable Services and Supplies," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 307.12(1)"j" and 312.3C.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 306D and sections 307.12(1) "j," 307.14, 307.24, 307.44, 309.22, 309.93, 310.27, 312.2, 312.3, 312.3B, 312.3C, 312.5 and 313.4(1).

Purpose and Summary

This proposed rulemaking will rescind Chapters 28, 102, 132, 161, 170, 172, 173 and 174 in accordance with Executive Order 10 and 2024 Iowa Acts, Senate File 2385, section 367, which repeals Iowa Code section 312.3C and affects Chapter 102.

Chapter 28 supports the development and use of the Iowa Transportation Map and restricts use of the map for personal or professional gain. The instances of using the map for personal or professional gain are extremely rare, and the Department determined that alternate methods to restrict this use of the map could be used and that the rules are unwarranted.

Chapter 102 establishes formulas used for the distribution of moneys in the Secondary Road Fund and the Farm-to-Market Road Fund and defines the process the Secondary Road Fund Distribution Committee administers its duties. 2024 Iowa Acts, Senate File 2385, section 368, repeals Iowa Code section 312.3C, which gave the Committee authority to adopt Chapter 102. Later this year, the Transportation Commission will be adopting a new chapter concerning the Secondary Road Fund and Farm-to-Market Road Fund distribution methodologies in accordance with Senate File 2385, sections 303 through 307.

Chapter 132 supports the designation of Iowa Byways; however, there have been only 14 Iowa Byways designated since 1988. In lieu of rules on the subject, the Department published a guidance document on the Department's website at www.iowadot.gov/iowasbyways/iowas-byways-home.

Chapter 161 implements the federal-aid county and city highway bridge funding programs. Chapter 170 establishes requirements for the counties' allocation of farm-to-market funds. Chapter 172 establishes requirements for instructional memorandums for cities and counties. The Department already publishes instructional memorandums concerning the subject matter of Chapters 161, 170 and 172, so rules are duplicative and unnecessary. The Department's instructional memorandums are available on the Department's website at www.iowadot.gov/local_systems. Cities and counties have multiple opportunities to provide input on the instructional memorandums.

Chapter 173 establishes requirements for preparation of secondary road construction programs, budgets, and county annual reports. These requirements are already published on the Local Systems Bureau's web page on the Department's website.

Chapter 174 establishes requirements for reimbursable services and supplies for cities and counties. The Department provides reimbursable services to cities and counties, which is more efficient and less costly for taxpayers. The Department's instructional memorandums and various other internal procedures list the services the Department provides to cities and counties.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on August 16, 2024. Comments should be directed to:

Tracy George
Department of Transportation

DOT Rules Administrator, Government and Community Relations
 800 Lincoln Way
 Ames, Iowa 50010
 Email: tracy.george@iowadot.us

Public Hearing

Public hearings at which persons may present their views orally will be held as follows:

August 15, 2024 11 to 11:30 a.m.	Microsoft Teams Link Or dial: 515.817.6093 Conference ID: 616 455 141#
August 16, 2024 2 to 2:30 p.m.	Microsoft Teams Link Or dial: 515.817.6093 Conference ID: 931 936 951#

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy George and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

- ITEM 1. Rescind and reserve **761—Chapter 28.**
- ITEM 2. Rescind and reserve **761—Chapter 102.**
- ITEM 3. Rescind and reserve **761—Chapter 132.**
- ITEM 4. Rescind and reserve **761—Chapter 161.**
- ITEM 5. Rescind and reserve **761—Chapter 170.**
- ITEM 6. Rescind and reserve **761—Chapter 172.**
- ITEM 7. Rescind and reserve **761—Chapter 173.**
- ITEM 8. Rescind and reserve **761—Chapter 174.**

ARC 8134C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

**Proposing rulemaking related to rescission of chapters
and providing an opportunity for public comment**

The Transportation Department hereby proposes to rescind Chapter 106, "Promotion of Iowa Agricultural Products at Rest Areas," Chapter 121, "Adopt-a-Highway Program," and Chapter 124, "Highway Helper Sponsorship Program," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 307.12(1)“j.”

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 23A.2, 307.12(1)“j” and 307.24 and 1995 Iowa Acts, chapter 18, section 2.

Purpose and Summary

This proposed rulemaking will rescind Chapters 106, 121 and 124 in accordance with Executive Order 10.

Chapter 106 provides Iowa agricultural organizations an opportunity to promote their products at Iowa interstate rest areas. However, only one promotional rest area has been designated since 1996 under Chapter 106. The Department will continue to provide a similar opportunity for nonprofit agricultural organizations to provide refreshments at rest areas during holiday periods under Chapter 105, “Holiday Rest Stops.”

Chapter 121 provides guidance for the Adopt-a-Highway litter pickup program. This program allows individuals or groups to pick up litter along certain highways as a volunteer public service. The Department is proposing to rescind Chapter 121; however, the program will continue. In lieu of rules on this subject, the public may find information on the Department’s website at: www.iowadot.gov/maintenance/Adopt-a-Highway-information.

Chapter 124 establishes the requirements for a Highway Helper Sponsorship Program. No companies have stepped forward to apply to be a sponsor of this program. The Department reviewed the need for the sponsorship and determined a sponsorship is not appropriate or necessary.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 761—Chapter 11.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on August 16, 2024. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Government and Community Relations
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

Public Hearing

Public hearings at which persons may present their views orally will be held as follows:

August 15, 2024
1 to 1:30 p.m.

[Microsoft Teams Link](#)
Or dial: 515.817.6093
Conference ID: 307 186 340#

August 16, 2024
10 to 10:30 a.m.

[Microsoft Teams Link](#)
Or dial: 515.817.6093
Conference ID: 141 207 268#

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy George and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

- ITEM 1. Rescind and reserve **761—Chapter 106.**
- ITEM 2. Rescind and reserve **761—Chapter 121.**
- ITEM 3. Rescind and reserve **761—Chapter 124.**

REVENUE DEPARTMENT[701]

Notice of Electric Delivery Tax Rate Changes

Pursuant to the authority of Iowa Code section 437A.4, the Director of Revenue hereby gives notice of the changes to the electric delivery tax rates. These rates will be used in conjunction with the number of kilowatt hours of electricity delivered to consumers in calendar year 2023 by each taxpayer, for replacement taxes payable in the 2024-2025 fiscal year.

This publication serves as an addendum to the Iowa Department of Revenue’s May 15, 2024, publication entitled “Notice of Electric and Natural Gas Delivery Tax Rate Changes.” The rate changes below are in addition to the rate changes mentioned in that publication.

2023 ELECTRIC DELIVERY TAX RATES BY SERVICE AREA RATE CHANGES ONLY

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3099	Hinton Municipal	0.00007183
3109	Lenox Mun. Light & Power	0.00052072
CO. #	RECs	DELIVERY TAX RATE
4379	Southwest Iowa Service Coop	0.00302207

ARC 8136C**UTILITIES COMMISSION[199]****Notice of Intended Action****Proposing rulemaking related to renewable energy percentage verification
and providing an opportunity for public comment**

The Utilities Commission hereby proposes to rescind Chapter 30, “Renewable Energy Percentage Verification,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code section 476.2.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 476.44A.

Purpose and Summary

The purpose of this proposed rulemaking is to comply with Executive Order 10. The Commission is proposing to rescind the chapter because it is not necessary.

The Commission issued an order requesting stakeholder comments on the proposed rescission of Chapter 30, the Commission’s rules that establish renewable energy percentage verification. The Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice; Interstate Power and Light Company; MidAmerican Energy Company; and Black Hills/Iowa Gas Utility Company, LLC d/b/a Black Hills Energy, filed comments addressing the proposed amendments.

The Commission reviewed the stakeholder comments and proposes the following rescission of the Commission’s rules for renewable energy percentage verification.

The Commission issued an order commencing rulemaking on June 17, 2024. The order is available on the Commission’s electronic filing system, efs.iowa.gov, under Docket No. RMU-2023-0030.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on May 1, 2024. A public hearing was held on the following date(s):

- May 21, 2024

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

No waiver provision is included in the proposed amendments because the Commission has a general waiver provision in rule 199—1.3(17A,474,476) that provides procedures for requesting a waiver of the rules in Chapter 30.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Commission no later than 4:30 p.m. on August 13, 2024. Comments should be directed to:

IT Support
 Iowa Utilities Commission
 Phone: 515.725.7300
 Email: ITSupport@iuc.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

August 13, 2024 9 to 11 a.m.	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa
August 27, 2024 9 to 11 a.m.	Commission Hearing Room 1375 East Court Avenue Des Moines, Iowa

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Commission and advise of specific needs.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **199—Chapter 30**.

ARC 8137C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Notice of Intended Action

**Proposing rulemaking related to new employment opportunities fund
and providing an opportunity for public comment**

The Director of the Workforce Development Department hereby proposes to rescind Chapter 13, "New Employment Opportunities Fund," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapter 17A and chapter 84A as amended by 2023 Iowa Acts, Senate File 514.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A and chapter 84A as amended by 2023 Iowa Acts, Senate File 514.

Purpose and Summary

Chapter 13 was originally created to provide administrative rules for the New Employment Opportunities Fund. This fund no longer exists, and, as part of the Department's review of rules under Executive Order 10, the chapter is proposed to be rescinded.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on May 29, 2024. A public hearing was held on the following date(s):

- June 18, 2024

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on August 13, 2024. Comments should be directed to:

Rebecca Stonawski
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319
Phone: 515.868.1939
Email: rebecca.stonawski@iwd.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally will be held as follows:

August 13, 2024 9:30 to 10 a.m.	Microsoft Teams Meeting ID: 275 416 053 543 Passcode: 9uPceZ
August 13, 2024 1:30 to 2 p.m.	Microsoft Teams Meeting ID: 227 932 730 594 Passcode: BPHYzk

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.868.1939 or via email at rebecca.stonawski@iwd.iowa.gov at least 48 hours prior to the hearing date.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **871—Chapter 13**.

ARC 8138C

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Notice of Intended Action

**Proposing rulemaking related to employer innovation fund
and providing an opportunity for public comment**

The Director of the Workforce Development Department hereby proposes to rescind Chapter 16, "Employer Innovation Fund," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code chapter 17A and chapter 84A as amended by 2023 Iowa Acts, Senate File 514.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A and chapter 84A as amended by 2023 Iowa Acts, Senate File 514.

Purpose and Summary

Chapter 16 previously provided rules for the Employer Innovation Fund. However, this fund no longer exists, and, as part of the Department's review of rules under Executive Order 10, the chapter is proposed to be rescinded.

Regulatory Analysis

A Regulatory Analysis for this rulemaking was published in the Iowa Administrative Bulletin on May 29, 2024. A public hearing was held on the following date(s):

- June 18, 2024

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

Public Comment

Any interested person may submit written or oral comments concerning this proposed rulemaking. Written or oral comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on August 13, 2024. Comments should be directed to:

Rebecca Stonawski
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319
Phone: 515.868.1939
Email: rebecca.stonawski@iwd.iowa.gov

Public Hearing

Public hearings at which persons may present their views orally will be held as follows:

August 13, 2024 10 to 10:30 a.m.	Microsoft Teams Meeting ID: 290 932 388 314 Passcode: NQqSpX
August 13, 2024 2 to 2:30 p.m.	Microsoft Teams Meeting ID: 278 873 881 802 Passcode: fxvGVp

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs by calling 515.868.1939 or via email at rebecca.stonawski@iwd.iowa.gov at least 48 hours prior to the hearing date.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rulemaking action is proposed:

ITEM 1. Rescind and reserve **871—Chapter 16**.

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the following interest rates of interest for public obligations and special assessments have been established. The usury rate for July is 6.5%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants Maximum 6.0%

74A.4 Special Assessments Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Financial Institutions as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective July 9, 2024, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum .05%
32-89 days	Minimum .05%
90-179 days	Minimum 1.75%
180-364 days	Minimum 1.80%
One year to 397 days	Minimum 1.95%
More than 397 days	Minimum 1.55%

These are minimum rates only. All time deposits are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Roby Smith, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

USURY

In accordance with the provisions of Iowa Code section 535.2(3)“a,” the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

August 1, 2023 — August 31, 2023	5.75%
September 1, 2023 — September 30, 2023	6.00%
October 1, 2023 — October 31, 2023	6.25%
November 1, 2023 — November 30, 2023	6.50%
December 1, 2023 — December 31, 2023	6.75%
January 1, 2024 — January 31, 2024	6.50%
February 1, 2024 — February 29, 2024	6.00%
March 1, 2024 — March 31, 2024	6.00%
April 1, 2024 — April 30, 2024	6.25%
May 1, 2024 — May 31, 2024	6.25%
June 1, 2024 — June 30, 2024	6.50%
July 1, 2024 — July 31, 2024	6.50%
August 1, 2024 — August 31, 2024	6.25%

ARC 8145C

ECONOMIC DEVELOPMENT AUTHORITY[261]**Adopted and Filed****Rulemaking related to the high quality jobs program**

The Economic Development Authority hereby rescinds Chapter 59, “Enterprise Zone (EZ) Program,” Chapter 60, “Entrepreneurial Ventures Assistance (EVA) Program,” and Chapter 68, “High Quality Jobs Program”; adopts a new Chapter 68, “High Quality Jobs Program (HQJP)”; and rescinds Chapter 172, “Environmental Law Compliance; Violations of Law,” Chapter 173, “Standard Definitions,” Chapter 174, “Wage, Benefit, and Investment Requirements,” Chapter 175, “Application Review and Approval Procedures,” Chapter 187, “Contracting,” Chapter 188, “Contract Compliance and Job Counting,” and Chapter 189, “Annual Reporting,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 15.106A.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 15, subchapter II, part 13, and section 15A.1.

Purpose and Summary

The Authority administers the High Quality Jobs Program pursuant to Iowa Code chapter 15, subchapter II, part 13. Pursuant to Executive Order 10 (January 10, 2023), the Authority has rescinded Chapter 68 relating to the Program and adopted a new chapter in lieu thereof. The chapter omits language that is duplicative of statutory language and Iowa Department of Revenue (IDR) rules. Additionally, the following changes to the chapter have been made:

- Rule 261—68.1(15) has been updated to remove references to 261—Chapters 172, 173, 174, 175, 187, 188, and 189, which have been rescinded. Language included in complex definitions has been removed from this rule and is instead included in relevant rules later in the chapter.
- Rule 261—68.2(15) has been updated to describe how local match requirements are approved by the Authority Board (Board), to clarify policies on acquisition of a business as a going concern and project initiation, and to add portions from rule 261—68.3(15) that relate to eligibility.
- Rule 261—68.3(15) has been updated to remove language regarding project initiation that was added to rule 261—68.2(15) and add language from 261—Chapters 174, 175, and 187 relating to the application and review process.
- New rule 261—68.6(15) addresses contracting and compliance policies previously addressed in 261—Chapters 172, 187, 188, and 189. The new rule streamlines the current process to extend the deadline for program recipients to execute an agreement with the Authority. A new requirement to maintain a base employment level has been added for businesses receiving incentives based on retained jobs only.
- New rule 261—68.7(15) addresses job counting policies and procedures previously addressed in the definitions in rule 261—68.1(15) and 261—Chapter 188. The new rule also addresses considerations relating to remote workers.
- New rule 261—68.8(15) describes the procedure by which the Authority establishes wage requirements for the Program, which were previously addressed in 261—Chapter 174.
- New rule 261—68.9(15) describes the procedure by which the Authority establishes investment requirements for the Program, which were previously addressed in 261—Chapter 174.

The Authority has permanently rescinded the following obsolete chapters:

- Chapter 59, which described the policies and procedures applicable to the Enterprise Zone Program. The Program was repealed by 2014 Iowa Acts, House File 2448. No award contracts remain open.

- Chapter 60, which described the eligibility criteria, application, and review process for the Entrepreneurial Ventures Assistance Program. The Authority ceased accepting applications for the Program effective July 1, 2009, pursuant to 2009 Iowa Acts, Senate File 344.

- Chapters 172, 173, 174, 175, 187, 188, and 189, which described various policies and procedures applicable to multiple Authority programs, including the High Quality Jobs Program and several repealed programs. The portions of these chapters that are relevant to the High Quality Jobs Program have been incorporated into Chapter 68.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on May 15, 2024, as **ARC 7937C**. A public hearing was held on the following date(s):

- June 4, 2024
- June 6, 2024

No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Authority Board on June 21, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on August 28, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **261—Chapter 59**.

ITEM 2. Rescind and reserve **261—Chapter 60**.

ITEM 3. Rescind 261—Chapter 68 and adopt the following **new** chapter in lieu thereof:

CHAPTER 68 HIGH QUALITY JOBS PROGRAM (HQJP)

261—68.1(15) Definitions. For purposes of this chapter, unless the context otherwise requires:

“*Authority*” means the same as defined in Iowa Code section 15.327(1).

“*Award date*” means the date the board approved an application for project completion assistance or tax incentives.

“*Base employment level*” means the same as defined in Iowa Code section 15.327(2).

“*Benefit*” means the same as defined in Iowa Code section 15.327(3).

“*Board*” means the same as defined in Iowa Code section 15.102(4).

“*Brownfield site*” means the same as defined in Iowa Code section 15.291(2).

“*Business*” means a sole proprietorship, partnership, corporation, or other business entity organized for profit under the laws of the state of Iowa or another state, under federal statutes, or under the laws of another country.

“*Community*” means the same as defined in Iowa Code section 15.327(6).

“*Created job*” means the same as defined in Iowa Code section 15.327(8).

“*Eligible business*” means a business that meets the conditions of Iowa Code section 15.329.

“*Fiscal impact ratio*” means the same as defined in Iowa Code section 15.327(11).

“*Forgivable loan*” is a loan for which repayment is eliminated in part or entirely if the borrower satisfies specified conditions.

“*Full-time equivalent position*” means the same as defined in Iowa Code section 15.327(12).

“*Grayfield site*” means the same as defined in Iowa Code section 15.291(4).

“*High quality jobs*” means created or retained jobs that meet the applicable wage requirements established in Iowa Code section 15.329(1)“c” or 15.335C.

“*Laborshed area*” means the geographic area surrounding an employment center from which the employment center draws its commuting workers as defined by the department of workforce development.

“*Laborshed wage*” means the same as defined in Iowa Code section 15.327(15).

“*Loan*” means funds provided that must be repaid with term, interest rate, and other conditions specified in an agreement entered into pursuant to Iowa Code section 15.330.

“*Maintenance period*” means the same as defined in Iowa Code section 15.327(17).

“*Maintenance period completion date*” means the same as defined in Iowa Code section 15.327(18).

“*Modernization project*” means a project that will result in increased skills and wages for current employees and that does not involve created or retained jobs.

“*Program*” means the same as defined in Iowa Code section 15.327(19).

“*Project*” means the same as defined in Iowa Code section 15.327(21).

“*Project completion assistance*” means the same as defined in Iowa Code section 15.327(22).

“*Project completion date*” means the same as defined in Iowa Code section 15.327(23).

“*Project completion period*” means the same as defined in Iowa Code section 15.327(24).

“*Qualifying wage threshold*” means the same as defined in Iowa Code section 15.327(26).

“*Retained job*” means the same as defined in Iowa Code section 15.327(27).

“*Retention-only project*” means a project that involves only retained jobs.

261—68.2(15) Eligibility requirements.

68.2(1) Community approval and local match. Community approval of the project by ordinance or resolution is required as specified in Iowa Code section 15.329(1)“a.” Local match may be required from the community or other relevant entity pursuant to criteria established by the board. The board will periodically approve such criteria to reflect meaningful types and amounts of local match that may be provided. The criteria established by the board may include but not be limited to when local match is required, entities that may provide local match, and acceptable amounts and forms of local match.

68.2(2) Relocations and reductions in operations. The authority will determine whether a business is ineligible due to a relocation or reduction in operations pursuant to Iowa Code section 15.329(1)“b.”

68.2(3) Retail or service businesses. For the purposes of determining whether a business is an ineligible retail business pursuant to Iowa Code section 15.329(1)“f,” “retail business” means any business engaged in the business of sale at retail of tangible personal property or taxable services in this

state or online. "Sale at retail" means the same as defined in Iowa Code section 423.1(46). Any business obligated to collect sales or use tax under Iowa Code chapter 423 is an ineligible retail business. A service business is not eligible for the program unless a significant proportion of its sales, as determined by the authority, are outside this state.

68.2(4) *Created and retained jobs.* The jobs created or retained by a business shall pay the applicable wages as established in Iowa Code section 15.329(1)"c" or 15.335C.

68.2(5) *Determination of sufficient benefits.* The business shall offer a sufficient package of benefits to each full-time equivalent position included in the business's base employment level and to each full-time equivalent position at the project location until the maintenance period completion date. The benefits package provided shall meet the criteria established by the board. The board will periodically approve such criteria to reflect the most current benefits package typically offered by employers. The criteria established by the board may include but not be limited to premium percentages to be paid by the business, deductible amounts, and other such criteria as determined necessary to the evaluation of benefits offered by a business.

68.2(6) *Sufficient fiscal impact.* The business shall demonstrate a sufficient fiscal impact as described in Iowa Code section 15.329(1)"e."

68.2(7) *Violations of law.* If the authority finds that a business has a record of violations of law, including but not limited to environmental and worker safety laws, over a period of time that tends to show a consistent pattern as described in Iowa Code section 15.329(2)"a," the business shall not qualify for the program.

68.2(8) *Applicant's past or current performance.* If an applicant received a prior award or other benefit through any program administered by the authority, the authority and board will consider the applicant's past or current performance under the prior award or benefit.

68.2(9) *Results of due diligence review.* The authority will complete a due diligence review, including but not limited to lien searches, reports of violations, pending or resolved litigation, and other relevant information about the applicant. A business may be ineligible based on the results of the review.

68.2(10) *Other factors.* The authority shall consider any applicable additional factors pursuant to Iowa Code section 15.329(3).

68.2(11) *Ineligible projects.*

a. If a project is creating or retaining jobs, but none are high quality jobs, then the project is not eligible for the program.

b. A project representing solely acquisition of a business as a going concern that does not include creation or retention of jobs and capital investment at the acquired business facility is not eligible for the program. A qualified project that occurs following acquisition of a business as a going concern may be eligible for the program.

68.2(12) *Project initiation.* The authority will not accept applications for projects that have been initiated or will be initiated prior to board consideration of the business's application for the program unless the business establishes that not initiating the project prior to board consideration of the application would result in undue hardship or that extenuating circumstances necessitate initiating the project prior to board consideration of the business's application for the program. Whether an undue hardship or extenuating circumstance exists will be determined by the authority.

a. Any one of the following may indicate that a project has been initiated:

- (1) The start of construction of new or expanded buildings;
- (2) The start of rehabilitation of existing buildings;
- (3) The purchase or leasing of existing buildings; or
- (4) The installation of new machinery and equipment or new computers to be used in the operation of the business's project.

b. The following shall not indicate a project has been initiated:

- (1) The purchase of land or signing an option to purchase land;
- (2) Earthmoving or other site development activities not involving actual building construction, expansion or rehabilitation; or
- (3) Acquisition of a business as a going concern.

- c. Any costs incurred prior to the award date are not eligible qualifying investment expenses.

261—68.3(15) Application process and review.

68.3(1) Application. Businesses applying for the program shall utilize a standardized application developed by the authority. A signature from an official authorized to represent the affected local community is required to indicate that the community supports the project. For a project with a qualifying investment of \$10 million or more, the application shall include an ordinance or resolution of the community's governing body approving the project.

68.3(2) Applicability of wage requirements. The qualifying wage threshold applicable to a project is the threshold in effect on the date the fully completed project application is received by the authority. If such an application is received but not acted upon by the board before the qualifying wage thresholds are updated, the thresholds in effect on the date the application was received will remain in effect for a period of three months after the month the thresholds were updated. The authority shall have sole discretion to determine whether an application is fully completed. Qualifying wage thresholds will be calculated and applied as described in rule 261—68.8(15).

68.3(3) Job requirements. The created job and retained job requirements applicable to a project, identified as described in rule 261—68.7(15), will be established at the time of application. Job requirements will be based on the base employment level as of the date the application was fully completed and submitted to the authority and eligible business's job projections and will be utilized to determine the amount of tax incentives and assistance.

68.3(4) Investment requirements. The investment requirements applicable to a project, identified as described in rule 261—68.9(15), will be established at the time of application. Investment requirements are based on an eligible business's estimates of project costs and will be utilized to determine the amount of tax incentives and assistance.

68.3(5) Negotiations. Authority staff may negotiate with the applicant concerning dollar amounts, terms, collateral, conditions of award, or any other elements of the proposed award. All forms of tax incentives and assistance available under the program are subject to negotiations. The authority shall consider all of the following factors in negotiating with the business:

a. *Level of need.* The following factors will determine the authority's assessment of need:

(1) Whether the business can raise only a portion of the debt and equity necessary to complete the project. The existence of a gap between the financing required and the committed financing indicates that tax incentives or assistance may be needed to fill the gap.

(2) Whether the likely returns of the project are inadequate to motivate a company decision maker to proceed with the project even if sufficient debt or equity can be raised to finance the project. The existence of such a condition indicates that the project's risks may outweigh its rewards and that tax incentives or assistance may be needed to reduce the project's risks.

(3) Whether the business is deciding between an Iowa site and a site in another state for its project and the cost of completing the project at the out-of-state site is demonstrably lower. Such a condition indicates that tax incentives or assistance may be needed to equalize the cost differential between the two sites. The authority will attempt to quantify the cost differential between the sites.

b. *Quality of the jobs.* The authority shall place greater emphasis on projects involving created or retained jobs rated as higher quality jobs pursuant to the factors listed in Iowa Code section 15.329(3) "a."

c. *Percentage of created jobs defined as high quality jobs.* The authority will consider the number of high quality jobs to be created in proportion to the total number of created jobs in determining what amount of tax incentives and assistance to offer the business.

d. *Economic impact.* In measuring the economic impact to this state, the authority shall place greater emphasis on projects that demonstrate the factors listed in Iowa Code section 15.329(3) "c."

68.3(6) Board approval and notice.

a. Authority staff will review applications to ensure program eligibility requirements are satisfied. Authority staff may request additional information from the business or may use other resources to obtain the needed information.

b. Complete and eligible applications and supporting documentation will be submitted to the board for its consideration. Authority staff will generate and submit to the board a report that summarizes the project and provide a recommendation on the amount of tax incentives and assistance to be offered to the business. Staff may provide to the board additional information or documentation as determined by staff. The board may offer an award in a lesser amount or that is structured in a manner different from that requested or recommended by authority staff. Meeting eligibility requirements does not guarantee that assistance will be offered or provided in the manner sought by the applicant.

c. The due diligence committee of the board established pursuant to 261—subrule 1.3(7) will review applications and make recommendations regarding the size and conditions of awards. The board may accept or reject recommendations from the due diligence committee.

d. If the board approves an award, an applicant will be notified in writing, including any conditions and terms of the approval.

261—68.4(15) Tax incentives. The authority may approve a business to receive any combination of applicable tax incentives allowed through the program pursuant to Iowa Code section 15.331A, 15.331C, 15.332, 15.333, 15.333A, or 15.335. An approved business shall not claim a tax incentive in excess of the amount specified in an agreement entered into pursuant to Iowa Code section 15.330.

68.4(1) Sales and use tax refund or tax credit for racks, shelving, and conveyor equipment. A business approved to receive a refund of sales and use taxes attributable to racks, shelving, and conveyor equipment in one fiscal year shall not be considered for an additional award of a refund of sales and use taxes attributable to racks, shelving, and conveyor equipment in a succeeding fiscal year. No business shall receive more than \$500,000 in refunds pursuant to this subrule. The limitations in this subrule also apply to an approved business that receives tax credit up to the amount of sales and use taxes paid by a third-party developer and attributable to racks, shelving, and conveyor equipment pursuant to Iowa Code section 15.331C.

68.4(2) Value-added property tax exemption. If a community approves an exemption from taxation pursuant to Iowa Code section 15.332, the community shall provide the authority and the local assessor with a copy of the resolution adopted by the community's governing body that indicates the estimated value and duration of the authorized exemption.

68.4(3) Investment tax credit—treatment of rent. The annual base rent paid to a third-party developer by an approved business may be considered new investment for the purpose of an investment tax credit approved pursuant to Iowa Code section 15.333 or an insurance premium tax credit approved pursuant to Iowa Code section 15.333A. Annual base rent may be included as new investment for a period equal to the term of the lease agreement but not to exceed the maximum term specified in a contract entered into with the authority. Annual base rent shall be considered only when the project includes the construction of a new building or the major renovation of an existing building. The approved business shall enter into a lease agreement with the third-party developer for a minimum of five years. For the purposes of this subrule, "annual base rent" means the business's annual lease payment minus taxes, insurance and operating or maintenance expenses.

68.4(4) Maximum tax incentives available. Tax incentives awarded under this program are based upon the number of jobs created or retained that pay the applicable wages as established in Iowa Code section 15.329(1)"c" or 15.335C and the amount of qualifying investment. The amount of tax incentives is subject to negotiations based on the factors identified in subrule 68.3(5). The maximum possible award is based on the following schedule:

a. The business is required to maintain the base employment level, but no high quality jobs are created or retained and economic activity is furthered by the qualifying investment. For purposes of this paragraph, "economic activity" means a modernization project that will result in increased skills and wages for the current employees.

(1) Less than \$100,000 in qualifying investment. Investment tax credit or insurance premium tax credit of up to 1 percent.

(2) \$100,000 to \$499,999 in qualifying investment.

1. Investment tax credit or insurance premium tax credit of up to 1 percent.

2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
- (3) \$500,000 or more in qualifying investment.
 1. Investment tax credit or insurance premium tax credit of up to 1 percent.
 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
 3. Research activities credit.
- b. One to five high quality jobs are created or retained.
 - (1) Less than \$100,000 in qualifying investment. Investment tax credit or insurance premium tax credit of up to 2 percent.
 - (2) \$100,000 to \$499,999 in qualifying investment.
 1. Investment tax credit or insurance premium tax credit of up to 2 percent.
 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
 - (3) \$500,000 or more in qualifying investment.
 1. Investment tax credit or insurance premium tax credit of up to 2 percent.
 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
 3. Research activities credit.
 - c. Six to ten high quality jobs are created or retained.
 - (1) Less than \$100,000 in qualifying investment. Investment tax credit or insurance premium tax credit of up to 3 percent.
 - (2) \$100,000 to \$499,999 in qualifying investment.
 1. Investment tax credit or insurance premium tax credit of up to 3 percent.
 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
 - (3) \$500,000 or more in qualifying investment.
 1. Investment tax credit or insurance premium tax credit of up to 3 percent.
 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
 3. Research activities credit.
 - d. 11 to 15 high quality jobs are created or retained.
 - (1) Less than \$100,000 in qualifying investment. Investment tax credit or insurance premium tax credit of up to 4 percent.
 - (2) \$100,000 to \$499,999 in qualifying investment.
 1. Investment tax credit or insurance premium tax credit of up to 4 percent.
 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
 - (3) \$500,000 or more in qualifying investment.
 1. Investment tax credit or insurance premium tax credit of up to 4 percent.
 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
 3. Research activities credit.
 - e. 16 to 30 high quality jobs are created or retained.
 - (1) Less than \$100,000 in qualifying investment. Investment tax credit or insurance premium tax credit of up to 5 percent.
 - (2) \$100,000 to \$499,999 in qualifying investment.
 1. Investment tax credit or insurance premium tax credit of up to 5 percent.
 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
 - (3) \$500,000 or more in qualifying investment.
 1. Investment tax credit or insurance premium tax credit of up to 4 percent.
 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
 3. Research activities credit.
 - f. 31 to 40 high quality jobs are created or retained.
 - (1) \$10 million or more in qualifying investment.
 1. Investment tax credit or insurance premium tax credit of up to 6 percent.
 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
 3. Research activities credit.
 4. Value-added property tax exemption.
 - (2) Reserved.

- g. 41 to 60 high quality jobs are created or retained.
 - (1) \$10 million or more in qualifying investment.
 - 1. Investment tax credit or insurance premium tax credit of up to 7 percent.
 - 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
 - 3. Research activities credit.
 - 4. Value-added property tax exemption.
 - (2) Reserved.
- h. 61 to 80 high quality jobs are created or retained.
 - (1) \$10 million or more in qualifying investment.
 - 1. Investment tax credit or insurance premium tax credit of up to 8 percent.
 - 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
 - 3. Research activities credit.
 - 4. Value-added property tax exemption.
 - (2) Reserved.
- i. 81 to 100 high quality jobs are created or retained.
 - (1) \$10 million or more in qualifying investment.
 - 1. Investment tax credit or insurance premium tax credit of up to 9 percent.
 - 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
 - 3. Research activities credit.
 - 4. Value-added property tax exemption.
 - (2) Reserved.
- j. 101 or more high quality jobs are created or retained.
 - (1) \$10 million or more in qualifying investment.
 - 1. Investment tax credit or insurance premium tax credit of up to 10 percent.
 - 2. Sales and use tax refund or third-party developer tax credit, or both, if applicable.
 - 3. Research activities credit.
 - 4. Value-added property tax exemption.
 - (2) Reserved.

261—68.5(15) Project completion assistance.

68.5(1) *Awards and negotiations.* The authority may award project completion assistance, in the form of a loan or forgivable loan or combination of both, to a business that meets the eligibility requirements of the program. All award determinations are subject to the requirements of Iowa Code section 15.335B(3). The board, with the assistance of authority staff, will determine the appropriate amount of project completion assistance, and the board will make a good-faith effort to provide only the amount of incentives and assistance necessary to facilitate the project's successful completion. The amount, type, and terms of the assistance provided typically vary according to the needs of each project, and each award is subject to negotiation. The board and the authority will strive to treat similarly situated applicants in a like manner. However, the amount, type, and terms of project completion assistance most appropriate for a given project are necessarily dependent on many factors, and awards of project completion assistance shall be entirely at the discretion of the board.

68.5(2) *Factors affecting the amount, type, and terms of project completion assistance.* When determining an award of project completion assistance, the board, with the assistance of authority staff, typically considers the following factors:

- a. The fiscal impact ratio of the project.
- b. Whether the amount of assistance to be awarded is appropriate to the number of jobs that will be created.
- c. The availability of funding.
- d. Whether other forms of assistance, including tax incentives, are available.
- e. The project's level of need, including whether the local community and the private sector are also contributing to the success of the project.
- f. The total amount of funds from other sources that can be leveraged.

- g. The quality of the project.

261—68.6(15) Agreements and compliance.

68.6(1) Execution. Successful applicants will be required to execute an agreement with the authority within 180 days of the award date. The time limit for execution may be extended by the authority director for an additional 180 days for good cause shown. Upon expiration of the time limit, including any extensions approved pursuant to this subrule, the board may approve additional extensions or rescind the award.

68.6(2) Requirements. An agreement shall meet all requirements of and be administered pursuant to Iowa Code sections 15.330 and 15.330A.

68.6(3) Jobs. An agreement will specify the number of jobs the business has pledged to create in addition to the base employment level and the number of retained jobs, if applicable. If the project is a modernization project or retention-only project, the business shall maintain the base employment level. Job obligations will be established and monitored pursuant to rule 261—68.7(15).

68.6(4) Investment. An agreement will describe the project and specify the investment the business proposes to make.

68.6(5) Project completion date. An agreement will specify the project completion date. The project completion date will be the date on which a program recipient has agreed to meet all the terms and obligations contained in an agreement with the authority, including but not limited to completing the project and creating or retaining jobs. The project completion period will be at least three years. The project completion date is calculated by the authority from the end of the month during which an award is made. For example, if an award is made on June 13, 2023, the three-year project completion date will be calculated from June 30, 2023. The project completion date for this award would be June 30, 2026.

68.6(6) Maintenance period completion date. An agreement will specify the maintenance period completion date. The maintenance period completion date will be used to establish the period during which the project, the created jobs, if any, and the retained jobs must be maintained. A modernization project shall maintain the base employment level through the maintenance period completion date. The total contract length, including the maintenance period, will be at least five years.

68.6(7) Conditions to disbursement. An agreement will specify the conditions to disbursement of project completion assistance funds or issuance of a tax credit certificate, including but not limited to compliance with the requirements of Iowa Code section 15A.1(3) “b” regarding solid and hazardous waste.

68.6(8) Monitoring and reports. The authority shall ensure that program recipients comply with contracts entered into pursuant to this rule. An agreement will specify the reports a program recipient must submit to the authority and due dates for such reports. Reports shall be provided in form and content acceptable to the authority.

a. Recipients shall report annually to the authority about the status of the funded project, including but not limited to employment, wages, benefits, project costs, capital investment, and compliance with the contract. The authority will use the data it collects in the authority’s annual report to the general assembly.

b. Recipients shall submit a report to the authority following the project completion date and the maintenance period completion date to verify compliance with the agreement. On-site or remote monitoring may be conducted following the project completion date as deemed appropriate by the authority. On-site or remote monitoring may be conducted following the maintenance period completion date as deemed appropriate by the authority.

68.6(9) Default. An agreement will specify events of default and the remedies available to the authority.

a. *Project completion assistance.* If the authority determines that a recipient is in default, the authority may seek recovery of all project completion assistance funds plus interest; assess penalties; negotiate alternative repayment schedules; initiate, suspend or discontinue collection efforts; and take other appropriate action as the board deems necessary. Negotiated settlements, write-offs or discontinuance of collection efforts are subject to approval by the board. If the authority or board refers

defaulted contracts to outside counsel for collection, then the terms of the agreement between the authority and the outside counsel regarding scope of counsel's authorization to accept settlements shall apply.

b. Tax incentives. If the authority determines that a recipient is in default, the authority may seek recovery of all state tax incentives by notifying the department of revenue of the event of default and the required repayment amount. The repayment amount is subject to applicable interest and penalties as determined by the department of revenue. The department of revenue will undertake collection efforts. If the business is an entity that has elected pass-through taxation status for income tax purposes, the department of revenue may undertake collection efforts against members, individuals, or shareholders to whom the tax incentives were passed through. If the agreement provided for local tax incentives, the authority will notify the community that provided incentives.

c. Calculation of repayment due or reduction of incentives.

(1) Job shortfall. If a business does not meet its job requirements, the repayment amount or reduction of incentives shall be the same proportion as the amount of the job shortfall. For example, if the business creates 50 percent of the jobs required, the business shall repay 50 percent of the incentives received or incentives will be reduced by 50 percent.

(2) Capital investment shortfall. If a business does not meet the capital investment requirement, the repayment amount or reduction of incentives shall be the same proportion as the amount of the shortfall in required capital investment. For example, if the business meets 75 percent of the amount of required capital investment, the business shall repay 25 percent of the amount of the incentives received or incentives will be reduced by 25 percent.

(3) Job and capital investment shortfalls. If a business has a shortfall in both capital investment and job requirements, the repayment amount or reduction of incentives shall be the same proportion as the greater of the two shortfalls. For example, if a business creates 50 percent of the required jobs and meets 75 percent of the required capital investment, the business shall be required to repay 50 percent of the amount of the incentives received or incentives will be reduced by 50 percent.

(4) Benefits. Notwithstanding any other provision in this subrule, if a business fails to comply with the benefit requirements of the agreement, the business shall be required to repay all of the incentives received or incentives will be fully revoked.

(5) Minimum eligibility. Notwithstanding any other provision in this subrule, if a business fails to maintain eligibility for the program, the business shall repay all of the incentives received or incentives will be fully revoked.

d. Notice of default. The authority will notify a business and, if applicable, the community of an event of default as described in the agreement.

68.6(10) Amendments. Agreement amendments must comply with Iowa Code chapter 15, subchapter II, part 13, and this chapter. Participating businesses may submit requests for amendments to authority staff.

a. Except as provided in paragraph 68.6(10)“*b*,” no request to amend an agreement may be approved unless it has been reviewed by the due diligence committee established pursuant to 261—subrule 1.3(7), the due diligence committee has recommended approving the request to amend the agreement, and the board approves the request to amend the agreement.

b. Authority staff may approve nonsubstantive changes, including but not limited to the following:

- (1) Recipient name, address and similar changes.
- (2) Collateral changes that do not materially and substantially impact the authority's security.
- (3) Line item budget changes that do not reduce overall total project costs.
- (4) Loan repayment amounts or due dates that do not extend the final due date of a loan.
- (5) Changes to tax credit amortization schedules.

261—68.7(15) Job counting.

68.7(1) Overview. The authority will count created and retained jobs using a base employment analysis comparing the base employment level to employment at another date. The business's base employment level will be established at the time of application for the program. The number of jobs the

business has pledged to create shall be in addition to the base employment level. Retained jobs may be included in the base employment level as established at the time of approval.

68.7(2) *Base employment level.*

a. Base employment level will include the number of full-time equivalent positions employed at the project location. If the project occurs at more than one physical location, the business's base employment level will include the total number of full-time equivalent positions working at the identified locations. Base employment level may include the business's full-time equivalent positions as identified by the authority who are employed in this state but are not employed at the project location.

b. If a business receives multiple awards for projects at the same location, the base employment level will be calculated by using the payroll document from the oldest award that is open. Job obligations from each new award will be added to this base employment level.

c. The authority will collect payroll documents to calculate and verify base employment level used in each award. Payroll documents must include a name or employee identification number and the hourly rate of pay for all full-time equivalent positions.

d. If the base employment level includes retained jobs, the authority will require a business to verify that a job is at risk. Such verification may include the signed statement of an officer of the business, documentation that the business is actively exploring other sites for the project, or any other information the authority may reasonably require during the application review process to establish that a job is at risk.

68.7(3) *Verification.* At the project completion date, during the maintenance period, and following the maintenance period completion date, payroll documents will be used to calculate and verify compliance with job obligations. The person who submits the documents must, under penalty of perjury, verify that the information contained in the documents is true and correct.

68.7(4) *Full-time equivalent positions.* Only a full-time equivalent position filled by an individual will be considered an employee of the business for the purpose of establishing the base employment level, retained jobs, or created jobs. The authority will not consider "job sharing" or any other means of aggregation or combination of hours worked by more than one natural person in counting jobs. The authority will verify that full-time equivalent positions constitute the employment of one person for:

a. Eight hours per day for a five-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations and other paid leave; or

b. The number of hours or days per week, including paid holidays, vacations and other paid leave, currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit, provided that the number of hours per week is at least 32 hours per week for 52 weeks per year, including paid holidays, vacations, and other paid leave.

If employees at the facility do not typically work 40 hours per week, the business will be required to provide documentation outlining what the business considers a full-time workweek and how the business's interpretation fits within the norms of its industry standards. Whether to accept this interpretation is within the sole discretion of the authority.

68.7(5) *Contract employees.* A business's leased or contract employee may be included in the base employment level, as a created job, or as a retained job only if the following requirements are met:

a. The business receiving the tax incentives or project completion assistance has a legally binding contract with a third-party provider to provide the leased or contract employee.

b. The contract between the third-party provider and the business specifically requires the third-party provider to pay the wages and benefits at the levels required and for the time period required by the authority as conditions of the award to the business.

c. The contract between the third-party provider and the business specifically requires the third-party provider to submit payroll records to the authority, in form and content and as frequently as required by the authority, for purposes of verifying that the business's job creation/retention and benefit requirements are being met.

d. The contract between the third-party provider and the business specifically authorizes the authority, or its authorized representatives, to access the third-party provider's records related to the funded project.

e. The business receiving the tax incentives or project completion assistance agrees to be contractually liable to the authority for the performance or nonperformance of the third-party provider.

68.7(6) Remote employees. Employees with a reasonable connection to a project location who work remotely may be included in the base employment level, as a created job, or as a retained job as established by the authority at the time of application. To determine whether employees who work remotely should be included, the authority will consider a business's policies on establishing remote work locations for employees, reporting structures, percentage of time worked at the project location, and the distance of employees' remote work locations from the project location. Only employees who work remotely within a defined geographic area established by the authority will be included. Whether an employee who works remotely is included in the base employment level, as a created job, or as a retained job pursuant to this subrule shall be solely within the discretion of the authority.

261—68.8(15) Authority procedure for establishing wage requirements. Created or retained jobs shall meet the qualifying wage threshold requirements as established pursuant to this rule and as indicated in an agreement entered into pursuant to Iowa Code section 15.330. Jobs that do not meet the qualifying wage threshold requirements will not be counted toward a business's job creation or job retention obligations.

68.8(1) The authority will update the qualifying wage thresholds annually each fiscal year. The thresholds will take effect on September 1 of each fiscal year and remain in effect until August 31 of the following fiscal year. If the authority determines that the laborshed wage of a laborshed area would increase by more than one dollar per hour, the authority will limit the increase to the qualifying wage threshold for that laborshed area for that annual update to one dollar per hour.

68.8(2) The authority will calculate the laborshed wage as follows:

a. The most current covered wage and employment data available from the department of workforce development will be used.

b. The wage will be computed as a mean wage figure and represented in terms of an hourly wage rate.

c. Only the wages paid by employers for jobs performed within the first two zones of a laborshed area will be included.

d. The wages paid by employers in the following categories will be excluded from the calculation: government, retail trade, health care and social assistance, and accommodations and food service. The wages paid by employers in all other categories will be included in the calculation.

e. To the extent that a laborshed area includes zip codes from states other than Iowa, the wages paid by employers in those zip codes may be included if the department of workforce development has finalized a data-sharing agreement with the state in question and has received the necessary data.

f. Only those wages within two standard deviations from the mean wage will be included.

68.8(3) For the purposes of establishing wage requirements, the authority may designate a county that does not meet at least three of the criteria listed in Iowa Code section 15.335C(1) as an economically distressed area if a business located in the county experiences a layoff or a closure that has a significant impact on a community within the county.

a. Factors the authority will consider in determining whether a layoff or closure has a significant impact on a community within the county include but are not limited to total number of employees impacted; percentage of the applicable laborshed impacted; number of employees impacted as a percentage of population; current unemployment rate; and unemployment rate, including the employees affected by a layoff or closure.

b. A city or county shall request designation of a county as an economically distressed area, pursuant to this subrule, in writing. Such requests are subject to approval by the board. Requests may be made simultaneously with a project application that would qualify for a lower qualifying wage threshold requirement pursuant to this subrule if the request is approved.

68.8(4) The authority will update the list of economically distressed areas, including those designated pursuant to subrule 68.8(3), according to the same schedule as the qualifying wage thresholds are updated pursuant to subrule 68.8(1). Designations of economically distressed areas will apply in the same manner as wage thresholds are applied as described in subrule 68.3(2).

68.8(5) The authority may consult with the brownfield redevelopment advisory council established pursuant to Iowa Code section 15.294 in order to make a determination as to whether a project site is a brownfield site or a grayfield site for purposes of determining wage requirements. The determination as to whether a project site qualifies as a brownfield site or a grayfield site shall be within the discretion of the authority. In making such determinations, to the extent it is possible to do so, the authority will apply the same definition in substantially the same manner as similar definitions are applied by the brownfield redevelopment advisory council. A project that is not a brownfield site or a grayfield site will be presumed to be a greenfield site.

68.8(6) To determine the wages paid to the employees of an eligible business, the authority will include only monetary compensation, represented in terms of an hourly rate, paid by an employer to an employee for work or services provided, typically on a weekly or biweekly basis. The wage will not include nonregular forms of compensation, such as bonuses, unusual overtime pay, commissions, stock options, pensions, retirement or death benefits, unemployment benefits, life or other insurance, or other fringe benefits.

261—68.9(15) Authority procedure for establishing investment requirements.

68.9(1) *Capital investment.* The authority reports on the amount of capital investment involved with funded projects. This rule lists the categories of expenditures that are included when the authority determines the amount of capital investment associated with a project.

68.9(2) *Qualifying investment for tax credit programs.* Minimum investment thresholds must be met for the project to be considered to receive an award. Not all expenditures count toward meeting the investment threshold. This rule identifies the categories of expenditures that can be included when the amount of investment is calculated for purposes of meeting program eligibility threshold requirements.

68.9(3) *Investment qualifying for tax credits.* Not all of the expenditures categories used to calculate the investment amount needed to meet program threshold requirements qualify for purposes of claiming the tax credits. The following table identifies the expenditures that do not qualify for tax credits.

	Capital Investment ¹	Qualifying Investment ²	Investment Qualifying for Tax Credits ³
Land acquisition	Yes	Yes	Yes
Site preparation	Yes	Yes	Yes
Building acquisition	Yes	Yes	Yes
Building construction	Yes	Yes	Yes
Building remodeling	Yes	Yes	Yes
Mfg. machinery & equip.	Yes	Yes	Yes
Other machinery & equip.	Yes	No	No
Racking, shelving, etc.	Yes	No	No
Computer hardware	Yes	Yes	Yes
Computer software	No	No	No
Furniture & fixtures	Yes	Yes	No
Working capital	No	No	No
Research & development	No	No	No
Job training	No	No	No
Capital or synthetic lease	No	Yes	Yes
Rail improvements ⁴	Yes	Yes	Yes
Public infrastructure ⁵	Yes	Yes	Yes

¹ “Capital investment” is used to calculate project investment on depreciable assets.

² “Qualifying investment” is used to determine eligibility for the program.

³ “Investment qualifying for tax credits” is used to calculate the maximum available tax credit award for a project.

⁴ “Rail improvements” includes hard construction costs for rail improvements. (These costs are included as part of construction or site preparation costs.)

⁵ “Public infrastructure” includes any publicly owned utility service, such as water, sewer, storm sewer or roadway construction and improvements. (These costs are included as part of construction costs.)

These rules are intended to implement Iowa Code chapter 15, subchapter II, part 13, and section 15A.1.

ITEM 4. Rescind and reserve **261—Chapter 172.**

ITEM 5. Rescind and reserve **261—Chapter 173.**

ITEM 6. Rescind and reserve **261—Chapter 174.**

ITEM 7. Rescind and reserve **261—Chapter 175.**

ITEM 8. Rescind and reserve **261—Chapter 187.**

ITEM 9. Rescind and reserve **261—Chapter 188.**

ITEM 10. Rescind and reserve **261—Chapter 189.**

[Filed 6/28/24, effective 8/28/24]

[Published 7/24/24]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/24.

ARC 8146C

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed

Rulemaking related to agency procedure for rulemaking

The Economic Development Authority hereby rescinds Chapter 196, “Department Procedure for Rule Making,” and adopts a new Chapter 196, “Agency Procedure for Rulemaking,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code chapter 17A and section 15.106A.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 17A.

Purpose and Summary

Pursuant to Executive Order 10 (January 10, 2023), the Authority has rescinded Chapter 196 and adopted a new chapter in lieu thereof. The new chapter incorporates Iowa Code chapter 17A by reference and provides contact information for the Authority.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on May 15, 2024, as **ARC 7936C**. A public hearing was held on the following date(s):

- June 4, 2024

- June 6, 2024

No one attended the public hearings. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Authority Board on June 21, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Authority for a waiver of the discretionary provisions, if any, pursuant to 261—Chapter 199.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on August 28, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 261—Chapter 196 and adopt the following **new** chapter in lieu thereof:

CHAPTER 196 AGENCY PROCEDURE FOR RULEMAKING

261—196.1(17A) Incorporation by reference. The authority incorporates by this reference all such matters in Iowa Code chapter 17A that relate to procedures for rulemaking.

261—196.2(17A) Contact information.

196.2(1) General. Inquiries about authority rules and the rulemaking process may be directed to Director, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315.

196.2(2) Comments on proposed rules. Any public comment on a Notice of Intended Action or similar document relating to rules may be directed to Director, Iowa Economic Development Authority, 1963 Bell Avenue, Suite 200, Des Moines, Iowa 50315, or as directed in the Notice of Intended Action or similar document.

These rules are intended to implement Iowa Code chapter 17A.

[Filed 6/28/24, effective 8/28/24]

[Published 7/24/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/24.

ARC 8147C**EDUCATION DEPARTMENT[281]****Adopted and Filed****Rulemaking related to general accreditation standards**

The State Board of Education hereby amends Chapter 12, “General Accreditation Standards,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 256.7(5).

State or Federal Law Implemented

This rulemaking implements, in whole or in part, 2023 Iowa Acts, Senate File 496.

Purpose and Summary

This rulemaking implements portions of 2023 Iowa Acts, Senate File 496. A portion of that legislation is currently enjoined by a federal court. Consistent with that injunction, neither the Department of Education nor the State Board will take any action in furtherance of those enjoined provisions.

The items from Senate File 496 that are not enjoined include age-appropriate instruction, a requirement for online availability of library catalogs, and provisions concerning parental rights for accurate information regarding their children’s gender identity.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7169C**. A public hearing was held on the following date(s):

- January 3, 2024
- January 4, 2024

A combined 30 people attended the two public hearings, with 9 individuals making public comments.

The Department received 83 written comments.

Consistent with the federal court’s injunction, the Department will not analyze or discuss any comment concerning the currently enjoined provisions of Senate File 496. Any proposed rule text that would conflict with the currently enjoined provisions has been stricken.

Items 1 through 3 from the Notice were completely resolved in a parallel rulemaking. Those final rules were published on April 17, 2024, as **ARC 7787C**, and became effective on May 22, 2024. For that reason, Items 1 through 3 from the Notice have been deleted, and the remaining items have been renumbered accordingly.

Two organizations submitted comments asking for additional modifiers to be added to the definition of “age-appropriate.” The organizations proposed the following text:

“‘*Age-appropriate*’ does not include any material with vivid or pornographic descriptions or graphic depictions of a sex act.”

The organizations assert that this is consistent with legislative intent and would allow schools to use “classic pieces of literature and other books that mention a sex act, but do not vividly describe it” in instruction. The definition is established by statute, and the sentence following the quoted language in Item 1 addresses the organizations’ concerns.

The two organizations also requested that the investigation process for violations of the parental rights provisions in Item 3 herein be modified by requiring complainants to “follow local processes first”

and requiring “timely” notification of “licensed staff who are under investigation about the complaint, providing an opportunity to remedy voluntarily and permanently” any violations. Concerning local processes, the Department is unable to add a required step to the complaint process. Concerning notification of staff members whose alleged conduct is the subject of an investigation, the rules need not include this requirement because it is an assumed part of any investigation and a required due process protection.

One organization objected to the requirement that online catalogues be updated a minimum of twice per year, asserting that this is inconsistent with the waiver process made available in Senate File 496. The governing statutory text is incorporated in Item 2 by reference, including the waiver provision. Item 2 is not inconsistent with Senate File 496; rather, it provides clarity and flexibility to districts. When a district, whether it received a waiver or not, is required to post its catalogue online, it must update its catalogue at least twice per year if it does not do so in real time.

The adopted rules include changes from the Notice to improve readability and update organizational structure as well as to remove a citation that has now been codified.

Adoption of Rulemaking

This rulemaking was adopted by the State Board on June 20, 2024.

Fiscal Impact

There is an unknown fiscal impact to the Department. The estimated fiscal impact for districts was set out in the Fiscal Note prepared for 2023 Iowa Acts, Senate File 496, available at www.legis.iowa.gov/docs/publications/FN/1370427.pdf.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the State Board for a waiver of the discretionary provisions, if any, pursuant to 281—Chapter 4.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on August 28, 2024.

The following rulemaking action is adopted:

ITEM 1. Adopt the following **new** definitions of “Age-appropriate” and “Sex act” in rule **281—12.2(256)**:

“*Age-appropriate*,” with the exception of the human growth and development, means topics, messages, and teaching methods suitable to particular ages or age groups of children and adolescents, based on developing cognitive, emotional, and behavioral capacity typical for the age or age group. “Age-appropriate” does not include any material with descriptions or visual depictions of a sex act. A reference or mention of a sex act in a way that does not describe or visually depict a sex act as defined in these rules is not included in the previous sentence. For purposes of human growth and development instruction required by Iowa Code section 279.50, “age-appropriate” means topics, messages, and

teaching methods suitable to particular ages or age groups of children and adolescents, based on developing cognitive, emotional, and behavioral capacity typical for the age or age group.

“*Sex act*” means any sexual contact between two or more persons by any of the following:

1. Penetration of the penis into the vagina or anus.
2. Contact between the mouth and genitalia or mouth and anus or by contact between the genitalia of one person and the genitalia or anus of another person.
3. Contact between the finger, hand, or other body part of one person and the genitalia or anus of another person, except in the course of examination or treatment by a person licensed pursuant to Iowa Code chapters 148, 148C, 151, or 152.
4. Ejaculation onto the person of another.
5. Use of artificial sexual organs or substitutes therefore in contact with the genitalia or anus.
6. The touching of a person’s own genitals or anus with a finger, hand, or artificial sexual organ or other similar device at the direction of another person.

ITEM 2. Amend subrule 12.3(10) as follows:

12.3(10) *Standards for library programs.*

a. The board of directors of each school district shall establish a kindergarten through grade 12 library program to support the student achievement goals of the total school curriculum as referenced in Iowa Code section 256.11(9). The board of directors of each school district will adopt policies to address selection and reconsideration of school library materials; confidentiality of student library records; and legal and ethical use of information resources, including plagiarism and intellectual property rights.

b. Each school district shall establish a kindergarten through grade 12 library program that is consistent with Iowa Code section 280.6 and with the educational standards established in this chapter and that supports the student achievement goals of the total school curriculum. In complying with the requirements in Iowa Code section 279.77(3), the district, if it does not make available a comprehensive list of all books available to all students in libraries offered by the district on its website in real time, must post an updated list at least two times per calendar year.

ITEM 3. Adopt the following **new** subrule 12.3(14):

12.3(14) *Parental rights in education.*

a. A school district shall not knowingly give false or misleading information to the parent or guardian of a student regarding the student’s gender identity or intention to transition to a gender that is different than the sex listed on a student’s official birth certificate or certificate issued upon adoption if the certificate was issued at or near the time of the student’s birth.

b. If a student enrolled in a school district requests an accommodation that is intended to affirm the student’s gender identity from a licensed practitioner employed by the school district, including a request that the licensed practitioner address the student using a name or pronoun that is different than the name or pronoun assigned to the student in the school district’s registration forms or records, the licensed practitioner shall report the student’s request to an administrator employed by the school district, and the administrator shall report the student’s request to the student’s parent or guardian. Concerning a student’s request to use a name that is different from the name on the student’s registration forms or records, that request is governed by this subrule only if the request is an accommodation intended to affirm a student’s gender identity.

c. If, after investigation, the department determines that a school district or an employee of a school district has violated this subrule, the school district or employee of the school district, as applicable, shall be subject to the following:

(1) For the first violation of this subrule, the department shall issue a written warning to the board of directors of the school district or the employee, as applicable.

(2) For a second or subsequent violation of this subrule, if the department finds that a school district knowingly violated this subrule, the superintendent of the school district shall be subject to a hearing conducted by the board of educational examiners, which may result in disciplinary action.

(3) For a second or subsequent violation of this subrule, if the department finds that an employee of the school district who holds a license, certificate, authorization, or statement of recognition issued by

the board of educational examiners knowingly violated this subrule, the employee shall be subject to a hearing conducted by the board of educational examiners, which may result in disciplinary action.

d. Concerning enforcement of this subrule, the department may exercise enforcement discretion if any violation is voluntarily and permanently corrected prior to the department making a determination of a violation.

[Filed 6/21/24, effective 8/28/24]

[Published 7/24/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/24.

ARC 8148C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rulemaking related to adoption of uniform and model rules

The Professional Licensure Division hereby rescinds Chapter 16, "Impaired Practitioner Review Committee," and adopts Chapter 34, "Adoption of Uniform and Model Rules," Chapter 46, "Adoption of Uniform and Model Rules," Chapter 66, "Adoption of Uniform and Model Rules," Chapter 84, "Adoption of Uniform and Model Rules," Chapter 106, "Adoption of Uniform and Model Rules," Chapter 125, "Adoption of Uniform and Model Rules," Chapter 135, "Adoption of Uniform and Model Rules," Chapter 145, "Adoption of Uniform and Model Rules," Chapter 184, "Adoption of Uniform and Model Rules," Chapter 210, "Adoption of Uniform and Model Rules," Chapter 226, "Adoption of Uniform and Model Rules," Chapter 245, "Adoption of Uniform and Model Rules," Chapter 266, "Adoption of Uniform and Model Rules," Chapter 284, "Adoption of Uniform and Model Rules," Chapter 305, "Adoption of Uniform and Model Rules," Chapter 330, "Adoption of Uniform and Model Rules," Chapter 354, "Adoption of Uniform and Model Rules," and Chapter 364, "Adoption of Uniform and Model Rules," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code section 272C.3 and Executive Order 10.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 272C.

Purpose and Summary

The purpose of this rulemaking is to adopt by reference uniform and model rules. By adopting by reference, the boards are utilizing existing chapters instead of creating multiple duplicative chapters within the Department of Inspections, Appeals, and Licensing. This helps streamline processes and build uniformity across the division.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7296C**. A public hearing was held on the following date(s):

- February 13, 2024
- February 14, 2024

No one attended the public hearings. No public comments were received.

Changes have been made from the Notice. The Department rescinded 641—Chapter 193, "Impaired Practitioner Review Committee," and promulgated 641—Chapter 193, "Model Rules for Licensee

Review Committee,” effective May 8, 2024 (**ARC 7753C**). The promulgation of 641—Chapter 193 took a licensee review committee chapter applicable to a single board and promulgated it as a model chapter that can be adopted by any board under the administrative authority of the Department. The Department then editorially renumbered 641—Chapter 193 by transferring the model chapter to 481—Chapter 505.

645—Chapter 16 is substantively akin to 641—Chapter 193 prior to its rescission and readoption and renumbering as a model chapter at 481—Chapter 505.

In accordance with the goals of Executive Order 10, including reduction of unnecessary duplication in the Iowa Administrative Code, the boards set forth below adopted the model chapter by reference in place of 645—Chapter 16.

Adoption of Rulemaking

This rulemaking was adopted by the following boards on the dates stated:

- Board of Hearing Aid Specialists, February 28, 2024.
- Board of Sign Language Interpreters and Transliterators, February 29, 2024.
- Board of Psychology, March 4, 2024.
- Board of Massage Therapy, March 5, 2024.
- Board of Mortuary Science, March 7, 2024.
- Board of Athletic Training, March 12, 2024.
- Board of Behavioral Science, March 14, 2024.
- Board of Dietetics, March 22, 2024.
- Board of Nursing Home Administrators, April 3, 2024.
- Board of Optometry, April 4, 2024.
- Board of Chiropractic, April 10, 2024.
- Board of Physical and Occupational Therapy, April 11, 2024.
- Board of Podiatry, April 12, 2024.
- Board of Physician Assistants, April 24, 2024.
- Board of Speech Pathology and Audiology, May 3, 2024.
- Board of Social Work, May 13, 2024.
- Board of Respiratory Care and Polysomnography, May 16, 2024.
- Board of Barbering and Cosmetology Arts and Sciences, May 20, 2024.

Fiscal Impact

This rulemaking will have no fiscal impact on the State of Iowa. Staff salaries to support the work of the boards are covered by the Licensing and Regulation Fund established in 2023 Iowa Acts, Senate File 557. Licensing fees go to the fund to cover operations of the regulated professional licensing boards.

Jobs Impact

After analysis and review of this rulemaking, there will be a positive impact on jobs in Iowa since the rulemaking reduces the regulatory burdens on Iowans and allows Iowans to more freely engage in individual and business pursuits.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The

Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on August 28, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **645—Chapter 16**.

ITEM 2. Adopt the following **new**645—Chapter 34:

CHAPTER 34
ADOPTION OF UNIFORM AND MODEL RULES

645—34.1(17A,272C) Board of behavioral science adoption of uniform and model rules. The board hereby adopts by reference the following:

34.1(1) to **34.1(9)** Reserved.

34.1(10) Model rules for licensee review committee, 481—Chapter 505.

This rule is intended to implement Iowa Code chapter 272C.

ITEM 3. Adopt the following **new**645—Chapter 46:

CHAPTER 46
ADOPTION OF UNIFORM AND MODEL RULES

645—46.1(17A,272C) Board of chiropractic adoption of uniform and model rules. The board hereby adopts by reference the following:

46.1(1) to **46.1(9)** Reserved.

46.1(10) Model rules for licensee review committee, 481—Chapter 505.

This rule is intended to implement Iowa Code chapter 272C.

ITEM 4. Adopt the following **new**645—Chapter 66:

CHAPTER 66
ADOPTION OF UNIFORM AND MODEL RULES

645—66.1(17A,272C) Board of barbering and cosmetology arts and sciences adoption of uniform and model rules. The board hereby adopts by reference the following:

66.1(1) to **66.1(9)** Reserved.

66.1(10) Model rules for licensee review committee, 481—Chapter 505.

This rule is intended to implement Iowa Code chapter 272C.

ITEM 5. Adopt the following **new**645—Chapter 84:

CHAPTER 84
ADOPTION OF UNIFORM AND MODEL RULES

645—84.1(17A,272C) Board of dietetics adoption of uniform and model rules. The board hereby adopts by reference the following:

84.1(1) to **84.1(9)** Reserved.

84.1(10) Model rules for licensee review committee, 481—Chapter 505.

This rule is intended to implement Iowa Code chapter 272C.

ITEM 6. Adopt the following **new**645—Chapter 106:

CHAPTER 106
ADOPTION OF UNIFORM AND MODEL RULES

645—106.1(17A,272C) Board of mortuary science adoption of uniform and model rules. The board hereby adopts by reference the following:

106.1(1) to 106.1(9) Reserved.

106.1(10) Model rules for licensee review committee, 481—Chapter 505.

This rule is intended to implement Iowa Code chapter 272C.

ITEM 7. Adopt the following **new**645—Chapter 125:

CHAPTER 125
ADOPTION OF UNIFORM AND MODEL RULES

645—125.1(17A,272C) Board of hearing aid specialists adoption of uniform and model rules. The board hereby adopts by reference the following:

125.1(1) to 125.1(9) Reserved.

125.1(10) Model rules for licensee review committee, 481—Chapter 505.

This rule is intended to implement Iowa Code chapter 272C.

ITEM 8. Adopt the following **new**645—Chapter 135:

CHAPTER 135
ADOPTION OF UNIFORM AND MODEL RULES

645—135.1(17A,272C) Board of massage therapy adoption of uniform and model rules. The board hereby adopts by reference the following:

135.1(1) to 135.1(9) Reserved.

135.1(10) Model rules for licensee review committee, 481—Chapter 505.

This rule is intended to implement Iowa Code chapter 272C.

ITEM 9. Adopt the following **new**645—Chapter 145:

CHAPTER 145
ADOPTION OF UNIFORM AND MODEL RULES

645—145.1(17A,272C) Board of nursing home administrators adoption of uniform and model rules. The board hereby adopts by reference the following:

145.1(1) to 145.1(9) Reserved.

145.1(10) Model rules for licensee review committee, 481—Chapter 505.

This rule is intended to implement Iowa Code chapter 272C.

ITEM 10. Adopt the following **new**645—Chapter 184:

CHAPTER 184
ADOPTION OF UNIFORM AND MODEL RULES

645—184.1(17A,272C) Board of optometry adoption of uniform and model rules. The board hereby adopts by reference the following:

184.1(1) to 184.1(9) Reserved.

184.1(10) Model rules for licensee review committee, 481—Chapter 505.

This rule is intended to implement Iowa Code chapter 272C.

ITEM 11. Adopt the following **new**645—Chapter 210:

CHAPTER 210
ADOPTION OF UNIFORM AND MODEL RULES

645—210.1(17A,272C) Board of physical and occupational therapy adoption of uniform and model rules. The board hereby adopts by reference the following:

210.1(1) to **210.1(9)** Reserved.

210.1(10) Model rules for licensee review committee, 481—Chapter 505.

This rule is intended to implement Iowa Code chapter 272C.

ITEM 12. Adopt the following **new**645—Chapter 226:

CHAPTER 226
ADOPTION OF UNIFORM AND MODEL RULES

645—226.1(17A,272C) Board of podiatry adoption of uniform and model rules. The board hereby adopts by reference the following:

226.1(1) to **226.1(9)** Reserved.

226.1(10) Model rules for licensee review committee, 481—Chapter 505.

This rule is intended to implement Iowa Code chapter 272C.

ITEM 13. Adopt the following **new**645—Chapter 245:

CHAPTER 245
ADOPTION OF UNIFORM AND MODEL RULES

645—245.1(17A,272C) Board of psychology adoption of uniform and model rules. The board hereby adopts by reference the following:

245.1(1) to **245.1(9)** Reserved.

245.1(10) Model rules for licensee review committee, 481—Chapter 505.

This rule is intended to implement Iowa Code chapter 272C.

ITEM 14. Adopt the following **new**645—Chapter 266:

CHAPTER 266
ADOPTION OF UNIFORM AND MODEL RULES

645—266.1(17A,272C) Board of respiratory care and polysomnography adoption of uniform and model rules. The board hereby adopts by reference the following:

266.1(1) to **266.1(9)** Reserved.

266.1(10) Model rules for licensee review committee, 481—Chapter 505.

This rule is intended to implement Iowa Code chapter 272C.

ITEM 15. Adopt the following **new**645—Chapter 284:

CHAPTER 284
ADOPTION OF UNIFORM AND MODEL RULES

645—284.1(17A,272C) Board of social work adoption of uniform and model rules. The board hereby adopts by reference the following:

284.1(1) to **284.1(9)** Reserved.

284.1(10) Model rules for licensee review committee, 481—Chapter 505.

This rule is intended to implement Iowa Code chapter 272C.

ITEM 16. Adopt the following **new**645—Chapter 305:

CHAPTER 305
ADOPTION OF UNIFORM AND MODEL RULES

645—305.1(17A,272C) Board of speech pathology and audiology adoption of uniform and model rules. The board hereby adopts by reference the following:

305.1(1) to **305.1(9)** Reserved.

305.1(10) Model rules for licensee review committee, 481—Chapter 505.

This rule is intended to implement Iowa Code chapter 272C.

ITEM 17. Adopt the following new645—Chapter 330:

CHAPTER 330
ADOPTION OF UNIFORM AND MODEL RULES

645—330.1(17A,272C) Board of physician assistants adoption of uniform and model rules. The board hereby adopts by reference the following:

330.1(1) to **330.1(9)** Reserved.

330.1(10) Model rules for licensee review committee, 481—Chapter 505.

This rule is intended to implement Iowa Code chapter 272C.

ITEM 18. Adopt the following new645—Chapter 354:

CHAPTER 354
ADOPTION OF UNIFORM AND MODEL RULES

645—354.1(17A,272C) Board of athletic training adoption of uniform and model rules. The board hereby adopts by reference the following:

354.1(1) to **354.1(9)** Reserved.

354.1(10) Model rules for licensee review committee, 481—Chapter 505.

This rule is intended to implement Iowa Code chapter 272C.

ITEM 19. Adopt the following new645—Chapter 364:

CHAPTER 364
ADOPTION OF UNIFORM AND MODEL RULES

645—364.1(17A,272C) Board of sign language interpreters and transliterators adoption of uniform and model rules. The board hereby adopts by reference the following:

364.1(1) to **364.1(9)** Reserved.

364.1(10) Model rules for licensee review committee, 481—Chapter 505.

This rule is intended to implement Iowa Code chapter 272C.

[Filed 7/3/24, effective 8/28/24]

[Published 7/24/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/24.

ARC 8149C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Rulemaking related to prescribing psychologists

The Board of Psychology hereby rescinds Chapter 244, “Prescribing Psychologists,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 147.36, 147.76, 154B.13, 154B.14, 272C.3 and 272C.4.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapters 17A, 147, 154B and 272C.

Purpose and Summary

This chapter lays out the minimum standards for education and practice of psychologists with a conditional prescribing certificate and psychologists with a prescribing certificate. Members of the public, licensees, training programs, and employers benefit from having a clear understanding of the minimum standards for appropriate training and practice in the state. Requirements include the application process, minimum educational qualifications, and supervision requirements.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on January 24, 2024, as **ARC 7292C**. A public hearing was held on the following date(s):

- February 13, 2024
- February 14, 2024

No one attended the public hearings.

A Board member noted instances in the rules in the Notice that were not updated to remove a requirement for a physician to be board-certified or specialized. It also was noted that a definition of “primary care provider” should be added, and additional guidance should be given in rules that detail types of practices for primary care providers.

The definition of “primary care physician” was modified to reflect the change to “primary care provider.” A primary care provider can be a physician, a registered nurse practitioner, or a physician assistant. The definition for “collaborating physician” was updated to replace “specialize in” with “engage in the practice of”, and the definition of “training physician” was updated to replace “be board-certified in” with “engage in the practice of”. Subrule 244.7(1) was updated with a list of appropriate practice types.

Nonsubstantive and grammatical changes from the Notice also have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Board on June 14, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 645—Chapter 18.

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on August 28, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 645—Chapter 244 and adopt the following **new** chapter in lieu thereof:

CHAPTER 244
PRESCRIBING PSYCHOLOGISTS

645—244.1(148,154B) Definitions—joint rule.

“*APA*” means the American Psychological Association.

“*Applicant*” means a psychologist applying for a conditional prescription certificate.

“*Board*” means the Iowa board of psychology.

“*Board of medicine*” means the Iowa board of medicine.

“*Collaborating physician*” means a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa, who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician's normal course of practice, and who serves as a resource for a prescribing psychologist pursuant to a collaborative practice agreement. A collaborating physician shall engage in the practice of family medicine, internal medicine, neurology, pediatrics, or psychiatry.

“*Conditional prescribing psychologist*” means a person licensed to practice psychology in Iowa who holds an active conditional prescription certificate. This term does not include prescribing psychologists.

“*Conditional prescription certificate*” means a certificate issued by the board to a psychologist that permits the psychologist to prescribe psychotropic medication under the supervision of a supervising physician.

“*CSA registration*” means a Controlled Substance Act registration issued by the Iowa board of pharmacy authorizing a psychologist to possess and prescribe controlled substances.

“*DEA registration*” means a mid-level practitioner registration with the Drug Enforcement Administration authorizing a psychologist to possess and prescribe controlled substances.

“*Joint rule*” means a rule adopted by agreement of the board of psychology and the board of medicine through the joint rulemaking process.

“*Mental disorder*” means a disorder that is defined by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR) published by the American Psychiatric Association March 2022, or contained within the mental and behavioral disorders chapter of the most recent version of the International Classification of Diseases, 11th revision, effective January 1, 2022.

“*Prescribing psychologist*” means a person licensed to practice psychology in Iowa who holds an active prescription certificate. This term does not include conditional prescribing psychologists.

“*Prescription certificate*” means a certificate issued by the board to a psychologist that permits the psychologist to prescribe psychotropic medication.

“*Primary care provider*” means a person who engages in the practice of family medicine, internal medicine, neurology, pediatrics, obstetrics and gynecology, or psychiatry and oversees a patient's general medical care, consistent with Iowa Code section 280A.1.

“*Psychologist*” means a person licensed to practice psychology in Iowa.

“*Psychotropic medication*” means a medication that shall not be dispensed or administered without a prescription and that has been explicitly approved by the federal Food and Drug Administration for the

treatment of a mental disorder, as defined by the most recent version of the Diagnostic and Statistical Manual of Mental Disorders (DSM-5-TR) published by the American Psychiatric Association March 2022, or the most recent version of the International Classification of Diseases, 11th revision, effective January 1, 2022. “Psychotropic medication” does not include narcotics.

“*Supervising physician*” means a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa, who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician’s normal course of practice, and who supervises a conditional prescribing psychologist. A supervising physician shall specialize in family medicine, internal medicine, neurology, pediatrics, or psychiatry.

“*Training director*” means an employee of the psychopharmacology training program who is primarily responsible for directing the training program.

“*Training physician*” means a person who is licensed to practice medicine and surgery or osteopathic medicine in Iowa, who regularly prescribes psychotropic medications for the treatment of mental disorders as part of the physician’s normal course of practice, and who provides training to a psychologist as part of the clinical experience and practicum described in rule 645—244.3(148,154B). A training physician shall engage in the practice of family medicine, internal medicine, neurology, pediatrics, or psychiatry. A training physician shall be approved by the psychopharmacology training program.

645—244.2(154B) Conditional prescription certificate. A conditional prescription certificate shall authorize a psychologist to prescribe psychotropic medications to patients with mental disorders under supervision in accordance with the requirements of this chapter.

244.2(1) Application. Unless a basis for denial exists in accordance with rule 645—244.9(154B), the board shall issue a conditional prescription certificate to an applicant who satisfies the following requirements:

a. Holds an active license to practice psychology in Iowa and an active health service provider certification issued by the board. Both the license and the health service provider certification must be in good standing.

b. Meets the educational requirements set forth in rule 645—244.3(148,154B). Official academic transcripts shall be sent directly from the school to the board.

c. Submits a supervision plan in accordance with subrule 244.4(1).

d. Possesses malpractice insurance that covers the prescribing of psychotropic medications.

e. Submits a completed application and a nonrefundable application fee of \$270.

244.2(2) Term. A conditional prescription certificate shall be valid for a period of four years from the date of issuance. The board shall not renew a conditional prescription certificate unless a conditional prescribing psychologist cannot complete the requirements of supervised practice within four years due to extenuating circumstances. A conditional prescribing psychologist may request an extension of a conditional prescription certificate when extenuating circumstances exist to provide additional time for the requirements of supervised practice to be met.

645—244.3(148,154B) Educational requirements for conditional prescription certificate—joint rule. An applicant for a conditional prescription certificate shall have completed a program of study designated by the APA as a program for the psychopharmacology training of postdoctoral psychologists. The program must have included didactic instruction, a clinical experience, and a practicum satisfying the requirements of this rule. A minimum of 40 hours of basic training on clinical assessment skills shall be included as part of the program’s didactic instruction.

244.3(1) Degree. An applicant shall possess a postdoctoral master of science degree in clinical psychopharmacology from a program designated by the APA as a program for the psychopharmacology training of postdoctoral psychologists. The degree program must be a minimum of 30 credit hours, not including the practicum, and shall include coursework in basic science; neuroscience; clinical medicine; pathological basis of disease; clinical pharmacology; psychopharmacology; and professional, ethical and

legal issues. A minimum of one-third of the coursework must be completed in a live interactive format. A program must be designated by the APA at the time the degree is conferred.

244.3(2) Clinical experience. An applicant shall have completed a clinical experience in accordance with the requirements of this subrule. During the clinical experience, a psychologist shall learn clinical assessment techniques and pathophysiology through direct observation and hands-on training with a training physician. During the clinical experience, a psychologist shall become competent in health history interviews, physical examinations, and neurological examinations with a medically diverse patient population. The clinical experience must be associated with the psychopharmacology training program from which the psychologist obtained the postdoctoral master of science degree in clinical psychopharmacology.

a. Scope. At the beginning of the clinical experience, the psychologist shall directly observe the training physician performing clinical assessments of patients. After the training physician determines the psychologist has gained sufficient knowledge, the clinical experience shall transition to the psychologist's performance of clinical assessments of patients under the direct observation of the training physician. After the training physician determines the psychologist has gained sufficient knowledge and experience, the psychologist may perform clinical assessments of patients without being directly observed by the training physician, provided that the training physician is on site at all times when the psychologist is with patients and is reviewing all medical records. A psychologist and a training physician shall have ongoing discussions regarding the psychologist's clinical assessment skills and progress in the clinical experience.

b. Minimum experience. The clinical experience shall consist of a minimum of 600 patient encounters that shall be completed by the end of the practicum.

c. Conflict of interest. A training physician shall not be an employee of the psychologist or otherwise have a conflict of interest that could affect the training physician's ability to impartially evaluate the psychologist's performance. A psychologist may utilize more than one training physician.

d. Milestones. To satisfactorily complete the clinical experience, a psychologist shall demonstrate competency in each of the following:

(1) Perform a health history interview to obtain pertinent information regarding a patient's chief complaint, history of the present illness, past medical and surgical history, family history, allergies, medications, and psychosocial history. The psychologist shall perform a review of systems to elicit a health history and shall appropriately document the health history.

(2) Perform a physical examination in a logical sequence, ensuring appropriate positioning of the patient, proper patient draping, and proper application of the principles of asepsis throughout the examination. The psychologist shall verbalize and assess the components of a general survey and be able to accurately assess all of the following: vital signs, including pulse, respiration, and blood pressure; skin, hair and nails; head, face and neck; eyes; ears, nose, mouth and throat; thorax, lungs and axillae; heart; peripheral vascular system; abdomen; and musculoskeletal system. The psychologist shall be proficient in utilizing any equipment needed to conduct a physical examination.

(3) Complete a neurological examination demonstrating knowledge of the history related to the neurological system and the ability to assess the following: mental status, cranial nerves, motor system, sensory system, and reflexes. The psychologist shall differentiate normal laboratory values from abnormal laboratory values and correlate abnormal laboratory values with impaired physiological systems. The psychologist shall identify adverse drug reactions and identify laboratory data and physical signs indicating an adverse drug reaction.

e. Informed consent. At the initial contact, the psychologist shall inform the patient, or the patient's legal guardian when appropriate, of the psychologist's training role in the clinical experience. The psychologist shall provide sufficient information regarding the expectations and requirements of the clinical experience to obtain informed consent and appropriate releases. Upon request, the psychologist shall provide additional information regarding the psychologist's education, training, or experience.

f. Training documentation. The psychologist and the training director shall maintain documentation accounting for all clinical experience patient encounters, including the dates, times, and locations of all clinical experience patient encounters, and documentation of completion of the

milestones defined in these rules. The applicant shall provide additional documentation to the board upon request.

g. Certification. The training physician(s) and the training director shall certify on forms provided by the board that the applicant has successfully completed the minimum number of clinical experience patient encounters required and demonstrated competence in clinical assessment techniques and pathophysiology through completion of the milestones defined in these rules.

244.3(3) Practicum. An applicant shall have completed a practicum in accordance with the requirements of this subrule. During the practicum, a psychologist shall develop competencies in evaluating and treating patients with mental disorders through pharmacological intervention via observation and active participation. The practicum must be associated with the psychopharmacology training program from which the applicant obtained the postdoctoral master of science degree in clinical psychopharmacology and must be completed in a period of time not less than six months and not more than three years.

a. Scope. At the beginning of the practicum, the psychologist shall directly observe the training physician evaluating and treating patients with mental disorders. After the training physician determines the psychologist has gained sufficient knowledge, the practicum shall transition to the psychologist's evaluation and treatment of patients under the direct observation of the training physician. After the training physician determines the psychologist has gained sufficient knowledge and experience, the psychologist may evaluate and treat patients without being directly observed by the training physician, provided that the training physician is on site at all times when the psychologist is with patients, has personal contact with the patient at each visit, and is reviewing all pertinent medical records. During the practicum, the training physician shall make all final treatment decisions, with consultation from the psychologist prior to making a final determination regarding the psychopharmacological treatment of a patient.

b. Minimum number of hours. A practicum shall consist of a minimum of 400 hours. Only hours spent face to face evaluating and treating patients with mental disorders and hours spent discussing treatment plans with a training physician may count as practicum hours. Time spent by the psychologist providing services that are within the scope of practice of a licensed psychologist, such as psychological examinations and psychotherapy, shall not be counted as practicum hours.

c. Minimum number of patients. A psychologist shall see a minimum of 100 individual patients throughout the practicum. A patient can be counted toward this requirement if the patient has a diagnosed mental disorder and pharmacological intervention is considered as a treatment option, even if a decision is made not to prescribe a psychotropic medication to the patient. Over the course of the practicum, the psychologist shall observe, evaluate, and treat patients encompassing a range of ages and a variety of psychiatric diagnoses.

d. Settings. At least 100 hours of the 400 hours must be completed in a psychiatric setting. At least 100 hours of the 400 hours must be completed in a primary care or community mental health setting.

e. Conflict of interest. A training physician shall not be an employee of the psychologist or otherwise have a conflict of interest that could affect the training physician's ability to impartially evaluate the psychologist's performance. A psychologist may utilize more than one training physician.

f. Milestones. To successfully complete the practicum, a psychologist shall demonstrate competency in each of the following:

(1) Physical examination and mental status examination. The psychologist shall perform comprehensive and focused physical examinations and mental status evaluations, demonstrate proper use of instruments, and recognize variation associated with developmental stages and diversity.

(2) Review of systems. The psychologist shall integrate information learned from patient reports, signs, symptoms, and a review of each major body system, recognizing normal developmental variations.

(3) Medical history interview. The psychologist shall systematically conduct a patient clinical interview, producing a patient's medical, surgical, psychiatric, and medication history, as well as a family medical and psychiatric history, and be able to communicate the findings in written and verbal form.

(4) Assessment indications and interpretation. The psychologist shall order and interpret appropriate tests (e.g., psychometric, laboratory, and radiological) for the purpose of making a differential diagnosis and monitoring therapeutic and adverse effects of treatment.

(5) Differential diagnosis. The psychologist shall determine primary and alternate diagnoses using established diagnostic criteria.

(6) Integrated treatment planning. The psychologist shall identify and select, using all available data, the most appropriate treatment alternatives, including medication, psychosocial, and combined treatments, and sequence treatment within the larger biopsychosocial context.

(7) Consultation and collaboration. The psychologist shall understand the parameters of the role of a prescribing psychologist and work with other professionals, including a patient's primary care physician, in an advisory or collaborative manner to effectively treat a patient.

(8) Treatment management. The psychologist shall apply, monitor, and modify as needed the treatment of a patient and learn to write valid and complete prescriptions.

(9) Medical documentation. The psychologist shall demonstrate appropriate medical documentation for the patient-psychologist interaction to include subjective and objective assessment; mental status, physical examination findings, or both; formulation; diagnostic impression; and comprehensive treatment plan.

g. Informed consent. At the initial contact, the psychologist shall inform the patient, or the patient's legal guardian when appropriate, of the psychologist's training role in the practicum. The psychologist shall provide sufficient information regarding the expectations and requirements of the practicum to obtain informed consent and appropriate releases. Upon request, the psychologist shall provide additional information regarding the psychologist's education, training, or experience.

h. Training documentation. The psychologist and the training director shall maintain documentation regarding all patients observed, evaluated, and treated by the psychologist as part of the practicum. The documentation shall clearly identify the training physician for each patient. The psychologist and the training director shall maintain documentation of all practicum hours, including the dates, times, and locations of all practicum hours, and documentation of completion of the milestones defined in these rules. The applicant shall provide additional documentation to the board upon request.

i. Certification. The training physician(s) and the training director shall certify on forms provided by the board that the psychologist has successfully completed the minimum number of practicum hours, treated the minimum number of patients, and demonstrated competence in the evaluation and treatment of patients with mental disorders through pharmacological intervention through completion of the milestones defined in these rules.

244.3(4) Examination. A psychologist shall pass the Psychopharmacology Examination for Psychologists (PEP) administered by the APA Practice Organization's College of Professional Psychology or by the Association of State and Provincial Psychology Boards. The passing score utilized by the board shall be the passing score recommended by the test administrator. The examination score shall be sent directly from the testing service to the board.

645—244.4(148,154B) Supervised practice as a conditional prescribing psychologist—joint rule. A conditional prescribing psychologist shall complete a minimum of two years of supervised practice in prescribing psychotropic medications to patients with mental disorders in accordance with this rule to be eligible to apply for a prescription certificate.

244.4(1) Supervision plan. Prior to issuing a conditional prescription certificate, the board shall review and approve the proposed supervision plan.

a. The proposed supervision plan must include the following:

(1) Conditional prescribing psychologist information. The plan must include the name, license number, address, telephone number, and email address of the supervisee.

(2) Supervising physician information. The plan must include the name, license number, date of licensure, area of specialization, address, telephone number, and email address of each supervising physician.

(3) Primary supervising physician. The plan must include a designation of the primary supervising physician.

(4) Period of supervision. The plan must include the beginning date of the supervision plan and estimated date of completion.

(5) Locations and settings. The plan must include a description of the locations and settings where and with whom supervision will occur.

(6) Scope of practice. The plan must include a description of the scope of practice of the conditional prescribing psychologist, including any limitations on the types of psychotropic medications that may be prescribed and the patient populations to which a prescription may be issued and including the expectations and responsibilities of the supervising physician.

(7) Release of information. The plan must include a provision requiring the conditional prescribing psychologist to obtain a release of information from all patients who are considered for psychopharmacological intervention, authorizing the conditional prescribing psychologist to share the patient's health information with the supervising physician.

(8) Consultation between the conditional prescribing psychologist and the supervising physician. The plan must include a provision requiring that the conditional prescribing psychologist consult with the supervising physician on a regular basis regarding a patient's psychotropic treatment plan and any potential complications. A conditional prescribing psychologist shall not prescribe a new psychotropic medication, discontinue a psychotropic medication, or change the dosage of a psychotropic medication if the supervising physician objects on the basis of a contraindication.

(9) Consultation between the supervising physician and the primary care physician. The plan must include a provision requiring that the supervising physician consult with the patient's primary care physician on a regular basis regarding the patient's psychotropic treatment plan and any potential complications.

(10) Termination of the supervision plan. The plan must include a description of how the supervision plan may be terminated and the process for notifying affected patients.

(11) Signatures. The plan must include signatures of the psychologist and all supervising physicians.

b. A conditional prescribing psychologist shall inform the board of any amendments to the conditional prescribing psychologist's supervision plan, including the addition of any supervising physicians, within 30 days of the change. Amendments to a supervision plan are subject to board approval.

c. The board shall transmit all approved supervision plans and approved amendments to the board of medicine.

244.4(2) *Responsibilities of a supervising physician.* A supervising physician shall provide supervision in accordance with rules established by the board of medicine.

244.4(3) *Responsibilities of a conditional prescribing psychologist.* At the initial contact, a conditional prescribing psychologist shall inform a patient, or a patient's legal guardian when appropriate, that the conditional prescribing psychologist is practicing under the supervision of a physician for purposes of prescribing psychotropic medication and shall provide the name of the supervising physician. A conditional prescribing psychologist shall provide sufficient information regarding the supervision requirements to obtain informed consent and appropriate releases. Upon request, a conditional prescribing psychologist shall provide additional information regarding the conditional prescribing psychologist's education, training, or experience with respect to prescribing psychotropic medications.

244.4(4) *Specialization.* A conditional prescribing psychologist shall complete the following training during the supervised practice period to be eligible to prescribe psychotropic medications to the respective population as a prescribing psychologist:

a. Children. To prescribe to patients who are less than 17 years of age, a conditional prescribing psychologist shall complete at least one year of the required two years of supervised practice in either:

- (1) A pediatric practice,
- (2) A child and adolescent practice, or

(3) A general practice provided the conditional prescribing psychologist treats a minimum of 50 patients who are less than 17 years of age.

b. Elderly patients. To prescribe to patients who are over 65 years of age, a conditional prescribing psychologist shall complete at least one year of the required two years of supervised practice in either:

- (1) A geriatric practice, or
- (2) A general practice with patients across the lifespan including patients who are over 65 years of age.

c. Serious medical conditions. To prescribe to patients with serious medical conditions including but not limited to heart disease, cancer, stroke, seizures, or comorbid psychological conditions, or patients with developmental disabilities and intellectual disabilities, a conditional prescribing psychologist shall complete at least one year prescribing psychotropic medications to patients with serious medical conditions.

244.4(5) Completion of supervised practice. A conditional prescribing psychologist shall see a minimum of 300 patients over a minimum of two years to complete the supervised practice period, provided each of the 300 patients has a diagnosed mental disorder and pharmacological intervention is considered as a treatment option, even if a decision is made not to prescribe a psychotropic medication to the patient. A conditional prescribing psychologist shall treat a minimum of 100 patients with psychotropic medication throughout the supervised practice period.

a. At the conclusion of the supervised practice period, a primary supervising physician shall certify the following:

- (1) Supervision was provided in accordance with rules established by the board of medicine.
- (2) A conditional prescribing psychologist has successfully completed two years of supervised practice, considered at least 300 patients for psychopharmacological intervention, and treated at least 100 patients with psychotropic medications.

(3) A conditional prescribing psychologist intending to specialize in the psychological care of children or elderly persons, or persons with serious medical conditions, has completed the requirements of subrule 244.4(4).

(4) A conditional prescribing psychologist has successfully completed the supervised practice period and demonstrated competence in psychopharmacology by demonstrating competency in the milestones listed in paragraph 244.3(3) “*f*” sufficient to obtain a prescription certificate.

b. If a conditional prescribing psychologist is unable to successfully complete the supervised practice period prior to the expiration of the conditional prescription certificate, the conditional prescribing psychologist may request an extension of the conditional prescription certificate provided that the conditional prescribing psychologist can demonstrate that the conditional prescribing psychologist is likely to successfully complete the supervised practice within the extended time requested. Any requests for extension must be submitted to and approved by both the board and the board of medicine.

645—244.5(154B) Prescription certificate. A prescription certificate shall authorize a psychologist to prescribe psychotropic medications to patients with mental disorders in accordance with the requirements of this chapter.

244.5(1) Application. Unless a basis for denial exists in accordance with rule 645—244.9(154B), the board shall issue a prescription certificate to a conditional prescribing psychologist who satisfies the following requirements:

- a.* Holds an active license to practice psychology in Iowa, an active health service provider certification issued by the board, and an active conditional prescription certificate. The license, certification, and certificate must all be in good standing.
- b.* Submits documentation regarding successful completion of the supervised practice period.
- c.* Submits a collaborative practice agreement in accordance with rule 645—244.8(148,154B).
- d.* Possesses malpractice insurance that covers the prescribing of psychotropic medications.
- e.* Submits a completed application and a nonrefundable application fee of \$60.

244.5(2) *Initial term and renewal.* An initial prescription certificate shall be valid through the current expiration date of the applicant's psychologist license. Thereafter, a prescription certificate shall be renewed biennially concurrent with the renewal of the psychologist license. A prescribing psychologist may renew a prescription certificate by submitting a completed renewal application and a nonrefundable application fee of \$60. A prescribing psychologist is responsible for renewing the prescription certificate prior to its expiration.

244.5(3) *Continuing education required.* A prescribing psychologist shall complete a minimum of 20 hours of continuing education in psychopharmacology each year. A total of 40 hours of continuing education in psychopharmacology is required to renew a prescription certificate. These hours are separate from, and in addition to, the continuing education hours needed to renew a psychologist license pursuant to 645—Chapter 241. If a psychologist specializes in treating children, a minimum of 10 hours of continuing education in psychopharmacology each year, for a total of 20 hours of continuing education per renewal period, must be directly related to prescribing psychotropic medication to children.

244.5(4) *Late renewal.* A prescription certificate shall become late when it has not been renewed prior to the expiration date. To renew a late prescription certificate, a prescribing psychologist shall complete the renewal requirements and submit a late fee of \$60 within 30 days following the prescription certificate expiration date. A prescribing psychologist who fails to renew a prescription certificate within 30 days following the prescription certificate expiration date shall have an inactive prescription certificate. A psychologist whose prescription certificate is inactive continues to hold the privilege of certification in Iowa but may not prescribe psychotropic medications until the prescription certificate is reactivated.

244.5(5) *Reactivation.* To apply for reactivation of an inactive prescription certificate, a psychologist shall submit a completed reactivation application, a nonrefundable fee of \$60, and documentation of a minimum of 40 hours of continuing education in psychopharmacology taken within the preceding two years. If a prescription certificate has been inactive for more than five years, a psychologist shall demonstrate competence in psychopharmacology through one of the following means:

- a. Practiced as a prescribing psychologist in another jurisdiction in the preceding two years.
- b. Completed a period of supervised practice for a minimum of 12 months. The board may issue a conditional prescription certificate to complete a supervised practice period for purposes of prescription certificate reactivation.

645—244.6(148,154B) Prescribing—joint rule. This rule applies to both conditional prescribing psychologists and prescribing psychologists. A psychologist shall comply with all prescription requirements described in 657—subrule 8.19(1). The following limits apply to a psychologist's prescriptive authority:

1. A psychologist shall only prescribe psychotropic medications for the treatment of mental disorders.
2. A psychologist shall only prescribe psychotropic medications in situations where the psychologist has adequate education and training to safely prescribe.
3. A prescription shall identify the prescriber as a "psychologist certified to prescribe" and shall include the Iowa license number of the psychologist.
4. A prescription issued by a conditional prescribing psychologist shall contain the name of the supervising physician overseeing the care of the patient.
5. A psychologist shall not delegate prescriptive authority to any other person.
6. A psychologist is prohibited from prescribing narcotics as defined in Iowa Code section 124.101.
7. A psychologist shall maintain an active DEA registration and an active CSA registration in order to dispense, prescribe, or administer controlled substances.
8. A psychologist shall not self-prescribe nor prescribe to any person who is a member of the psychologist's immediate family or household.

9. Before prescribing a psychotropic medication that is classified as a controlled substance, a psychologist shall check the patient's prescriptive profile using the Iowa prescription monitoring program.

10. To prescribe to a patient who is pregnant or lactating, a psychologist shall consult with the patient's obstetrician-gynecologist or the physician managing the patient's pregnancy or postpartum care regarding all prescribing decisions. A psychologist shall not prescribe a psychotropic medication to a patient if the patient's obstetrician-gynecologist or the physician managing care objects on the basis of a contraindication.

11. To prescribe to a patient who has a serious medical condition, including but not limited to heart disease, kidney disease, liver disease, cancer, stroke, seizures, or comorbid psychological conditions, or to a patient who has a developmental or intellectual disability, a psychologist shall consult with the physician who is managing the comorbid condition for that patient regarding all prescribing decisions. A psychologist shall not prescribe a psychotropic medication if the patient's physician objects on the basis of a contraindication.

12. A psychologist shall not prescribe a new psychotropic medication, discontinue a psychotropic medication, or change the dosage of a psychotropic medication if the supervising physician or collaborating primary care provider objects on the basis of a contraindication.

645—244.7(148,154B) Consultation with primary care providers—joint rule. This rule applies to both conditional prescribing psychologists and prescribing psychologists. A psychologist shall maintain a cooperative relationship with the primary care provider who oversees a patient's general medical care to ensure that necessary medical examinations are conducted, the psychotropic medication is appropriate for the patient's medical conditions, and significant changes in the patient's medical or psychological condition are discussed.

244.7(1) Requirement for a primary care provider. A patient must have a designated primary care provider who engages in the practice of family medicine, internal medicine, neurology, pediatrics, obstetrics and gynecology, or psychiatry in order for a psychologist to have the ability to prescribe psychotropic medications to the patient. If a patient does not have a designated primary care provider, a psychologist shall refer the patient to a primary care provider prior to prescribing psychotropic medications to the patient. A psychologist shall not prescribe psychotropic medications to a patient until the patient has established care with a primary care provider.

244.7(2) Requirement for a release. A psychologist shall obtain a release of information from the patient, or the patient's legal guardian when appropriate, authorizing the sharing of the patient's health information between the psychologist and the patient's primary care provider. A psychologist shall not prescribe psychotropic medications to a patient who refuses to sign a release.

244.7(3) Cooperation and consultation with primary care provider. A psychologist shall contact each patient's primary care provider on at least a quarterly basis and shall contact the primary care provider to relay information regarding the care of a patient whenever the following occur:

a. A psychologist is considering adding a new psychotropic medication to a patient's medication regimen. A psychologist shall not prescribe a new psychotropic medication if the patient's primary care provider objects on the basis of a contraindication.

b. A psychologist is discontinuing or changing the dosage of a psychotropic medication.

c. A patient experiences adverse effects from any medication prescribed by the psychologist that may be related to the patient's medical condition.

d. A psychologist receives the results of laboratory tests related to the medical care of a patient.

e. A psychologist notes a change in a patient's mental condition that may affect the patient's medical treatment.

645—244.8(148,154B) Collaborative practice—joint rule.

244.8(1) A prescribing psychologist shall have one or more collaborating physicians at all times, as evidenced by a current collaborative practice agreement. Prior to executing a collaborative practice agreement, a prescribing psychologist and a collaborating physician shall review and discuss each

other's relevant education, training, experience, and competencies to determine whether a collaborative practice is appropriate and to facilitate drafting a suitable collaborative practice agreement. A collaborative relationship between a prescribing psychologist and a collaborating physician shall ensure patient safety and optimal clinical outcomes. Collaboration may be done in person or via electronic communication in accordance with these rules. A physician shall not serve as a collaborating physician for more than two prescribing psychologists at one time. A prescribing psychologist shall not prescribe without a current written collaborative practice agreement with a collaborating physician in place. All collaborative relationships shall be reviewed and evaluated on an annual basis to ensure that the prescribing psychologist is competent to safely prescribe psychotropic medications to patients and that the collaborating physician is providing appropriate feedback to the prescribing psychologist. A collaborative practice agreement shall establish the parameters of the collaborative practice that are mutually agreed upon by the prescribing psychologist and the collaborating physician and shall be reviewed on an annual basis.

244.8(2) A collaborative practice agreement shall include the following:

a. Prescribing psychologist information. The name, license number, DEA registration number, CSA registration number, address, telephone number, email address, and practice locations of the prescribing psychologist.

b. Collaborating physician information. The name, license number, DEA registration number, CSA registration number, address, telephone number, email address, and practice locations of the collaborating physician.

c. Time period. The time period covered by the agreement.

d. Locations and settings. The locations and settings where collaborative practice will occur.

e. Collaboration. A provision indicating that the collaborating physician and prescribing psychologist shall ensure that the collaborating physician is available for timely collaboration with a prescribing psychologist, either in person or via electronic communication, in accordance with these rules.

f. Scope of practice. The scope of practice agreed upon by the collaborating physician and the prescribing psychologist, as it relates to the prescribing psychologist's prescribing of psychotropic medications, including provisions to ensure that the prescribing psychologist's practice complies with all provisions of these rules.

g. Clinical protocols, practice guidelines, and care plans. Clinical protocols, practice guidelines, and care plans relevant to the scope of practice authorized.

h. Methods of communication. A description of how a prescribing psychologist and a collaborating physician may contact each other for consultation.

i. Limitations on psychotropic medications. A description of any limitations on the range of psychotropic medications the prescribing psychologist may prescribe. The collaborative practice agreement shall also include a provision indicating that the collaborating physician and prescribing psychologist shall ensure that the prescribing psychologist only prescribes psychotropic medications that are consistent with the prescribing psychologist's education, training, experience, and competence.

j. Limitations on patient populations. A description of any limitations on the types of populations that the prescribing psychologist may treat with psychotropic medications. The collaborative practice agreement shall also include a provision indicating that the collaborating physician and prescribing psychologist shall ensure that the prescribing psychologist only provides psychopharmacology services to patient populations that are within the prescribing psychologist's education, training, experience, and competence.

k. Release of information. A provision requiring the prescribing psychologist to obtain a release of information from all patients who are considered for psychopharmacological intervention, authorizing the prescribing psychologist to share the patient's health information with the collaborating physician.

l. Chart review. A provision indicating that the collaborating physician and prescribing psychologist shall ensure that the collaborative physician personally reviews and documents review of at least 10 percent of the prescribing psychologist's patient charts on a quarterly basis in each of the following categories:

- (1) Juvenile patients,
- (2) Pregnant or lactating patients,
- (3) Elderly patients,
- (4) Patients with serious medical conditions, and
- (5) All other patients.

m. Annual review. A provision requiring an annual review and evaluation of the collaborative relationship and the collaborative practice agreement.

n. Consultation between the prescribing psychologist and the collaborating physician. A provision requiring that the prescribing psychologist consult with the collaborating physician on a regular basis regarding the patient's psychotropic treatment plan and any potential complications. A prescribing psychologist shall not prescribe a new psychotropic medication, discontinue a psychotropic medication, or change the dosage of a psychotropic medication if the collaborating physician objects on the basis of a contraindication.

o. Consultation between the collaborating physician and the primary care provider. A provision requiring that the collaborating physician consult with the patient's primary care provider on a regular basis regarding the patient's psychotropic treatment plan and any potential complications.

p. Termination. A provision describing how the agreement can be terminated and the process for notifying affected patients if there will be an interruption in services.

q. Signatures. Signatures of the prescribing psychologist and all collaborating physicians.

645—244.9(154B) Grounds for discipline. The board may deny, suspend, revoke, or impose other discipline as outlined in 645—Chapter 13 against a psychologist who holds a conditional prescription certificate or prescription certificate for any of the following:

244.9(1) Violating any of the grounds for discipline set forth in rule 645—242.2(147,272C).

244.9(2) The inability to safely prescribe psychotropic medications.

244.9(3) Prescribing medications in violation of rule 645—244.6(148,154B).

244.9(4) Repeatedly failing to cooperate and collaborate with primary care physicians.

244.9(5) Prescribing psychotropic medications without a current written collaborative practice agreement.

244.9(6) Failing to maintain malpractice insurance that covers the prescribing of psychotropic medications.

244.9(7) Practicing outside the scope of a collaborative practice agreement.

244.9(8) Prescribing medications while the conditional prescription certificate or prescription certificate is inactive, or prescribing controlled substances while the DEA registration or CSA registration is not current.

244.9(9) Having a conditional prescription certificate or prescription certificate disciplined by the licensing authority of another state.

244.9(10) Having a license or health service provider certification disciplined by the board or the licensing authority of another state.

645—244.10(154B) List of psychologists. The board shall maintain a list of all current conditional prescribing psychologists and prescribing psychologists. The list shall be transmitted annually to the board of medicine.

244.10(1) Information. The list shall include the name of the psychologist, license number, license expiration date, expiration date of the conditional prescription certificate or prescription certificate, and practice locations.

244.10(2) Additions and deletions. When a psychologist is added or removed from the list, the board shall notify the board of medicine of the addition or deletion.

645—244.11(148,154B) Complaints—joint rule. Any complaint received by the board alleging a violation of this chapter shall be forwarded to the board of medicine. Any complaint received by the board of medicine alleging a violation of this chapter shall be forwarded to the board.

645—244.12(148,154B) Joint waiver—joint rule. Any rule identified as a joint rule may only be waived upon approval by both the board and the board of medicine.

645—244.13(148,154B) Amendment—joint rule. Any rule identified as a joint rule may only be amended by agreement of the board and board of medicine through a joint rulemaking process.

These rules are intended to implement Iowa Code chapters 148 and 154B.

[Filed 6/25/24, effective 8/28/24]

[Published 7/24/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/24.

ARC 8150C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rulemaking related to sales and use tax permits

The Revenue Department hereby rescinds Chapter 201, "Sales and Use Tax Permits," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14, 423.25, 423.36 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 252J.7, 421.17, 423.2, 423.36 and 423.40.

Purpose and Summary

The purpose of this rulemaking is to rescind Chapter 201 and adopt a new Chapter 201 related to sales and use tax permits. Chapter 201 describes the requirements surrounding sales and use tax permits. The rules in this chapter are intended to help the public understand how to obtain a permit and what is required to obtain one.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7171C**. A public hearing was held on the following date(s):

- January 3, 2024

Public comment was received. The Iowa Taxpayers' Association provided comments both orally at the public hearing and via written comment through Iowa Taxpayers' Association President and CEO Thomas R. Sands. These comments are summarized as follows:

1. The Department proposed amending rule 701—201.5(423) to allow the transfer of sales tax permits upon the sale of certain businesses. The rule should include the information needed by the Department to do so.
2. Proposed rule 701—201.6(423) requires that businesses that change location cancel an existing sales tax permit and apply for a new sales tax permit. However, Iowa Code section 423.36(4)"a" allows a business to retain an existing sales tax permit when relocating within the same county.

In considering the comment on proposed rule 701—201.5(423), the Department determined that allowing the transfer of sales tax permits upon the sale of a business is not administratively feasible. Since publication of the Notice, rule 701—201.5(423) has been revised to disallow such a transfer.

Rule 701—201.6(423) has also been revised to allow businesses to change location within a county without canceling a sales tax permit and applying for a new one.

Adoption of Rulemaking

This rulemaking was adopted by the Department on June 24, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on August 28, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 201 and adopt the following **new** chapter in lieu thereof:

CHAPTER 201
SALES AND USE TAX PERMITS

701—201.1(423) Permit required.

201.1(1) Permit requirement. A person shall not make taxable sales of tangible property, specified digital products, or services until the person has received a permit from the department.

201.1(2) Purchases subject to use tax. A person liable for use tax under Iowa Code section 423.34 is required to file a sales and use tax return with the department, reporting and remitting use tax on all property or taxable service purchased for use in Iowa during the tax period covered by the return, unless the seller from whom the purchase is made is registered with the department and has collected sales or use tax on the purchase.

201.1(3) Sales subject to use tax. A remote seller as defined in rule 701—207.1(423) making sales into Iowa or sales of tangible personal property, specified digital products, or taxable services without meeting or exceeding the sales threshold as defined in rule 701—207.1(423) may register for a sales and use tax permit to collect use tax on such sales. The person collecting use tax on these sales shall report these sales as sales subject to use tax on the sales and use tax return. Rule 701—207.6(423) contains additional information about sales tax collection obligations for out-of-state persons.

201.1(4) Infrequent purchases. A person who does not regularly make purchases subject to use tax but needs to remit tax may use the Iowa non-permit use tax return available via GovConnectIowa or by other means as prescribed by the department. If a person owes less than \$1,200 per year in use tax, the person does not need to obtain a permit and may file the Iowa non-permit use tax return.

This rule is intended to implement Iowa Code section 423.36.

701—201.2(423) Application for permit.

201.2(1) Permit application.

a. An application for a sales and use tax permit shall be made via GovConnectIowa or by other means prescribed by the department, and the applicant shall furnish all information requested on such form. An application for a permit for a business operating under a trade name shall state the trade name, as well as the individual owner's name, in the case of a sole proprietorship by an individual, or the trade name and the name of all partners in the case of a partnership. The application shall state the date when the applicant will begin making taxable sales from the location for which the application is made.

b. There is no charge for a sales and use tax permit. If a person makes retail sales from more than one location, each location from which taxable sales of tangible personal property, specified digital products, or services will occur shall be required to hold a permit.

201.2(2) Signatures required.

a. Applications. The application shall be signed by the owner in the case of a sole proprietorship or a single-member LLC, or otherwise by an individual authorized to act on behalf of the business under rule 701—7.6(17A,22,421,422).

b. Electronic applications. For electronically transmitted applications, the signature must comply with rule 701—8.2(17A,421) unless more specified requirements are described on the form.

201.2(3) Retroactive permits and returns for prior periods. A person may indicate on a permit application that the effective date of the permit is in a prior tax period. Returns must be filed for all prior tax periods dating back to the effective date of the permit. Penalty and interest applies pursuant to Iowa Code sections 421.27 and 423.40. Submission of a retroactive permit application makes a person ineligible for a voluntary disclosure agreement for those prior tax periods and does not prohibit the department from enforcing provisions of Iowa Code section 423.40, if applicable. 701—Chapter 19 contains more information about the voluntary disclosure program.

201.2(4) Address only required for retail sales locations. If a person is subject to sales tax and has physical presence or economic presence and is not making sales exclusively through a marketplace facilitator, the person shall provide a location for its sales and use tax permit.

201.2(5) Seasonal filers. A seasonal business retailer with sales in up to four months during the calendar year may register to file a return and remit tax as a seasonal filer. The retailer will be expected to only file returns for the specific months in which the retailer conducts business as indicated by the retailer upon registration. The retailer will not be expected to file a return or remit tax for the other months of the year. Like any other retailer, the seasonal retailer must still notify the department when it ceases operation permanently; if it does not, it will receive a nonfiler notice from the department.

EXAMPLE: Retailer A plans to start selling Christmas trees annually starting in 2022. Retailer A only plans to sell trees in November and December each year. Retailer A may request to be designated as a seasonal filer such that it only is required to file returns for November and December each year. Retailer A fails to file a sales and use tax return for November 2029. Retailer A will receive a notice from the department even if Retailer A stopped selling trees after 2028.

This rule is intended to implement Iowa Code section 423.36.

701—201.3(423) Retailers selling nontaxable goods and services. Persons regularly engaged in selling tangible personal property or a specified digital product that is exempt from tax, making nontaxable transactions, or performing a service that is not enumerated in Iowa Code section 423.2 shall not be required to obtain a sales tax permit. However, if the retailer makes taxable sales or provides taxable services, the retailer will be required to hold a permit under the provisions of this chapter and Iowa Code section 423.36.

This rule is intended to implement Iowa Code section 423.36.

701—201.4(423) Obtaining a new permit after voluntarily canceling a prior permit. A person who previously held and canceled a permit who wishes to re-engage in business shall apply to the department for a new permit and file any previously unfiled tax returns. Upon receipt of the proper clearance for

previous tax returns, a new permit may be issued if the relevant persons described in Iowa Code section 423.36 are not substantially delinquent in paying any tax due that is administered by the department.

This rule is intended to implement Iowa Code section 423.36.

701—201.5(423) Permit not transferable—sale of business. Permits shall not be transferable. The owner of a business holding a permit that sells the business shall cancel the permit, and the purchaser of the business shall apply for a new permit in the purchaser's own name.

This rule is intended to implement Iowa Code section 423.36.

701—201.6(423) Change of location. A business changing its location within the same county shall update its address with the department via GovConnectIowa or the form prescribed by the department. A business changing its location outside of the same county shall cancel its original permit and apply for a new permit. If a business does not have a stationary location, the business shall report its mailing address as its location.

This rule is intended to implement Iowa Code section 423.36.

701—201.7(423) Change of ownership or business organization.

201.7(1) Change of business entity. A retailer changing its business entity shall apply for a new permit under the name of the new entity. This includes but is not limited to such entity changes as proprietorship to partnership, partnership to corporation, or any combination thereof.

201.7(2) Change of ownership. A business that changes ownership shall cancel its permit and reapply with the new federal employer identification number (FEIN).

This rule is intended to implement Iowa Code section 423.36.

701—201.8(423) Change of legal or operating name of a business.

201.8(1) Change to legal name. A retailer changing its legal name but maintaining its ownership may continue to use its existing sales and use tax permit. The retailer shall notify the department of the change in legal name and shall provide any form of documentation requested by the department proving the change in name before the department will change the legal name for the permit.

201.8(2) Change to operating name. A retailer changing its operating, or "doing business as," name may continue using its existing sales and use tax permit. The retailer shall notify the department of the change in operating name. The department may require any documentation to update the operating name associated with the permit.

This rule is intended to implement Iowa Code section 423.36.

701—201.9(423) Trustees, receivers, executors and administrators. By virtue of their appointment, trustees, receivers, executors and administrators who continue to operate, manage or control a business involving the sale of tangible personal property, specified digital products, or taxable services or engage in liquidating the assets of a business by means of sales made in the usual course of trade shall collect and remit tax on inventory and non-inventory items. A permit of a ward, decedent, cestui que trust, bankrupt, assignor or debtor for whom a receiver has been appointed, which is valid at the time a fiduciary relation is created, shall continue to be a valid permit for the fiduciary to continue the business for a reasonable time or to close out the business for the purpose of settling an estate or terminating or liquidating a trust or receivership.

This rule is intended to implement Iowa Code section 423.36.

701—201.10(423) Substantially delinquent tax—denial of permit.

201.10(1) Substantial delinquency factors. For purposes of Iowa Code section 423.36, the department will consider the following nonexclusive factors when considering whether an applicant is substantially delinquent in paying a tax such that a permit application will be denied:

- a. The amount of tax delinquent.
- b. The number of filing periods for which a tax remains due and unpaid.
- c. The length of time a tax has been unpaid.

d. The amount of tax, interest, or penalty owed in relation to the applicant's total financial resources.

e. Additional factors, which may be considered based on the specific facts and circumstances of each application.

201.10(2) *Child support noncompliance.* The department will deny a permit to any applicant or permittee who is an individual if the department has received a certificate of noncompliance from the child support recovery unit in regard to the individual, until the unit furnishes the department with a withdrawal of the certificate of noncompliance. The department will not deny a permit to any applicant that is an entity if the department has received a certificate of noncompliance from the child support recovery unit in regard to an individual who is an owner or officer of the entity.

This rule is intended to implement Iowa Code sections 252J.7 and 423.36.

701—201.11(423) Substantially delinquent tax—revocation of permit.

201.11(1) *Substantial delinquency of tax.* The department may revoke a permit if the permit holder has become substantially delinquent in paying any tax that is administered by the department or the interest or penalty on the tax. The department will consider the nonexclusive factors set forth in subrule 201.10(1) to determine whether there is a substantial delinquency.

201.11(2) *Child support noncompliance.* The holder of a revoked permit will not be permitted to obtain a new permit if the department has received a certificate of noncompliance from the child support recovery unit in regard to the permit holder who is an individual requesting reinstatement until the unit furnishes the department with a withdrawal of the certificate of noncompliance. The department will not revoke a permit from an entity if the department has received a certificate of noncompliance from the child support recovery unit in regard to an individual who is an owner or officer of the entity.

This rule is intended to implement Iowa Code section 423.36.

701—201.12(423) Obtaining a new permit after revocation.

201.12(1) If a taxpayer's permit is revoked, the taxpayer may apply for a new permit. The new permit application will be granted or denied based on terms and conditions set forth by the department. Terms and conditions include payment of any tax liability that may be due to the department.

201.12(2) Upon revocation of a sales and use tax permit, the taxpayer will be required to pay all delinquent tax liabilities, to file returns, and to refrain from taxable occurrences under Iowa Code section 423.2 prior to the issuance of a new sales tax permit, and the director may require the taxpayer to post a bond.

201.12(3) The director may impose a waiting period during which the person must refrain from taxable occurrences pursuant to the penalties of Iowa Code section 423.40, not to exceed 90 days, to issue a new permit after a revocation. The department may require a sworn affidavit, under penalty of perjury, stating that the person has fulfilled all requirements of said order of revocation and stating the dates on which the person refrained from taxable occurrences.

201.12(4) Each of the following situations will be considered one offense, for the purpose of determining the waiting period to reinstate a revoked permit or issue a new permit after a revocation, unless otherwise noted:

- a.* Failure to post a bond as required.
- b.* Failure to file a return timely.
- c.* Failure to pay tax timely (including dishonored checks, failure to pay, and late payments).
- d.* Failure to file a return and pay tax shown on the return timely (counts as two offenses).

201.12(5) The administrative law judge or director of revenue may order a waiting period after the revocation not to exceed:

- a.* Five days for one through five offenses.
- b.* Seven days for six through seven offenses.
- c.* Ten days for eight through nine offenses.
- d.* Thirty days for ten offenses or more.

201.12(6) The administrative law judge or director of revenue may order a waiting period not to exceed:

- a. Forty-five days if the second revocation occurs within 24 months of the first revocation.
- b. Sixty days if the second revocation occurs within 18 months of the first revocation.
- c. Ninety days if the second revocation occurs within 12 months of the first revocation.
- d. Ninety days if the third revocation occurs within 36 months of the second revocation.

201.12(7) A new permit will not be issued following revocation if the department has received a certificate of noncompliance from the child support recovery unit in regard to the permit holder until the unit furnishes the department with a withdrawal of the certificate of noncompliance. The department will not deny a permit to any applicant that is an entity if the department has received a certificate of noncompliance from the child support recovery unit in regard to an individual who is an owner or officer of the entity.

This rule is intended to implement Iowa Code sections 423.2, 423.36, and 423.40.

701—201.13(423) Administrative cancellation of permit. The department may cancel a permit upon verification by the department that the permit is no longer in use.

This rule is intended to implement Iowa Code section 421.17(37).

[Filed 7/2/24, effective 8/28/24]

[Published 7/24/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/24.

ARC 8151C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rulemaking related to exemption certificates

The Revenue Department hereby amends Chapter 202, "Filing Returns and Payment of Tax," and Chapter 204, "Rules Necessary to Implement the Streamlined Sales and Use Tax Agreement"; adopts Chapter 209, "Exemption Certificates"; and rescinds Chapter 288, "Determination of a Sale and Sale Price," Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.2, 423.3, 423.31, 423.45 and 423.51.

Purpose and Summary

The purpose of this rulemaking is to rescind and reserve 701—Chapter 288. 701—Chapter 288 contained a number of rules that the Department determined are unnecessary, obsolete, or duplicative of statutory language and that should be rescinded. Further, the Department determined that rules on returned merchandise, freight and other transportation charges, and premiums and gifts were better suited to be included in 701—Chapters 202, 204, and 213, which align more with those rules' subject matters.

Additionally, the Department determined that the rule that described the Department's interpretation of the underlying statutes relating to the use of exemption certificates would be better suited in a chapter solely on that topic, so the Department is readopting the rule and moving it into 701—Chapter 209,

which was previously reserved, in order to make it more easily accessible to the public. The Department made revisions to that rule in order to provide for better organization and clarity and to remove unnecessary, obsolete, and duplicative statutory language.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7196C**. A public hearing was held on the following date(s):

- January 16, 2024

Public comment was received. The Iowa Taxpayers' Association provided comments both orally at the public hearing and via written comment through Iowa Taxpayers' Association President and CEO Thomas R. Sands. These comments are summarized as follows:

1. Paragraph 209.1(1)“c” states exemption certificates are valid for up to three years, which may be confusing when an exemption certificate is used for a single transaction. The Department agreed and did not adopt paragraph 209.1(1)“c.” The Department also made changes to subrule 209.1(4), which now states blanket exemption certificates remain effective until canceled by the purchaser or until 12 months elapse with no purchases between the same purchaser and seller. The Department will consider changes to the exemption certificate during its annual forms review.

2. The elimination of the administrative burden of obtaining new exemption certificates from an “entity-based” organization, such as a utility company obtaining new exemption certificates for federal, state, and local governments and public schools every three years was supported for both the seller and the purchaser. The commenter also suggested allowing a taxpayer to list a Federal Employer Identification Number (FEIN) or a Taxpayer Identification Number (TIN) on the exemption certificate or attaching a copy of the Internal Revenue Service Determination Letter. The Department has determined the expanded use of blanket exemption certificates in subrule 209.1(4) will address some of these concerns. The Department will consider additional changes to the exemption certificate during its annual forms review.

Adoption of Rulemaking

This rulemaking was adopted by the Department on June 24, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on August 28, 2024.

The following rulemaking action is adopted:

ITEM 1. Adopt the following **new** rule 701—202.17(423):

701—202.17(423) Returned merchandise. When merchandise is sold and returned by a customer who secures an allowance or a return of the full purchase price, the seller may deduct the amount allowed as full credit or refund, provided the merchandise is taxable merchandise and tax has been previously paid on the sales price. No allowance is to be made for the return of any merchandise that (1) is exempt from either sales or use tax, or (2) has not been reported in the taxpayer's tax previously paid.

This rule is intended to implement Iowa Code section 423.31.

ITEM 2. Adopt the following **new** rule 701—204.8(423):

701—204.8(423) Freight, other transportation charges, and exclusions from the exemption applicable to these services. The determination of whether freight and other transportation charges are subject to sales or use tax is dependent upon the terms of the sale agreement.

204.8(1) Charges separately stated. When tangible personal property or a taxable service is sold at retail in Iowa or purchased for use in Iowa and under the terms of the sale agreement the seller is to deliver the property to the buyer or the purchaser is responsible for delivery and such delivery charges are stated and agreed to in the sale agreement or the charges are separate from the sale agreement, the sales price of the freight or transportation charges is not subject to tax. This exemption does not apply to the service of transporting electrical energy or the service of transporting natural gas.

204.8(2) Charges not separately stated. When freight and other transportation charges are not separately stated in the sale agreement or are not separately sold, the sales price of the freight or transportation charges become a part of the sales price of the sale of tangible personal property or a taxable service and are subject to tax. Where a sales agreement exists, the freight and other transportation charges are subject to tax unless the freight and other transportation charges are separately contracted. If the written contract contains no provisions separately itemizing such a charge, tax is due on the full contract price with no deduction for transportation charge, regardless of whether or not such transportation charges are itemized separately on the invoice.

204.8(3) Exemption. The sales price from charges for delivery of electricity or natural gas are exempt from tax to the extent that the sales price from the sale, furnishing, or service of electricity or natural gas or its use are exempt from sales or use tax under Iowa Code chapter 423. The exclusions from this exemption relating to the transportation of natural gas and electricity are applicable to all contracts for the performance of these transportation services. Below are examples that explain some of the principal circumstances in which the transport of natural gas or electricity is a service subject to tax.

204.8(4) Applicable charges. Freight and transportation charges include but are not limited to the following charges or fees: freight, transportation, shipping, delivery, or trip charges.

204.8(5) Examples.

EXAMPLE 1: Consumer ABC, located in Des Moines, contracts with supplier DEF, located in Waterloo, for DEF to sell gas and electricity to ABC. ABC then contracts with utility GHI to transport the energy over GHI's network (of pipes or wires) from Waterloo to ABC's facility in Des Moines. GHI's transport of ABC's energy is a taxable service. The transportation of natural gas and electricity by a utility is a taxable service of furnishing natural gas or electricity whether or not that utility or some other utility produces the natural gas or generates the electricity furnished. A utility's transportation of gas or electricity is a "transportation service" specifically excluded from the exemption in Iowa Code section 423.3(70).

EXAMPLE 2: Consumer ABC contracts with utility DEF for DEF to provide electricity from DEF's generating plant in Mason City to ABC's location in Cedar Rapids. Transport of the electricity is by way of DEF's network of long-distance transmission lines. The contract between ABC and DEF states the prices to be paid for the purchase of various amounts of electricity and also sets out the amounts to be paid for transport of electricity and constitutes separate sales of electricity and transportation services. In these circumstances, amounts that ABC pays DEF for transport of the electricity are taxable.

EXAMPLE 3: As in Example 2, consumer ABC contracts with utility DEF for the delivery of electricity from DEF's generating plant in Mason City to ABC's location in Cedar Rapids, ownership of the electricity to pass to ABC in Cedar Rapids. Also, as in Example 2, the contract between ABC and DEF states varying prices to be paid for the purchase and transportation of varying amounts of electricity and constitutes separate sales of electricity and transportation services. Transport of the electricity will be by way of GHI's transmission lines. DEF contracts with GHI for the transport of the electricity to ABC's plant in Cedar Rapids. At the time the contract is signed, GHI asks DEF for an exemption certificate stating that DEF will resell GHI's transportation service to ABC. GHI must either secure the certificate or collect Iowa sales tax from DEF. GHI is furnishing a taxable electricity transportation service to DEF, which DEF will in turn furnish to ABC. DEF must collect tax from ABC.

EXAMPLE 4: In this example, the same contract exists between ABC and DEF as exists in Example 3. However, in this example, a breakdown at DEF's plant in Mason City prevents DEF from generating the electricity that it is contractually obligated to provide to ABC. DEF is forced to purchase both electricity and its transport from JKL. The contract between DEF and JKL states the prices to be paid for the purchase of various amounts of electricity and also sets out the amounts to be paid for the transport of this electricity and constitutes separate sales of electricity and transportation services. JKL asks DEF for an exemption certificate stating that DEF has purchased the electricity and its transport for resale to ABC. In this case, JKL must secure an exemption certificate from DEF to avoid collecting tax on its sale and transport of the electricity for DEF.

EXAMPLE 5: Again, ABC and DEF have contracted, as they did in Example 2, for DEF to sell and transport electricity from Mason City to Cedar Rapids. However, their agreement mentions only one combined price for sale and delivery of the electricity. There is no separately contracted price for transport of the electricity, in contrast to the situation in Example 2. In this case, the entire amount that ABC pays to DEF is taxable as the entire amount paid is for the sale of tangible personal property.

EXAMPLE 6: Manufacturer EFG contracts with utility DEF for the purchase of natural gas with a separate contract for its delivery. The gas is to be transported from DEF's storage facility near Osceola to EFG's manufacturing plant in Fort Dodge by way of DEF's pipeline. Ownership of the gas passes from DEF to EFG in Fort Dodge. EFG uses 92 percent of the gas that is transported to its plant in processing the tangible personal property manufactured there. The receipts that EFG pays DEF for the transport of the gas are excluded from the transportation exemption, but they are not excluded from the processing exemption. Ninety-two percent of those receipts are exempt from tax because that is the percentage of gas used by EFG in processing. In addition, utility DEF charges manufacturer EFG \$9.95 as a delivery fee for the gas. Since the purchase of the gas has a 92 percent exemption from Iowa sales tax because of a 92 percent usage in processing, 92 percent of the delivery charge of \$9.95 is also exempt from tax.

This rule is intended to implement Iowa Code sections 423.2 and 423.3.

ITEM 3. Adopt the following new701—Chapter 209:

CHAPTER 209 EXEMPTION CERTIFICATES

701—209.1(423) Exemption certificates.

209.1(1) *General provisions.* A valid exemption certificate, whether furnished by the department or a seller, must be fully completed, dated, and signed if a paper certificate is used.

a. A fully completed exemption certificate must include the following information:

- (1) Name of both the purchaser and seller.
- (2) The purchaser's address and type of business (e.g., retailer, manufacturer).
- (3) Reason for tax-exempt purchase (e.g., resale, processing).
- (4) When required, purchaser's identification number (e.g., Iowa-issued sales and use tax permit, another state's issued sales tax identification number, and Federal Employer Identification Number).

b. Either a fully completed exemption certificate or capture of the data elements listed in paragraph 209.1(1) "a" must be obtained at the time of sale or within 90 days subsequent to the date of sale.

209.1(2) *Liability.* The sales tax liability is on both the seller and purchaser; however, a seller is relieved of the liability if the seller obtains a fully completed exemption certificate or captures all the data elements listed in paragraph 209.1(1)“a.”

a. If no exemption certificate or the data elements are obtained within 90 days of the sale, a seller obligated to collect tax from a purchaser is relieved of liability if the seller obtains a fully completed exemption certificate taken in good faith or provides proof the transaction was not subject to tax within 120 days of the department’s request for substantiation.

b. No liability relief is available for sellers who do any of the listed activities in Iowa Code section 423.51(2).

c. The purchase of tangible personal property, specified digital products, or services that are specifically exempt from tax under the Iowa Code need not be evidenced by an exemption certificate. However, if certificates are given to support these transactions, they do not relieve the purchaser of the responsibility for tax if at some later time the transaction is determined to be taxable.

d. A person who is selling tangible personal property, specified digital products, or services, but who does not make any taxable sales at retail, is not required to hold a permit. When this person purchases tangible personal property, specified digital products, or services for resale, the person shall furnish a certificate in accordance with these rules to the supplier stating that the property or services were purchased for the purpose of resale.

209.1(3) *Other acceptable forms.* Purchasers may also use a Multistate Tax Commission’s Uniform Sales & Use Tax Resale Certificate, available at mtc.gov, or a Streamlined Sales Tax Agreement Certificate of Exemption, available on the department’s website or at streamlinedsalestax.org, as an alternative to a department-issued certificate.

209.1(4) *Blanket certificates.* Sellers and purchasers with a recurring business relationship, as described in Iowa Code section 423.51(3)“d,” may use blanket exemption certificates covering more than one transaction. Blanket exemption certificates remain effective until canceled by the purchaser or until 12 months elapse with no purchases between the same purchaser and seller.

This rule is intended to implement Iowa Code sections 423.45 and 423.51.

701—209.2(423) Fuel exemption certificates.

209.2(1) *Use of fuel exemption certificates.* The use and acceptance of fuel exemption certificates must comply with Iowa Code section 423.45(5). For purposes of this subrule, terms mean the same as defined in Iowa Code section 423.45(5).

209.2(2) *Necessary information.* A fuel exemption certificate, as defined in Iowa Code section 423.45(5), must be dated and contain the following information, including but not limited to:

- a.* The seller’s name and address;
- b.* The purchaser’s name and address;
- c.* The type of fuel purchased, such as electricity or propane;
- d.* Description of the purchaser’s business, such as farmer or manufacturer;
- e.* A general description of the type of processing in which the fuel is consumer, such as grain drying, raising livestock, generating electricity, or the manufacture of tangible personal property;
- f.* Claimed exemption percentage.

209.2(3) *Additional documentation.* The seller may demand from the purchaser additional documentation attached to the fuel exemption certificate, which is reasonably necessary to support the claim of exemption for fuel consumed in processing; however, additional documentation is not required under the circumstances listed in Iowa Code section 423.45(5)“f.” In the absence of separate metering, documentation reasonably necessary to support a claim for exemption must consist of either an electrical consultant’s survey or of a document prepared by the purchaser in accordance with the requirements of subrule 209.2(5).

209.2(4) *Exemption determination.* When the amount of the exemption is modified pursuant to Iowa Code section 423.45(5)“d,” a purchaser must notify the seller of any change in percentage.

209.2(5) *Determining percentage of electricity used in processing.* When electricity is purchased for consumption both for processing and for taxable uses, and the use of the electricity is recorded on a

single meter, the purchaser must allocate the use of the electricity according to taxable and nontaxable consumption if an exemption for nontaxable use is to be claimed. The calculations that support the allocation, if properly performed, can serve as the documentation reasonably necessary to support a claim of exemption for fuel used in processing. The following method with its alternative table may be used to determine the percentage of electricity used on the farm or in a factory that is exempt by virtue of its being used in processing. Paragraph 209.2(5)“e” provides information on alternative methods of computing exempt use, including exempt use by a new business. First, the base period for the calculations must be selected.

a. Ordinarily, the 12 months previous to the date upon which the exemption is calculated are used as the base period for determining the percentage of electricity exempt as used in processing. The immediately previous 12-month period is used because it is a span of time that is (1) recent enough to accurately reflect future electric usage; (2) extended enough to take into account variations in electrical usage resulting from changes in temperature occurring with the seasons; and (3) is not so long as to require unduly burdensome calculations. However, individual circumstances can dictate that a shorter or longer period than 12 months will be used or that some 12-month period other than that immediately previous to the date upon which the exemption certificate is filed, will be used.

EXAMPLE 1: Farmer A files a fuel exemption certificate for the period beginning January 1, 2022. The year 2021 had a very mild winter, a relatively cool summer, and a very dry autumn. Farmer A uses no electricity for grain drying and substantially less electricity than usual for heating and cooling his livestock buildings. Farmer A must use a 12-month period that is more representative of his usual exempt electrical consumption than that of January through December 2021.

EXAMPLE 2: Company A manufactures its product in a factory that has no windows and is heavily insulated. The factory always runs 40 hours per week, 52 weeks per year. Because of these and other circumstances, Company A’s electrical usage does not vary significantly from month to month, and it is easy enough to document this. Company A can calculate its percentage of exempt use of electricity based on a one-month, rather than a 12-month, period.

EXAMPLE 3: Company B manufactures widgets. The “economic cycle” for widget production is, on average, 36 months long. During this economic cycle, there are times when, for months at a time, the factory will operate three shifts. At other times, for weeks at a time, the entire factory will be shut down and its personnel laid off. The only accurate way to determine the exempt percentage of electricity used is to calculate electrical use over the entire economic cycle. Therefore, 36 months, rather than 12 months, would be the base period.

b. Calculating kilowatts used per hour by various electrical devices. The first step in computing the percentage of exemption is to determine the number of kilowatts used per hour for each device in the farm or factory. If kilowatts consumed per hour of a device’s use is not listed on the device or otherwise readily obtainable, formulas can be used to determine this information.

(1) Lights. For incandescent bulbs, add rated wattages and divide by 1,000. For fluorescent lights, add rated wattages plus an additional 20 percent of rated wattages, then divide by 1,000.

Incandescent Lights:

$$\frac{\text{Watts}}{1,000} = \text{Kilowatts Per Hour}$$

Fluorescent and Other High Intensity Lights:

$$\frac{\text{Watts} + .20 (\text{Watts})}{1,000} = \text{Kilowatts Per Hour}$$

(2) Devices other than lights. For these devices, use the wattage rating given by the manufacturer and divide by 1,000 to obtain approximate kilowatts used per hour of operation.

$$\frac{\text{Watts}}{1,000} = \text{Kilowatts Per Hour}$$

If an appliance does not list a watt rating, tables provided by Iowa State University Cooperative Extension Service can be used, especially by farmers who are attempting to compute their exempt percentage of electricity used. Persons using a table are reminded to convert watts to kilowatts before proceeding to further calculations.

c. The average number of kilowatts consumed per hour of operation for any one device must next be multiplied by the total number of hours that the device is operated during the base period. A person may use intermediate calculations.

(1) EXAMPLE 1: Assume that a machine used in processing consumes 20 kilowatts per hour of operation. The machine is operated, during a 12-month base period, 40 hours per week during 50 weeks. The machine is not placed in operation when the factory is closed for two weeks' vacation. Exempt use is calculated as follows:

$$\begin{array}{rcccl} \text{Kilowatts} & & & & \text{Weeks operated in 12-month} \\ \text{per hour} & \times & \text{Hours operated} & \times & \text{period equals number of} \\ & & \text{per week} & & \text{exempt kilowatt hours} \end{array}$$

In this example, $20 \times 40 \times 50 = 40,000$ exempt kilowatt hours.

(2) EXAMPLE 2: Assume that a grain dryer uses 30 kilowatts per hour of operation. During a 12-month base period, the grain dryer is used in processing 200 hours per month, for 3 months. The calculation for total number of kilowatt hours of exempt use for the 12-month period is as follows:

$$\begin{array}{rcccl} \text{Kilowatts} & & & & \text{Number of months of exempt} \\ \text{per hour} & \times & \text{Hours operated} & \times & \text{use equals total number of} \\ & & \text{per month} & & \text{exempt kilowatt hours} \end{array}$$

In this example, $30 \times 200 \times 3 = 18,000$ exempt kilowatt hours.

(3) EXAMPLE 3: The following is a very simplified example of a worksheet for determining the percentage of electricity qualifying for exemption when a single meter records both exempt and taxable use.

d. *Example worksheet.* The following is a simplified example of a worksheet for determining the percentage of electricity qualifying for exemption when a single meter records both exempt and taxable use.

	Kilowatts Per Hour of Operation	Average Hours of Operation Per 12-Month Base Period	Average Kilowatt Hours Per 12-Month Base Period	Total
All Exempt Usage				
Production Machine #1	10	1000	10000	
Production Machine #2	10	1000	10000	
Other	10	1000	10000	
Total Exempt Usage				30000(A)
All Taxable Usage				
Air Conditioners	10	3000	30000	
General Lighting	10	3000	30000	
Office Equipment	10	3000	30000	
Space Heaters	10	3000	30000	
Other	10	3000	30000	
Total Taxable Usage				150000(B)
Total—All Usages				180000(C)

$$\frac{30000}{180000} \text{ or } \frac{A}{C} = \text{Percentage of Electricity Purchase Qualifying for Exemption} = 16.60\%$$

The number actually used in the base period can be determined by reference to billings for the base period. If the number of kilowatt hours calculated to have been used does not approximate the number actually used in the base period, the calculations are deficient and should be performed again. Once the

precise percentage of exemption has been calculated, that percentage must be applied during any period for which a purchaser is requesting exemption. Any substantial and permanent change in the amount of electricity consumed or in the proportion of exempt and nonexempt use of electricity is an occasion for recomputing the exempt percentage and for filing a new exemption certificate.

e. Alternative methods. The following are nonexclusive alternatives to the above method of determining the percentage of electricity, which is exempt because it is used in processing.

(1) If currently only one meter exists to measure both exempt and nonexempt use of electricity, the most accurate method of determining exempt and nonexempt use may be separate metering of these two uses. This possibility is especially practical if all exempt use results from the activities of one machine, however large.

(2) If separate metering is impossible or impractical, it may be useful to employ the services of an energy consultant. If using an energy consultant's service is impractical, it may be possible to secure, from the manufacturer of a machine used in processing, the number of kilowatts that a machine uses per hour of operation. Often, these manufacturer's studies give a more accurate measure of a machine's use of electricity than the formulas set out in paragraph 209.2(5) "b" above. This circumstance is especially true with regard to large electric motors.

(3) If a business is new, and no historical data exists for use in calculating exempt and nonexempt percentages of electricity or other fuel consumed, any person calculating future exempt use must make the best projections possible. If calculating future exempt use with no past historical data to serve as a basis for the calculations, it is suggested that conservative estimates of exempt use be made. Using these conservative estimates can avoid future liability for sales tax on the part of the purchaser of the electricity. Possibly, in calculating exempt use of fuel for a new business, historical data from existing similar businesses can be used if available from persons not in direct competition with the person claiming the exemption. The calculation and the exemption certificate must be updated once data from an accurate 12-month cycle, or other appropriate cycle, is available.

209.2(6) Applicability. The provisions of subrule 209.2(5) explaining the determination of the percentage exemption for electricity also apply to other types of fuel, such as natural gas, LP, etc., when used for exempt purposes.

This rule is intended to implement Iowa Code section 423.45.

701—209.3(423) Special certificates of beer and wine wholesalers. Beer or wine purchased from a wholesaler holding a Class A or F permit has been purchased for resale if the purchaser provides the wholesaler with a retail beer or wine permit or liquor license number. A wholesaler's record of account with an individual retailer is a complete and correct exemption certificate for the purposes of beer or wine sales and provides all the protection that the usual exemption certificate, as described in rule 701—209.1(423), provides if the record of account contains the retailer's beer or wine permit or liquor license number and all other information concerning the account is taken in good faith by the wholesaler. For the purposes of this rule, the words "beer," "permit," "retailer," "wholesaler," and "wine" mean the same as defined in Iowa Code section 123.3.

This rule is intended to implement Iowa Code section 423.45.

ITEM 4. Rescind and reserve **701—Chapter 288.**

[Filed 7/2/24, effective 8/28/24]

[Published 7/24/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/24.

ARC 8152C**REVENUE DEPARTMENT[701]****Adopted and Filed****Rulemaking related to elements included in and excluded from a taxable sale and sales price**

The Revenue Department hereby rescinds Chapter 203, “Elements Included in and Excluded from a Taxable Sale and Sales Price,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.1, 423.2, 423.3 and 423.24.

Purpose and Summary

The purpose of this rulemaking is to readopt Chapter 203. The Department made revisions to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. The chapter describes the Department’s interpretation of the underlying statutes to help the public understand elements included in and excluded from a taxable sale. These rules reduce uncertainty about what constitutes sales price.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7145C**. A public hearing was held on the following date(s):

- January 3, 2024

Public comment was received. Larry Nordeen with Iowa Taxes LLC provided written comments regarding citations to court cases or other rulings that were to be removed from the rules and the criteria involved for them to be added, if applicable.

No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Department on June 24, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on August 28, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 203 and adopt the following **new** chapter in lieu thereof:

CHAPTER 203
ELEMENTS INCLUDED IN AND EXCLUDED
FROM A TAXABLE SALE AND SALES PRICE

701—203.1(423) Tax not to be included in price. When a retailer prices an article for retail sale and displays or advertises the same to the public with that price marked, the price so marked or advertised shall include only the sales price of such article unless it is stated on the price tag that the price includes tax.

EXAMPLE: The advertised or marked price is \$1. When a sale is made, the purchaser must pay tax in addition to the \$1 sales price or agree to pay \$1.07, which represents the purchase price plus state sales tax of 6 percent plus local option sales tax of 1 percent, which, when added, becomes a part of the sale price or charge.

This rule does not prohibit advertising or displaying the sale price plus tax or the price including tax, as shown in the following examples:

“This dress—\$10 plus tax” or “This dress—\$10.70 including tax.”

When a retailer conspicuously advertises in such manner and position so that it may be readily seen and read by the public that the price “includes tax,” the retailer will be allowed to determine sales price by dividing the total of such retailer's price which includes tax by the applicable percentage. For example, a retailer in a jurisdiction that has the state sales tax rate of 6 percent plus a 1 percent local option tax would use a factor of 107 percent.

However, where an invoice is given to the purchaser as a part of the sale, either the invoice must show the tax separately from the retailer's price or it must be stated on each invoice that tax is included in the retailer's price. If the invoice states “tax included,” the seller may determine sales price by the applicable percent method described above. It shall be the responsibility of the retailer that uses or has used the applicable percent method for reporting to provide proof that the retailer has complied with the method of advertising or displaying the retailer's price, as described above.

This rule is intended to implement Iowa Code sections 423.14 and 423.24.

701—203.2(423) Finance charge. Interest or other types of additional charges that result from selling on credit or under installment contracts are not subject to sales tax when such charges are separately stated and when such charges are in addition to an established cash sales price. However, if finance charges are not separately stated and a sale is made for a lump sum amount, the tax is due on the total retailer's price.

When interest and other types of additional charges are added as a condition of a sale in order to obtain title rather than as a charge to obtain credit where title to goods has previously passed, such charges will be subject to tax even though they may be separately stated. More information is contained in rule 701—213.3(423), relating to conditional sales contracts.

This rule is intended to implement Iowa Code section 423.1(51).

701—203.3(423) Retailers' discounts, trade discounts, rebates and coupons.

203.3(1) Retailers' discounts. A retailer's discount reduces the retailer's price of a property or service with the remainder being the actual sales price of the goods charged in the account. The purchaser entitled to the discount will never owe the retailer's price as a debt, the debt being the sales price after the agreed discount has been deducted. The word "discount" means "to buy at a reduction."

Any discount a retailer allows that reduces a retailer's price to a sales price is a proper deduction when collecting and reporting tax. This is not the case when the retailer offers a discount to a purchaser but bills and collects tax on the retailer's price rather than on the sales price. The customer must receive the benefit of the discount, for sales tax purposes, in order for the retailer to exclude the discount from the sales price when collecting and reporting tax.

Certain retailers bill their customers on a gross and net basis, with the difference considered to be a discount for payment purposes. When a customer does not resolve the bill within the net payment period, tax shall apply on the gross charge shown on the billing, the gross charge having become the taxable sales price by virtue of the customer's failure to take the action, which allows the discount to be taken.

203.3(2) Rebates. A "rebate" is a return of part of an amount paid for a product. Manufacturers' rebates are not discounts and cannot be used to reduce the sales price received from a sale or to reduce the purchase price of a product. This subrule applies even though the rebate is used by the retailer to reduce the retailer's price to a sales price or is used by the purchaser as a down payment. The rebate is considered a transaction between the manufacturer and the purchaser.

203.3(3) Coupons. Coupons issued by the producer of a product are not discounts and cannot be used as an abatement from the retailer's price of the product. Coupons issued by the retailer that actually reduce the price of the product to the purchaser are treated as a discount as provided in subrule 203.3(1).

EXAMPLE 1: Customer C acquires a 30¢ off coupon issued by the manufacturer of A-B Bandages for A-B Bandages. The coupon can be redeemed at a store that sells the product. Customer C goes to Store D and purchases a box of A-B Bandages, which shows a price of \$1.50. C pays \$1.20 plus the 30¢ coupon. Store D is reimbursed the 30¢ for the coupon by the manufacturer. Tax is due on the \$1.50 because Store D's total sales price is \$1.50. The coupon is not used as a discount in this situation.

EXAMPLE 2: Restaurant E offers a two-for-the-price-of-one coupon for its super hamburger. Each hamburger normally sells for \$2. The coupon can only be redeemed at Restaurant E's retail store. Customer F acquires the coupon and redeems it at Restaurant E's store. The purchase price for Customer F was \$2 for both hamburgers. The tax is due on the \$2 because this amount is the sales price for Restaurant E, even though the value of the two hamburgers would normally be \$4. In this situation, the sales price for the two hamburgers is \$2.

203.3(4) Trade discounts. A "trade discount" is a discount from a seller's list price that is offered to a class or category of customer (e.g., retailers or wholesalers). Trade discounts given or allowed by manufacturers, distributors, or wholesalers to retailers or by manufacturers or distributors to wholesalers and payments made by manufacturers, distributors, or wholesalers directly to retailers or by manufacturers or distributors to wholesalers to reduce the sales price of a manufacturer's, distributor's, or wholesaler's product (e.g., cigarettes) or to promote the sale or recognition of the manufacturer's, distributor's, or wholesaler's product are not to be included in any taxable sales price. This subrule does not apply to coupons issued by manufacturers, distributors, or wholesalers to consumers; more information is contained in subrule 203.3(3).

This rule is intended to implement Iowa Code section 423.1(51).

701—203.4(423) Excise tax included in and excluded from sales price.

203.4(1) An excise tax that is not an Iowa sales or use tax may be excluded from the sales price or purchase price of the sale or use of property or taxable services only if all of the following conditions exist:

a. The excise tax is imposed upon the identical sales price on which the Iowa sales tax is imposed or upon the purchase price that measures the amount of taxable use or upon a use identical to the Iowa taxable use and not upon some event or activity that precedes or occurs after the sale or use.

b. The legal incidence of the excise tax falls upon the purchaser who is also responsible for payment of the Iowa sales tax. The purchaser must be obligated to pay the excise tax either directly to the government in question or to another person (e.g., the retailer) who acts as a collector of the tax. *Gurley v. Rhoden*, 421 U.S. 200, 95 S. Ct. 1605, 44 L.Ed.2d 110 (1975) contains a description of the circumstances under which the legal, as opposed to the economic, burden of an excise tax falls upon the purchaser.

c. The name of the excise tax is specifically stated, and the amount of the excise tax is separately set out on the invoice, bill of sale, or another document that embodies a record of the sale.

EXAMPLE 1: The federal government imposes an excise tax upon the act of manufacturing certain tangible personal property within the United States. The amount of the tax is measured as a percentage of the price for the first sale of the property, which is usually to a wholesaler. However, one particular manufacturer sells its manufactured goods at retail in Iowa. Even if this tax meets the requirements for exclusion of paragraphs 203.4(1)“*b*” and “*c*,” it is not excludable because it does not meet the requirements of paragraph 203.4(1)“*a*.” The tax is not imposed upon the act of selling but upon the prior act of manufacturing. The tax is merely measured by the amount of the proceeds of the sale.

EXAMPLE 2: The federal government imposes an excise tax of 4 percent on a retailer’s sales price from sales of tangible personal property. The law allows the retailer to separately identify and bill a customer for the tax. However, if a retailer fails to pay the tax, the government cannot collect it from a purchaser, and if the government assesses tax against the retailer and secures a judgment requiring the retailer to pay the tax, the retailer that has failed to collect the tax from a purchaser on the initial sale has no right of reimbursement from the purchaser. This tax is not excludable from Iowa excise tax. Its economic burden falls upon the purchaser. However, since neither the government nor the retailer has any legal right to demand payment of the tax from a purchaser, the legal incidence of the tax is not upon the purchaser and the tax would not meet the requirements of paragraph 203.4(1)“*b*.”

203.4(2) The following federal excise taxes are to be included in the sales price upon which Iowa sales tax is to be paid for purposes of collecting Iowa sales tax:

a. The federal gallonage taxes imposed by 26 U.S.C. Sections 5001, 5041, and 5051 on distilled spirits, wines, and beer.

b. The tax imposed by 26 U.S.C. Section 5701 with regard to cigars, cigarettes, cigarette papers and tubes, smokeless tobacco, and pipe tobacco.

c. The federal tax imposed under 26 U.S.C. Section 4081 on gasoline.

203.4(3) The following excise taxes are excluded from the amount of the sales price:

a. The federal tax imposed by 26 U.S.C. Section 4251(a) on the communication services of local telephone service, toll telephone service, and teletypewriter exchange service.

b. The federal tax imposed by 26 U.S.C. Section 4051 upon the first retail sale of automobile and truck chassis and bodies, truck trailer and semitrailer chassis and bodies and tractors of the kind chiefly used for highway transportation in combination with trailers or semitrailers.

This rule is intended to implement Iowa Code section 423.1(51).

701—203.5(423) Trade-ins.

203.5(1) Trade-ins.

a. When tangible personal property is traded toward the purchase price of other tangible personal property, the sales price shall be only that portion of the purchase price that is payable in money to the retailer if the conditions in paragraph 203.5(1)“*b*” are met.

b. The tangible personal property is traded to a retailer, the property traded is the type normally sold in the regular course of the retailer’s business and either subparagraph 203.5(1)“*b*”(1) or 203.5(1)“*b*”(2) is true.

(1) The tangible personal property traded to a retailer is intended by the retailer to be ultimately sold at retail; or

(2) The tangible personal property traded to a retailer is intended to be used by the retailer or another in the remanufacturing of a like item.

EXAMPLE 1: Customer A owns a car valued at \$5,000. Customer A trades a used car to XY Car Dealer for a used car valued at \$12,000. XY Car Dealer normally sells used cars. Use tax would be due on the \$7,000 in money that Customer A paid to XY Car Dealer, as both conditions in paragraph 203.5(1)“b” and subparagraph 203.5(1)“b”(1) have been met.

EXAMPLE 2: John Doe has a pickup truck with a value of \$2,000. John wants a boat, so he offers to trade his \$2,000 pickup to ABC Boat Dealer for the purchase of a boat valued at \$5,000. ABC Boat Dealer is a new and used boat dealer. ABC Boat Dealer agrees to accept the \$2,000 pickup and \$3,000 cash in trade for the boat. In this example, the tax would be computed on \$5,000. The trade-in provision would not apply because the condition in paragraph 203.5(1)“b” has not been met. The property traded is not the type of property normally sold by ABC Boat Dealer in the regular course of the boat dealer’s business.

EXAMPLE 3: ABC Corporation trades 500 bushels of corn and \$500 cash to the local cooperative elevator for the purchase of various hand tools. In its regular course of business, the local cooperative elevator sells grain for processing into bread. The trade-in provision in this example would not apply because the condition in subparagraph 203.5(1)“b”(1) has not been met. When ultimately sold by the cooperative elevator, the grain traded toward the purchase price of the hand tools is sold for processing and not at retail.

EXAMPLE 4: Hometown Appliance store is in the business of selling stoves, refrigerators, and other various appliances in Iowa. Hometown Appliance has a refrigerator valued at \$650. Customer A wishes to trade a used refrigerator toward the purchase price of the new refrigerator. Hometown Appliance agrees to accept Customer A’s used refrigerator at a value of \$150 toward the purchase price of the new refrigerator. Customer A pays Hometown Appliance \$500 in cash. The trade-in provision applies as both conditions in paragraph 203.5(1)“b” and subparagraph 203.5(1)“b”(1) have been met, and tax would be due on the \$500.

Several months later, Hometown Appliance sells the used refrigerator it received from Customer A to the local school district, which is exempt from sales tax on its purchase. The trade-in provision on the original transaction is still applicable because both conditions in paragraph 203.5(1)“b” and subparagraph 203.5(1)“b”(1) were met. The sale is “at retail,” even if the sales price is exempt from tax.

EXAMPLE 5: ABC Auto Supply is in the business of selling various types of automobile and farm implement supplies. The normal selling price for a car generator is \$80. ABC Auto Supply allows a \$20 trade-in credit to any customer who wishes to trade in an unworkable generator. At the time ABC Auto Supply accepts the unusable generator, it knows that the generator will not be sold at retail; however, ABC Auto Supply also knows that the generator will be sold to XYZ Company, which is in the business of rebuilding generators by using existing parts plus new parts. In this example, the trade-in provision would apply since conditions in paragraph 203.5(1)“b” and subparagraph 203.5(1)“b”(2) have been met.

203.5(2) All the provisions of subrule 203.5(1) apply to the trade-in of vehicles subject to registration when the trade involves retailers of vehicles.

When vehicles subject to registration are traded among persons who are not retailers of vehicles subject to registration, the conditions set forth in subrule 203.5(1) need not be met. The purchase price is only that portion of the purchase price represented by the difference between the total purchase price of the vehicle subject to registration acquired and the value of the vehicle subject to registration traded.

This rule applies only when a vehicle is traded for tangible personal property, regardless of whether the transaction is between a retailer and a nonretailer or between two nonretailers. The vehicle traded in must be owned by the person(s) trading in the vehicle. It is presumed that the name or names indicated on the title of the vehicle dictate ownership of the vehicle as set forth in Iowa Code chapter 321.

EXAMPLE 1: John Doe has an automobile with a value of \$2,000. John and his neighbor Bill Jones, who has an automobile valued at \$3,500, decide to trade automobiles. John pays Bill \$1,500 cash. Vehicles subject to registration are subject to use tax, which is payable to the county treasurer at the time of registration. In this example, John would owe use tax on \$1,500 since this is the amount John paid Bill and tax is only due on the cash difference. Bill would not owe any use tax on the vehicle acquired through the trade.

EXAMPLE 2: Joe has a Ford automobile with a value of \$5,000. Joe and his friend Jim, who has a Chevrolet automobile also valued at \$5,000, decide to trade automobiles. Joe and Jim make an even trade, automobile for automobile, with no money changing hands. In this example, there is no tax due on either automobile because there is no exchange of money.

203.5(3) Trade for services or specified digital products. The trade-in provisions referenced in Iowa Code section 423.1(51) and found in Iowa Code section 423.3(59) do not apply to taxable enumerated services or specified digital products. When taxable enumerated services or specified digital products are traded, the sales price would be determined based on the value of the service or specified digital products or other consideration.

EXAMPLE: A and B agree that A will purchase a car that B now owns. The two parties agree on a purchase price of \$9,000. In return for transfer of title from B, A agrees to pay B \$7,000 in cash and to paint B's house with paint provided by B. A and B agree that the value of B's house painting services is \$2,000. House painting is a taxable enumerated service; rule 701—219.13(423) contains more information about this service. Since the trade-in provisions are not applicable to the value of taxable enumerated services, the purchase price of the car is \$9,000 and not \$7,000.

203.5(4) Three-way trade-in transactions. In a three-way trade-in transaction, the agreement provides that a lessee sells to a third-party dealer a vehicle (or other tangible personal property) that the lessee owns. The lessor then purchases another vehicle from the third-party dealer at a reduced price and leases the vehicle to the lessee. The difference between the reduced sale price and retail price of the vehicle is not allowed as a trade-in on the vehicle for use tax purposes.

EXAMPLE: Customer A enters into a three-way agreement with Lessor B. Under the terms of the contract, Customer A sells a 2005 Ford Taurus owned by A to Used Car Dealer C. The retail price for the Ford Taurus is \$30,000. Used Car Dealer C then sells the Ford Taurus to Lessor B for the reduced price of \$25,000. Lessor B then leases the Ford Taurus to Customer A for a period of 12 months. The \$5,000 difference between the reduced sale price and the retail price of the vehicle is not allowed as a trade-in on the sale of the vehicle for use tax purposes.

This rule is intended to implement Iowa Code sections 423.1(51) and 423.3(59).

701—203.6(423) Installation charges when tangible personal property is sold at retail. When the sale of tangible personal property includes a charge for installation of the personal property sold, the current rate of tax shall be measured on the entire sales price from the sale. The installation charges would not be taxable if the installation service is not an enumerated service, and where a sales agreement exists, the installation charges are separately contracted. If the written contract contains no provisions separately itemizing such charges, tax is due on the full contract price with no deduction for installation charges, whether or not such installation charges are itemized separately on the invoice.

If the installation services are enumerated services, the installation charges would not be taxable if (1) the services are exempt from tax (e.g., the services are performed on or connected with new construction, reconstruction, alteration, expansion or remodeling of a building or structure) or the services are rendered in connection with the installation of new industrial machinery or equipment, and (2) where a sales agreement exists, the installation charges are separately contracted. If the written contract contains no provisions separately itemizing such charges, tax is due on the full contract price with no deduction for installation charges, whether or not such installation charges are itemized separately on the invoice. If no written contract exists, the installation charges must be separately itemized on the invoice to be exempt from tax. More information is contained in rule 701—219.13(423).

This rule is intended to implement Iowa Code section 423.1(51).

701—203.7(423) Service charge and gratuity. When the purchase of any food, beverage or meal automatically and invariably results in the inclusion of a mandatory service charge to the total price for such food, beverage or meal, the amounts so included shall be subject to tax. The term “service charge” means either a fixed percentage of the total price of or a charge for food, a beverage or a meal.

The mandatory service charge shall be considered: (1) a required part of a transaction arising from a taxable sale and a contractual obligation of a purchaser to pay to a vendor a charge arising directly from

and as a condition of the making of the sale and (2) a fixed labor cost included in the price for food, a beverage or a meal even though such charge is separately stated from the charge for the food, beverage or meal.

When a gratuity is voluntarily given for food, a beverage or a meal, it shall be considered a tip and not subject to tax.

This rule is intended to implement Iowa Code sections 423.1(51) and 423.2(1).

701—203.8(423) Payment from a third party. The sales price from the sales of tangible personal property, services, or enumerated services includes consideration received by the seller from third parties. The following conditions shall apply:

203.8(1) The seller actually receives consideration from a party other than the purchaser, and the consideration is directly related to a price reduction or discount on the sale;

203.8(2) The seller has an obligation to pass the price reduction or discount through to the purchaser;

203.8(3) The amount of the consideration attributable to the sale is fixed and determinable by the seller at the time of the sale of the item to the purchaser; and

203.8(4) One of the following criteria is met:

a. The purchaser presents a coupon, certificate or other documentation to the seller to claim a price reduction or discount where the coupon, certificate or documentation is authorized, distributed or granted by a third party with the understanding that the third party will reimburse any seller to whom the coupon, certificate or documentation is presented;

b. The purchaser self-identifies to the seller as a member of a group or organization entitled to a price reduction or discount (a “preferred customer” card that is available to any patron does not constitute membership in such a group); or

c. The price reduction or discount is identified as a third-party price reduction or discount on the invoice received by the purchaser or on a coupon, certificate or other documentation presented by the purchaser.

This rule is intended to implement Iowa Code chapter 423.

[Filed 7/2/24, effective 8/28/24]

[Published 7/24/24]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/24.

ARC 8153C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rulemaking related to bundled transactions

The Revenue Department hereby rescinds Chapter 206, “Bundled Transactions,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code section 423.2.

Purpose and Summary

The purpose of this rulemaking is to readopt Chapter 206. This chapter was recently updated, and the Department has determined that it does not contain language that is obsolete, unnecessary, or duplicative of statutory language. The chapter describes the Department's interpretation of the underlying statute to help the public understand the taxability of bundled transactions. The rules reduce uncertainty about how tax applies when items are sold together.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7148C**. A public hearing was held on the following date(s):

- January 3, 2024

Public comment was received. The Department received the following written comments:

1. A commenter suggested specifying that a bundled transaction does not include the sale of any products in which the sales price varies, or is negotiable, based on the selection by the purchaser of the products included in the transaction to rule 701—206.1(423). The Department determined that since the exclusion is already stated in paragraph 206.2(2)“b,” it would be unnecessary to state it earlier. Nevertheless, the Department revised rule 701—206.1(423) to make it less broad in response to this comment.

2. A commenter suggested changing Example 2 in subrule 206.2(1) to a keepsake decorative tin and relating the conclusion to the 50 percent threshold for food products under subrule 206.3(5). The Department determined that the change would not make the example more helpful and elected not to change the example.

3. A commenter suggested changing Example 2 in subrule 206.2(2) to add that Buyer D is a commercial enterprise and qualifies for the exemption of software services. The Department determined that the change would not be relevant for this example and would not lead to a better understanding of the rule and elected not to change the example.

4. A commenter suggested adding language to rule 701—206.3(423) clarifying that transactions that otherwise meet the definition of bundled transaction are not bundled transactions “if they are any of the following.” The Department determined that adding this language would be unnecessarily duplicative of statutory language and elected not to make the change.

5. A commenter suggested changing the example in subrule 206.3(1) to Internet services because programming services are taxable services but exempt if provided to commercial enterprises. The Department determined that the change would not be relevant for this example and would not lead to a better understanding of the rule and elected not to change the example.

6. A commenter suggested adding examples to rule 701—206.2(423). The Department determined these additional examples would not lead to a better understanding of the rule.

7. A commenter suggested changing Example 2 in subrule 206.3(4) to be in accordance with the rule for live webinars set forth in rule 701—213.27(423), and to change the scenario so there is an included manual instead of a smartwatch. The Department determined that changing a smartwatch to a manual did not lead to a better understanding of the rule and elected not to change it; however, the Department did change the language to clarify that the live webinar does allow for participation so it is not subject to sales tax.

8. A commenter suggested changing the example in subrule 206.3(5) to include cooked hot dogs and a beverage instead of cooked and uncooked hot dogs. The Department determined that the actual item being sold does not affect the understanding of the rule and elected not to change it.

Adoption of Rulemaking

This rulemaking was adopted by the Department on June 24, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on August 28, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 206 and adopt the following **new** chapter in lieu thereof:

CHAPTER 206
BUNDLED TRANSACTIONS

701—206.1(423) Taxability of bundled transactions. The sales price of a bundled transaction is subject to tax. For purposes of this rule, products include tangible personal property, services, and specified digital products and exclude real property and services to real property.

701—206.2(423) Bundled transaction. A “bundled transaction” is the retail sale of two or more products where the products are otherwise distinct and identifiable and the products are sold for one nonitemized price.

206.2(1) Distinct and identifiable product. “Distinct and identifiable product” does not include any of the following:

a. Packaging or other materials that accompany the retail sale of the products and are incidental or immaterial to the retail sales of the products. Packaging or other materials include but are not limited to containers, boxes, sacks, bags, bottles, envelopes, wrapping, labels, tags, twine, garment hangers, and instruction guides.

EXAMPLE 1: Seller Z provides paper and plastic bags for purchasers to use to carry away their purchased items. The bags are incidental or immaterial to the retail sales of the products and are not distinct and identifiable products. Seller Z's retail sale of purchased items in the provided bags does not constitute a bundled transaction.

EXAMPLE 2: Seller X sells brownies and offers purchasers the option of adding a premium box for an increased price. The sales price of the brownies is the same whether they are sold on their own or with a standard box, but the total sales price increases if the purchasers select a premium box. The premium box is distinct and identifiable from the food product because it requires separate shopping preferences and product selection by the purchaser and is not standard with every order of food product. The retail sale of the brownies and the premium box may constitute a bundled transaction if the other requirements pursuant to Iowa Code section 423.2(8) are satisfied.

EXAMPLE 3: Seller A offers purchasers the option to buy reusable, long-lasting grocery bags to use to carry away purchased grocery items. If the reusable grocery bags are purchased with other items and separately itemized, they are taxable and the sale does not constitute a bundled transaction.

b. A product that is provided free of charge to the consumer in conjunction with the required purchase of another product, if the sales price of the other product does not vary depending on whether the product provided free of charge is included in the transaction. Examples include a free car wash with the purchase of gasoline or free dinnerware with the purchase of groceries.

c. Items specified in the definition of “sales price” in Iowa Code section 423.1.

206.2(2) One nonitemized price. “One nonitemized price” does not include the following:

a. A price that is separately identified by product on a binding sales document, or other sales-related documentation, that is made available to the customer in paper or electronic form, including but not limited to an invoice, a bill of sale, a receipt, a contract, a service agreement, a lease agreement, a periodic notice of rates and services, a rate card or a price list.

b. A price for which the sales price varies or is negotiable based on the purchaser’s selection of the products included in the transaction even if the seller only provides one price on its invoice to the purchaser.

EXAMPLE 1: Seller A sells a bakery item as part of a meal which consists of taxable prepared food. The purchaser selects items from a list of options of prepared food to be included in the meal. The individual items of the meal are not itemized on the receipt and the meal is always the same price, notwithstanding the items selected by the purchaser. The meal is sold for one nonitemized price, and the sales price of the meal is subject to tax as a bundled transaction.

EXAMPLE 2: Seller B enters into a contract with buyer D to provide various information technology services. Buyer D selects the information technology services it wants from seller B. Through negotiation, buyer D and seller B agree on a price based on the services selected and seller B bills buyer D one price for all of the services, some of which are taxable and some of which are not taxable. Although the invoice from seller B to buyer D only contains one price for all of the services, since the price was based on the products selected by buyer D, the price is not one nonitemized price and the sale does not constitute a bundled transaction.

701—206.3(423) Transactions not taxable as bundled transactions. Generally, the entire sales price from a bundled transaction is subject to sales tax. However, the transactions described in this rule are not taxable as bundled transactions.

206.3(1) Sales involving mixed tangible personal property and services. The retail sale of tangible personal property or a specified digital product and a service, if the tangible personal property or specified digital product is essential to the use of the service, and provided exclusively in connection with the service, and if the true object of the transaction is the service.

EXAMPLE: Seller A charges customer B for computer programming services where customer B is also given a backup disk and instruction manual. The true object of the transaction is the provision of the programming services. Seller A is selling nontaxable services and is not making a sale of a bundled transaction. Iowa sales tax is not due on the programmer’s charge for services; sales tax is due on seller A’s purchases of tangible personal property used to fulfill the service.

206.3(2) Sales involving services. The retail sale of services, if one of the services is essential to the use or receipt of a second service, and provided exclusively in connection with the second service, and if the true object of the transaction is the second service. If the transaction is not a bundled transaction as a result of this exclusion, then the true object of the transaction will be the retail sale of the second service and should be taxed accordingly.

206.3(3) True object test. The true object of a transaction is the main product that is the subject of the transaction. Determining the true object of a transaction is a fact-based inquiry and shall be made on a case-by-case basis. Factors that may be considered in determining the true object of a transaction include but are not limited to the nature of the seller’s business and purchaser’s reason for making the purchase.

206.3(4) Sales involving de minimis taxable products. A transaction that includes taxable and nontaxable products and the seller’s purchase price or sales price of the taxable products is de minimis. “De minimis” means the seller’s purchase price or sales price of the taxable products is 10 percent or less of the total purchase price or sales price of the bundled products. A seller shall use either the seller’s

purchase price or seller's sales price of the products to determine whether the taxable products are de minimis. A seller may not use a combination of the seller's purchase price and seller's sales price of the products to determine whether the taxable products are de minimis.

EXAMPLE 1: Seller H sells a coupon book that includes a packet of stickers for one nonitemized price of \$75. The packet of stickers is not provided free of charge. Seller H purchased the stickers, a taxable product, for \$2 per packet, which does not exceed 10 percent of the total purchase price of the coupon book and stickers. Seller H's sale of the coupon book and stickers is not a bundled transaction, and the sales price of \$75 is not subject to tax.

EXAMPLE 2: Technology Company F (company F) sells access to a day-long live webinar about the latest trends occurring in the technology industry for one nonitemized price of \$200. The webinar, which allows for participation that is substantially similar to an in-person presentation, is not subject to Iowa sales tax. The customer also receives a smartwatch that is included in the payment of the webinar but is not provided free of charge. Company F's sales price of the smartwatch is \$50, which exceeds 10 percent of the total sales price of the fee. The watch is subject to sales tax by the customer. Because company F's purchase price of the watch is not de minimis, the \$200 transaction is a bundled transaction and is subject to tax.

206.3(5) *Sales involving taxable and exempt food or medical products.* The retail sale of exempt tangible personal property and taxable tangible personal property where all of the following apply:

a. The transaction includes food and food ingredients, drugs, durable medical equipment, mobility enhancing equipment, prosthetic devices, or medical supplies; and

b. The seller's purchase price or sales price of the taxable tangible personal property is 50 percent or less of the total purchase price or sales price of the bundled tangible personal property. Sellers may not use a combination of the purchase price and sales price of the tangible personal property when making the 50 percent determination for a transaction.

EXAMPLE: Seller F offers its customers a package containing two prepared hot dogs and five frozen hot dogs. The sales price for the two prepared hot dogs is \$5, and the sales price of the five frozen hot dogs is \$10. The package is sold for one nonitemized price of \$15. The sales price of the package is not taxable because the sales price of the taxable items (the two prepared hot dogs) is 50 percent or less of the total sales price of the package.

These rules are intended to implement Iowa Code section 423.2(8).

[Filed 7/2/24, effective 8/28/24]

[Published 7/24/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/24.

ARC 8154C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rulemaking related to multilevel marketer agreements

The Revenue Department hereby rescinds Chapter 208, "Multilevel Marketer Agreements," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 421.5 and 421.17.

Purpose and Summary

This rulemaking rescinds Chapter 208 and adopts a new Chapter 208 regarding multilevel marketer agreements. These agreements allow multilevel marketer companies to enter into contracts with the Department to collect and remit sales tax. The rules help the companies understand eligibility requirements for the multilevel marketer program. This rulemaking repromulgates the existing Chapter 208 with updated language and an additional rule to provide additional clarity that the Department determined was necessary.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7173C**. A public hearing was held on the following date(s):

- January 3, 2024

Public comment was received. The Iowa Taxpayers' Association provided comments both orally at the public hearing and via written comment through Iowa Taxpayers' Association President and CEO Thomas R. Sands. These comments are summarized as follows:

1. Incorrect cross-references to local option sales tax were identified in subrule 208.1(2). The Department has corrected these cross-references to Iowa Code chapter 423B in response.

2. Speculation whether the new rule 701—208.2(421) could negate an agreement entered pursuant to rule 701—208.1(421), and how the intent of rule 701—208.2(421) differs from subrule 208.1(7). The Department determined that rule 701—208.2(421) recognizes that the expanded statutory definition of “retailer” (effective January 1, 2019) may have imposed a legal obligation on many multilevel marketers to collect Iowa sales tax regardless of whether the multilevel marketer opted to use the provisions of this rule. Future changes to Iowa law could also expand sales tax collection duties. Rule 701—208.2(421) does not negate any agreements.

Another statutory reference was corrected from Iowa Code chapter 422B to Iowa Code chapter 423B in the definition of “sales tax.”

Adoption of Rulemaking

This rulemaking was adopted by the Department on June 24, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on August 28, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 208 and adopt the following **new** chapter in lieu thereof:

CHAPTER 208
MULTILEVEL MARKETER AGREEMENTS

701—208.1(421) Multilevel marketers—in general. Multilevel marketer companies may enter into a written contract with the department to collect and remit state and local option sales taxes on sales of tangible personal property and specified digital products to independent distributors for resale and remit the taxes directly to the department. To be eligible for the multilevel marketer program, the company must meet certain eligibility requirements and agree to certain terms in the multilevel marketer agreement as set forth in 701—subrules 208.1(3) and 208.1(4). All written contacts with the department should be sent to Nonfiler Unit, Compliance Division, Iowa Department of Revenue, P.O. Box 10456, Des Moines, Iowa 50306-0456.

208.1(1) Definitions. The following definitions of terms are applicable to this chapter:

“*Independent distributor*” means a seller who purchases products for resale to an Iowa consumer based on a price suggested by a multilevel marketer.

“*Multilevel marketer*” means a wholesaler that sells tangible personal property or specified digital products for resale via a network of independent distributors who then sell the property to the ultimate consumers located in Iowa at a retail price suggested by the multilevel marketer.

“*Sales tax*” or “*sales taxes*” for the purpose of this rule means Iowa state sales tax, including local option sales and service taxes, and state use tax. To determine whether local option sales and service taxes are due, see rules 701—270.2(423B) and 701—270.3(423B).

208.1(2) Collection of tax. Iowa state sales tax is to be collected on the wholesale or retail selling price if delivery of the multilevel marketer’s tangible personal property or specified digital product occurs in Iowa or the property is used in Iowa (more information is contained in subparagraph 208.1(4)“a”(1)). In addition, local option sales tax is due on the sale if delivery of the tangible personal property or specified digital product to the consumer occurs within a local option tax jurisdiction. More information and examples illustrating delivery and taxation can be found in rules 701—270.2(423B) and 701—270.3(423B).

208.1(3) Eligibility requirements. For a multilevel marketer to be eligible for a multilevel marketer agreement, the following criteria must be met:

a. Tangible personal property or specified digital products are sold by the multilevel marketer to an independent distributor for resale to an Iowa end user or for a distributor’s personal use.

b. Unless authorized by the department, the multilevel marketer must not have been previously required to be registered to remit sales tax.

c. The multilevel marketer must have contacted the department with a request to collect and remit sales taxes directly to the department on sales made by an independent distributor.

d. The multilevel marketer must not be under audit or examination by the department on the effective date of the agreement.

The department has full discretion to determine if a multilevel marketer meets the eligibility requirements for a multilevel marketer agreement. The department has full discretion to decide whether to enter a multilevel marketer agreement. The department can request any and all information and documentation necessary to determine whether eligibility requirements are met. Failure to timely submit information and documents requested by the department will result in the department’s refusal to enter into an agreement with the multilevel marketer.

208.1(4) Terms of the multilevel marketer agreement. The multilevel marketer agreement will become effective on the date an authorized representative of the multilevel marketer executes the agreement. Unless terminated in accordance with subrule 208.1(5), the multilevel marketer agreement remains in effect as long as the multilevel marketer has an independent distributor making sales in Iowa.

Terms of agreements are based on results of negotiations between the multilevel marketer and the department. However, the following general terms must be in each multilevel marketer agreement:

a. The multilevel marketer agrees to the following terms:

(1) The multilevel marketer agrees to collect tax on the following three types of sales, excluding sales properly exempt from tax and evidenced by a valid exemption certificate:

1. The multilevel marketer agrees to collect sales tax from the independent distributors based on the suggested retail price of its product;

2. If the multilevel marketer allows independent distributors to purchase its product at a wholesale price for the distributor's personal use, then the multilevel marketer agrees to collect sales tax on sales that are based on the wholesale price to the independent Iowa distributor, unless the department waives this requirement; and

3. The multilevel marketer agrees to collect sales tax on all retail sales by the multilevel marketer to consumers that are subject to sales tax;

(2) The multilevel marketer will timely remit sales tax on transactions described in subparagraph 208.1(4) "a"(1);

(3) The multilevel marketer will maintain records to establish the accuracy of the sales and use tax returns within the applicable statutes of limitation;

(4) The multilevel marketer agrees that the sales tax shall be added to the retail price charged to the consumer, as required by Iowa Code section 423.14(2) "e";

(5) The multilevel marketer agrees to be subject to audit and to pay any tax, penalty, and interest that are ultimately found to be legally due and that were required to be collected by the multilevel marketer under Iowa law, these rules, and the multilevel marketer agreement;

(6) The multilevel marketer agrees to abide by the rules in 701—Chapter 208; and

(7) The multilevel marketer agrees to register for an Iowa sales and use tax permit.

b. The department agrees to the following terms:

(1) The department will not audit, assess or demand payment of sales tax, penalty or interest from the multilevel marketer for any tax periods ending before the effective date of the multilevel marketer agreement, unless the multilevel marketer had a permit registration with the department prior to the effective date of this multilevel marketing agreement. If a multilevel marketer had a permit registration with the department prior to the effective date of this multilevel marketing agreement, the department may audit, assess, refund, or demand payment of tax, penalty, and interest from the multilevel marketer for any of those previous tax periods within the applicable statute of limitation.

(2) Unless required for transactions outside the multilevel marketer agreement, the department will not require the multilevel marketer to retroactively register for an Iowa sales and use tax permit or file Iowa sales and use tax returns for periods ending on or before the effective date of this agreement.

(3) The department agrees to allow a deduction from taxable sales reported by the multilevel marketer for merchandise returned by an independent distributor for which tax has already been paid to the department and for which the multilevel marketer, via the distributor, has allowed a credit or refund of the tax to the consumer.

c. Other general agreement terms:

(1) The multilevel marketer agreement is binding upon all parties, including their successors and assignees; and

(2) The terms, provisions, interpretations and enforcement of the multilevel marketer agreement are to be governed by the laws of the state of Iowa.

d. Refunds. Refunds for any overpayment of taxes paid by a consumer as a result of a multilevel marketer agreement should be claimed on the proper Iowa refund claim form as designated by the director. Under this agreement, if the retail sale is made by an Iowa retailer to an out-of-state consumer, the multilevel marketer agrees to forego any claim for refund of tax that was paid on such sale.

208.1(5) *Termination of a multilevel marketer agreement.* If any of the following events occur, an executed multilevel marketer agreement may be declared null and void:

a. Termination of a multilevel marketer agreement at the department's discretion.

(1) The multilevel marketer has misrepresented any material fact regarding its activities, operations, tax liabilities, or eligibility under the agreement.

(2) It is determined by the department that the multilevel marketer had been notified that it was to be or was under audit by the department prior to the time the multilevel marketer executed the multilevel marketer agreement.

b. Termination of a multilevel marketer agreement by mutual agreement of the parties.

(1) Change occurs in law that impacts the tax liability subject to the multilevel marketer agreement.

(2) Collection and remittance of sales tax as required under the agreement are more feasible by other means.

Written notice of termination will be promptly given by the department in the event of termination under paragraph 208.1(5)“a.” To accommodate the time necessary to effectuate changes by the multilevel marketer and the department, the effective date of the termination of the multilevel marketer agreement shall be 60 days from the date of the notice of the written termination, unless a request for additional time is made by the multilevel marketer and the request is granted by the department.

208.1(6) *Liability of independent distributors.* After execution of a multilevel marketer agreement, an independent distributor must collect, report, and remit to the department, unless remitted to the multilevel marketer, any and all sales taxes that the independent distributor is required to collect, report, and remit that exceed the amount of tax that the independent distributor has previously remitted to the multilevel marketer company. If such excess tax is remitted to the multilevel marketer, the multilevel marketer shall report and remit the tax to the department.

EXAMPLE 1: An independent distributor purchased products from the multilevel marketer at the wholesale price because the distributor thought that the product would be for the personal use of the distributor. The distributor paid Iowa tax based on the wholesale price to the multilevel marketer and the multilevel marketer remitted the tax to the state of Iowa. Subsequently, the distributor resold the product to an Iowa customer at a retail price, which is greater than the wholesale price. The distributor is required to charge Iowa tax on the retail price. The distributor is also required to report and remit directly to the department or the multilevel marketer the difference between the tax previously paid on the wholesale price and the tax collected on the retail price from the Iowa customer.

EXAMPLE 2: An independent distributor purchased products from a multilevel marketer for resale at the retail price suggested by the multilevel marketer. Tax was collected by the multilevel marketer from the independent distributor on the suggested retail price of the products and remitted to the department by the multilevel marketer. The independent distributor subsequently sold the product to an Iowa customer for a price greater than the suggested retail price. The independent distributor is required to charge Iowa tax on the full sale price. The independent distributor is also required to report and remit directly to the department or to the multilevel marketer the difference between the tax previously paid on the suggested retail price and the tax collected on the price charged the Iowa customer.

If an independent distributor makes sales that are exempt from sales taxes, then the independent distributor must obtain a valid exemption certificate from the purchaser to evidence the transaction and provide a copy of the completed exemption certificate to the multilevel marketer that has the multilevel marketer agreement with the department.

208.1(7) *Legislative changes.* All multilevel marketer agreements are subject to all applicable legislative enactments that are made subsequent to the agreement and that impact the agreement.

701—208.2(421) Other sources of tax collection requirements. Notwithstanding any provision in this chapter or any multilevel marketer agreement and notwithstanding whether a multilevel marketer agreement is entered between a person and the department, multilevel marketers and independent distributors may have an obligation to collect Iowa sales tax and any applicable local option sales tax if they meet the definition of “retailer” under Iowa Code section 423.1(47).

These rules are intended to implement Iowa Code sections 421.5 and 421.17.

[Filed 7/2/24, effective 8/28/24]

[Published 7/24/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/24.

ARC 8155C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rulemaking related to purchases by businesses

The Revenue Department hereby rescinds Chapter 210, "Purchases by Businesses," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 99F.10(6), 421.14, and 423B.5.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.2 and 423.3.

Purpose and Summary

The purpose of this rulemaking is to repromulgate Chapter 210. The Department made revisions to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. This chapter also includes rules that were previously in other chapters that the Department has determined are more closely related to the subject matter of this chapter. This chapter describes the Department's interpretation of the underlying statute to help the public understand the taxability of purchases by businesses.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7197C**. A public hearing was held on the following date(s):

- January 16, 2024

Public comment was received. The Iowa Taxpayers' Association provided comments both orally at the public hearing and via written comment through Iowa Taxpayers' Association President and CEO Thomas R. Sands. The commenter noted rule 701—210.20(423) is limited to affiliated corporations. This limitation was not intended, and the Department has revised this rule to apply to affiliated entities.

Adoption of Rulemaking

This rulemaking was adopted by the Department on June 24, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on August 28, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 210 and adopt the following **new** chapter in lieu thereof:

CHAPTER 210
PURCHASES BY BUSINESSES

701—210.1(423) Wholesalers and jobbers selling at retail. Sales made by a wholesaler or jobber to a purchaser for use or consumption by the purchaser or in the purchaser's business and not for resale are considered retail sales and subject to tax, even if sales are made at wholesale prices or in wholesale quantities.

This rule is intended to implement Iowa Code section 423.2(1).

701—210.2(423) Materials and supplies sold to retail stores. The sales price of materials and supplies sold to retail stores for their use and not for resale shall be subject to tax. The retail store is the final buyer and ultimate consumer of such items as fuel, cash registers, adding machines, typewriters, stationery, display fixtures and numerous other commodities that are not sold by the store to its customers.

This rule is intended to implement Iowa Code section 423.2.

701—210.3(423) Tangible personal property and specified digital products purchased for resale but incidentally consumed by the purchaser. A retailer engaged in the business of selling tangible personal property or specified digital products who takes merchandise from stock for personal use, consumption, or gifts shall report these items as "goods consumed" on the sales and use tax return and remit sales tax and any applicable local option sales tax on the purchase cost of the items. This rule does not authorize purchase for resale of items intended to be used by the retailer.

This rule is intended to implement Iowa Code section 423.2.

701—210.4(423) Property furnished without charge by employers to employees. When an employer furnishes tangible personal property, including meals, or specified digital products to employees without charge or uses merchandise for gifts or consumption, the cost to the employer of the tangible personal property or specified digital products shall be subject to sales tax and any applicable local option sales tax and reported on the employer's return as "goods consumed" if the employer has not previously paid tax to a retailer. However, the food purchased by the employer for meals prepared for employees is not subject to tax.

This rule is intended to implement Iowa Code section 423.2.

701—210.5(423) Owners or operators of buildings. Owners or operators of buildings who purchase items to be used by them in maintaining the building are the users or consumers and shall pay sales tax to their suppliers.

210.5(1) When owners or operators of buildings remeter and bill their tenants for electric current, gas, or any other taxable service consumed by the tenants, such owners or operators shall be considered to be purchasing the electric current, gas, or other taxable service for resale. These owners or operators shall hold permits and shall be liable for the tax upon the sales price of the sale of such service. When the building owners or operators purchase all of the electric current, gas, or other services for resale and consume a portion in the operation of the building, they shall be liable for sales tax on that portion consumed, based upon the cost of the electric current or gas purchased for resale.

210.5(2) When the management of a building sells heat to other buildings or other persons and charges for such service as a sale of heat, such transactions are considered sales at retail and shall be subject to tax.

210.5(3) When heat is furnished to tenants as a service to them, incidental to the renting of the space, there shall be no tax. When heat is sold separately and billed to the tenants separately, such service shall be taxable.

210.5(4) When a building manager makes sales of tangible personal property, specified digital products, or taxable services at retail, the manager shall be required to procure a permit and collect and remit tax.

This rule is intended to implement Iowa Code section 423.2.

701—210.6(423) Blacksmith and machine shops. When a blacksmith or machine shop operator fabricates finished tangible personal property from raw materials and sells such property at retail, tax shall apply on the total charge, which includes the fabrication labor. Rule 701—211.28(423) contains information on the taxable service of machine operation.

This rule is intended to implement Iowa Code section 423.2.

701—210.7(423) Truckers engaged in retail business. Truckers or haulers engaged in the sale of tangible personal property to ultimate users or consumers shall be deemed as making taxable sales.

This rule is intended to implement Iowa Code section 423.2.

701—210.8(423) Out-of-state truckers selling at retail in Iowa. Truckers or persons who are based outside of Iowa and are engaged in the sale of tangible personal property at retail in Iowa by means of hauling the tangible personal property into the state shall collect and remit Iowa sales tax. To ensure the remission of tax on Iowa sales, the department has the statutory authority to require a bond deposit from sellers classified in this rule. This right shall be exercised when necessary.

This rule is intended to implement Iowa Code section 423.2.

701—210.9(423) Iowa dental laboratories.

210.9(1) *Sales by dental laboratories.* Iowa dental laboratories are engaged in selling tangible personal property to Iowa dentists. Such laboratories shall hold a retail sales tax permit and collect and report all tax due from dentists in all transactions involving taxable retail sales.

210.9(2) *Purchases not subject to tax.* Iowa dental laboratories shall not be subject to tax on those purchases of tangible personal property that form a component or integral part of new work or repair work being furnished to Iowa dentists or other dentists or that would be exempt if purchased directly by the dentist's patient.

210.9(3) *Purchases subject to tax.* Iowa dental laboratories are the final user or consumer of all tangible personal property, including tools, office supplies, equipment, and any other tangible personal property not otherwise exempt. Sales tax shall be remitted to its Iowa supplier when purchasing in this state, and use tax shall be remitted directly to the department when such items are purchased from out-of-state suppliers, unless the out-of-state supplier is registered with the department and collects sales or use tax for the state.

This rule is intended to implement Iowa Code sections 423.2 and 423.33.

701—210.10(423) Dental supply houses. Dental supply houses are engaged in selling tangible personal property to dentists and dental laboratories. Such dental supply houses shall collect and report all tax due from purchasers in all transactions involving taxable retail sales. This shall not include sales of tangible personal property that will form a component or integral part of new work or repair work being furnished to Iowa dentists or other dentists or that would be exempt if sold directly to an individual.

This rule is intended to implement Iowa Code section 423.2.

701—210.11(423) News distributors and magazine distributors. News distributors and magazine distributors engaged in intrastate sales of magazines and periodicals in Iowa to vendors that are engaged in part-time distribution of such magazines are deemed to be making sales at retail. The sales price of such sales shall be subject to sales tax.

This rule is intended to implement Iowa Code section 423.2.

701—210.12(423) Magazine subscriptions by independent dealers. The sales price of the sale of subscription magazines or periodicals derived by independent distributors or dealers in the state of Iowa that secure such subscriptions as independent dealers or distributors shall be subject to tax.

This rule is intended to implement Iowa Code section 423.2.

701—210.13(423) Sales by finance companies. A finance company that repossesses or acquires tangible personal property or specified digital products in connection with its finance business and sells tangible personal property or specified digital products at retail in Iowa shall be required to hold a permit and remit the current rate of tax on the sales price of such sales at retail in Iowa.

This rule is intended to implement Iowa Code section 423.2.

701—210.14(423) Bowling.

210.14(1) Pinsetters. The rental of automatic pinsetters by bowling alley operators is subject to the imposition of sales tax since the pinsetters are not resold to patrons. Therefore, the operator of the alley is considered the consumer of the pinsetter rental.

210.14(2) Shoes. The rental of bowling shoes is subject to the imposition of sales tax as equipment rental.

210.14(3) Score sheets. The sales of bowling score sheets to operators of bowling establishments are subject to the imposition of sales tax since the operators are the consumers of such score sheets.

This rule is intended to implement Iowa Code section 423.2.

701—210.15(423) Various special problems relating to public utilities.

210.15(1) Late payment charges. The amount of any charge, commonly called a “late payment charge,” imposed by a public utility on its customers shall not be subject to tax if the charge is in addition to any charge for the utility’s sale of its commodity or service and is imposed solely for the privilege of deferring payment of the purchase price of the commodity or service and furthermore is separately stated and reasonable in amount.

210.15(2) Due dates. The date of the billing of charges for a public utility’s sales shall be used to determine the period in which the utility shall remit tax upon the amount charged. The utility shall remit tax upon the sales price of any bill during the period that includes the billing date. Thus, if the date of a billing is March 31 and the due date for payment of the bill without penalty is April 20, tax upon the sales price contained in the bill shall be included in the return for the first quarter of the year. The same principle shall be used to determine when tax will be included in payment of a deposit.

210.15(3) Franchise fees. In general, the amount of any franchise fee that a public utility pays to a city for the privilege of operating and that is directly or indirectly passed on to the utility’s customers shall be included in sales price subject to tax. This will be true even if the amount of the franchise fee is computed as a percentage of other sales price subject to tax and is separately stated and separately charged to the immediate consumer of the commodity or service. However, if, in the future, it becomes lawful for a city to impose a sales or use tax and such tax is imposed upon the customers of public

utilities in the guise of a franchise fee, the amount of this city excise tax shall not be subject to Iowa tax if the tax imposed by the city is separately stated and separately billed.

This rule is intended to implement Iowa Code section 423.2(2).

701—210.16 Reserved.

701—210.17(423) Communication services furnished by a hotel to its guests. When a hotel purchases telephone communication services from telephone companies and furnishes those services to guests, tax shall apply to the entire charge that the hotel makes to its guests for such communication service, regardless of whether a guest's calls are local or long-distance within the state. However, the hotel would purchase any communication service that it furnishes for a charge to a guest exempt from tax as a service purchased for subsequent resale.

This rule is intended to implement Iowa Code section 423.2(2).

701—210.18(423) Explosives used in mines, quarries and elsewhere. A person engaged in the business of selling explosives to miners, quarries, or other purchasers shall be subject to sales tax on the sales price from the sale of such property at retail in Iowa. The purchaser shall be liable for use tax upon all purchases for use in Iowa not subject to sales tax.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—210.19(423) Sales of signs at retail. A person engaged in selling illuminated signs, bulletins, or other stationary signs (whether manufactured by that person or by others) to users or consumers is selling tangible personal property at retail. The sales price shall be taxable, even when the sales price of the sign includes a charge for maintenance or repair service in addition to the charge for the sign.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—210.20(423) Sale, transfer or exchange of tangible personal property or taxable enumerated services between affiliated entities. The sales price of the sale, transfer or exchange of tangible personal property or taxable services among affiliated entities, including but not limited to a parent corporation to a subsidiary corporation, for a consideration is subject to tax. A bookkeeping entry for an "account payable" qualifies as consideration as well as the actual exchange of money or its equivalent.

This rule is intended to implement Iowa Code section 423.1(50).

701—210.21(423) Mergers that do not involve taxable sales of tangible personal property or services. If title to or possession of tangible personal property or ownership of services is transferred from one business to another pursuant to a statutory merger, the transfer is not a "sale" in which the sales price is subject to tax if all of the following circumstances exist: (1) the merger is pursuant to statute; (2) by the terms of that statute, the title or possession of property or services transferred passes from a merging business to a surviving business and not for any consideration; and (3) the merging business is extinguished and dissolved the moment the merger occurs and, as a result of this dissolution, cannot receive any benefit from the merger.

EXAMPLE A: Nonaffiliated Corporations A and C enter into a voluntary merger agreement governed by Iowa Code section 490.1106. A and C are separate and independent, one from the other, and neither is a subsidiary of another corporation. No officer of the one is an officer of the other. A and C voluntarily negotiate an arms-length merger agreement, which results in the transfer of A's assets to C and the dissolution of A. In return, A's stockholders receive stock in C. The sales price of A's transfer of tangible personal property to merged company C is not subject to sales or use tax.

EXAMPLE B: Corporation H buys all the assets of Corporation I, which include machinery, equipment, finished goods, and raw materials. Corporation H pays cash for these assets. This transaction does involve the sale of tangible personal property, and the sales price of the sale may be subject to Iowa sales tax. However, 701—subrule 18.28(2) contains more information concerning a casual sale exemption applicable to the liquidation of a business.

701—210.22(422,423) Railroad rolling stock. Railroad rolling stock is that portion of railroad property that is incapable of being affixed or annexed on any one place but is wholly intended for movement on rails to transport persons or property whether for hire or not for hire and includes materials and parts used therefor. Locomotives, railroad cars, and materials and parts used therefore shall be exempt from tax. This exemption includes maintenance-of-way equipment that is used to transport persons or property. Also, fuel and lubricants used in railroad rolling stock are materials used in railroad rolling stock and their sales are exempt from tax. Enumerated services are not railroad rolling stock and are not exempt from tax.

This rule is intended to implement Iowa Code section 423.3(71).

[Filed 7/2/24, effective 8/28/24]

[Published 7/24/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/24.

ARC 8156C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rulemaking related to taxable services

The Revenue Department hereby rescinds Chapter 211, "Taxable Services," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.2, 423.3 and 423.36.

Purpose and Summary

The purpose of this rulemaking is to rescind Chapter 211 and adopt a new Chapter 211. The Department made amendments to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. The chapter describes the Department's interpretation of the underlying statute to help the public understand the taxability of services.

Many prior rules were deleted and were not replaced. The Department determined that several rules contained unnecessary language. Language was removed that was either duplicative of statute or had a plain meaning that did not need to be defined in the rules. Issues no longer addressed by the rules are not necessarily meant to be interpreted differently.

The rules no longer address services performed for employers. The Department determined that a separate rule on services for employers is not needed because Iowa Code section 423.1(54) excludes services performed for an employer from the definition of a taxable service.

Several services are no longer defined in the rules. The Department removed many rules because they either duplicated statutory language or they defined terms that have plain language understandings that do not need to be defined in the rules. Terms no longer defined by rule are not necessarily meant to be interpreted differently.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7198C**. A public hearing was held on the following date(s):

- January 16, 2024

The Iowa Taxpayers' Association provided comments both orally at the public hearing and via written comment through Iowa Taxpayers' Association President and CEO Thomas R. Sands. Larry Nordeen with Iowa Taxes LLC also provided written comment. The comments are summarized as follows:

1. The outdated term "gross receipts" appeared in rule 701—211.24(423). This was an error, and the Department has updated the language.
2. Rule 701—211.34(423) did not include a reference to the exemption for digital goods and services for commercial enterprises. The Department has added this reference to this rule.

Adoption of Rulemaking

This rulemaking was adopted by the Department on June 24, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on August 28, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 211 and adopt the following **new** chapter in lieu thereof:

CHAPTER 211
TAXABLE SERVICES

701—211.1(423) Definitions and scope.

211.1(1) Definitions. For purposes of this chapter:

"Persons engaged in the business of" means persons who offer the named service or services to the public or others in exchange for consideration, regardless of whether such persons offer the service or services continuously, part-time, seasonally, or for short periods.

“*Repair*” includes the mending or renovation of existing parts and the replacement of defective parts or subassemblies. Repair does not include the installation of new parts or accessories that are not replacements.

“*Specified digital products*” means the same as defined in Iowa Code section 423.1.

211.1(2) *Scope.* Iowa imposes tax upon the sales price of rendering, furnishing, or performing at retail services listed in Iowa Code section 423.2(6). Some of these services are described in more detail in this chapter.

This rule is intended to implement Iowa Code section 423.2.

701—211.2(423) Services purchased for resale. Services purchased for resale are not subject to sales tax. A service is purchased for resale when it is subcontracted by the person contracted to perform the service. Tax imposed on services is collectible at the time the service is complete even if the services are not purchased by the ultimate beneficiary.

EXAMPLE 1: D owns an auto repair shop, and F brings an automobile in to have the air conditioner fixed. D is unable to fix the unit, so the car is sent to G, who is an air conditioning specialist. The sale of G’s service to D is a sale for resale by D to F, so there is no tax imposed. The sale from D to F is subject to sales tax.

EXAMPLE 2: R operates a retail farm implement dealership. R accepts a motorboat as part consideration for a piece of farm equipment. R then contracts with D to repair the motor on the boat. R does not normally sell motorboats in the regular course of R’s business. Therefore, the repair service performed by D for R is subject to sales tax.

This rule is intended to implement Iowa Code section 423.3(2).

701—211.3(423) Fur storage and repair.

211.3(1) *In general.* Persons engaged in the business of storing fur for preservation and future use and refurbishing, repairing, and renovating fur, including the addition of new skins and furs, are selling a service subject to sales tax.

211.3(2) *Definition.* For purposes of this rule:

“*Fur*” includes both natural fur and synthetic products resembling fur.

This rule is intended to implement Iowa Code section 423.2(6) “*u.*”

701—211.4(423) Investment counseling. Persons engaged in the business of counseling others relative to investment in or on the disposition of property or rights, whether real, personal, tangible, or intangible, and who charge for that counseling, are selling a service subject to sales tax. This includes investment counseling rendered, furnished, or performed by a trust department.

This rule is intended to implement Iowa Code section 423.2(6) “*e.*”

701—211.5(423) Bank and financial institution service charges.

211.5(1) *In general.* The service charges imposed by financial institutions relating to a depositor’s checking account are subject to sales tax. If the same service is performed by a financial institution relating to an account that does not qualify as a checking account, the service charge imposed by the financial institution is not subject to sales tax.

211.5(2) *Definitions.* For purposes of this rule:

“*Bank*” means an institution empowered to do all banking business, including issue negotiable notes, discount notes, receive deposits payable on demand, and buy and sell bills of exchange. Savings and loan associations and other financial institutions not commonly considered to be banks do not fall within the meaning of a bank.

“*Checking account*” means an account on which withdrawals may be made from the account via a written instrument, including but not limited to a check, draft, or negotiable order of withdrawal (NOW). Whether or not an account pays interest does not determine whether an account qualifies as a checking account. The term “checking account” is characterized by its general meaning rather than a technical definition, and other types of accounts not described in this rule may qualify as checking accounts. Certificates of deposit do not qualify as checking accounts.

“Financial institutions” means the same as defined in Iowa Code section 423.2(6) *“f.”*

211.5(3) *Checking account charges.* All charges relating to a checking account are subject to sales tax, including but not limited to charges for the following:

- a. Withdrawals made by check or bank card.
- b. Nonproprietary automatic teller machine (ATM) transactions.
- c. Transferring funds from one account to another (if billed to a checking account).
- d. Stop payment.
- e. Debit card replacement.
- f. Copy and research.
- g. Bill payment.
- h. Returned deposit items.
- i. Issuance of a certified check, drawn from a particular account.

211.5(4) *Other service charges.* Service charges not usually subject to sales tax by virtue of having no relationship to checking accounts include but are not limited to:

- a. Safety deposit box rentals.
- b. Mortgages and loans.
- c. Trust department fees for probating estates, administering trusts, administering agency accounts, administering pension and profit-sharing plans, serving as stock transfer agents or registrars, serving as farm managers, and fees or commissions charged to customers for handling security transactions. Some of these services may qualify as investment counseling and may be subject to sales tax.

- d. Real estate appraisals.
- e. Servicing real estate loans.
- f. Contract collection and collection not related to the maintenance of a checking account.
- g. Special lockbox handling.
- h. Finance charges, including those for credit cards.
- i. Escrow agent.
- j. Safekeeping, handling and cashing coupons or certificates kept in a bank’s possession.
- k. Penalties on early withdrawal for saving certificates.
- l. Purchasing or selling securities for customers, unless used as a disguise for investment counseling fees.
- m. Real estate collection exchange, including collecting and transferring mortgage payments.
- n. Traveler’s or a similar type of check, bank cashier’s checks, bank drafts, or money orders with no relation to a customer’s checking account.
- o. Check exchanges.
- p. Noncustomer point-of-sale or ATM access fees or service charges.

211.5(5) *Exceptions.* Fees charged to a checking account depositor for a depositor’s failure to adhere to contractual obligations with a bank or financial institution are not subject to sales tax. These charges, such as fees for overdrafts or returned checks, are penalties rather than service charges. Bank service charges that are never assessed against the expense of maintaining a checking account are not subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(6) *“f.”*

701—211.6(423) Barber and beauty.

211.6(1) *In general.* Persons engaged in the business of barbering and beauty are selling a service subject to sales tax.

211.6(2) *Definitions.* For purposes of this rule:

“Barbering” means the same as defined in Iowa Code section 157.1.

“Beauty” means the same as “cosmetology” and “esthetics” as those terms are defined in Iowa Code section 157.1.

211.6(3) *Sales tax permits.*

a. Each barber, beauty or other beautification shop or establishment shall receive only one permit and remit tax as one enterprise when operated under a common management.

b. When an operator leases space and is an independent operator, the lessee shall notify the department and secure a sales tax permit whereby the lessee will be responsible directly for the sales tax due. In order to be considered independent, the lessee must also be independent from the lessor for the purposes of withholding income tax, unemployment compensation, and social security taxes.

211.6(4) Leasing. The lessor who has leased a part of the premises shall report to the department the names and addresses of all lessees. If the lessor is accounting for the lessee's sales, the lessor shall, after the name of each lessee, show the amount of net taxable sales made by the lessee on each report to the department and which net taxable sales are included in the lessor's return. Rule 701—288.11(423) contains more information.

This rule is intended to implement Iowa Code sections 423.2(6) "g" and 423.36.

701—211.7(423) Photography and retouching.

211.7(1) Definitions. For purposes of this rule:

"*Photography*" means the art or process of capturing or producing still or moving images, films, or videos using any device designed to record or capture images, film, or video. Taxable sales associated with photography services include but are not limited to sitting or photoshoot fees and fees relating to taking or producing photographs or videos, including editing.

"*Retouching*" means the alteration, restoration, or renovation of a picture, film, video, image, artwork, likeness, or design.

211.7(2) In general. The sales price of photography services and retouching services are taxable regardless of whether the service results in the production of tangible personal property or specified digital products. A deduction shall not be allowed for the expenses incurred by the photographer, such as rental of equipment or salaries or wages paid to assistants or models, whether or not the expenses are itemized in billings to customers.

EXAMPLE 1: Standalone photography service. X operates a photography business where customers can purchase a half-hour photoshoot session for \$50 and may purchase physical or electronic copies of any photographs taken during the photoshoot for \$10 each. Y purchases a half-hour photoshoot from X for \$50; however, after viewing the images, Y decides not to purchase any copies of any of the photographs. X must collect and remit sales tax and any applicable local option tax on \$50, the cost of the photography service, even though Y decided not to purchase any of the resulting photographs.

EXAMPLE 2: Photography service and sale of photographs. Same facts as Example 1, except that Y decides to purchase ten photographs for \$10 each. X must collect and remit sales tax and any applicable local option tax on \$150, the total cost of the \$50 photography service and the \$100 cost of the ten photographs. Here, the photography service is taxable and the photographs are taxable as the sale of tangible personal property if they are delivered in hard copy or as the sale of specified digital products if they are delivered electronically.

211.7(3) Tax not applicable. Tax shall not apply to the sales price of tangible personal property to photographers and photostat producers that becomes an ingredient or component part of photographs or photostat copies sold, such as mounts, frames and sensitized paper; but tax shall apply to the sales price of materials to photographers or producers that are used in the processing of photographs or photostat copies.

211.7(4) Sourcing. More information about how various aspects of photography services may be sourced is available in 701—subrule 205.2(1).

This rule is intended to implement Iowa Code section 423.2(6) "bo" and "bp."

701—211.8(423) Household appliance, television, and radio repair.

211.8(1) In general. Persons engaged in the business of repairing household appliances, television sets, or radio sets are selling a service subject to sales tax.

211.8(2) Definition. For purposes of this rule:

“Household appliances” includes all mechanical devices normally used in the home, whether or not the appliances are actually used in the home.

This rule is intended to implement Iowa Code section 423.2(6) “y.”

701—211.9(423) Machine operators.

211.9(1) *In general.* Persons engaged in the business of operating machines of all kinds that belong to other persons and charge a fee for operating are selling a service subject to sales tax. Operation of the machine must be the central function of the service being performed and not incidental to the performance of the service the operator was hired to perform.

211.9(2) *Definitions.* For purposes of this rule:

“Machine” includes but is not limited to typewriters, computers, calculators, cash registers, and manufacturing machinery and equipment. “Machine” does not include telephones, automobiles, or airplanes.

“Machine operator” is a person who manages, controls, and conducts a mechanical device or a combination of mechanical powers and devices used to perform a function and produce a certain result or effect.

211.9(3) *Machine operators as employees.* The services of a machine operator are not subject to sales tax if the operation of machinery is by an employee directly for an employer. Rule 701—211.3(423) contains information about services performed by an employee for an employer.

EXAMPLE 1: Employee A is hired to perform data entry on a computer for A’s employer. While Employee A is performing the service of a machine operator, because Employee A is performing the service directly for A’s employer, A’s service is not subject to sales tax.

EXAMPLE 2: Through a temporary employment agency, Worker B performs data entry on a computer for Company Z. Company Z pays a set per-hour fee for data entry services. Worker B is performing the service of a machine operator, not directly for Company Z but for the temporary employment agency. Company Z must pay sales or use tax on the fee imposed by the temporary employment agency. Rule 701—211.23(423) contains information about the service of private employment agencies.

EXAMPLE 3: Through a temporary employment agency, Worker C performs telemarketing services for Company X. Because Worker C is operating a telephone, which is not considered a machine for purposes of this rule, Company X would not pay sales or use tax on the fee imposed by the temporary employment agency.

EXAMPLE 4: Company Y hires Lawyer D through a temporary employment agency. Lawyer D spends most of the work time performing legal research and writing memoranda, both of which are done at a computer. Lawyer D is not a machine operator just because Lawyer D uses a computer. Lawyer D was hired by Company Y to perform legal services. Lawyer D’s use of the computer is incidental to the legal services Lawyer D was hired to perform.

EXAMPLE 5: Company X hires Employee A as a purchaser. In this role, Employee A procures materials for Company X, negotiates and manages purchasing agreements, and communicates with vendors. To perform these job duties, Employee A spends the majority of working hours on a computer. Employee A is not a machine operator, because the central function of the job is as a purchaser and the computer use is incidental to the performance of job duties.

This rule is intended to implement Iowa Code section 423.2(6) “ad.”

701—211.10(423) Machine repair of all kinds.

211.10(1) *In general.* Persons engaged in the business of repairing machines of all kinds are selling a service subject to sales tax.

211.10(2) *Definition.* For purposes of this rule:

“Machine” means a mechanical device or combination of mechanical powers and devices used to perform some function and produce a certain result or effect. Machines include devices that have moving parts, are operated by hand, and are powered by a motor, engine, or other form of energy.

211.10(3) *Musical instruments.* For purposes of this rule, a musical instrument does not constitute a machine.

EXAMPLE: Person A owns an electric piano and an acoustic upright piano. Both pianos require repairs; the electric piano needs a new power cord, and the acoustic piano needs keys replaced. The electric piano repair would be taxable under 701—subrule 219.13(6). The repair to the acoustic piano is not taxable.

This rule is intended to implement Iowa Code section 423.2(6) “*ae.*”

701—211.11(423) Oilers and lubricators.

211.11(1) *In general.* Persons engaged in the business of oiling, changing oil in, lubricating, or greasing vehicles and machines of all types are selling a service subject to sales tax.

211.11(2) *Definition.* For purposes of this rule:

“*Machine*” includes those items with moving parts or powered by a motor or engine or other form of energy. “*Machine*” also includes heavy equipment vehicles or implements, whether such equipment functions in a state of rest or a state of motion.

This rule is intended to implement Iowa Code section 423.2(6) “*ah.*”

701—211.12(423) Parking facilities.

211.12(1) *In general.* Persons engaged in the business of operating a parking facility for a fee are selling a service subject to sales tax.

211.12(2) *Definition.* For purposes of this rule:

“*Parking facility*” means any place that is used for parking a vehicle for consideration. It is irrelevant whether the charge is by the hour, day, month, or any other period of time.

This rule is intended to implement Iowa Code section 423.2(6) “*ak.*”

701—211.13(423) Private employment agency, executive search agency.

211.13(1) *In general.* Private employment agencies engaged in the business of providing listings of available employment, counseling others with respect to future employment, or aiding another in any way to procure employment are selling a service subject to sales tax, regardless of whether the service is rendered for a prospective employer or prospective employee.

211.13(2) *Principal place of employment outside of Iowa.* Services rendered by private employment agencies that place a person and where the person’s principal place of employment is outside of Iowa are not subject to Iowa sales tax. For purposes of this rule, “principal place of employment” means the primary work location of the employee.

EXAMPLE: Company B, a sales company, contracts with Agency C, an employment agency, to secure a salesperson to travel throughout Iowa, Missouri, and Nebraska. Both Company B and Agency C are located in Iowa. Agency C is successful in finding a salesperson for Company B. Although the salesperson will be traveling throughout the three states, because Company B, the principal place of the salesperson’s employment, is located within Iowa, Agency C’s service is subject to Iowa sales tax.

211.13(3) *Executive search agencies.* Executive search agencies that are engaged in the business of securing employment for top-level management positions are selling a service subject to sales tax, regardless of whether the executive search agency is licensed under Iowa Code chapter 94A or not. Executive search agencies’ services performed in Iowa are subject to Iowa sales tax regardless of whether the principal place of employment for the person the agency placed into employment is located within Iowa.

211.13(4) *Private employment versus executive search agencies.* To determine if an agency is an executive search agency or a private employment agency, the following nonexhaustive lists of elements may be used to distinguish the two.

a. Private employment agency:

- (1) All levels of jobs in an organization. All salary levels.
- (2) Large number of clients at all times. Both possible employers and employees.
- (3) Individual’s résumé circulated to many possible employers.
- (4) No extensive analysis of the position or the individual.
- (5) Normally does not make travel arrangements for interviews, does not conduct salary negotiations, does not perform detailed follow-up studies.

- (6) Paid by either the company or the job seeker.
- (7) Paid on a contingent-fee basis. Paid only if a referred person is hired.
- (8) Engages in general advertising of available positions.
- (9) Overall placement of an individual is not as extensive or sophisticated.
- b. Executive search agency:
 - (1) Top-level management positions.
 - (2) Serves only a few clients at one time. Employers only.
 - (3) Sends information regarding one individual to one possible employer only. Résumés never circulated to other possible employers.
 - (4) Extensive analysis of the position to be filled. Extensive analysis of the individuals who are candidates. Preparation of detailed professional assessment of strengths and weaknesses of individuals.
 - (5) Makes travel arrangements for interviews, conduct salary negotiations, perform follow-up studies.
 - (6) Only paid by the company seeking the employee.
 - (7) Paid on retainer or by an hourly charge or by contract. Paid whether or not an individual is hired.
 - (8) Does not advertise available positions.
 - (9) Overall placement of an individual requires extensive and sophisticated analysis of position and individual.

This rule is intended to implement Iowa Code section 423.2(6) “*ap*” and “*aq*.”

701—211.14(423) Storage of household goods and mini-storage.

211.14(1) *In general.* The sales price from the sale of the storage of household goods and mini-storage are subject to sales and use tax.

211.14(2) *Definitions.* For purposes of this rule:

“*Household goods*” means tangible personal property ordinarily located in a person’s residence that is not inventory.

“*Mini-storage*” means a commercial operation that provides individual storage units of various sizes to persons for the purpose of storing tangible personal property. “Mini-storage” includes a secured area in which vehicles, boats, recreational vehicles, camping trailers and other types of tangible personal property can be stored. “Mini-storage” is taxable, regardless of whether the buyer or the seller provides particular security measures including but not limited to locks, fences, gates, security cameras, or password-protected entrances. “Mini-storage” is taxable regardless of whether the buyer has sole access to the unit. “Mini-storage” does not include storage lockers, storage units, or garages at apartment complexes for the primary convenience of the tenant if such lockers, units, or garages are part of the nonitemized price of an apartment rental. Mini-storage space is not a warehouse. Rule 701—214.21(423) contains provisions on warehousing of raw agricultural products.

This rule is intended to implement Iowa Code section 423.2(6) “*ax*.”

701—211.15(423) Test laboratories.

211.15(1) *In general.* Persons engaged in the business of providing laboratory testing of any substance for any experimental, scientific, or commercial purpose are selling a service subject to sales tax. “Test laboratories” includes but is not limited to mobile testing laboratories and field testing by test laboratories.

211.15(2) *Exempt testing services.* Test laboratory services performed on humans and animals and environmental testing services are not taxable. “Environmental testing services” includes but is not limited to the physical and chemical analysis of soil, water, wastewater, air, or solid waste performed in order to ascertain the presence of environmental contamination or degradation.

211.15(3) *Nonprofit blood centers.* Test laboratory services rendered, furnished, or performed for a nonprofit blood center registered by the federal Food and Drug Administration are exempt when the services are directly and primarily used in the processing of human blood.

This rule is intended to implement Iowa Code sections 423.2(6) “*bc*,” 423.3(102), and 423.3(26A).

701—211.16(423) Termite, bug, roach, and pest eradicators.

211.16(1) *In general.* Persons engaged in the business of eradicating, controlling, or preventing the infestation by termites, insects, roaches, and all other living pests, by spraying or other means, are selling a service subject to sales tax. This includes persons who eradicate, prevent, or control pest infestations in farmhouses, outbuildings, and other structures, such as grain bins, used in agricultural production.

211.16(2) *Spraying of cropland exempt.* This rule does not include those persons who are engaged in the business of spraying cropland used in agricultural production to eradicate or prevent the infestation by pests of the cropland. The service of spraying cropland is exempt.

This rule is intended to implement Iowa Code sections 423.2(6) “*bd*” and 423.3(5).

701—211.17(423) Turkish baths, massage, and reducing salons.

211.17(1) *In general.* Persons engaged in the business of operating Turkish baths, massage, and reducing salons are selling a service subject to sales tax. This includes persons engaged in the business of operating a health studio which, as a part of its operation, offers any services of Turkish baths, massage, or reducing facilities or programs. The sales price of those services is subject to sales tax.

211.17(2) *Definitions.* For purposes of this rule:

“*Massage*” means the kneading, rubbing, or manipulation of the body to condition the body. “*Massage*” does not include any body manipulation undertaken and incidental to the practice of one or more of the healing arts or those provided by massage therapists licensed under Iowa Code chapter 152C.

“*Reducing salons*” means any type of establishment that offers facilities or a program of activities for the purpose of weight reduction.

“*Turkish baths*” means any type of facility where an individual is warmed by steam or dry heat.

This rule is intended to implement Iowa Code section 423.2(6) “*bg.*”

701—211.18(423) Wrapping, packing, and packaging of merchandise other than processed meat, fish, fowl, and vegetables. Persons engaged in the business of wrapping, packing, and packaging of merchandise other than processed meat, fish, fowl, and vegetables are selling a service subject to sales tax. A person who provides a service described in this rule incidental to the sale of such items without charging separately for the service does not need to collect or remit tax. 701—Chapter 206 contains additional information on bundled transactions.

This rule is intended to implement Iowa Code section 423.2(6) “*bl.*”

701—211.19(423) Wrecking service.

211.19(1) *In general.* Persons engaged in the business of wrecking are selling a service subject to sales tax.

211.19(2) *Definition.* For purposes of this rule:

“*Wrecking*” includes defacing or demolishing tangible personal or real property or any part thereof.

This rule is intended to implement Iowa Code section 423.2(6) “*bm.*”

701—211.20(423) Cable and pay television.

211.20(1) *In general.* Persons engaged in the business of distributing the signals of one or more television broadcasting stations or other television programming to subscribers and using any transmission path, including but not limited to cable, satellite, streaming video, video on-demand, or pay-per-view, for those signals are selling a service subject to sales tax. The sales price for the rental of any device used to decode or receive television broadcasting signals from a communications satellite is also subject to sales tax.

211.20(2) *Signals to exhibitors.* Any person distributing or providing signals to exhibitors on screens in auditoriums or other buildings that show sporting or other events are selling a service subject to sales tax.

211.20(3) *Applicability.* This rule applies to the transmissions of single events and subscriptions and to television services that serve fewer than 50 subscribers or are serving only customers located in one or more multiple-unit dwellings that are under common ownership, control, or management.

This rule is intended to implement Iowa Code section 423.2(6) “*al.*”

701—211.21(423) Camera repair.

211.21(1) *In general.* Persons engaged in the business of camera repair are selling a service subject to sales tax.

211.21(2) *Definition.* For purposes of this rule:

“*Camera repair*” includes the repair of any still photograph, motion picture, video, digital, or television camera. “*Camera repair*” includes the repair of any part of a camera considered to be a part of a camera that may be detached from the camera body but can only be used with a camera. Examples of such accessories include but are not limited to detachable lenses, flash units, and motor drives. “*Camera repair*” does not include the repair of cameras that are built into a cell phone or computer.

This rule is intended to implement Iowa Code section 423.2(6) “*w.*”

701—211.22(423) Gun repair.

211.22(1) *In general.* Persons engaged in the business of repairing guns are selling a service subject to sales tax.

211.22(2) *Definition.* For purposes of this rule:

“*Gun repair*” means the repair of any pistol, revolver or other hand gun, as well as the repair of any shoulder or hip-fired gun such as a rifle or shotgun.

This rule is intended to implement Iowa Code section 423.2(6) “*w.*”

701—211.23(423) Janitorial and building maintenance or cleaning.

211.23(1) *In general.* Persons engaged in the business of performing one or a number of janitorial services and building maintenance or cleaning are selling a service subject to sales tax.

211.23(2) *Definitions.* For purposes of this rule:

“*Building maintenance or cleaning*” includes but is not limited to the cleaning of exterior walls or windows of any building and any other act performed upon the exterior of a building with the intent to keep it in good condition or upkeep.

“*Janitorial services*” means the type of cleaning services performed by a janitor in the regular course of duty. These services may be performed individually under a separate contract or included within a general contract to perform a combination of such services. These services may include but are not limited to interior window washing, floor cleaning, vacuuming, waxing, cleaning of interior walls and woodwork, cleaning of restrooms and furnaces, and the movement of furniture or other personal property within a building.

211.23(3) *Exempt services.*

a. Janitorial services performed in a private residence, including apartment or multiple housing units, and paid for by the occupant of the residence are exempt from sales tax.

b. Repairs and any service performed upon the exterior of a building that is a private residence and paid for by an occupant of the building are excluded from the meaning of “*building maintenance or cleaning.*” However, these services may be taxable under a construction-related enumerated service described in rule 701—219.13(423).

c. Janitorial services and building maintenance or cleaning performed on or in connection with new construction, reconstruction, alteration, expansion or remodeling of a structure are exempt from tax.

This rule is intended to implement Iowa Code section 423.2(6) “*z.*”

701—211.24(423) Lawn care, landscaping, and tree trimming and removal.

211.24(1) *Lawn care.*

a. *In general.* Persons engaged in the business of lawn care are selling a service subject to sales tax. Lawn care is a taxable service regardless of the age of the person performing the service. Lawn care services performed on properties including but not limited to cemetery grounds, golf courses, parks, and residential or commercial properties containing one or more buildings or structures are subject to sales tax.

b. *Definitions.* For purposes of this rule:

“*Landscaping*” includes services related to the arrangement and modification of a given parcel or tract of land so as to render the land suitable for public or private use or enjoyment.

“*Lawn*” means an open space between woods or ground that is covered with grass and is generally kept mowed or required to be kept mowed.

“*Lawn care*” includes but is not limited to services related to mowing, trimming, watering, fertilizing, reseeding, resodding, and the killing of weeds, fungi, vermin, and insects that may threaten a lawn.

c. *Not taxable.* The mowing of grass within a ditch is not a taxable service.

211.24(2) Landscaping.

a. *In general.* Persons engaged in the business of landscaping are selling a service subject to sales tax.

b. *Landscape architects.* Services that require licensure as a “landscape architect” pursuant to Iowa Code section 544B.2 are not subject to sales tax under this rule if those services are performed by a licensed landscape architect, are separately stated, and are separately billed as a charge for landscape architecture.

c. *Exempt.* Landscaping services performed on or in connection to new construction, reconstruction, alteration, expansion, or the remodeling of real property are not subject to sales tax. 701—Chapter 219 contains additional information on new construction, reconstruction, alteration, expansion, and the remodeling of real property.

d. *Landscaping materials.* The sales price of sod, dirt, trees, shrubbery, bulbs, sand, rock, wood chips and other similar landscaping materials, when used for landscaping and sold to final consumers, shall be subject to sales tax. For the purpose of this rule, “final consumer” ordinarily means the owner of the land to which the landscaping materials are applied, or a general building contractor when the landscaping contractor contracts with the general building contractor. When a landscaping contractor uses materials to fulfill a contract, the landscape contractor is considered the retailer of the landscaping materials and shall be obligated to collect sales tax on the selling price from the final consumer.

e. *Lump sum.* When the retailer of sod, dirt, trees, shrubbery, bulbs, sand, rock, wood chips and other similar landscaping materials installs these items as a part of a contract for landscaping or improving land for a lump sum, the entire sales price shall be subject to tax. Any retailer’s charges for “landscaping” shall be taxable. However, a retailer’s charges for nontaxable services are not taxable if contracted for separately, or, if no written contract exists, the charges are itemized separately on the invoice.

EXAMPLE 1: A sodding contractor agrees to furnish and install 20 yards of sod for the lump sum of \$20 per yard. The sodding contractor must charge the customer \$20 sales tax (5 percent x \$400).

EXAMPLE 2: XYZ Company enters into a contract for the landscaping of an existing office building. XYZ Company agrees to furnish shrubs at \$25 each, white rock for \$5 per bag and wood chips for \$4 per bag. XYZ Company also contracts to install all of the landscaping materials for a fee of \$25 per hour. XYZ Company’s hourly fee is taxable if paid for the service of “landscaping” or for some other taxable service (e.g., excavation). If the service is not taxable, the charge is excluded from tax because it was separately contracted for.

f. *Intangible property.* The sales price from the sale of uncut sod and unexcavated trees, shrubs, and rock shall not be subject to sales or use tax. This is considered a sale of intangible property and not the sale of tangible personal property.

g. *Food coupons.* This rule does not apply to the sale price from the sale of plants and trees that are eligible for purchase with food coupons under rule 701—220.2(422,423).

211.24(3) Tree trimming and removal.

a. *In general.* Persons engaged in the business of tree trimming, tree removal, and stump removal are selling a service subject to sales tax. This includes but is not limited to removal of any portion of a tree, including branches or a trunk.

b. *Shrubs with woody stems or trunks.* For purposes of this rule, tree trimming and tree removal include the trimming or removal of any shrub that has a woody main stem or trunk with branches.

c. *Sale of cut wood.* Persons engaged in the business of tree trimming and tree removal who cut wood from the trees that they trim or remove into sizes suitable for sale as firewood and sell the wood as firewood are engaged in the sale of tangible personal property. The tree trimming or removal is not a sale for resale. The sales price from the sale of this wood is subject to sales tax.

This rule is intended to implement Iowa Code sections 423.1 and 423.2(6) “*ab.*”

701—211.25(423) Pet grooming.

211.25(1) *In general.* Persons engaged in the business of pet grooming are selling a service subject to sales tax. This includes persons who are not veterinarians and groom dogs.

211.25(2) *Definitions.* For purposes of this rule:

“*Pet*” means any animal that has been tamed or gentled and is kept by its owner for pleasure or affection, rather than for utility or profit. Service animals or assistance animals as defined in Iowa Code section 216.8B and livestock are not considered pets.

“*Pet grooming*” includes any act performed to maintain or improve the appearance of a pet. This includes but is not limited to washing, combing, currying, hair cutting, and nail clipping, regardless of whether the person performing the act is a veterinarian.

211.25(3) *Veterinary pet grooming.* 701—Chapter 206 contains more information on bundled transactions to aid in determining the taxability of pet grooming when it is completed for both veterinary and cosmetic reasons.

211.25(4) *Livestock showing.* Services related to the pet grooming of livestock, including but not limited to the preparation of livestock for exhibition at fairs or shows, are exempt from tax.

This rule is intended to implement Iowa Code section 423.2(6) “*am.*”

701—211.26(423) Reflexology.

211.26(1) *In general.* Persons engaged in the business of reflexology are selling a service subject to sales tax.

211.26(2) *Definition.* For purposes of this rule:

“*Reflexology*” means the same as defined in Iowa Code section 152C.1.

This rule is intended to implement Iowa Code section 423.2(6) “*ar.*”

701—211.27(423) Water conditioning and softening.

211.27(1) *In general.* Persons engaged in the business of water conditioning and softening are selling a service subject to sales tax.

211.27(2) *Definitions.* For purposes of this rule:

“*Water conditioning*” means any action other than water softening taken with respect to water that renders the water fit for its intended use, more healthful, or enjoyable for human consumption. “*Water conditioning*” includes but is not limited to water filtration, purification, deionization, and reverse osmosis.

“*Water softening*” means the removal of minerals from water to render it more suitable for drinking and washing.

211.27(3) *Water purification.* When performed for residential, commercial, industrial, or agricultural users, the service of water purification is subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(6) “*bh.*”

701—211.28(423) Security and detective services.

211.28(1) *In general.* Persons engaged in the business of providing security or detective services are selling a service subject to sales tax.

211.28(2) *Definitions.* For purposes of this rule:

“*Detective service*” means a service of investigation with the purpose to obtain information regarding any of the following subjects: crimes or wrongs done or threatened; the habits, conduct, movements, location, associations, transactions, reputation, or character of a person; credibility of witnesses or other persons; inquiry or recovery of lost or stolen property; cause, origin, or responsibility of a fire, accident, or damage to property; or veracity or falsity of any statement or representation, or

means a service of investigation with the purpose to detect deception or to secure evidence to be used before an authorized investigation committee, before boards of award or arbitration, or in a civil or criminal trial.

“*Security service*” means a service with the purpose to protect property from theft, vandalism, or destruction or individuals from physical attack or harassment. “*Security service*” includes but is not limited to the rental of guard dogs; burglar or fire alarms; providing security guards, bodyguards or mobile patrols; or the protection of computer systems against unauthorized access.

211.28(3) Exempt. The sales price of the following services or activities are not subject to sales tax under this rule:

a. Peace officer engaged privately in security or detective work with the knowledge and consent of the chief executive officer of the peace officer’s law enforcement agency.

b. Person employed full- or part-time by an employer in connection with the affairs of the employer.

c. Attorney licensed to practice law in Iowa while performing duties as an attorney.

d. Person engaged exclusively, either as an employee or independent contractor, in conducting investigations and adjustments for insurance companies.

e. Person serving notice or any other document to a party, witness, or any other individual in connection with any criminal, civil, or administrative litigation.

f. Solicitation of a debtor to pay or collect payment for a debt.

g. Consulting, rendering advice, or providing training with regard to security or detection matters.

h. Charges for mileage, travel expenses, lodging, meal expenses, fees paid for records, and amounts paid for information if those charges are separately identified, separately billed, and reasonable in amount.

This rule is intended to implement Iowa Code section 423.2(6) “*as.*”

701—211.29(423) Solid waste collection and disposal services.

211.29(1) In general. Persons engaged in the business of solid waste collection and disposal are selling a service subject to sales tax.

211.29(2) Definitions. For purposes of this rule:

“*Nonresidential commercial operation*” means any operation that is an industrial, commercial, agricultural, or mining operation, whether for profit or not. “*Commercial*” refers to those involved in the buying and selling of goods and services, rather than just meaning a for-profit operation.

1. “*Nonresidential commercial operation*” includes but is not limited to hotels, motels, restaurants, realtors, professional firms (doctors, lawyers, accountants, or dentists), repair persons, persons selling and renting all sorts of tangible personal property, persons selling insurance of any kind, appraisers, skilled trades (e.g., plumbers, carpenters, and electricians), construction contractors, banks, savings and loans, barbers and beauticians, day care centers, counseling services, employment agencies, janitorial services, landscapers, painters, pest control, photography, printing, and storage services. Also included within the meaning of nonresidential commercial operation are the United Way, the American Cancer Society, the Elks, Masons, houses of worship (e.g., churches, synagogues, and mosques), and not-for-profit hospitals that are not licensed under Iowa Code chapter 135B.

2. “*Nonresidential commercial operation*” does not include apartment complexes, mobile home parks, manufactured home communities, and single-family or multifamily dwellings. Also excluded from the meaning are nonprofit hospitals licensed pursuant to Iowa Code chapter 135B.

“*Recyclable material*” includes but is not limited to used motor oil, paper, glass, metals (e.g., copper, aluminum, and iron), and batteries, as long as the recycled materials are separated from the solid waste for the purpose of recycling the materials.

“*Recycling facilities*” means facilities where recyclable materials are separated or processed for the purpose of reusing a material in its original form or using it in a manufacturing process that will not cause the destruction of the recyclable material to preclude its further use. A facility that produces insulation from used glass would qualify as a recycling facility under this rule, while a facility that

separates or processes recyclable materials for use as fuel would not qualify as a recycling facility under this rule.

“*Solid waste*” means the same as defined in Iowa Code section 423.2(7).

211.29(3) *Nonresidential commercial operations.* Counties, municipalities, and cities that provide the service of solid waste collection and disposal to nonresidential commercial operations are obligated to collect and remit the tax from these services. Additionally, any person who has contracted to provide solid waste collection and disposal service to a city or municipality is obligated to collect and remit the tax from those services provided to nonresidential commercial operations located within that city or municipality. If the solid waste collection and disposal service is rendered to multiple businesses or organizations, tax must be collected and remitted only on those portions that meet the definition of nonresidential commercial operations.

211.29(4) *Bundled transaction of solid waste collections and disposal services.* 701—Chapter 206 contains more information on bundled transactions regarding when both taxable and nontaxable solid waste collection and services are provided to a customer.

211.29(5) *Disposal or tipping charges.*

a. Taxable. Charges for disposal or tipping of solid waste are also subject to sales tax. Persons or businesses that transport their own solid waste and persons who transport, without compensation, solid waste generated by another must pay the required tax upon the disposal or tipping charge or fee imposed by the collection or disposal facility.

b. Exempt. Charges or fees imposed for the service of collecting and managing recyclable material separated from solid waste by a waste generator are not subject to sales tax.

211.29(6) *Recycling facilities.* The sales price of the service of solid waste collection and disposal provided to recycling facilities that separate or process recyclable materials is not subject to sales tax if, as a result of the separation or processing, the volume of the waste collected is reduced by 85 percent and the waste is collected and disposed of separately from other solid waste.

This rule is intended to implement Iowa Code section 423.2(7).

701—211.30(423) Sewage services.

211.30(1) *In general.* Persons engaged in providing sewage service to nonresidential commercial operations are selling a service subject to sales tax.

211.30(2) *Definitions.* For purposes of this rule:

“*Agricultural operation*” means any enterprise engaged in the raising of crops or livestock for market on an acreage.

“*Industrial operation*” means a business that purchases or rents machinery or equipment eligible for the Iowa sales and use tax exemption for industrial machinery and equipment.

“*Mining operation*” means a business engaged in underground mining, strip mining, or quarrying.

“*Nonresidential commercial operation*” means the same as defined in rule 701—211.44(423).

“*Sewage services*” means the services of collecting rainwater, liquid and solid refuse, or excreta for drainage or purification by means of pipes, channels, or conduits usually placed underground.

211.30(3) *Nonresidential commercial operations.* Counties, municipalities, sanitary districts, or any other person providing sewage service to nonresidential commercial operations are obligated to collect and remit the applicable Iowa sales tax. Any person or entity that has contracted to provide sewage services to a county or municipality is obligated to collect and remit the applicable Iowa sales tax performed for the county or city on behalf of the nonresident commercial operations located within that county or city.

This rule is intended to implement Iowa Code section 423.2(6) “*at.*”

701—211.31(423) Sign construction and installation.

211.31(1) *In general.* Persons engaged in the business of constructing and installing signs are selling a service subject to sales tax.

211.31(2) *Definition.* For purposes of this rule:

“*Sign*” means notices erected and maintained for the purpose of providing information, notices, markers, and the advertising of products or services. Signs include but are not limited to billboards, indoor or outdoor sign devices, and any structure erected and maintained for the purpose of conveying information.

This rule is intended to implement Iowa Code section 423.2(6) “*aw*.”

701—211.32(423) Dating services.

211.32(1) *In general.* Persons engaged in providing dating services are selling a service subject to sales tax.

211.32(2) *Definition.* For purposes of this rule:

“*Dating service*” means the service of providing an opportunity for individuals to meet and interact socially with the possibility of forming a relationship. Dating services include but are not limited to the services of those who provide an opportunity for individuals to describe themselves to and meet potential partners through escort services, smartphone applications, online websites and applications, and videotapes. Excluded from the definition are marriage matchmakers, telephone numbers that only provide opportunities for conversation rather than in-person interaction, and advertisements in newspapers or magazines soliciting companionship.

This rule is intended to implement Iowa Code section 423.2(6) “*n*.”

701—211.33(423) Personal transportation service.

211.33(1) *Personal transportation service defined.* “Personal transportation service” means the arrangement or provision of transportation of a person or persons for consideration, regardless of whether the person or entity providing such service supplies or uses a vehicle in conjunction with the service. “Personal transportation service” includes but is not limited to the following:

- a. Transportation services provided by a human driver, including but not limited to drivers with a Class C, Class D endorsement 3, or Class M license, or by a chauffeur as defined in Iowa Code section 321.1(8). Examples of such services include but are not limited to taxi services, driver services, limousine services, bus services, shuttle services, and rides for hire;
- b. Transportation services provided by a nonhuman driver, autonomous vehicle, or driverless vehicle; and
- c. Ride sharing services, including but not limited to use of a network to connect transportation network company riders to transportation network company drivers who provide prearranged rides as defined in Iowa Code section 321N.1(4).

EXAMPLE 1: Marketplace X is a transportation network company that operates a network to connect drivers to riders. Driver D provides rides in Iowa exclusively through X’s network. A person in Iowa requests a ride through X’s network, and D provides the ride in D’s car. X is a marketplace facilitator. X must collect Iowa sales tax and applicable local option sales tax on the sales price of the ride. Because D makes all of D’s Iowa sales through X, which collects all applicable taxes on all of D’s rides, D does not need to register for an Iowa sales tax permit or file an Iowa sales tax return. X will report the sales tax on X’s Iowa sales tax return.

EXAMPLE 2: D provides rides for X and Y, two different transportation network companies. X is a marketplace facilitator responsible for collecting and remitting Iowa sales tax and applicable local option sales tax on the sales price of the rides D provides through X’s network. Y is also a marketplace facilitator responsible for collecting all applicable taxes on the rides D provides through Y’s network. D does not need to register for an Iowa sales tax permit or file an Iowa sales tax return.

EXAMPLE 3: D independently provides rides in addition to providing rides through X’s network. X must collect all applicable taxes on the rides D provides through its network. X is not responsible for collecting tax on any of the rides D provides independent from X’s network. D, a seller of personal transportation service with physical presence in Iowa, must collect and remit Iowa sales tax and applicable local option sales tax on the sales price of the rides D sells independent of X’s network.

211.33(2) *Tax imposed; sourcing.* The sales price from the sale of personal transportation service in Iowa is subject to Iowa sales tax. The tax is imposed if the personal transportation service is first used in Iowa and is sourced to the location at which the service is first received.

EXAMPLE: R schedules a personal transportation service while at R's residence in Des Moines. R schedules the transportation service to transport R from Grinnell to Iowa City. R independently travels to Grinnell, where R enters a vehicle owned by the transportation service. The transportation service takes R from Grinnell to Iowa City, where the service ends and R pays for the service. The sale is sourced to Grinnell, the location at which R first received the transportation service. The transportation service must charge sales tax and the applicable local option tax in Grinnell, even though R scheduled the service while in Des Moines and the service concluded and payment was made in Iowa City.

211.33(3) *No tax imposed on interstate motor carrier transportation service.* Where a personal transportation service involves interstate travel by a motor carrier as defined in 49 U.S.C. Section 13102(14), no tax shall be imposed on the transaction to the extent prohibited by 49 U.S.C. Section 14505.

211.33(4) *Exemption for transportation services furnished by a qualified public transit system, medical transportation service, or paratransit service.* The sales price from sales of transportation services by public transit systems, medical transportation services, or paratransit services is exempt from tax. For purposes of the exemption under Iowa Code section 423.3(106), the following definitions shall apply:

"Medical transportation" means a personal transportation service for an individual to travel to a health care provider for the individual's medical care. Medical transportation is not limited to transportation services for immediate life-threatening or serious injuries.

"Paratransit service" means a personal transportation service provided to individuals with disabilities.

"Public transit system" means a public transit system as defined in Iowa Code section 324A.1(4).

This rule is intended to implement Iowa Code sections 423.2(6) "*ac*" and 423.3(106).

701—211.34(423) Information services.

211.34(1) *In general.* Persons engaged in the business of providing access to information services provided through any tangible or electronic medium are selling a service subject to sales tax.

211.34(2) *Definition.* For purposes of this rule:

"Information services" means the same as defined in Iowa Code section 423.1(22A).

211.34(3) *Taxable examples.* Examples of information services include but are not limited to database files, research databases, genealogical information, mailing lists, subscription files, credit reports, surveys, real estate listings, bond rating reports, abstracts of title, bad check lists, broadcasting rating services, wire services, price lists or guides, scouting reports, and other similar items of compiled information prepared for a particular customer.

211.34(4) *Nontaxable examples.* "Information services" does not include the furnishing of artwork (including musical compositions and films), drawings, illustrations, or other graphic material or information prepared for general dissemination to the public in the form of books, magazines, newsletters, videotapes or audiotapes, compact discs, or any other medium commonly used to communicate with large numbers of customers. The sale of a book, magazine, or similar item is not the sale of an information service, even if the item contains material of practical use (e.g., in conducting a private, for-profit business) to its purchaser. These items sold in digital formats may be taxable as a specified digital product.

211.34(5) *Exemption.* Information services may be exempt from sales tax in accordance with Iowa Code section 423.3(104) and rule 701—225.8(423).

This rule is intended to implement Iowa Code section 423.2(6) "*br*."

701—211.35(423) Software as a service.

211.35(1) *In general.* Persons engaged in the business of providing software as a service are selling a service subject to sales tax. The content or material accessed by way of software as a service does not impact the taxability of the software itself.

211.35(2) *Definitions.* For purposes of this rule:

“*Software as a service*” means the sale, storage, use, or other consumption of vendor-hosted computer software, such as but not limited to software accessible on the cloud. “Software as a service” does not include services commonly understood to constitute “infrastructure as a service” but may include what is described as “platform as a service” based on the facts and circumstances relating to that particular service. A relevant declaratory order, *In the Matter of study.com, LLC*, Iowa Dep’t of Revenue Declaratory Order No. 2020-310-2-0649 (Apr. 20, 2021), provides further discussion of software as a service.

“*Vendor-hosted computer software*” means computer software that is accessed through the Internet or a vendor-hosted server whether the access is permanent or temporary, whether any downloading occurs, or whether the software is hosted by the retailer of the software or by a third party.

211.35(3) *Exemptions.* Software as a service may be exempt from sales tax in accordance with Iowa Code section 423.3(104) and rule 701—225.8(423).

This rule is intended to implement Iowa Code section 423.2(6) “*bu.*”

701—211.36(423) Video game services and tournaments.

211.36(1) *In general.* Persons engaged in the business of providing video game services and tournaments are selling a service subject to sales tax. Taxable services relating to video game tournaments include fees paid for participating in such tournaments and related services as well as observing a video game tournament. Participation in or observation of such tournaments is taxable regardless of whether or not a prize is provided to any participants.

211.36(2) *Definitions.* For purposes of this rule:

“*Video games*” means any virtual, digital, or electronic game in which a user interacts with a user interface to generate visual feedback on a video device such as a computer monitor, television screen, or mobile device. Video games may be transferred through any physical or electronic medium, including by cartridge, disc, or electronic file, or through access to any server or network of servers.

“*Video game services*” means providing access to video games, support and account services, in-game currency exchanges, payment processing services, and any other service related to the hosting or provision of video games.

“*Video game tournament*” means an event where participants compete in the playing of video games. Participants may be playing video games by being physically present in the same location or playing remotely.

This rule is intended to implement Iowa Code section 423.2(6) “*bt.*”

701—211.37(423) Services related to specified digital products or software sold as tangible personal property.

211.37(1) *In general.* Persons engaged in the business of providing services arising from or related to installing, maintaining, servicing, repairing, operating, upgrading, or enhancing specified digital products or software sold as tangible personal property are selling a service subject to sales tax.

211.37(2) *Definition.*

“*Specified digital products*” means the same as defined in Iowa Code section 423.1.

211.37(3) *Exemption.* Services arising from or related to installing, maintaining, servicing, repairing, operating, upgrading, or enhancing specified digital products or software sold as tangible personal property may be exempt from sales tax in accordance with Iowa Code section 423.3(104) and rule 701—225.8(423).

This rule is intended to implement Iowa Code section 423.2(6) “*bs.*”

701—211.38(423) Storage of tangible or electronic files, documents, or other records.

211.38(1) *In general.* Persons engaged in the business of providing storage of tangible or electronic files, documents, or other records are selling a service subject to sales tax.

211.38(2) *Exemption.* Storage of tangible or electronic files, documents, or other records may be exempt from sales tax in accordance with Iowa Code section 423.3(104) and rule 701—225.8(423).

This rule is intended to implement Iowa Code section 423.2(6) “*bq.*”

[Filed 7/2/24, effective 8/28/24]

[Published 7/24/24]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/24.

ARC 8157C

REVENUE DEPARTMENT[701]**Adopted and Filed****Rulemaking related to exempt and taxable sales, sales involving government entities and nonprofits, and types of sales based on the type and method of transaction**

The Revenue Department hereby rescinds Chapter 212, “Governments and Nonprofits,” Iowa Administrative Code, and adopts a new chapter with the same title; rescinds Chapter 284, “Exempt Sales,” Iowa Administrative Code; rescinds Chapter 285, “Taxable and Exempt Sales Determined by Method of Transaction or Usage,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.1, 423.2, 423.3, 423.14 and 423.14A.

Purpose and Summary

The purpose of the rulemaking is to readopt Chapters 212 and 285 and rescind and reserve Chapter 284. The Department made revisions to Chapters 212 and 285 to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. These chapters describe the Department’s interpretation of Iowa Code chapter 423 as it applies to certain types of exempt and taxable sales. Chapter 212 provides guidance on sales involving government entities and nonprofits. Chapter 285 provides guidance on certain types of sales based on the type and method of transaction. After review, the Department determined there is no benefit to retaining Chapter 284 and is rescinding and reserving the chapter; however, the Department also determined that several rules from Chapter 284 will be repromulgated into Chapters 210, 212, and 219.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7199C**. A public hearing was held on the following date(s):

- January 16, 2024

Public comment was received. The Iowa Taxpayers’ Association provided comments both orally at the public hearing and via written comment through Iowa Taxpayers’ Association President and CEO Thomas R. Sands. These comments are summarized as follows:

1. There was concern that rule 701—212.1(423) narrows the definition of “charitable.” The Department deleted superfluous examples and other language from the prior rule not needed to define “charitable.” The test for a charitable act under rule 701—212.1(423) remains the same: “A charitable act is an act done out of goodwill, benevolence, and a desire to add or improve the good of humankind in general or any class or portion of humankind, with no pecuniary profit inuring to the person performing the service or giving the gift.”

2. The purpose of rule 701—212.2(423) was requested, which specifies four entities as exempt from paying sales tax on purchases. Rule 701—212.2(423) recognizes certain nonprofit organizations are considered instrumentalities of the federal government, as stated in *Department of Employment v. United States*, 385 U.S. 355 (1966). An incorrect reference to the Iowa Code was also noted in rule 701 — 212.2(423), which the Department has corrected. This rulemaking corrects the reference to the Iowa Code.

3. Regarding rule 701—212.4(423), a question was raised as to why the Department deleted prior language allowing “a group of qualifying organizations acting in concert” to qualify for the exemption. The Department determined this change was necessary to make the rule consistent with the current statute.

4. Clarification was requested as to why rule 701—212.8(423) refers to “hospice” and “hospice care” instead of “hospice program” under the prior rule. The changes reflect the federal regulations referenced in Iowa Code section 423.3(28) and do not impact what entities are eligible to claim the exemption.

5. Regarding rule 701—212.12(423), clarification about the test for determining whether an entity is a government entity was requested. This rule is consistent with the most recent determinations of an instrumentality, including determinations by the Department, administrative tribunals, and courts. This rule articulates the clearest way for a government instrumentality to be created: through express legislation that creates a tax-exempt government instrumentality.

6. Regarding rule 701—285.6(423), language was asked for on the treatment of preventative maintenance contracts. The Department determined a specific rule on preventive maintenance contracts is not needed. If an optional contract only requires visual inspection, no taxable service or tangible personal property is involved, and the contract is not taxable under subrule 285.6(2).

7. Regarding rule 701—285.9(423), the purpose of paragraph 285.9(1)“a” was sought. The Department determined this language was helpful introductory language that clarifies the statute at issue. The commenter also asked for a definition of “automatic data processing equipment.” As used in the definition of “software” in Iowa Code section 423.1(11), “automatic data processing equipment” is equipment, other than a computer, that can run computer software. The Department determined this definition is circular and not needed in the rules.

8. Comments were also received from Larry Nordeen (Iowa Taxes LLC) about the rule on software in Chapter 285. In response, the Department updated the title of rule 701—285.9(423) to “Computer software and hardware.”

Adoption of Rulemaking

This rulemaking was adopted by the Department on June 24, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on August 28, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 212 and adopt the following **new** chapter in lieu thereof:

CHAPTER 212
GOVERNMENTS AND NONPROFITS

701—212.1(423) Taxability of profits used by or donated to an educational, charitable, or religious entity. For purposes of the exemption provided in Iowa Code section 423.3(78), the following definitions apply:

212.1(1) Educational. An activity has an “educational purpose” if the activity has as its primary objective to give instruction. The term “educational purpose” includes recreational or cultural activities. Activities that are directly related to the educational process such as intramural sports and tests given to students or prospective students to measure intelligence, ability, or aptitude are considered educational for purposes of this exemption. Municipal or public or nonprofit science centers and libraries are also considered educational for purposes of the exemption.

EXAMPLE 1: A local nonprofit preschool that is exempt from federal tax under Internal Revenue Code (IRC) Section 501(c)(3) has a chili supper to raise money for playground equipment, educational materials, and classroom furniture. The sales transactions from the supper are exempt from sales tax because the total amount of the profits from the chili supper will be used for educational purposes. In addition, purchases made by the preschool may be exempt from tax if the preschool can meet the qualifications to be classified as a private nonprofit educational institution. Rule 701—212.5(423) contains additional information regarding the sale of tangible personal property and performance of services to certain nonprofit corporations.

EXAMPLE 2: A local nonprofit ballet company, which is exempt from federal income tax under IRC Section 501(c)(3), promotes the arts, provides classes and instruction on various types of dance, and sponsors and performs at numerous recitals that are free to the public. At its location, the ballet company has a gift shop in which patrons can purchase T-shirts, dance wear, and costumes. All profits are utilized by the ballet company to pay for its operational expenses and to perform the activities previously mentioned. The sales from this gift shop are exempt from Iowa sales tax to the extent that the profits therefrom are utilized to pay for the stated educational activities.

212.1(2) Religious. “Religious purpose” includes all forms of belief in the existence of superior beings or things capable of exercising power over the human race. It also includes the use of property by a religious society or by a body of persons as a place for public worship.

EXAMPLE 1: A local church, which is exempt from federal income tax under IRC Section 501(c)(3), has a bake sale. All of the bake sale profits are returned to the church for religious purposes. Bake sales are generally exempt from sales tax unless the product is sold for “on-premises consumption” (rule 701—220.5(423) contains more information on the sale of prepared food), but the bake sale profits are exempt from tax in any event because they are to be used for religious purposes. However, generally, any purchases made by the church that are not for resale are subject to sales tax. Iowa Code section 423.3(2) contains the exemption for the sales price of sales for resale.

EXAMPLE 2: Another local church, exempt from federal income tax under IRC Section 501(c)(3), conducts bingo games every Thursday. The profits from the bingo activities will be used for religious purposes. However, bingo and other gambling activities are subject to sales tax regardless of the manner in which the profits are going to be used.

212.1(3) Charitable. A charitable act is an act done out of goodwill, benevolence, and a desire to add or improve the good of humankind in general or any class or portion of humankind, with no pecuniary profit inuring to the person performing the service or giving the gift.

EXAMPLE 1: A local, nonprofit animal shelter that is exempt from federal income tax under IRC Section 501(c)(3) provides shelter, medical care, socialization, and adoption services for homeless animals and, as a fundraiser, sells T-shirts and sweatshirts depicting rescued animals. All of the profits from the sales will go to and be used by the animal shelter to defray the costs it incurs. Sales of the T-shirts and sweatshirts would be exempt from sales tax since the profits from the sales would be expended on a charitable purpose. Items purchased by the shelter for resale would also be exempt from sales tax. Items purchased by the shelter that are not for resale, such as dog or cat food that will be used by the shelter, would be subject to sales tax.

EXAMPLE 2: A nonprofit hospital, which has received exemption from federal income tax under IRC Section 501(c)(3), operates a gift shop. All of the profits are used to defray costs of hospital care for indigent patients who are unable to pay for such care. Due to the fact that all of the profits from the gift shop are used for a charitable purpose, the sales price would be exempt from sales tax.

a. Profits. The sales price from sales at issue in this exemption is exempt from sales tax to the extent that the profits are used by or donated to a qualifying organization and used for a qualifying activity. For purposes of this rule, “profits” means proceeds remaining after direct expenses have been deducted from the sales price derived from the activity or event. The expenses should be necessary and have an immediate bearing or relationship to the fulfillment of the activity.

Even though an activity or an organization has been recognized as one which could avail itself to the exemption provided by Iowa Code section 423.3(78), it can still be held responsible for sales tax on gross receipts sales price if the department finds, upon additional investigation, that the proceeds expended by the organization were not for educational, religious, or charitable purposes.

At the time of the selling event, a presumption is made that sales tax will not be charged to and collected from the consumer on the property or service sold. This particular exemption is dependent upon how the profits from the sale are expended, which follows the selling event. If after the event a portion of the profits is expended for a noneducational, nonreligious, or noncharitable purpose, tax is due on that portion of the sales price in the tax period in which that portion was expended.

EXAMPLE 1: The cost of food for a fundraising meal would be a direct expense. However, the cost of a victory celebration because the fundraising dinner was a success would not be a direct expense.

EXAMPLE 2: An educational institution hosts an art show. It invests profits from the art show into income-producing property and uses the remainder of the profits to purchase books for the library.

EXAMPLE 3: A nonprofit organization hosts a concert to raise money for neighborhood improvements. The cost of entertainment, if the entertainment is the principal source of proceeds for the activity or event, is a direct expense of the concert.

Unless a specific exemption applies to the entity, purchases by qualifying organizations that are not for resale cannot be purchased free of sales tax.

b. General information. The following is general information that is important to organizations involved in educational, religious, or charitable activities:

(1) There is no authority in the Iowa Code to grant a nonprofit corporation any type of blanket sales or use tax exemption on its purchases because the organization is exempted from federal or state income taxes.

(2) Nonprofit corporations and educational, religious, or charitable organizations are subject to audit and should keep for three years financial records that meet acceptable accounting procedures.

(3) Nonprofit corporations and educational, religious, or charitable organizations can be held responsible for the payment of sales and use taxes as would any other individual, retailer, or corporation.

(4) Nonprofit corporations and educational, religious, or charitable organizations are not required to obtain a sales tax permit or any type of registration number if they are not making taxable sales. There is no provision in the Iowa Code that requires that such organizations have a special sales tax number or registration number and none are issued by the department of revenue. However, if such organizations are making sales that are subject to tax, then a sales tax permit must be obtained.

(5) The mere renting of facilities to be used by another person or organization for educational, religious, or charitable purposes is not an educational, religious, or charitable activity.

(6) When profits from an activity are used to reimburse individuals for the cost of transporting their automobiles to an antique car show, the profits are not considered to be expended for educational purposes, and the gross receipts sales price from the car show are subject to tax.

(7) Activities to raise funds to send members of qualifying educational, religious, or charitable organizations to conventions and other similar events that are directly related to the purposes of the qualifying educational, religious, or charitable organization are within the exemption requirements provided in Iowa Code section 423.3.

(8) An organization whose function is to promote by advertising the use of a particular product that can be purchased at retail does not qualify for the exemption provided by Iowa Code section 423.3(78), even though promotion by advertising may educate the public.

(9) Sales of tangible personal property or specified digital products by civic and municipal art and science centers are of an educational value and the gross receipts therefrom are exempt to the extent the profits are expended for educational, religious, or charitable purposes.

(10) All proceeds from games of skill, games of chance, raffles, and bingo games as defined in Iowa Code chapter 99B are subject to sales tax regardless of who is operating the game and regardless of how the proceeds therefrom are expended, except that those games operated by a county or a city are exempt from collecting the sales tax. When organizations operate such games, they are required to have a sales tax permit and a gambling license.

This rule is intended to implement Iowa Code section 423.3(78).

701—212.2(423) Sales to the American Red Cross, the Coast Guard Auxiliary, Navy-Marine Corps Relief Society, and U.S.O. Receipts from the sale of tangible personal property or specified digital products or from rendering, furnishing, or providing taxable services to the American Red Cross, Coast Guard Auxiliary, Navy-Marine Corps Relief Society, and U.S.O. shall be exempt from sales tax.

Purchases made by the American Red Cross, Coast Guard Auxiliary, Navy-Marine Corps Relief Society, or U.S.O. outside of Iowa for use in Iowa shall be exempt from use tax.

This rule is intended to implement Iowa Code sections 423.3(1) and 423.3(31).

701—212.3(423) Sales in interstate commerce—goods transported or shipped from this state. When tangible personal property or services are exempt as described in Iowa Code section 423.3(43), sales tax does not apply.

EXAMPLE: Company A sells point-of-sale computer equipment. The company is located in Des Moines, Iowa. Company A enters into a contract with company B to sell the latter company a large number of point-of-sale computers. Company B is located in Little Rock, Arkansas. Company A transfers possession of the computers to a common carrier in Des Moines, Iowa, for shipment to Company B in Little Rock. Sale of the computers is exempt from Iowa sales tax.

212.3(1) Proof of transportation. The most acceptable proof of transportation outside the state is:

- a. A waybill or bill of lading made out to the retailer's order calling for transport; or
- b. An insurance or registry receipt issued by the United States postal department, or a post office department's receipts; or
- c. A trip sheet signed by the retailer's transport agency, which shows the signature and address of the person outside the state who received the transported goods.

212.3(2) Certificate of out-of-state delivery. Iowa retailers making delivery and therefore sales out of state shall use a certificate in lieu of trip sheets. The certificate shall be completed at the time of sale, identifying the merchandise delivered and signed by the purchaser upon delivery.

212.3(3) Exemption not applicable. Sales tax shall apply when tangible personal property is delivered in the state to the buyer or the buyer's agent, even though the buyer may subsequently transport that property out of the state and, also, when tangible personal property is sold in Iowa to a carrier and then delivered by the purchasing carrier to a point outside of Iowa for the carrier's use.

This rule is intended to implement Iowa Code section 423.3(43).

701—212.4(423) Educational institution. Tangible personal property, specified digital products, or enumerated services purchased by any private nonprofit educational institution, as defined in Iowa Code section 423.3(17), in the state and used for educational purposes is exempt from sales tax. When purchases are made by any private nonprofit educational institution and the institution is acting as an agent for the sale to any student or other person, the sales are taxable if the proceeds from the sale are not used for educational purposes.

212.4(1) Taxable sales. Examples of taxable sales include:

- a. Sales of prepared food or other taxable food (rules 701—220.3(423) to 701—220.6(423) contain more information), whether sold at snack bars, grills, cafeterias, restaurants, or cafes and whether or not sold to students.
- b. Sales from vending machines.
- c. Special event billings to colleges for meals for guests not connected with the college or at events not connected with the college.
- d. Sales to fraternities or sororities for events not billed to the college.
- e. Special event meals by commercial or social clubs, such as chambers of commerce, Rotarians, Kiwanis, alumni, advertising clubs, or political groups, whether or not billed through the college.

212.4(2) Exempt sales. Examples of exempt sales include:

- a. The sales of yearbooks to schools that have executed contracts with yearbook companies to purchase yearbooks. These are considered sales for resale and are exempt from tax.
- b. The sales of yearbooks from the school to the students and others. These are considered an educational activity and are exempt to the extent the profits therefrom are expended for educational purposes.
- c. Student board billing to include freshman days and student orientation when billed to the college and included in tuition.
- d. Students and faculty casual board when billed to the college.
- e. Events, when given by faculty for students and billed to the college.
- f. Events sponsored by colleges for visiting dignitaries, or functions related to education and billed to the college.
- g. Meals for students on education field trips and billed to the college.

EXAMPLE 1: A child care center (ABC) is a private nonprofit organization that provides the service of caring for children newborn to six years of age. In addition, ABC teaches children basic learning skills such as shapes, numbers, colors and the alphabet. ABC's primary purpose is to provide child care. The education of the children is a secondary activity. Consequently, ABC is not a private educational institution and would not qualify for exemption from sales tax under Iowa Code section 423.3(17).

EXAMPLE 2: A Preschool (XYZ) is a nonprofit private organization that teaches children from the ages of three to six years old. XYZ Preschool teaches the children basic learning skills such as shapes, numbers, colors and the alphabet by using certified faculty and accredited curriculum. XYZ Preschool is a private nonprofit educational institution and is eligible to claim the exemption to the extent purchases otherwise meet the requirements of Iowa Code section 423.3(17).

This rule is intended to implement Iowa Code section 423.3(17).

701—212.5(423) Gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to certain nonprofit corporations exempt from tax.

212.5(1) Unless a specific exemption applies, the sales price of tangible personal property, taxable services, and specified digital products sold to nonprofit corporations is subject to tax. Sales price from the sale or rental of tangible personal property, specified digital products, or from services performed,

rendered or furnished to certain nonprofit corporations are exempt from tax. Such organizations can be found in Iowa Code section 423.3(18).

212.5(2) The exemption does not apply to tax paid on the purchase of building materials by a contractor which are used in the construction, remodeling or reconditioning of a facility used or to be used for one or more of the uses set forth in this rule.

This rule is intended to implement Iowa Code section 423.3(18).

701—212.6(423) Nonprofit private museums. Iowa Code section 423.3(21) provides a sales tax exemption for certain purchases by nonprofit private museums.

212.6(1) Definitions and examples. A “museum” is all of the following:

a. An institution that is organized for educational, scientific, historical preservation, or aesthetic purposes.

b. An institution that is predominantly devoted to the care and exhibition of a collection of objects in a room, building, or locale.

c. An institution with a collection that is open to the public periodically or at fixed intervals.

d. An institution with a staff available to answer questions regarding the institution’s collection.

212.6(2) Exclusions from definition of “museum.”

a. An institution is not a “museum” unless it can be included in the ordinary and usual public concept of a museum.

b. Examples of institutions that are not designated as “museums” include aquariums, arboretums, botanical gardens, nature centers, planetariums, and zoos.

701—212.7(423) State fair and fair societies. The sales price from sales or services rendered, furnished, or performed by the state fair organized under Iowa Code chapter 173 or a county, district or fair society organized under Iowa Code chapter 174 are exempt from sales tax. This exemption does not apply to individuals, entities, or others that sell or provide services at the state, county, district fair, or fair societies organized under Iowa Code chapters 173 and 174.

This rule is intended to implement Iowa Code sections 423.3(23) and 423.3(35).

701—212.8(423) Sales to hospices. Iowa Code section 423.3(28) provides an exemption for freestanding nonprofit hospice facilities. “Hospice” and “hospice care” are defined in 42 CFR §418.3. A “freestanding hospice facility” is any hospice program housed in a building that is dedicated only to the hospice program and that is not attached to any other building or complex of buildings. An individual is “terminally ill” if that individual has a medical prognosis that the individual’s life expectancy is six months or less if the illness runs its normal course.

This rule is intended to implement Iowa Code section 423.3(28).

701—212.9(423) Art centers.

212.9(1) Iowa Code section 423.3(22) provides an exemption from tax for certain purchases made by private nonprofit art centers.

212.9(2) To qualify for the exemption, the organization will be all of the following:

a. An art center, which is defined as a structure that displays aesthetic objects that are the product of the conscious use of skill and creative imagination.

b. Housed in a structure open to the public periodically or at fixed intervals with regular hours and with staff available to answer visitors’ questions.

c. Located in Iowa.

This rule is intended to implement Iowa Code section 423.3(22).

701—212.10(423) Tangible personal property purchased from the United States government. Tangible personal property purchased from the United States government or any of the federal governmental agencies shall be exempt from sales tax, but such purchases shall be taxable to the purchaser under the provisions of the use tax law. Persons making purchases from the United States

government, unless exempt from the provisions of Iowa Code section 423.5(1)“c” shall report and pay use tax at the current rate on the purchase price of such purchases.

This rule is intended to implement Iowa Code section 423.3.

701—212.11(423) Sales by the state of Iowa, its agencies and instrumentalities. The state of Iowa, its agencies and instrumentalities, are required to collect and remit tax on the sales price from taxable retail sales of tangible personal property, specified digital products, and taxable services.

This rule does not apply to sales made by cities and counties in the state of Iowa that are specifically exempted from collecting tax by Iowa Code section 423.3(32).

This rule is intended to implement Iowa Code chapter 423.

701—212.12(423) Sales to federal, state, municipal, and tribal governments and instrumentalities.

212.12(1) Exempt sales. Sales are exempt from tax under Iowa Code section 423.3(31) if the tangible personal property, taxable services, and specified digital products are:

- a. Sold directly to an exempt government entity described in Iowa Code section 423.3(31);
- b. Used for a public purpose; and
- c. Not one of the types of the products listed in Iowa Code section 423.3(31)“a”(1) through 423.3(31)“a”(3) that remain taxable even when sold to certain government entities.

212.12(2) Direct, legal incidence of the tax.

a. *Sale to exempt government entities.* A sale to an exempt government entity occurs only if the government entity, pursuant to a contract for sale, takes title or ownership to tangible personal property as a buyer from a seller. Rule 701—219.23(423) contains additional information on construction contracts with designated exempt entities.

b. *Government contractors.* Iowa Code section 423.3(31) does not apply to independent contractors who contract with agencies, instrumentalities, or other entities of government. These contractors do not, by virtue of their contracting with governmental entities, acquire any immunity or exemption from taxation for themselves. Sales to these contractors remain subject to tax, even if those sales are of goods or services that a contractor will use in the performance of a contract with a governmental entity. This principle is applicable to construction contractors who create or improve real property for federal, state, county, and municipal instrumentalities or agencies thereof. The contractors shall be subject to sales and use tax on all tangible personal property they purchase regardless of the identity of their construction contract sponsor.

c. *Examples.*

EXAMPLE 1: Patient A purchases a hospital bed. A percentage of patient A’s bill is paid by federal funds from Medicaid. Patient A has purchased a hospital bed, not the federal government, and Iowa tax is due as a result of this sale. Patient A is the direct purchaser of the bed. The exemption in Iowa Code section 423.3(31) does not apply.

EXAMPLE 2: A is a federal government employee. A travels in Iowa while on government business and purchases prepared meals from restaurants in Iowa. A pays for the meals. The federal government later reimburses A the entire cost of the meals, including the sales tax A paid on the prepared meals. A has purchased meals, and Iowa sales tax should be charged accordingly. The federal government is not the direct purchaser of the prepared meals so the exemption under Iowa Code section 423.3(31) does not apply and neither A nor the federal government qualifies for a tax refund.

212.12(3) Government instrumentalities.

a. *Express statute.* An entity can be an instrumentality of government under Iowa Code section 423.3(31) if a state or federal statute expressly designates the entity as a government instrumentality that is exempt from paying sales tax on its direct purchases.

EXAMPLE 1: Iowa Code section 231.32(5) provides that after the commission on aging designates an area agency on aging, the area agency “shall be considered an instrumentality of the state and shall adhere to all state and federal mandates applicable to an instrumentality of the state.” Thus, a designated area agency on aging is a government instrumentality exempt from tax under Iowa Code section 423.3(31).

EXAMPLE 2: Iowa Code section 12E.3(1) provides the tobacco settlement authority is “a public instrumentality and agency of the state, separate and distinct from the state, exercising public and essential government functions.” Thus, the tobacco settlement authority is a government instrumentality exempt from tax under Iowa Code section 423.3(31).

b. Lack of express statute defining an entity as a government instrumentality. If there is no statute that expressly defines an entity as a government instrumentality exempt from tax, the entity may qualify as a government instrumentality if it satisfies all of the following requirements:

- (1) Government controls the detailed physical performance of the entity;
- (2) The entity’s day-to-day operations are supervised by government; and
- (3) The entity is created for the purpose of, and is primarily engaged in, the performance of essential government functions.

212.12(4) *Certain corporations organized under federal statutes.* The sale of tangible personal property, specified digital products, or taxable services at retail to the following corporations are sales for final use or consumption to which tax shall apply:

- a.* Federal savings and loan associations.
- b.* Federal savings and trust companies.
- c.* National banks.
- d.* Other organizations of like character.

701—212.13(423) Fees paid to cities and counties for the privilege of participating in any athletic sport. A “sport” is any activity or experience that involves some movement of the human body and gives enjoyment or recreation. An “athletic” sport is any sport that requires physical strength, skill, speed, or training in its performance. The following activities are nonexclusive examples of athletic sports: baseball, football, basketball, softball, volleyball, golf, tennis, racquetball, swimming, wrestling, and foot racing.

212.13(1) The following is a list of various fees that would be considered fees paid to a city or county for the privilege of participating in any athletic sport, and thus subject to tax under this rule. The list is not exhaustive.

a. Fees paid for the privilege of using any facility specifically designed for use by those playing an athletic sport: fees for use of a golf course, ball diamond, tennis court, swimming pool, or ice skating rink are subject to tax. These fees are subject to tax whether they allow use of the facility for a brief or extended period of time, e.g., a daily fee or season ticket for use of a swimming pool or golf course would be subject to tax. Group rental of facilities designed for playing an athletic sport would also be subject to tax.

b. Fees paid to enter any tournament or league that involves playing an athletic sport would be subject to tax. Both team and individual entry fees are taxable. Fees paid to enter any marathon or foot race of shorter duration would be subject to tax under this rule.

212.13(2) Not subject to tax as fees paid to a city or county for the privilege of participating in any athletic sport under this rule are the following charges. The list is not intended to be exhaustive.

a. Fees paid for lesson or instruction in how to play or to improve one’s ability to play an athletic sport are not subject to tax. Golf and swimming lesson fees are specific examples of such nontaxable charges. The fees are excluded from tax regardless of whether the person receiving the instruction is a child or an adult. Fees charged for equipment rental, regardless of whether this equipment is helpful or necessary to participation in an athletic sport, are not subject to tax. The rental of a golf cart or moveable duck blind would not be subject to tax. The rental of a recreational boat is a transportation service, the gross receipts of which are not subject to tax if provided by a city or county.

b. Sales of merchandise, e.g., food or drink, to persons watching or participating in any athletic sport are not subject to tax.

c. Fees charged to improve any facility where any athletic sport is played are not subject to tax, unless such a fee must be paid to participate in an athletic sport that can be played within the facility.

d. Fees paid by any person or organization to rent any county or city facility or any portion of any county or city park shall not be subject to tax unless the portion of the park or facility is specifically designed for the playing of an athletic sport.

EXAMPLE: A local bridge club pays a fee to use a shelter house and the surrounding grounds at a county park for a picnic. During the course of the picnic, the club members set up a net and use the surrounding grounds to play volleyball. They also improvise a softball field and play a softball game there. The fee that the bridge club has paid to rent the shelter house and surrounding grounds would not be subject to tax.

e. Fees paid for the use of a campground or hiking trail are not subject to tax.

This rule is intended to implement Iowa Code section 423.3(32).

701—212.14(423) Property used by a lending organization. The sales price from the sale of tangible personal property or specified digital products to a nonprofit organization organized for the purpose of lending the tangible personal property to the general public for use by the public for nonprofit purposes are exempt from tax. The exemption contained in this rule is applicable to tangible personal property only, and not to taxable services or specified digital products. It is applicable to the sale of that property and not to its rental to a nonprofit organization. Finally, the exemption is applicable only to property purchased by a nonprofit organization for subsequent rental to the general public. The exemption is not applicable to other property (e.g., office equipment) that the nonprofit organization might need for its ongoing existence.

This rule is intended to implement Iowa Code section 423.3(19).

701—212.15(423) Urban transit systems. A privately owned urban transit system that is not an instrumentality of federal, state or county government is subject to sales tax on fuel purchases that are within the urban transit system's charter.

Tax shall not apply to the sales price of fuel purchases made by a privately owned urban transit company for use outside the urban transit system charter in which a fuel tax has been imposed and paid and no refund has been or will be allowed.

This rule is intended to implement Iowa Code sections 423.3(1) and 423.3(31).

ITEM 2. Rescind and reserve **701—Chapter 284**.

ITEM 3. Rescind 701—Chapter 285 and adopt the following **new** chapter in lieu thereof:

CHAPTER 285
TAXABLE AND EXEMPT SALES DETERMINED BY METHOD
OF TRANSACTION OR USAGE

701—285.1(423) Auctioneers as agents.

285.1(1) An auctioneer in making a sale, whether of tangible personal property, specified digital products, or realty, is by virtue of this employment making the sale as the agent of the principal.

285.1(2) Where an auctioneer is conducting a sale and the principal meets the requirement of the casual sale exemption found in Iowa Code section 423.3(39), the sales price from the sale is exempt from sales tax.

This rule is intended to implement Iowa Code sections 423.2 and 423.3(39).

701—285.2(423) Florists.

285.2(1) Florists are engaged in the business of selling tangible personal property and specified digital products at retail. The sales price from the sale of flowers, wreaths, bouquets, potted plants and other items of tangible personal property and specified digital products are subject to sales tax.

285.2(2) When florists conduct transactions through a florists' telephonic delivery association, the following rules shall apply when computing tax liability:

a. On all orders taken by an Iowa florist and telephoned to a second florist in Iowa for delivery in the state, the sending florist shall be liable for tax, based on sales price from the total amount collected from the customer, except the cost of a telegram if separately stated on a bill or invoice.

b. In cases where an Iowa florist receives an order pursuant to which the Iowa florist gives telephonic instructions to a second florist located outside Iowa for delivery to a point outside Iowa, Iowa sales tax is not due.

c. In cases where Iowa florists receive telephonic instructions from other florists located either within or outside of Iowa for the delivery of flowers, the receiving florist will not be held liable for Iowa sales tax with respect to the transaction.

This rule is intended to implement Iowa Code section 423.2.

701—285.3(423) Student fraternities and sororities.

285.3(1) Student fraternities and sororities are not considered to be engaged in the business of selling tangible personal property at retail when they provide their members with meals and lodging for which a flat rate or lump sum is charged. A person engaged in the selling of foods and beverages to such organizations for use in the preparation of meals is making exempt sales at retail and shall not be liable for tax if the food purchases would be exempt under rule 701—220.5(423).

285.3(2) Student fraternities or sororities engaged in the business of selling meals or other tangible personal property to persons other than members for which separate charges are made are making taxable sales.

285.3(3) Sales by other food preparers. When student fraternities or sororities do not provide their own meals but meals instead are provided to members by caterers, concessionaires or other persons, such caterers, concessionaires or other persons shall be liable for the collection and remittance of sales tax on the sales price from meals furnished.

This rule is intended to implement Iowa Code sections 423.1, 423.1(39), 423.2, and 423.5.

701—285.4(423) Morticians or funeral directors. A mortician or funeral director is engaged in the business of selling tangible personal property, specified digital products, and funeral services. Examples of the tangible personal property sold by a funeral director include but are not limited to caskets, other burial containers, flowers, and burial clothing. “Funeral services” includes but is not limited to cremation, transportation by hearse and embalming. Tax is due only on the sales price from the sale of tangible personal property, specified digital products, and taxable services, and not on the sales price from the sale of nontaxable services.

If a mortician or funeral director separately itemizes charges for tangible personal property, specified digital products, taxable services and nontaxable services, tax is due only upon the sales price from the sales of tangible personal property and taxable services.

The mortician or funeral director is considered to be purchasing caskets, outer burial containers, burial clothing, and other items sold to customers for resale, and may purchase these items from suppliers without payment of sales tax.

For purposes of this rule, the terms of morticians or funeral directors shall also include cemeteries, cemetery associations and anyone engaged in activities similar to those discussed in the rule.

This rule is intended to implement Iowa Code section 423.2.

701—285.5(423) Physicians, dentists, surgeons, ophthalmologists, optometrists, and opticians.

Physicians, dentists, surgeons, ophthalmologists, optometrists, and opticians are not liable for sales tax on services rendered, including but not limited to examinations, consultations, diagnosis, and surgery.

The purchase of materials, supplies, and equipment by these persons is subject to tax unless the particular item is exempt from tax when purchased by an individual for the individual’s own use. For example, the purchase of prescription drugs would not be subject to sales tax if purchased for use in the practice of the physician, dentist, surgeon, ophthalmologist, optometrist, or optician. Sales of tangible personal property and specified digital products to dentists, which are to be affixed to the person of a patient as an ingredient or component part of a dental prosthetic device, are exempt from sales tax. These

include artificial teeth, and facings, dental crowns, dental mercury and acrylic, porcelain, gold, silver, alloy, and synthetic filling materials.

Sales of tangible personal property and specified digital products to physicians or surgeons, which are prescription drugs to be used or consumed by a patient, are exempt from tax.

Sales of tangible personal property and specified digital products to ophthalmologists, optometrists, and opticians, which are prosthetic devices designed, manufactured, or adjusted to fit a patient, are exempt from tax. These include prescription eyeglasses, contact lenses, frames, and lenses.

The purchase by such persons of materials such as pumice, tongue depressors, stethoscopes, which are not in themselves exempt from tax, would be subject to tax when purchased by such professions.

The purchase of equipment, such as an X-ray machine, X-ray photograph or frames for use by such persons is subject to tax. On the other hand, the purchase of equipment that is utilized directly in the care of an illness, injury or disease, which would be exempt if purchased directly by the patient, is not subject to tax.

This rule is intended to implement Iowa Code section 423.2.

701—285.6(423) Warranties and maintenance contracts.

285.6(1) Mandatory warranties. A warranty is a mandatory warranty when the buyer, as a condition of the sale, is required to purchase the warranty from the seller. When the sale of tangible personal property, specified digital products, or services includes the furnishing or replacement of parts or materials that are pursuant to the guaranty provisions of the sales contract, a mandatory warranty exists. If the property subject to the warranty is sold at retail, and the measure of the tax includes any amount charged for the guaranty or warranty, whether or not such amount is purported to be separately stated from the purchase price, the sale of replacement parts and materials to the seller furnishing them thereunder is a sale for resale and not taxable. Labor performed under a mandatory warranty that is in connection with an enumerated taxable service is also exempt from tax.

285.6(2) Optional warranties. A warranty is an optional warranty when the buyer is not required to purchase the warranty from the seller.

a. The sale of optional service or warranty contracts that provide for the furnishing of labor and materials and require the furnishing of any taxable service enumerated under Iowa Code section 423.2 is considered a sale of tangible personal property the sales price of which is subject to tax at the time of sale except as described below.

b. The sale of a residential service contract regulated under Iowa Code chapter 523C is not the sale of tangible personal property, and the sales price from the sales of these service contracts is not subject to tax, and the sales price from taxable services performed for the providers of residential service contracts are now subject to tax. “Residential service contract” is defined in Iowa Code section 523C.1(8).

c. If an optional service or warranty contract is a computer software maintenance or support service contract and the contract provides for the furnishing of technical support services only, then no tax is imposed on the furnishing of those services. If a computer software maintenance or support service contract provides for the performance of nontaxable services and the taxable transfer of tangible personal property, and no separate fee is stated for either the performance of the service or the transfer of the property, then sales tax shall be imposed on the sales price from the sale of the contract.

285.6(3) Additional charges for parts and labor furnished in addition to that covered by a warranty or maintenance contract that are for enumerated taxable services shall be subject to tax. Only parts and not labor will be subject to tax where a nontaxable service is performed if the labor charge is separately stated.

This rule is intended to implement Iowa Code section 423.2.

701—285.7(423) Casual sales.

285.7(1) *Casual sales by persons not retailers or by retailers outside the regular course of business.*

a. Exemptions. Casual sales are exempt from Iowa sales and use taxes except for the casual sale of vehicles subject to registration, aircraft, and other vehicles listed in Iowa Code section 423.3(39)“b.” In order for a casual sale to qualify for exemption under this subrule, two conditions must be present:

(1) The sale of tangible personal property, specified digital products, or taxable services must be of a nonrecurring nature, and

(2) The seller, at the time of the sale, must not be engaged for profit in the business of selling tangible goods or services taxed under Iowa Code section 423.2 or, if so engaged, the sale must be outside the regular course of the seller’s business.

b. Nonrecurring events. Two separate selling events outside the regular course of business within a 12-month period shall be considered nonrecurring. Three such separate selling events within a 12-month period shall be considered as recurring. Tax shall only apply commencing with the third separate selling event. However, in the event that a sale event occurs consistently over a span of years, such sale is recurring and not casual, even though only one sales event occurs each year.

c. Sales of capital assets. Sales of capital assets such as equipment, machinery, and furnishings that are not sold as inventory shall be deemed outside the regular course of business (including sales of capital assets during a retailer’s liquidation) and the casual sales exemption shall apply as long as such sales are nonrecurring. This will include transactions exempted from state and federal income tax under Section 351 of the Internal Revenue Code.

EXAMPLE: Corporation A sells the company copy machine at retail to B. At the time of this sale, Corporation A is engaged in the business for profit of selling clothes at retail. Assuming that the sale of the copy machine constitutes a sale of a nonrecurring nature, there is a casual sale because the sale is outside the regular course of Corporation A’s business.

EXAMPLE: Corporation C is engaged in the business of lending money secured by collateral. In the course of such business, Corporation C must repossess some collateral and sell it at retail for purposes of payment of loans. Such sales recur from time to time. Notwithstanding that Corporation C is presumably not engaged in the business of selling tangible personal property, specified digital products, or services for a profit, since the sales are recurring, there is no casual sale.

EXAMPLE: F, a farmer, does not sell tangible personal property at retail or engage in the performance of any taxable services. F liquidates the farming business and hires a professional auctioneer to auction off many items of tangible personal property. Assuming this liquidation event is casual, all items sold by the auctioneer at retail are casual sales notwithstanding that many different sales to numerous different buyers may occur. More information is contained in rule 701—285.1(423).

EXAMPLE: H, an insurance agency, holds a semiannual event to sell its used office furniture. Even though H does not regularly sell tangible personal property at retail, the casual sale exemption does not apply because the selling events are recurring.

EXAMPLE: I, a corporation, has one sales event every year whereby it auctions off capital assets that it has no use for or desires to replace. This event has been a planned function of I and is conducted regularly and consistently over a span of years. Even though this sale event occurs only once a year, it is of a recurring nature because of the pattern of repetitiveness present and, therefore, the casual sale exemption would not apply, regardless of the number of items sold at the sale event each year.

EXAMPLE: J, a corporation engaged in the sale for resale of tangible personal property, sells three capital assets used in J’s trade or business consisting of a copy machine, a desk, and a computer. Each sale is made to different buyers and is unrelated to the other sales. The three sales occur in January, June, and October of the same year. The sale made in October consists of a desk. J has not established a pattern of recurring sales of capital assets prior to aforementioned sales of capital assets. Under these circumstances, the sale of the desk is not a casual sale, but the sales of the copy machine and the computer are casual and exempt.

EXAMPLE: K, a corporation, is primarily engaged in the business of road construction. From time to time, it sells used capital assets and scrap materials reclaimed from its road construction work to individuals and businesses. It does not advertise itself as a retailer of these assets and materials but sells them as a matter of courtesy to persons who cannot purchase them elsewhere. After 42 years of operation, it decides to liquidate. Pursuant to that decision, K employs two auctioneers to sell its capital

assets and ceases operation after its assets are sold. K had only one capital asset sale during the 12 months immediately preceding each liquidation auction sale. The auction sales are exempt casual sales under this subrule (1) because they are nonrecurring, and (2) because K is not a retailer of the capital assets sold during its liquidation.

EXAMPLE: L, a sole proprietorship, engaged in selling automobile parts at retail, incorporated. The assets of L are sold to the new corporation in exchange for stock and the new corporation now engages in selling automobile parts at retail. The casual sale exemption would apply, but only because of the exemption set out in subrule 285.7(2) *infra*, since the transfer involves a liquidation of L's business and the sale of L's inventory to another person (the corporation), which will continue to engage in a similar trade or business.

The above examples are not the only ones pertaining to the questions of whether a casual sale did or did not occur. However, because of the myriad of factual situations that can and do exist, it is not possible to formulate more detailed rules on this subject matter.

285.7(2) *Special rules for casual sales involving the liquidation of a trade or business.* When retailers sell all or substantially all of the tangible personal property held or used in the course of the trade or business for which retailers are required to hold a sales tax permit, the casual sale exemption will apply to exempt those sales only when the following circumstances exist: (1) the trade or business must be transferred to another person, and (2) the transferee must engage in a similar trade or business. The trade or business transferred refers to the place where the business is located since each taxable retail business must have a sales tax permit at each location. For purposes of this casual sale circumstance, it is irrelevant whether the retailer actually has a sales tax permit or not; rather, the relevant circumstance is that the retailer was required to have a sales tax permit. One effect of this is that a retailer who is closing as opposed to transferring a business and is selling inventory in the process of this closing is not entitled to claim the casual sale exemption under this subrule, but see subrule 285.7(1), and the resale exemption is always potentially applicable to sales of inventory. The examples below contain further explanation.

EXAMPLE: L, a hardware store, desires to liquidate the business. L had been selling tangible personal property at retail and was required to have an Iowa retail sales tax permit. L hires a professional auctioneer and all items of inventory, equipment, and fixtures are sold to various purchasers. These items consist of all or substantially all of the tangible personal property held or used by L in the course of the business for which a sales tax permit was required to be held. L, however, does not transfer the trade or business to anyone else. Under these circumstances, the casual sales exemption does not apply to the sale of the inventory, but see subrule 285.7(1) for criteria that determine whether the casual sales exemption applies to the equipment and fixtures.

EXAMPLE: The facts are the same as those in the previous example, except that L is liquidating its business because it attempted to build a new store and its entire inventory was destroyed by fire while in storage. An auctioneer sells L's equipment and trade fixtures to various purchasers. The auctioneer's sale of the equipment and trade fixtures is an exempt casual sale of the type described in subrule 285.7(2) because (1) it is nonrecurring, and (2) it is outside the usual course of L's business.

EXAMPLE: M, a sole proprietorship, incorporated. The assets of M are sold to the new corporation for stock. The new corporation engaged in a similar business. The casual sale exemption would apply.

EXAMPLE: N, an oil company, sells all or substantially all of the tangible personal property of ten company-owned service stations that were held or used in the course of its business, for which N was required to hold a sales tax permit, by bulk sales or otherwise. The sales were made to O, P, and Q and occurred at different times during the same year, each sale being unrelated. N was required to have a sales tax permit for each service station. N transferred its trade or business (each service station) to O, P, and Q, each of whom will engage in the same business N did, i.e., operation of service stations. Even though under these circumstances, the sales by N are recurring, the casual sales exemption would apply since each trade or business was transferred to another person who did engage in a similar trade or business.

EXAMPLE: R, an operator of a restaurant, auctions off to various purchasers who are not engaged in the restaurant business all or substantially all of the tangible personal property held or used in the

business for which R was required to hold a retail sales tax permit. R transfers the trade or business to S who then operates a restaurant at the same location R did. Even if S did not purchase any of the tangible personal property, under these circumstances, the casual sales exemption applies. The tangible personal property held or used in the trade or business need not be sold to the same person to whom the trade or business is sold for the exemption to apply.

EXAMPLE: T, a restaurant, sells all of its tangible personal property held or used in the course of its business for which it was required to hold a sales tax permit to U. T also sells its trade or business to U. U engages in the business of operation of a dance hall and does not continue to operate the restaurant. This subrule's casual sales exemption will not apply, but see subrule 285.7(1) for the criteria of a casual sale exemption that could apply.

The above examples are not the only ones pertaining to the question of whether a casual sale did or did not occur. However, because of the myriad of factual situations that can and do exist, it is not possible to formulate more detailed rules on this subject matter.

285.7(3) *Casual sales of services.* The "casual sale" of an enumerated service has occurred if the following circumstances exist:

a. The service was rendered, furnished, or performed on a nonrecurring basis by a seller who, at the time of the sale of the service, is not engaged for profit in the business of selling tangible goods or services taxed under Iowa Code section 423.2 or, if so engaged, the sale was outside the regular course of the seller's business; or

b. The sales of all, or substantially all of the services held or used by a retailer in the course of the retailer's trade or business for which the retailer is required to hold a sales tax permit, if the retailer sells or otherwise transfers the trade or business to another person who engages in a similar trade or business.

EXAMPLE: V ordinarily engages in janitorial and building maintenance or cleaning, which are taxable services. Once, as a favor to customer W, V cut customer W's lawn and otherwise performed the taxable service of "lawn care" for customer W. Since this performance of lawn care was not "within V's regular course of business" and was not "recurring," the sales price from the lawn care is not subject to tax.

EXAMPLE: Corporation X rents a piece of equipment from Y. Y does not otherwise rent equipment and does not engage in the business for profit of selling tangible personal property, specified digital products, or taxable enumerated services. A casual sale qualifying for the exemption exists.

This rule is intended to implement Iowa Code section 423.3(39).

701—285.8(423) Taxation of Native Americans.

285.8(1) *Definitions.*

"*Native Americans*" means all persons who are descendants of and who are members of any recognized tribe.

"*Settlement*" means all lands recognized as a tribal government settlement or reservation within the boundaries of the state of Iowa.

285.8(2) *Retail sales tax—tangible personal property.* Retail sales of tangible personal property made on a recognized settlement to Native Americans who are members of the tribe located on that settlement, where delivery occurs on the settlement, are exempt from tax. Retail sales of tangible personal property made on a recognized settlement to Native Americans where delivery occurs off the settlement are subject to tax. Retail sales of tangible personal property made to non-Native Americans on a recognized settlement are subject to tax regardless of where the delivery occurs. Sales made to non-Native Americans are taxable even though the seller may be a member of a recognized settlement.

285.8(3) *Retail sales tax—services.* Sales of enumerated taxable services and sales made by municipal corporations furnishing gas, electricity, water, heat, or communication services to Native Americans who are members of the tribe located on the recognized settlement where delivery of the service occurs are exempt from tax. Sales of enumerated taxable services or sales made by municipal corporations furnishing gas, electricity, water, heat, or communication services to Native Americans where delivery of the services occurs off a recognized settlement are subject to tax.

285.8(4) *Off-settlement purchases.* Purchases made by Native Americans off a recognized settlement are subject to tax if delivery occurs off the settlement. Purchases made by Native Americans

off a recognized settlement are not subject to tax if delivery is made on the settlement to Native Americans who are members of the tribe located on that settlement.

This rule is intended to implement Iowa Code section 423.3.

701—285.9(423) Computer software and hardware.

285.9(1) In general.

a. Applicability of tax. For the purposes of this rule, the sales price of the tangible personal property, specified digital products, and services found within Iowa Code section 423.2 is subject to tax.

b. Definitions.

“Program” is interchangeable with the term “software” for purposes of this rule.

“Rental or lease” means the same as defined in Iowa Code section 423.1(24).

285.9(2) Taxable sales, rentals or leases, and services.

a. Sales of equipment. Tax applies to sales of automatic data processing equipment and related equipment.

b. Rental or leasing of equipment. Where a lease includes a contract for the use of equipment, the rental or lease payments are subject to tax.

c. Training materials. Persons who sell or lease data processing equipment may provide a number of training services with the sale or rental of their equipment. Training services, per se, are not subject to tax. Training materials, such as books, furnished to the trainees for a specific charge are taxable.

d. Services a part of the sale or lease of equipment. Where services, such as programming, or training are provided to those who purchase or lease software on a mandatory basis as an inseparable part of the sale or taxable lease of the equipment, charges for the furnishing of the services are includable in the measure of tax from the sale or lease of the equipment whether or not the charges are separately stated. (Where the purchaser or lessee has the option to acquire the equipment either with the services or without the services, charges for the services may not be excluded from the measure of tax if they are taxable enumerated services.)

e. Mailing services. Addressing (including labels) for mailing. Where a service provider addresses, through the use of its software or otherwise, material to be mailed, with names and addresses furnished by the customer or maintained by the service provider for the customer, tax does not apply to the charge for addressing. Similarly, where the service provider prepares, through the use of its software or otherwise, labels to be affixed to material to be mailed, with names and addresses furnished by the customer or maintained by the service provider for the customer, tax does not apply to the charge for producing the labels, regardless of whether the service provider itself affixes the labels to the material to be mailed. However, tax would be due on any tangible personal property, such as labels, consumed by the service provider. Mailing lists that are attached to envelopes and placed in the mail by a service bureau constitute tangible personal property and are subject to tax.

This rule is intended to implement Iowa Code section 423.3.

701—285.10(423) Envelopes for advertising. Some envelopes that contain advertising are exempt from tax. Envelopes that are not primarily used for advertising are taxable. The primary use of the envelopes should control whether they will be taxable or exempt.

EXAMPLE 1: XYZ mails coupons and advertisements to persons giving discounts on a certain item that is sold at retail. The envelope used to package these materials is exempt from tax since it is primarily used to contain advertising materials.

EXAMPLE 2: XYZ mails a monthly billing statement to its charge account customers. In addition to the billing statement, XYZ encloses an advertisement in the envelope. The envelope has a dual purpose: (1) the collection of accounts receivable and (2) the distribution of advertising. However, the envelope is not primarily used for advertising but for billing the customer, therefore, the exemption does not apply.

This rule is intended to implement Iowa Code section 423.3(42).

701—285.11(423) Newspapers, free newspapers and shoppers' guides.

285.11(1) *Sales price of newspapers.* The sales price from the sales of newspapers, free newspapers, and shoppers' guides are exempt from tax. The sales price from the sales of magazines, newsletters, and other periodicals that are not newspapers are taxable.

285.11(2) *General characteristics of a newspaper.* "Newspaper" is a term with a common definition. A "newspaper" is a periodical, published at short, stated, and regular intervals, usually daily or weekly. It is printed on newsprint with news ink. The format of a newspaper is that of sheets folded loosely together without stapling. A newspaper is admitted to the U.S. mails as second-class material.

285.11(3) *Characteristics of newspaper publishing companies.* Companies in the business of publishing newspapers are differently structured from other companies. Often, companies publishing larger newspapers will subscribe to various syndicates or "wire services." A larger newspaper will employ a general editor and a number of subordinate editors as well, for example, sports and lifestyle editors; business, local, agricultural, national, and world news editors; and editorial page editors. A larger newspaper will also employ a variety of reporters and staff writers. Smaller newspapers may or may not have these characteristics or may consolidate these functions.

285.11(4) *Characteristics that distinguish a newsletter from a newspaper.* A "newsletter" is generally distributed to members or employees of a single organization and not usually to a large cross section of the general public. It is often published at irregular intervals by a volunteer, rather than the paid individual who usually publishes a newspaper. A newsletter is often printed on sheets that are held together at one point only by a staple, rather than folded together.

This rule is intended to implement Iowa Code section 423.3(55).

701—285.12(423) Maintenance or repair of fabric or clothing.

285.12(1) Sales of chemicals, solvents, sorbents, or reagents consumed in the maintenance or repair of fabric or clothing are exempt from tax. See rule 701—200.1(423) for definitions of the terms "chemical," "solvent," "sorbent" or "reagent." This subrule's exemption is mainly applicable to dry-cleaning and laundry establishments; however, it is also applicable to soap or any chemical or solvent used to clean carpeting. The department presumes that a substance is "directly used" in the maintenance or repair of fabric or clothing if the substance comes in contact with the fabric or clothing during the maintenance or repair process. Substances that do not come into direct contact with fabric or clothing may, under appropriate circumstances, be directly used in the maintenance or repair of the fabric or clothing but direct use will not be presumed.

The following are examples of substances directly used and consumed in the maintenance or repair of fabric or clothing: perchloroethylene "perch" or petroleum solvents used in dry-cleaning machines and coming in direct contact with the clothing being dry-cleaned. Substances used to clean or filter the "perch" or petroleum solvents would also be exempt from tax, even though these substances do not come in direct contact with the clothing being cleaned. The sale of soap or detergents especially made for mixing with "perch" or petroleum solvents is exempt. The sale of stain removers to dry cleaners is exempt from tax.

A commercial laundry's purchase of detergents, bleaches, and fabric softeners is exempt from tax. A commercial laundry's purchase of water, which is a solvent, is also exempt from tax if purchased for use in the cleaning of clothing.

The purchase of starch by laundries and "sizing" by dry cleaners is not exempt from tax.

285.12(2) The sale of property that is a container, label, or similar article or receptacle for transfer in association with the maintenance or repair of fabric or clothing is exempt from tax. In general, the sale of any article that protects dry-cleaned or laundered clothing from dirt or helps the dry-cleaned or laundered clothing to maintain its proper shape or form in the same fashion as a container does would be exempt from tax under this subrule. By way of nonexclusive example, the sale of plastic garment bags, which protect clothing from dirt, is exempt from tax. The sale of "shirt boards" and garment hangers, both of which help clothing to maintain its proper shape, would also be exempt.

A container, label, or similar article's sale is exempt from tax only if the item is transferred to the customer of a commercial laundry, dry cleaner, or other retailer. Thus, "bundle bags" and "Meese carts,"

used to transfer or transport clothing within a dry-cleaning establishment, are not subject to the exemption because these bags and carts remain with the dry cleaner and are not transferred to a customer.

Concerning labels, the sale of which would be exempt from tax, these labels must be affixed to the dry-cleaned or laundered clothing and transferred to the customer of the dry-cleaning or laundering establishment. By way of nonexclusive example, the sale to dry cleaners of “special attention,” “invoice” and “sorry” tags would be exempt from tax.

The sale of safety pins and other types of clips used to hang skirts and other garments from hangers would not be exempt from tax. These items do not sufficiently resemble containers or labels to the extent that their sale is exempt from tax.

This rule is intended to implement Iowa Code sections 423.3(45) and 423.3(51).

701—285.13(423) Drop shipment sales. A “drop shipment” generally involves two transactions and three parties. The first party is a consumer located inside Iowa. The second party is a retailer located outside the state. The third party is a supplier who may be located inside or outside of Iowa. A drop shipment sale occurs when the consumer places an order for the purchase of tangible personal property with the out-of-state retailer. The retailer does not own the property ordered at the same time the consumer’s order is placed. The retailer then purchases the property from the supplier. The supplier ships the property directly to the consumer in Iowa. The supplier in a drop shipment sale is not required to collect sales or use tax from the consumer, even if the requisite nexus to require collection exists.

If delivery of goods under a contract for sale occurs outside of Iowa, sale of the goods occurs outside of Iowa. If delivery of the goods under the contract for sale occurs within Iowa, the sale occurs in Iowa. If the sale occurs in Iowa and the retailer possesses the requisite nexus to require it to collect Iowa sales tax, the retailer is obligated to collect Iowa sales tax upon the sales price from its sale of the goods to the consumer. If the sale occurs in Iowa but the retailer does not have nexus sufficient to require it to collect Iowa sales or use tax, or if the retailer fails to collect sales tax, the consumer is obligated to pay use tax directly to the department.

EXAMPLE A: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The Minneapolis retailer contracts with a supplier in Iowa to manufacture and ship the goods to the consumer. The retailer has nexus with Iowa, and delivery under the contract for sale has occurred in this state. In this case, the consumer is obligated to pay and the retailer is obligated to collect Iowa sales tax. The supplier is not obligated to collect any Iowa tax.

EXAMPLE B: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The Minnesota retailer contracts with a supplier in Iowa to manufacture and ship the goods to the consumer. The retailer has no nexus with Iowa. Delivery under the contract of sale is in Iowa. Under these circumstances, the consumer is obligated to pay use tax directly to the department. Neither the retailer nor the supplier is obligated to collect any Iowa tax.

EXAMPLE C: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier in Minneapolis to manufacture and ship the goods to the consumer in Des Moines. The retailer has nexus with this state; delivery under the contract for sale is in Minnesota. Under the circumstances, the consumer is obligated to pay and the retailer is obligated to collect Iowa use tax. The supplier is not obligated to collect or pay any Iowa tax.

This rule is intended to implement Iowa Code sections 423.1, 423.14, and 423.14A.

[Filed 7/2/24, effective 8/28/24]

[Published 7/24/24]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/24.

ARC 8158C**REVENUE DEPARTMENT[701]****Adopted and Filed****Rulemaking related to miscellaneous taxable sales**

The Revenue Department hereby rescinds Chapter 213, “Miscellaneous Taxable Sales,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.1, 423.2, 423.3 and 423.5.

Purpose and Summary

The purpose of this rulemaking is to rescind Chapter 213 and adopt a new Chapter 213. The Department made revisions to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. The chapter describes the Department’s interpretation of the underlying statute to help the public understand the taxability of miscellaneous types of sales. These rules reduce uncertainty about what is subject to tax and what is exempt.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7375C**. A public hearing was held on the following date(s):

- January 16, 2024

No one attended the public hearing. No public comments were received. No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Department on June 24, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The

Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on August 28, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 213 and adopt the following **new** chapter in lieu thereof:

CHAPTER 213
MISCELLANEOUS TAXABLE SALES

701—213.1(423) Conditional sales contracts.

213.1(1) Definition. A “conditional sale” is a sale in which the vendee receives the right to the use of the goods that are the subject matter of the sale, but the transfer of title to the vendee is dependent on the performance of some condition by the vendee, usually the full payment of the purchase price.

213.1(2) Factors used to determine a conditional sale. Conditional sales are evidenced by the facts supporting the nature of the vendor's business, the intent of the parties, and the facts supporting the control over the tangible personal property by the vendee.

A conditional sales contract would exist where:

- a. The vendee/lessee has total control over the property and is responsible for all losses or damages;
- b. The transfer of the property is complete except for title, which passes upon the condition of full payment; and where such full payment is performed under nearly all the vendor's “lease” agreements, except in cases of default; and
- c. The vendor has no intent of retaining control over the property except for purposes of selling it or financing it for sale.

In determining whether an agreement constitutes a conditional sale or a true lease, substance shall prevail over form, and the terminology of the written agreement will be considered only to the extent that it accurately represents the true relationship of the parties.

213.1(3) Taxability of conditional sales. When a conditional sale exists, the seller bills the purchaser for the full amount of tax due, and sales tax is due on the full contract price upon delivery of the property that is the subject of the contract. No further tax is due on the periodic payments. Interest and finance charges are not considered part of the sales price if they are separately stated and reasonable in amount and are, therefore, not subject to tax.

This rule is intended to implement Iowa Code sections 423.1(50) and 423.2(1).

701—213.2(423) The sales price of sales of butane, propane and other like gases in cylinder drums, etc. Sales of butane, propane and other like gases in cylinder drums and other similar containers purchased for cooking, heating and other purposes are taxable.

213.2(1) When gas of this type is sold and motor vehicle fuel tax is collected by the seller, sales or use tax shall not be due. If Iowa motor vehicle fuel tax is not collected by the seller at the time of the sale, sales or use tax shall be collected and remitted to the department, unless the sale is specifically exempt.

213.2(2) If tax is not collected by the seller at the time of sale, any tax due shall be collected by the department at the time the user of the product makes an application for a refund of the motor vehicle fuel tax.

213.2(3) The sales price from the rental of cylinders, drums and other similar containers by the distributor or dealer of the gas shall be subject to tax when the title remains with the dealer. The sales price of gas converter equipment that might be sold to an ultimate consumer shall be subject to tax.

This rule is intended to implement Iowa Code sections 423.1(46) and 423.2(1).

701—213.3(423) Antiques, curios, old coins, collector’s postage stamps, and currency exchanged for greater than face value. Curios, antiques, art work, coins, collector’s postage stamps and such articles sold to or by art collectors, philatelists, numismatists and other persons who purchase or sell such items of tangible personal property for use and not primarily for resale are sales at retail, and their sales prices are subject to tax.

213.3(1) The sales price of stamps, whether canceled or uncanceled, which are sold by a collector or person engaged in retailing stamps to collectors is subject to tax.

213.3(2) Stamps that are purchased for their value as evidence of the privilege of the owner to have certain mail carried by the United States government are not taxable. A stamp becomes an article of tangible personal property having market value when, because of the demand, it can be sold for a price greater than its face value. On the other hand, when a stamp has only face value, as evidence of the right to certain services or an indication that certain revenue has been paid, its sales price is not subject to either sales or use tax.

213.3(3) The sales price from any exchange, transfer, or barter of merchandise for a consideration paid in gold, silver, or other coins or currency is subject to tax to the extent of the agreed-upon value of the coins or currency so exchanged. This agreed-upon value constitutes the sales price or purchase price subject to tax. Currency or coins become articles of tangible personal property having a value greater than face value when the currency or coins are exchanged for a price greater than face value. However, when a coin or other currency, in the course of circulation, is exchanged at its face value, the sales price of the sale is subject to tax for the face value alone.

EXAMPLE 1: Taxpayer operates a furniture store. The taxpayer offers to exchange furniture for silver coins at ten times the face value of any coins dated prior to January 1, 1965. Upon any exchange pursuant to the offer, the value of the coins for purposes of determining the tax on the exchange will be equivalent to the value as agreed upon by the parties, without regard to the face value of the coins.

EXAMPLE 2: Taxpayer operates a hardware store. In the regular course of business, the taxpayer receives silver coins dated prior to January 1, 1965. Taxpayer has received the coins at face value for the sales price and only that value is subject to tax.

This rule is intended to implement Iowa Code sections 423.1(47), 423.2(1) and 423.5.

701—213.4(423) Consignment sales.

213.4(1) When a retailer receives tangible personal property on consignment from others and the consigned merchandise is sold in the ordinary course of business with other merchandise owned or services performed by the retailer, the retailer or consignee shall be making sales at retail. In these cases, the consignee shall file a return and remit tax to the department along with the returns and remittances of tax on the sales price from the sale of other merchandise.

213.4(2) The sales price of sales of tangible personal property by an agent or consignee for another person is exempt if the sales meet the requirements of a casual sale or any other exemptions.

This rule is intended to implement Iowa Code section 423.2(1).

701—213.5(423) Electrotypes, types, zinc etchings, halftones, stereotypes, color process plates, wood mounts and art productions. The sales price of electrotypes, types, zinc etchings, halftones, stereotypes, color process plates, wood mounts and art productions is subject to tax when sold to users or consumers. The listed articles do not become an integral or component part of merchandise intended to be sold ultimately at retail.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.3(51).

701—213.6(423) Sales on layaway.

213.6(1) The sales price from a layaway sale is subject to tax. A layaway sale involves two separate and distinct contracts. Under the first contract, the customer and the retailer enter into an agreement to give the customer an option to purchase a certain item of tangible personal property. Under the second contract, the sale of property takes place. During the period of the option to purchase, the item is placed aside “on layaway” and is not available for sale to the general public. This option to purchase is exercised by the customer’s making one or more “layaway payments.” The customer

exercises the option to buy by completing the layaway payments. The last layaway payment is also the tendered payment under the separate contract for sale of the property. The contract for sale is complete when the seller delivers the property to the buyer. Tax must be reported during the period (e.g., the quarter or month) in which delivery under the contract for sale portion of the layaway occurs. This will nearly always be the reporting period in which physical transfer of possession passes from the retailer to the buyer.

213.6(2) A sale on layaway should not be confused with a “conditional sale.” The differences are these: (1) In a conditional sale, physical transfer of property occurs before, rather than after, the buyer makes all periodic payments necessary to purchase the property; and (2) in a conditional sale, physical possession of and title to the property pass to the buyer at different times. In a conditional sale situation, physical possession passes first; then, after all periodic payments are made, title (ownership) passes to the buyer. In a layaway sale, both possession and title pass at the same time after all payments are made.

This rule is intended to implement Iowa Code sections 423.1(46) and 423.2(1).

701—213.7(423) Memorial stones.

213.7(1) The sales price of memorial stones is subject to tax. When the seller of a memorial stone agrees to erect a stone upon a foundation, the total sales price from the sale is taxable. Any separately itemized charge for engraving is part of the taxable sales price of a memorial stone.

213.7(2) The sales price of any designs, lettering or engraving performed on a memorial stone or monument is also subject to tax.

This rule is intended to implement Iowa Code section 423.2(1).

701—213.8(423) Creditors and trustees.

213.8(1) Pursuant to the provisions of any piece of chattel paper or any other document evidencing a creditor’s interest in tangible personal property, the sales price from the sale of tangible personal property at a public auction shall be taxable even if the sale is made by virtue of a court decree of foreclosure by an officer appointed by the court for that purpose.

213.8(2) The tax applies to the sales price of inventory and noninventory goods, provided the owner is in the business of making retail sales of tangible personal property or taxable services.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.9(423) Sale of pets. Sales of pets are tangible personal property subject to tax. A retailer selling pets shall procure a permit and report tax on the sales price from the sale of such pets.

This rule is intended to implement Iowa Code sections 423.1(54) and 423.2(1).

701—213.10(423) Redemption of meal tickets, coupon books and merchandise cards as a taxable sale. When meal tickets, coupon books, or merchandise cards are sold by persons engaged exclusively in selling taxable commodities or services, tax shall be levied at the time such items are redeemed by the customer. Tax shall not be added at the time of purchase of the meal ticket, coupon book, or merchandise card. When a retailer sells gift certificates, tax shall be added at the time the gift certificate is redeemed.

This rule is intended to implement Iowa Code sections 423.1 and 423.2.

701—213.11(423) Repossessed goods.

213.11(1) *Sale subject to tax.* When tangible personal property that has been repossessed either by the original seller or by a finance company is resold to final users or consumers, the sales price from those sales is subject to tax.

213.11(2) *Bad debts.* A retailer repossessing previously sold merchandise shall be entitled to claim a credit on tax paid for bad debts in the same fashion as any other retailer that has paid tax to the department upon a sales price that ultimately constitutes a bad debt.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.12(423) Tangible personal property made to order. When a retailer contracts to fabricate items of tangible personal property from materials available in stock or through placing orders for

materials that have been selected by customers, all expenses and profits from the sale of such fabricated articles shall be included in the sales price. The retailer shall not deduct fabrication or production charges, even though such charges are separately billed.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.13(423) Used or secondhand tangible personal property. The sales price on the sale of used or secondhand tangible personal property is subject to tax in the same manner as new property. This condition eliminates any consideration for secondhand merchandise to be treated differently than new merchandise when sold at retail for sales tax purposes.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.5(1).

701—213.14(423) Carpeting and other floor coverings. The sale of carpeting and other floor coverings to any person constitutes a sale at retail of tangible personal property, and the sales price of these sales is subject to sales or use tax unless the carpeting and other floor coverings are purchased for resale or are otherwise exempt from tax.

213.14(1) The sales price of floor coverings other than carpeting that are shaped to fit a particular room or area and that are attached to the supporting floor with cement, tacks, or by some other method making a permanent attachment with the building or structure are considered to be building materials and shall be taxable in the same manner as building materials that are used or consumed in the performance of a construction contract. See rule 701—219.2(423) and 701—subrule 219.3(3) for tax treatment.

213.14(2) The sale of carpeting is not to be treated as the sale of a “building material.” The sales price of rugs, mats, linoleum, and other types of floor coverings that are not attached but that are simply laid on finished floors and are not considered building materials is subject to tax unless the floor coverings are purchased for resale or are otherwise exempt from tax.

213.14(3) The sale of “carpeting” to owners, contractors, subcontractors or builders is not the sale of a building material, but the sale of ordinary tangible personal property, which can be purchased for resale by owners, contractors, subcontractors or builders. “Carpeting” is any floor covering made of fabric, usually of wool or synthetic fibers. For purposes of this rule, “carpeting” also includes any pads, tack strips, adhesive, and other materials other than subflooring necessary for installation of the carpeting. Sellers of carpeting should charge purchasers sales tax unless the carpeting is purchased for resale or some other exempt purpose, in which case the purchaser must provide the seller with an exemption certificate upon demand.

213.14(4) The sales price of carpeting, with installation, is taxable in the following manner:

a. If separate contracts exist for the sale of the carpeting and for the installation, only the sales price of the carpeting is subject to tax.

b. If the selling price of the carpeting and the installation charge are stated as one charge or lump sum, the entire charge is subject to sales tax.

c. If the invoice itemizes the installation charge separately from the selling price of the carpet, only the selling price of the carpet is subject to sales tax if the installer and the purchaser of the carpet intend that a sale of the carpet shall occur. See 701—subrule 225.4(1) for more information.

213.14(5) In the following examples, assume that contractor A purchases carpeting from supplier B for installation in customer C’s home. Whether or not A will purchase the carpeting from B for A’s own consumption (and thus, A will pay the tax to B) or A will purchase the property from B for resale to C (and thus, C will pay the tax to A) depends upon any contracts existing between A (the contractor) and C (the customer).

EXAMPLE A: A contracts with C to install carpeting in C’s home. Separate contracts exist between A and C for the sale of the carpeting and for its installation. Under these circumstances, A purchases the carpeting from B for resale to C. No tax is due upon the sales price of the transaction between A and B; tax is due upon A’s resale of the carpet to C, but not upon A’s charges for carpet installation, a nontaxable service.

EXAMPLE B: A charges C one lump sum for the carpeting and installation. In this case, A collects sales tax from C on the entire lump sum. The lump sum is treated, for sales tax purposes, as the sales price from the sale of tangible personal property; so A purchases the carpet from B for resale and without tax.

EXAMPLE C: A and C contract for the sale of the carpet separate from its installation. A sends C one invoice for the installation and sale of the carpet with the installation charge listed on the invoice separately from the selling price of the carpet. Under these circumstances, only the selling price of the carpet listed on the invoice is subject to sales tax and A purchases the carpet from B for resale and thus, without obligation to pay sales tax to B.

This rule is intended to implement Iowa Code section 423.2(1)“b.”

701—213.15(423) Goods damaged in transit.

213.15(1) If goods shipped by a retailer have been delivered under a contract for sale to a consumer, and thereafter the goods are damaged in the course of transit to the consumer, the retailer and purchaser shall be liable for tax upon the full sale price of the goods, as the sale to the consumer has been completed.

213.15(2) If the goods have not been delivered to the consumer, the sale to the consumer has not been completed, and the retailer shall not be taxed for the amount agreed to be paid by the consumer.

This rule is intended to implement Iowa Code section 423.2.

701—213.16(423) Sales of engraved, bound, printed, and vulcanized materials.

213.16(1) *Engraving.* Engraving includes the business of engraving on wood, metal, stone, or any other material. The engraved material is tangible personal property, the sales price of which is subject to tax.

213.16(2) *Binding.* Persons engaged in the business of binding any printed matter, other than for the purpose of ultimate sale at retail, are engaged in the sale of tangible personal property, the sales price of which is subject to tax.

213.16(3) *Printing.* Printing includes, but is not limited to, any type of printing, lithographing, mimeographing, photocopying and similar reproduction. The following activities are nonexclusive examples of printed tangible personal property that are subject to tax: printing of pamphlets, leaflets, stationery, envelopes, folders, bond and stock certificates, abstracts, law briefs, business cards, matchbook covers, campaign posters and banners for the users thereof.

213.16(4) *Vulcanizing.* “Vulcanizing” means the act or process of treating crude rubber, synthetic rubber, or other rubberlike material with a chemical and subjecting it to heat in order to increase its strength and elasticity. The item produced after vulcanizing is tangible personal property, the sales price of which is subject to sales tax.

This rule is intended to implement Iowa Code section 423.2(1)“a.”

701—213.17(423) Premiums and gifts. A person who gives away or donates tangible personal property, specified digital products, or taxable services is deemed to be a consumer of such property, products, or services for tax purposes. The sales price from the sale of tangible personal property, specified digital products, or taxable services to such persons for such purposes is subject to tax.

213.17(1) When a retailer purchases tangible personal property, a specified digital product, or a taxable service, exclusive of tax, for the purpose of resale in the regular course of business and later gives it away or donates it, the retailer shall include in the return the value of the property, product, or service at the retailer’s cost price.

213.17(2) When a retailer sells tangible personal property, specified digital products, or taxable services and furnishes a premium with the property, product, or service sold, the retailer is considered to be the ultimate consumer or user of the premium furnished.

This rule is intended to implement Iowa Code sections 423.1 and 423.2.

701—213.18(423) Webinars.

213.18(1) *In general.* Webinars are generally taxable as specified digital products. Specifically, webinars fall into the “other digital products” category as a news or information product. Purchasing

access to a live or pre-recorded webinar, even if the webinar's purpose is educational or otherwise, is not treated as purchase of a service.

213.18(2) *Nontaxable live webinars with virtual participation.* Purchases of access to a live webinar, meaning access to viewing a presentation occurring in real time, are not always subject to sales tax. Attending a presentation in person, if it is not an admission to an amusement, is generally not taxable under Iowa law. Similarly, purchasing access to a live webinar is not taxable if the live webinar allows for a level of participation that is substantially similar to an in-person presentation.

213.18(3) *Exemptions.* Since purchases of webinars are taxable as specified digital products, any sales tax exemptions that apply to specified digital products may also apply to webinars.

EXAMPLE 1: A person purchases access to a live webinar to view on the person's computer or mobile device. The in-person presentation, which can be viewed by people with access to the live webinar, allows for in-person attendees to ask questions throughout the presentation. Persons viewing the presentation through the live webinar on their computer or mobile device cannot submit questions to the presenter throughout the duration of the webinar. The level of participation between the in-person presentation and the live webinar is not substantially similar. The purchase of access to view this live webinar is subject to sales tax.

EXAMPLE 2: A person purchases access to a live webinar to view on the person's computer or mobile device. The in-person presentation, which is viewable by people with access to the live webinar, does not allow in-person attendees to ask questions throughout the presentation. The person viewing the presentation through the live webinar on the person's computer or mobile device cannot submit questions to the presenter throughout the duration of the webinar. The level of participation between the in-person presentation and the live webinar is substantially similar. The purchase of access to view this live webinar is not subject to sales tax.

This rule is intended to implement Iowa Code section 423.1(55B).

[Filed 7/2/24, effective 8/28/24]

[Published 7/24/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/24.

ARC 8159C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rulemaking related to agricultural rules

The Revenue Department hereby rescinds Chapter 214, "Agricultural Rules," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.2(1), 423.2(6), 423.3(2), 423.3(3), 423.3(5), 423.3(6), 423.3(8), 423.3(11) through 423.3(16), 423.3(51) and 423.3(57).

Purpose and Summary

The purpose of this rulemaking is to rescind Chapter 214 and adopt a new Chapter 214, which describes the Department's interpretation of the underlying statutes to aid the public in understanding the application of sales and use tax statutes to taxpayers engaged in agricultural activity. The Department

made revisions to the rules to provide clarification and to remove obsolete, unnecessary, and duplicative statutory language. The Department also renumbered some rules due to other edits and for organizational reasons.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7174C**. A public hearing was held on the following date(s):

- January 3, 2024

Public comment was received. The Iowa Taxpayers' Association provided comments both orally at the public hearing and via written comment through Iowa Taxpayers' Association President and CEO Thomas R. Sands. These comments are summarized as follows:

1. Language was requested on egg production. Egg production is outside the scope of this rule review process, but the Department will consider egg production for future rulemaking or guidance.
2. Within rule 701—214.19(423), possible errors were identified in which items have an asterisk. These were formatting errors and are now fixed.
3. Additional rulemaking was requested regarding conveyors. This issue is outside the scope of this rule review process, but the Department will consider conveyors for future rulemaking or guidance.
4. An incorrect use of “consumer’s use tax” was identified in rule 701—214.20(423). The Department has corrected this error to be consistent with other rulemakings.

Adoption of Rulemaking

This rulemaking was adopted by the Department on June 24, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on August 28, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 214 and adopt the following **new** chapter in lieu thereof:

CHAPTER 214 AGRICULTURAL RULES

701—214.1(423) Farm machinery and equipment and items used in agricultural production that are attached to a self-propelled implement of husbandry. The sales price from the sale of farm machinery and equipment directly and primarily used in production of agricultural products and certain items used in agricultural production that are attached to or towed by a self-propelled implement of husbandry is exempt from sales and use tax.

214.1(1) Farm machinery and equipment.

a. Exempt. Under this rule, to be eligible for the exemption from the tax, the farm machinery or equipment must be directly and primarily used in production of agricultural products and must also be one of the following:

- (1) A self-propelled implement; or
- (2) An implement customarily drawn or attached to a self-propelled implement; or
- (3) A grain dryer; or
- (4) An auxiliary attachment that improves the performance, safety, operation, or efficiency of a qualifying implement or grain dryer; or
- (5) A replacement part for any item described in subparagraph 214.1(1)“a”(1), (2), (3), or (4).

b. Taxable. A vehicle subject to registration as defined in Iowa Code section 423.1, an implement customarily drawn by or attached to a vehicle subject to registration, an auxiliary attachment for a vehicle subject to registration, or any replacement part for a vehicle, implement, or auxiliary attachment for a vehicle subject to registration is not eligible for the exemption allowed under this rule.

214.1(2) Attachments to self-propelled implements of husbandry.

a. Exempt. Exempt from the tax under this rule are the following items if, and only if, they are used in agricultural production:

- (1) A snow blower that is to be attached to a self-propelled implement of husbandry; or
- (2) A rear-mounted or front-mounted blade that is to be attached to or towed by a self-propelled implement of husbandry; or
- (3) A rotary cutter that is to be attached to a self-propelled implement of husbandry.

b. Used in agricultural production. Under this subrule, the items must be used in agricultural production, and not “directly and primarily” used in production of agricultural products as is required under subrule 214.1(1).

EXAMPLE: Farmer Jones purchases a front-mounted blade that will be attached to a self-propelled implement of husbandry (e.g., farming tractor). Farmer Jones primarily uses the blade to prepare previously uncultivated land—a use that is not for agricultural production. However, Farmer Jones sporadically uses the front-mounted blade for agricultural production. Even though Farmer Jones does not directly and primarily use the front-mounted blade in agricultural production, the front-mounted blade is exempt from sales or use tax because the blade is occasionally used in agricultural production and it is attached to a self-propelled implement of husbandry.

214.1(3) Definitions and specific provisions. For the purposes of this rule, the following definitions and provisions apply.

a. Production of agricultural products. The term “production of agricultural products” means the same as the term “agricultural production,” which is defined in rule 701—200.1(423) to mean a farming operation undertaken for profit by the raising of crops or livestock. Nonexclusive examples of items not included within the meaning of the term “agricultural production” are the clearing or preparation of previously uncultivated land, the creation of farm ponds, and the erection of machine sheds, confinement facilities, storage bins, or other farm buildings. Machinery and equipment used for these purposes would be used for activities that are preparatory to, but not a part of, the production of agricultural products and, therefore, are not exempt.

b. Farm machinery and equipment. The term “farm machinery and equipment” means machinery and equipment specifically designed for use in the production of agricultural products and machinery and equipment that are not specifically designed for use in the production of agricultural products but are directly and primarily used for that purpose.

EXAMPLE: Farmer Jones raises livestock, and his farming operation requires that fences be repaired to confine the livestock. Farmer Jones purchases a posthole digger that is customarily attached to a tractor

and uses the digger to repair the fences used to confine the livestock. The posthole digger is not specifically designed for use in the production of agricultural products but is directly and primarily used in the production of agricultural products. Therefore, the exemption would apply.

c. Self-propelled implement. The term “self-propelled implement” means an implement that is capable of movement from one place to another under its own power. An implement is not self-propelled merely because it has moving parts. The term “self-propelled implement” includes, but is not limited to, the following items: skid loaders and tractors. The term also includes, but is not limited to, the following machinery if capable of movement under its own power: combines, corn pickers, fertilizer spreaders, hay conditioners and windrowers, sprayers, and bean buggies.

d. Implements customarily drawn or attached to self-propelled implements. The following is a nonexclusive, representative list of implements customarily drawn or attached to self-propelled implements: augers, balers, blowers, combines, conveyers, cultivators, disks, drags, dryers (portable), farm wagons, feeder wagons, fertilizer spreaders, front- and rear-end loaders, harrows, hay loaders, hay mowers, hay rakes, husking machines, manure spreaders, planters, plows, rotary hoes, sprayers and tanks, and tillage equipment.

e. Directly used in agricultural production.

(1) Property is “directly used” only if it is used to initiate, sustain, or terminate an exempt activity. In determining whether any property is directly used, consideration should be given to the following factors:

1. The physical proximity of the property to other property clearly exempt as directly used in agricultural production. The closer the property is to exempt property, the more likely it is that the property is directly used in agricultural production.

2. The chronological proximity of the use of the property in question to the use of property clearly exempt as directly used in agricultural production. The closer the proximity of the property’s use within the production process to the use of exempt property, the more likely the use is direct rather than remote.

3. The active causal relationship between the use of the property in question and agricultural production. The fewer intervening causes between the use of the property and the production of the product, the more likely it is that the property is directly used in agricultural production.

(2) The fact that particular machinery or equipment is essential to the production of agricultural products because its use is required either by law or practical necessity does not, of itself, mean that the machinery or equipment is directly used in the production of agricultural products. Machinery or equipment that comes into actual physical contact with the soil or crops during the operations of planting, cultivating, harvesting, and soil preparation will be presumed to be machinery or equipment used in agricultural production.

f. Primarily used in agricultural production. Property is “primarily used” in agricultural production based on the total time it is used in agricultural production in comparison to the time it is used for other purposes. Any property used in agricultural production more than 50 percent of its total use time is eligible for exemption.

g. Beginning and end of agricultural production. Agricultural production begins with the cultivation of land previously cleared for the planting of crops or begins with the purchase or breeding of livestock or domesticated fowl. Agricultural production ceases when an agricultural product has been transported to the point where it will be sold by the producer or processed for further use.

EXAMPLE: Farmer Brown uses a tractor and wagon to haul harvested corn from a field to a grain dryer located on the farm. After the corn is dried, the same tractor and wagon are used to move the grain to a storage bin, also located on the farm. Later, the same tractor and wagon are used to deliver the corn from the farm to the local elevator where the corn is sold. After Farmer Brown deposits the corn there, the local elevator uses its own tractor and wagon to move the corn to a place of relatively permanent storage. Farmer Brown has used the tractor and wagon in the production of agricultural products, and the exemption would apply to Farmer Brown’s tractor and wagon. However, the elevator has not used its tractor and wagon in agricultural production; thus, the exemption would not be allowed for the elevator’s tractor and wagon.

h. Grain dryer. The term “grain dryer” includes the heater and the blower necessary to force the warmed air into a grain storage bin. The term “grain dryer” does not include equipment, such as augers and spreaders, used in grain storage or movement, nor does it include any other equipment, such as specialized flooring, that is not a grain dryer. Equipment that is not a grain dryer but is used in grain drying may be exempt if the equipment is a self-propelled implement or customarily drawn or attached to a self-propelled implement and is directly and primarily used in agricultural production.

i. Replacement parts.

(1) The term “replacement parts” means any farm machinery or equipment that is substituted for another part that has broken, worn out or has become obsolete or otherwise unable to perform its intended function. Replacement parts are those parts that materially add to the value of farm machinery or equipment, appreciably prolong its life or keep it in its ordinarily efficient operating condition. Excluded from the meaning of the term “replacement parts” are supplies and computer software. Sales of supplies and computer software are taxable. Nonexclusive examples of supplies include lubricants, oils, greases, and coolants.

(2) Tangible personal property that has an expected useful life of 12 months or more and is used in the operation of farm machinery or equipment is rebuttably presumed to be a replacement part. Tangible personal property that is used in the same manner but has an expected useful life of less than 12 months is rebuttably presumed to be a supply.

(3) The sale or lease of a replacement part is exempt from tax if the replacement part is used in any repair or reconstruction of the exempt piece of farm machinery or equipment used in the production of agricultural products. Nonexclusive examples of replacement parts to machinery and equipment that would be exempt include air-conditioning parts, computer equipment parts, fire equipment parts, glass parts, mirrors, headlights, communication systems, and global positioning equipment parts.

j. Implement of husbandry.

(1) The term “implement of husbandry” means any tool, equipment, or machinery necessary to the carrying on of the business of agricultural production and without which that could not be done. To be an implement of husbandry, the following must both be true:

1. The tool, equipment, or machine must be necessary to the carrying on of the business of agricultural production; and
2. Agricultural production must be impossible without the use of the tool, equipment, or machine.

(2) Whether a given item is an implement of husbandry depends on the facts of each particular case, and in each particular case the person claiming the exemption has the burden of proving that the person is entitled to the exemption.

k. Snow blower. “Snow blower” as used in this rule means an attachment that has the primary purpose of snow removal by the throwing of snow and that is ordinarily thought of as a snow blower.

l. Rear-mounted or front-mounted blade. “Rear-mounted or front-mounted blade” as used in this rule means a stationary attachment that has a primary purpose of pushing or leveling, for example, sand, dirt, snow, gravel, or manure. The term “rear-mounted or front-mounted blade” does not include mounted buckets or loaders that have a primary purpose of loading or digging.

m. Rotary cutter. “Rotary cutter” as used in this rule means an attachment used for mowing of grassy areas, pastures, and brush, but does not include attachments often referred to as “finishing mowers” and “mid-mount mowers.”

214.1(4) Taxable and nontaxable transactions. The following are nonexclusive examples of sales and leases of and services for farm machinery or equipment subject to or exempt from tax. Taxable services performed on farm machinery or equipment are subject to tax even when the replacement parts are exempt.

a. A lessor’s purchase of farm machinery or equipment is not subject to tax if the machinery or equipment is leased to a lessee who uses it directly and primarily in the production of agricultural products and if the lessee’s use of the machinery or equipment is otherwise exempt. To claim exemption from tax, the lessor does not need to make an exempt use of the machinery or equipment as long as the lessee uses the machinery or equipment for an exempt purpose. The lease of tangible personal property is

treated as the sale of that property for the purposes of Iowa sales and use tax law because leases of tangible personal property are taxable retail sales of that property.

b. A lessor's purchase of a snow blower, rear-mounted or front-mounted blade, or rotary cutter is not subject to tax if such item is leased to a lessee who uses the item in agricultural production and the item will be attached to an implement of husbandry.

c. The owner or lessee of farm machinery or equipment need not be a farmer as long as the machinery or equipment is directly and primarily used in the production of agricultural products and the owner or lessee and the machinery or equipment meet the other requirements of this rule. For example, a person who purchases an airplane designed for use in agricultural aerial spraying and who uses the airplane directly and primarily for agricultural production is entitled to the benefits provided under this rule even though that person is not the owner or occupant of the land where the airplane is used.

d. The owner or lessee of a snow blower, rear-mounted or front-mounted blade, or rotary cutter need not be a farmer as long as the snow blower, rear-mounted or front-mounted blade, or rotary cutter is used in agricultural production and the snow blower, rear-mounted or front-mounted blade, or rotary cutter is attached to an implement of husbandry.

e. The sale or lease, within Iowa, of any farm machinery, equipment, or replacement part for direct and primary use in agricultural production outside of Iowa is a transaction eligible for the exemption if the transaction is otherwise qualified for an exemption under this rule.

f. The sale or lease, within Iowa, of any snow blower, rear-mounted or front-mounted blade, or rotary cutter that is used, outside of Iowa, in agricultural production while attached to an implement of husbandry is a transaction eligible for the exemption, if the transaction is otherwise qualified for an exemption under this rule.

214.1(5) Auxiliary attachments. The following is a nonexclusive list of auxiliary attachments for which the sale or use in Iowa is exempt from tax: auxiliary hydraulic valves, cabs, coil tine harrows, corn head pickup reels, dry till shanks, dual tires, extension shanks, fenders, fertilizer attachments and openers, fold kits, grain bin extensions, herbicide and insecticide attachments, kit wraps, no-till coulters, quick couplers, rear-wheel assists, rock boxes, rollover protection systems, rotary shields, stalk choppers, step extensions, trash whips, upper beaters, silage bags, and weights.

This rule is intended to implement Iowa Code sections 423.3(8) and 423.3(11).

701—214.2(423) Farm implement repair of all kinds.

214.2(1) In general. Persons engaged in the business of repairing, restoring, or renovating implements, tools, machines, vehicles, or equipment used in the operation of farms, ranches, or acreages on which crops of all kinds are grown and on which livestock, poultry, or furbearing animals are raised or used for any purpose are selling a service subject to sales tax.

214.2(2) Installation not taxable. Those services relating to the installation of new parts or accessories that are not replacements are not taxable.

This rule is intended to implement Iowa Code section 423.2(6) "r."

701—214.3(423) Irrigation equipment used in agricultural production. The sales price from the sale or rental of irrigation equipment used in agricultural production is exempt from tax. The term "irrigation equipment" includes but is not limited to circle irrigation systems and trickle irrigation systems, whether installed aboveground or belowground, as long as the equipment is sold to or rented by a contractor or farmer and the equipment is directly and primarily used in agricultural production. The term "agricultural production" is defined in rule 701—200.1(423).

This rule is intended to implement Iowa Code sections 423.3(12) and 423.3(13).

701—214.4(423) Sale of a draft horse. The sales price from the sale of draft horses, when they are purchased for use and used as draft horses, is not subject to tax. Draft horses are horses that pull loads, including loads in shows, or transport persons or property. For purposes of this rule, horses commonly known as Clydesdales, Belgians, Shires, and Percherons are draft horses. However, upon proper showing by the person or entity claiming exemption, the sales price exemption will be granted by the director for other breeds. However, the burden of proof lies with the person or entity claiming exemption.

This rule is intended to implement Iowa Code section 423.3(14).

701—214.5(423) Veterinary services. Veterinary services are not subject to sales tax. Purchases of food, drugs, medicines, bandages, dressings, serums, tonics, and the like that are used in treating livestock raised as part of agricultural production are exempt from tax. Where these same items are used in treating animals maintained as pets or for hobby purposes, sales tax is due. Purchases of equipment and tools used in the veterinary practice are subject to tax. Rule 701—214.17(423) explains the exemption for machinery or equipment used in livestock or dairy production that may be applicable to veterinarians, but should only be claimed with caution. A veterinarian must charge sales tax on any sales of tangible property or enumerated services, such as pet grooming, that are not part of professional veterinarian services.

This rule is intended to implement Iowa Code section 423.3(5).

701—214.6(423) Commercial fertilizer and agricultural limestone.

214.6(1) Commercial fertilizer. The sales price from the sales of commercial fertilizer is exempt from sales and use tax. Plant hormones are considered to be commercial fertilizer.

214.6(2) Agricultural limestone. The sales price from the sales of agricultural limestone is exempt from sales and use tax only if the purchaser intends to use the limestone for disease control, weed control, insect control, or health promotion of plants or livestock produced for market as part of agricultural production. Rule 701—200.1(423) contains definitions of “agricultural production” and “plants.” Sales of agricultural limestone used for other purposes are subject to sales tax. Examples of taxable sales include but are not limited to sales of agricultural limestone for application on a lawn, golf course, or cemetery.

This rule is intended to implement Iowa Code sections 423.3(4) and 423.3(5).

701—214.7(423) Breeding livestock. The sales price from the sale of agricultural livestock is exempt from tax only if at the time of purchase the purchaser intends to use the livestock primarily for breeding. The sales price from the sale of agricultural livestock that is capable of breeding, but will not be used for breeding or primarily for breeding, is not exempt from tax. However, the sales price from the sale of most nonbreeding agricultural livestock to farmers would be a sale for resale and exempt from tax. Rule 701—200.1(423) contains a definition of “livestock.”

EXAMPLE 1: A breeding service purchases a prize bull from a farmer. At the time of sale, the intent of the purchaser is to use the bull for breeding other cattle. The sale of the bull is exempt from tax even though three years later the breeding service sells the bull to a meat packer.

EXAMPLE 2: A farmer purchases dairy cows. To ensure production of milk over a sustained period of time, dairy cows must be bred to produce calves. If a farmer purchases dairy cows for the primary purpose of using them to produce milk and incidentally breeds them to ensure that this milk will be produced, the sale of the dairy cows to the farmer is not exempt from tax. If the farmer purchases the dairy cows for the primary purpose of using them to produce calves and, incidental to that purpose, at times sells the milk that the cows produce, the sale of the dairy cows to the farmer is exempt from tax.

This rule is intended to implement Iowa Code section 423.3(3).

701—214.8(423) Domesticated fowl. The sales price from the sale of domesticated fowl for the purpose of providing eggs or meat is exempt from tax, whether purchased by a person engaged in agricultural production or not. Rule 701—200.1(423) contains a definition of the term “domesticated fowl.”

This rule is intended to implement Iowa Code section 423.3(3).

701—214.9(423) Agricultural health promotion items.

214.9(1) Definitions. For purposes of this rule, the following definitions apply:

“*Adjuvant*” means any substance that is added to an herbicide, a pesticide, or an insecticide to increase its potency.

“*Agricultural production*” means the same as defined in rule 701—200.1(423).

“*Food*” includes vitamins, minerals, other nutritional food supplements, and hormones sold to promote the growth of livestock.

“*Herbicide*” means any substance intended to prevent, destroy, or retard the growth of plants including fungi. The term includes preemergence, postemergence, lay-by, pasture, defoliant, and desiccant herbicides and fungicides.

“*Insecticide*” means any substance used to kill insects. Any substance used merely to repel insects is not an insecticide. Mechanical devices that are used to kill insects are not insecticides.

“*Livestock*” means the same as defined in rule 701—200.1(423). For the purposes of this rule, “livestock” includes domesticated fowl.

“*Medication*” includes antibiotics or other similar drugs administered to livestock.

“*Pesticide*” means any substance that is used to kill rodents or smaller vermin, other than insects, such as nematodes, spiders, or bacteria. For the purposes of this rule, a disinfectant is a pesticide. Excluded from the term “pesticide” is any substance that merely repels pests or any device, such as a rat trap, that kills pests by mechanical action.

“*Plants*” means the same as defined in rule 701—200.1(423).

“*Surfactant*” means a substance that is active on a surface.

214.9(2) *Agricultural health promotion items and adjuvants.* The sales price from the sale of herbicides, pesticides, insecticides, food, and medication that are to be used in disease, weed, or insect control or health promotion of plants or livestock produced as part of agricultural production for market is exempt from tax. Sales of adjuvants, surfactants, and other products that enhance the effects of herbicides, pesticides, or insecticides used in disease, weed, or insect control or health promotion of plants or livestock produced as part of agricultural production for market are also exempt from tax. The sales price from the sale of herbicides, pesticides, insecticides, food, medication, and products to any person not engaged in agricultural production for market are exempt if the property sold will be used for an exempt purpose (e.g., in disease control or on the behalf of another person engaged in agricultural production for market).

This rule is intended to implement Iowa Code sections 423.3(5) and 423.3(16).

701—214.10(423) *Drainage tile.* The sales price from the sale or installation of drainage tile that is to be used in disease control or weed control or in health promotion of plants or livestock produced as part of agricultural production for market is exempt from tax. In all other cases, drainage tile will be considered a building material and subject to tax under the provisions of Iowa Code section 423.2. Sales of the following materials associated with the installation of agricultural drainage tile are also exempt from tax: tile intakes, outlet pipes and outlet guards, aluminum and gabion structures, erosion control fabric, water control structures, and tile fittings.

This rule is intended to implement Iowa Code section 423.3.

701—214.11(423) *Materials used for seed inoculations.* The sales price from the sale of materials used for seed inoculations is exempt from sales tax. All forms of inoculation, whether for promotion of better growth and healthier plants or for the prevention or cure of plant mildew or disease of seeds and bulbs, are intended for the same general purpose and are therefore exempt.

This rule is intended to implement Iowa Code section 423.3.

701—214.12(423) *Fuel used in agricultural production.*

214.12(1) *Definitions.* For purposes of this rule, the following definitions apply:

“*Aquaculture*” means the same as defined in rule 701—200.1(423).

“*Fuel*” includes electricity.

“*Implement of husbandry*” means the same as defined in paragraph 214.1(3) “j.”

“*Livestock*” means the same as defined in rule 701—200.1(423) and includes domesticated fowl.

214.12(2) *Exemptions.*

a. *Fuel used for livestock buildings.* The sale of fuel used to provide heating or cooling for livestock buildings is exempt from tax.

b. *Fuel used for flowering, ornamental, or vegetable plant production buildings.*

(1) The sales price from the sale of fuel for heating or cooling greenhouses, buildings, or parts of buildings used for the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business is exempt from tax. More information can be found in subparagraph 214.12(2)“b”(3) for the formula for calculating exempt use if a building is only partially used for growing flowering, ornamental, or vegetable plants.

(2) Fuel used in a flowering, ornamental, or vegetable plant production building for purposes other than heating or cooling (e.g., lighting) or for purposes other than direct use in flowering, ornamental, or vegetable plant production (e.g., heating or cooling office space) is not eligible for this exemption. Examples of nonexempt purposes for which a portion of a greenhouse might be used include, but are not limited to, portions used for office space; loading docks; storage of property other than flowering, ornamental, or vegetable plants; housing of heating and cooling equipment; and packaging flowering, ornamental, or vegetable plants for shipment.

(3) Calculating proportional exemption. It may be possible to calculate the amount of total fuel used in plant production by dividing the number of square feet of the greenhouse heated or cooled and used for raising flowering, ornamental, or vegetable plants by the number of square feet heated or cooled in the entire greenhouse. It may be necessary to alter this formula (by the use of separate metering, for example) if a greenhouse has a walk-in cooler and the cooler is used directly in flowering, ornamental, or vegetable plant production. Subrule 214.18(12) provides information about a seller’s and purchaser’s liability for sales tax.

EXAMPLE 1: Bill Brown’s herb farming operation has a separate greenhouse used to grow his herbs. All other aspects of his farm operations are conducted in other facilities. Because the greenhouse is used exclusively for raising flowering, ornamental, or vegetable plants, Bill Brown is able to claim exemption from sales tax on the cost of fuel used to heat and cool the greenhouse.

EXAMPLE 2: Martha Green’s greenhouse has a separate meter to track the electricity used only for heating or cooling. Her greenhouse is used partially for growing flowering, ornamental, or vegetable plants and partially for a nonexempt purpose. Martha Green is able to claim a proportional exemption from sales tax on the cost of fuel used to heat and cool her growing flowering, ornamental, or vegetable plants. Martha Green calculates her exempt amount by dividing the number of heated or cooled square feet of her greenhouse that are used for raising flowering, ornamental, or vegetable plants by the total number of square feet heated or cooled in the entire greenhouse.

Total square footage used for raising flowering, ornamental, or vegetable plants	=	800
Total square footage	=	1,000
TOTAL:	$800 \div 1,000$	= .80 or 80%

Thus, 80 percent of the cost of the fuel used to heat and cool Martha Green’s greenhouse is exempt from sales tax.

c. *Sales of fuel used for aquaculture.* Sales of fuel used in the raising of agricultural products by aquaculture are exempt from tax.

d. *Sales of fuel, gas, electricity, water, and heat consumed in implements of husbandry.* The sale of fuel used in any implement of husbandry, whether self-propelled or not, is exempt from tax if the fuel is consumed while the implement is engaged in agricultural production. For example, the sale of fuel used not only in tractors or combines, but also used in implements that cannot move under their own power, is exempt from tax. The sale of fuel used in milk coolers and milking machines, grain dryers, and stationary irrigation equipment and in implements used to handle feed, grain, and hay and to provide water for livestock is exempt from tax even though these implements of husbandry would not ordinarily be considered self-propelled.

214.12(3) Partial use. If a building is used partially for an exempt agricultural purpose and partially for a nonexempt purpose, a proportional exemption from sales tax may be claimed based upon a percentage obtained by dividing the number of square feet of the building heated or cooled and used for an exempt agricultural purpose by the number of square feet heated or cooled in the entire building.

This rule is intended to implement Iowa Code section 423.3(6).

701—214.13(423) Water used in agricultural production. The sales price from the sale of water sold to farmers who are purchasing water for household use, sanitation, swimming pools, or other personal use is subject to sales tax. The sales price from the sale of water sold to farmers and others and used directly as drinking water for livestock production (including the production of domesticated fowl) is exempt from sales tax. When water is used for exempt purposes, as in livestock production, as well as for taxable purposes, the water may, when practical, be separately metered and separately billed to clearly distinguish the water consumed for exempt purposes from taxable purposes. When it is impractical to separately meter exempt water from taxable water, the purchaser may furnish to the seller a statement enabling the seller to determine the percentage of water subject to exemption. In the absence of proof to the contrary, the retailer of the water bills and collects tax on the first 5,000 gallons of water per month. The first 5,000 gallons of water per month will be considered to be for nonexempt use, and the balance will be considered to be used as part of agricultural production.

This rule is intended to implement Iowa Code section 423.3(5).

701—214.14(423) Hatcheries. The sales price from the sale of egg-type cockerel chicks, broiler chicks, and turkey poults is subject to tax. If sale of domestic poultry is for breeding, rule 701—214.7(423) provides information.

When pullets and poults are sold for production purposes, the sales price from the sale is exempt from tax.

This rule is intended to implement Iowa Code sections 423.2(1) and 423.3(3).

701—214.15(423) Sales by farmers. The sales price from the sale of grain, livestock, or any other farm or garden product by the producer thereof ordinarily constitutes a sale for resale, processing, or human consumption and is exempt from tax. In order to sell tangible personal property not otherwise exempt to ultimate consumers or users, farmers shall hold a permit and collect and remit sales tax on the sales price from their sales.

This rule is intended to implement Iowa Code sections 423.3(2), 423.3(51), and 423.3(57).

701—214.16(423) Sales of livestock (including domesticated fowl) feeds. The sales price from the sale of feed for any form of animal life when the product of the animals constitutes food for human consumption is exempt from tax. The sales price from the sale of feed sold for consumption by pets is subject to tax. The sales price from the sale of antibiotics that are administered as an additive to feed or drinking water and vitamins and minerals that are sold for livestock (including domesticated fowl) is exempt from tax.

This rule is intended to implement Iowa Code section 423.3(16).

701—214.17(423) Farm machinery, equipment, and replacement parts used in livestock or dairy production.

214.17(1) The sales price from the sale of farm machinery, equipment, and replacement parts used in livestock or dairy production is exempt from sales and use tax.

214.17(2) Definitions and special provisions. For purposes of this rule, the following definitions and special provisions apply.

a. Machinery. The term “machinery” means major mechanical machines, or major components thereof, that contribute directly and primarily to the livestock or dairy production process. Usually, a machine is a large object with moving parts that performs work through the expenditure of energy, either mechanical (e.g., gasoline or other fuel) or electrical.

b. Equipment. The term “equipment” means tangible personal property (other than a machine) that is directly and primarily used in livestock or dairy production. Equipment may be characterized as property that performs a specialized function and that has no moving parts, or if the equipment does possess moving parts, its source of power is external to it. The following nonexclusive examples differentiate between machinery and equipment:

EXAMPLE 1: An auger places feed into a cattle feeder. The auger is a piece of machinery; the cattle feeder is a piece of equipment.

EXAMPLE 2: An electric pump is used to pump milk into a bulk milk tank. The electric pump is a piece of machinery; the bulk milk tank is equipment.

c. Property used in livestock or dairy production that is neither equipment nor machinery.

(1) Real property. The ground or the earth is not machinery or equipment. A building is not machinery or equipment. Therefore, tangible personal property that is sold for incorporation into the ground or a building in such a manner that the property will become a part of the ground or the building is taxable except for machinery and equipment. Generally, property incorporated into the ground or a building has become a part of the ground or the building if its removal would substantially damage the property, ground, or building or would substantially diminish the value of the property, ground, or building. Fence posts embedded in concrete, electrical wiring, light fixtures, fuse boxes, and switches are examples of property sold for incorporation into the ground or a building, respectively. For the purpose of the following example, assume that property is being sold to a contractor rather than a person engaged in livestock or dairy production. If the property is sold to a contractor, the retailer would be required to consider the property building material and charge the contractor sales tax upon the purchase price of the building material. If the property is building material, sale of the property is not exempt from Iowa sales tax. Rule 701—219.3(423) contains a characterization of building material and a list of specific examples of building material.

(2) Supplies. Supplies are neither machinery nor equipment. Tangible personal property is a farm supply if it is used up or destroyed by virtue of its use in livestock or dairy production or, because of its nature, can only be used once in livestock or dairy production. A light bulb is an example of a farm supply that is not machinery or equipment. Examples of farm supplies that could be mistaken for equipment and are not exempt from tax on other grounds can be found in subrule 214.19(4).

d. Hand tools. The term “hand tools” means tools that can be held in the hand or hands and that are powered by human effort. Hand tools specifically designed for use in livestock or dairy production are exempt from tax as equipment. Mechanical devices that are held in the hand and driven by electricity from some source other than human muscle power are, if they meet all other qualifications, exempt from tax as farm machinery.

e. “Directly used” in livestock or dairy production. To determine if machinery or equipment is “directly used” in livestock or dairy production, one must first ensure that the machinery or equipment is used during livestock or dairy production and not before that process has begun or after it has ended. Paragraph 214.17(2) “g” contains an explanation of when livestock or dairy production begins and ends.

(1) Definition. If the machinery or equipment is used in livestock or dairy production, “directly used” means the use is an integral and essential part of production as distinguished from use that is incidental or merely convenient to production or use that is remote from production. Machinery or equipment may be necessary to livestock or dairy production, but its use is so remote from production that it is not directly used in that production.

(2) Determination. In determining whether machinery or equipment is directly used, consideration should be given to the following factors:

1. The physical proximity of the machinery or equipment to other machinery or equipment clearly exempt as directly used in livestock or dairy production. The closer the machinery or equipment is to exempt machinery or equipment, the more likely it is that the machinery or equipment is directly used in livestock or dairy production.

2. The chronological proximity of the use of machinery or equipment in question to the use of machinery clearly exempt as directly used in livestock or dairy production. The closer the proximity of the machinery’s or equipment’s use within the production process to the use of exempt machinery or equipment, the more likely the use is direct rather than remote.

3. The active causal relationship between the use of the machinery or equipment in question and livestock or dairy production. The fewer intervening causes between the use of the machinery or equipment and the production of the product, the more likely it is that the machinery or equipment is directly used in production.

f. “Primarily used” in livestock or dairy production. Machinery or equipment is “primarily used” in livestock or dairy production based on the total time it is used in livestock or dairy production in

comparison to the time it is used for other purposes. Any unit of machinery or equipment directly used in livestock or dairy production more than 50 percent of its total use time is eligible for exemption.

g. Beginning and end of livestock or dairy production. Livestock or dairy production begins with the purchase or breeding of livestock or dairy animals. Livestock or dairy production ceases when an animal or the product of an animal's body (e.g., wool) has been transported to the point where it will be sold by the farmer or processed.

h. Machinery and equipment design. Farm machinery and equipment used in livestock or dairy production are eligible for exemption if specifically designed for use in livestock or dairy production. Farm machinery and equipment that are not specifically designed for use in livestock or dairy production, but are directly and primarily used in livestock or dairy production, are eligible for exemption with the exception of common or ordinary hand tools.

EXAMPLE: Farmer Jones raises livestock and must use fans to cool the animals. Farmer Jones buys electric fans designed for use in a residence, but uses them directly and primarily to cool the livestock. The fans' use would be considered exempt.

i. Replacement parts. The term "replacement parts" means the same as defined in paragraph 214.1(2) "i."

214.17(3) Examples of machinery and equipment directly used in livestock or dairy production.

a. Machinery and equipment used to transport or limit the movement of livestock or dairy animals (e.g., electric fence equipment, portable fencing, head gates, and loading chutes) are directly used in livestock or dairy production.

b. Machinery and equipment used in the conception, birth, feeding, and watering of livestock or dairy animals (e.g., artificial insemination equipment, portable farrowing pens, feed carts, and automatic watering equipment) are directly used in livestock or dairy production.

c. Machinery and equipment used to maintain healthful or sanitary conditions in the immediate area where livestock are kept (e.g., manure gutter cleaners, automatic cattle oilers, fans, and heaters if not real property) are directly used in livestock or dairy production.

d. Machinery and equipment used to test or inspect livestock during production are directly used in livestock or dairy production.

214.17(4) Taxable examples. The following are nonexclusive examples of machinery or equipment that would not be directly used in livestock or dairy production.

a. Machinery or equipment used to assemble, maintain, or repair other machinery or equipment directly used in livestock or dairy production (e.g., welders, paint sprayers, and lubricators).

b. Machinery or equipment used in farm management, administration, advertising, or selling (e.g., a computer used for record keeping, calculator, office safe, telephone, books, and farm magazines).

c. Machinery or equipment used in the exhibit of livestock or dairy animals (e.g., blankets, halters, prods, leads, and harnesses).

d. Machinery or equipment used in safety or fire prevention, even though the machinery or equipment is required by law.

e. Machinery or equipment for employee or personal use. Machinery or equipment used for the personal comfort, convenience, or use by a farmer, the farmer's family or employees, or persons associated with the farmer is not exempt from tax. Examples of such machinery and equipment include the following: beds, mattresses, blankets, tableware, stoves, refrigerators, and other equipment used in conjunction with the operation of a farm home or other facilities for farm employees.

f. Machinery or equipment used for heating, cooling, ventilation, and lighting of farm buildings generally.

g. Vehicles subject to registration.

214.17(5) The sales price, not including services, of the following machinery or equipment is exempt from tax regardless of whether the machinery or equipment remains tangible personal property after installation or is incorporated into the realty: auxiliary attachments that improve the performance, safety, operation, or efficiency of the machinery and equipment, including auger systems, curtains and curtain systems, drip systems, fan and fan systems, shutters, inlets, shutter or inlet systems, refrigerators, and replacement parts if all of the following conditions are met:

a. The implement, machinery, or equipment is directly and primarily used in livestock or dairy production.

b. The implement is not a self-propelled implement or implement customarily drawn or attached to self-propelled implements.

c. The replacement part is used in a repair or reconstruction of the exempt piece of farm machinery or equipment used in the production of agricultural products.

214.17(6) Auxiliary attachments exemption. Sales of auxiliary attachments that improve the performance, safety, operation, or efficiency of exempt machinery or equipment are exempt from tax. Sales of replacement parts for these auxiliary attachments are also exempt.

214.17(7) Seller's and purchaser's liability for sales tax. The seller is relieved of sales tax liability if the seller takes from the purchaser an exemption certificate stating that the purchase is of machinery and equipment meeting the requirements of this rule. The exemption certificate must be fully completed. If items purchased tax-free pursuant to an exemption certificate are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely and directly liable for sales tax and remits the tax to the department.

This rule is intended to implement Iowa Code sections 423.3(11) and 423.3(15).

701—214.18(423) Machinery, equipment, and replacement parts used in the production of flowering, ornamental, and vegetable plants.

214.18(1) The sales price from the sale of machinery, equipment, and replacement parts used in the production of flowering, ornamental, and vegetable plants is exempt from sales and use tax. The production of flowering, ornamental, or vegetable plants by a grower in a commercial greenhouse or at another location is considered to be a part of agricultural production and exempt from sales tax. The term "flowering, ornamental, or vegetable plants" does not include silvicultural products or fungi.

214.18(2) Definitions and special provisions. For purposes of this rule, the following definitions and special provisions apply.

a. Machinery. The term "machinery" means major mechanical machines, or major components thereof, that contribute directly and primarily to the flowering, ornamental, or vegetable plant production process. Usually, a machine is a large object with moving parts that performs work through the expenditure of energy, either mechanical (e.g., gasoline or other fuel) or electrical.

b. Equipment. The term "equipment" means tangible personal property (other than a machine) that is directly and primarily used in the flowering, ornamental, or vegetable plant production process. Equipment may be characterized as property that performs a specialized function that, of itself, has no moving parts, or if the equipment does possess moving parts, its source of power is external to it.

c. Property used in the flowering, ornamental, or vegetable plant production process that is neither equipment nor machinery.

(1) Real property. The ground or the earth is not machinery or equipment. A building is not machinery or equipment. Therefore, tangible personal property that is sold for incorporation into the ground or a building in such a manner that the property will become a part of the ground or the building is taxable except for machinery and equipment. Generally, property incorporated into the ground or a building has become a part of the ground or the building if its removal would substantially damage the property, ground, or building or would substantially diminish the value of the property, ground, or building. Fence posts embedded in concrete, electrical wiring, light fixtures, fuse boxes, and switches are examples of property sold for incorporation into the ground or a building, respectively. For the purpose of this example, assume that the property is being sold to a contractor rather than a person engaged in the flowering, ornamental, or vegetable plant production process. If the property is sold to a contractor, the retailer would be required to consider the property building material and charge the contractor sales tax upon the purchase price of this building material. If the property is building material, sale of the property is not exempt from Iowa sales tax. Rule 701—219.3(423) contains a characterization of building material and a list of specific examples of building material.

(2) Supplies. Supplies are neither machinery nor equipment. Tangible personal property is a supply if it is used up or destroyed by virtue of its use in the flowering, ornamental, or vegetable plant

production process or, because of its nature, can only be used once in the flowering, ornamental, or vegetable plant production process. A light bulb is an example of a supply that is not machinery or equipment. Subrule 214.19(4) provides examples of supplies that could be mistaken for equipment and are not exempt from tax on other grounds.

d. Hand tools. The term “hand tools” means tools that can be held in the hand or hands and that are powered by human effort. Hand tools specifically designed for use in the flowering, ornamental, or vegetable plant production process are exempt from tax as equipment. Mechanical devices that are held in the hand and driven by electricity from some source other than human muscle power are, if they meet all other qualifications, exempt from tax.

e. “Directly used” in the flowering, ornamental, or vegetable plant production process. To determine if machinery or equipment is “directly used” in the flowering, ornamental, or vegetable plant production process, one must first ensure that the machinery or equipment is used during the flowering, ornamental, or vegetable plant production process and not before that process has begun or after it has ended. Paragraph 214.18(2)“g” contains an explanation as to when the flowering, ornamental, or vegetable plant production process begins and ends.

(1) Definition. If the machinery or equipment is used in the flowering, ornamental, or vegetable plant production process, “directly used” means the use is an integral and essential part of production as distinguished from use that is incidental or merely convenient to production or use that is remote from production. Machinery or equipment may be necessary to the flowering, ornamental, or vegetable plant production process, but its use is so remote from production that it is not directly used in that production.

(2) Determination. In determining whether machinery or equipment is directly used, consideration should be given to the following factors:

1. The physical proximity of the machinery or equipment to other machinery or equipment clearly exempt as directly used in the flowering, ornamental, or vegetable plant production process. The closer the machinery or equipment is to exempt machinery or equipment, the more likely it is that the machinery or equipment is directly used in the flowering, ornamental, or vegetable plant production process.

2. The chronological proximity of the use of machinery or equipment in question to the use of machinery clearly exempt as directly used in the flowering, ornamental, or vegetable plant production process. The closer the proximity of the machinery’s or equipment’s use within the production process is to the use of exempt machinery or equipment, the more likely the use is direct rather than remote.

3. The active causal relationship between the use of the machinery or equipment in question and the flowering, ornamental, or vegetable plant production process. The fewer intervening causes between the use of the machinery or equipment and the production of the product, the more likely it is that the machinery or equipment is directly used in production.

f. “Primarily used” in flowering, ornamental, or vegetable plant production. Machinery or equipment is “primarily used” in flowering, ornamental, or vegetable plant production based upon the total time it is used in flowering, ornamental, or vegetable plant production in comparison to the time it is used for other purposes. Any unit of machinery or equipment directly used in flowering, ornamental, or vegetable plant production more than 50 percent of its total use time is eligible for exemption.

g. Beginning and end of flowering, ornamental, or vegetable plant production. Flowering, ornamental, or vegetable plant production begins with the purchase of seeds or starter plants. Flowering, ornamental, or vegetable plant production ceases when a plant has grown to the size or weight at which it will be prepared for shipment to the destination where it will be marketed.

h. Machinery and equipment design. Machinery and equipment used in flowering, ornamental, or vegetable plant production are eligible for exemption if they were specifically designed for use in flowering, ornamental, or vegetable plant production. Machinery and equipment that are not specifically designed for use in flowering, ornamental, or vegetable plant production, but are directly and primarily used in flowering, ornamental, or vegetable plant production, are eligible for exemption with the exception of common or ordinary hand tools.

EXAMPLE: Bob Jones raises tulips and must use a thermometer to monitor the temperature in his greenhouse. Bob Jones buys a thermometer designed for use in a residence but uses it directly and

primarily to monitor the temperature in his greenhouse. The thermometer's use would be considered exempt.

i. Replacement parts. The term "replacement parts" means the same as defined in paragraph 214.1(2) "i."

214.18(3) Examples of machinery and equipment directly used in flowering, ornamental, or vegetable plant production can be found in subrule 214.19(3).

214.18(4) Taxable examples. The following are nonexclusive examples of machinery or equipment that would not be directly used in flowering, ornamental, or vegetable plant production.

a. Machinery or equipment used to assemble, maintain, or repair other machinery or equipment directly used in flowering, ornamental, or vegetable plant production.

b. Machinery or equipment used in the growing operation's management, administration, advertising, or selling (e.g., calculators, office safes, telephones, books, and plant magazines).

c. Machinery or equipment used in the exhibit of flowering, ornamental, or vegetable plants.

d. Machinery or equipment used in safety or fire prevention, even though the machinery or equipment is required by law.

e. Machinery or equipment for employee or personal use. Machinery or equipment used for the personal comfort, convenience, or use by a grower, the grower's family or employees, or persons associated with the grower is not exempt from tax. Examples of such machinery and equipment include the following: beds, mattresses, blankets, tableware, stoves, refrigerators, and other equipment used in conjunction with the operation of a grower's home, or other facilities for the grower's employees.

f. Machinery or equipment used for heating, cooling, ventilation, and lighting of office, retail, or display buildings where production does not occur.

g. Vehicles subject to registration.

214.18(5) Packing material used in flowering, ornamental, or vegetable plant production. The sales price for the sale of property that is a container, label, carton, pallet, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in the production of flowering, ornamental, or vegetable plants in commercial greenhouses or other places that sell such items in the ordinary course of business is not subject to sales tax. Containers and packaging materials include but are not limited to boxes, trays, labels, sleeves, tape, and staples.

214.18(6) Self-propelled implements. The sales price from the sale of self-propelled implements or implements customarily drawn or attached to self-propelled implements and replacement parts for the same is exempt from tax if the implements are used directly and primarily in the production of flowering, ornamental, or vegetable plants in commercial greenhouses or elsewhere. Exempt implements include but are not limited to forklifts used to transport pallets of flowering, ornamental, or vegetable plants, wagons containing sterilized soil, and tractors used to pull these items.

214.18(7) Machinery and equipment used in flowering, ornamental, or vegetable plant production that are not self-propelled or attached to self-propelled machinery and equipment are exempt from tax. Rule 701—214.19(423) includes nonexclusive examples of machinery and equipment that are not self-propelled or attached to self-propelled machinery and equipment and that are directly and primarily used in flowering, ornamental, or vegetable plant production.

214.18(8) Fuel used in plant production is discussed in paragraph 214.12(2) "b."

214.18(9) The sales price from the sale of water used in the production of plants is exempt from tax. If water is not separately metered, the plants' grower must determine by use of a percentage the portion of water used for a taxable purpose and the portion used for an exempt purpose. Nonexclusive examples of taxable usage include restrooms, sanitation, lawns, and vehicle wash.

214.18(10) Agricultural health promotion items. The sales price from the sale to a commercial greenhouse of fertilizer, limestone, herbicides, pesticides, insecticides, plant food, and medication for use in disease, weed, and insect control or in other health promotion of flowering, ornamental, or vegetable plants is exempt from tax. For the purposes of this rule, a virus, bacterium, fungus, or insect that is purchased for use in killing insects or other pests is an insecticide or pesticide. Rule 701—214.9(423) contains more information regarding these exemptions.

214.18(11) Miscellaneous exempt and taxable plant sales.

a. Sales of pots, soil, seeds, bulbs, and starter plants for use in plant production are not the sale of machinery or equipment, but can be sales for resale and exempt from tax if the pots and soil are sold with the final product or become the finished product.

b. The sales price from the sale of portable buildings that will be used to display plants for retail sales is taxable.

c. The sales price from the sale of whitewash that will be painted on greenhouses to control the amount of sunlight entering those greenhouses is subject to tax as the sale of a supply rather than exempt from tax as a sale of equipment.

214.18(12) Seller's and purchaser's liability for sales tax. The seller is to be relieved of sales tax liability if the seller receives from the purchaser an exemption certificate stating that the purchase is of machinery and equipment meeting the requirements of this rule. The exemption certificate must be fully completed. If items purchased tax-free pursuant to an exemption certificate are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely and directly liable for the sales tax and remits the tax to the department.

This rule is intended to implement Iowa Code sections 423.3(11) and 423.3(15).

701—214.19(423) Nonexclusive lists. The following tables list items that are taxable or exempt.

214.19(1) *Exempt for agricultural production.*

adjuvants	irrigation equipment
alternators and generators*	kill cones
augers*	limestone, agricultural
balers	manure spreaders
bale transportation equipment	mowers, hay
baling wire and binding twine	oil filters
batteries for exempt machinery	oil pumps
blowers, grain dryer	packing materials
brush hogs*	pesticides
combines, cornheads, platforms	pickers
conveyors, temporary or portable*	plants (seeds)
corn pickers	planters
crawlers, tractor	plows
cultipackers	piston rings
cultivators	pruning and picking equipment*
discs	replacement parts
draft horses	rock pickers
drags	rollers*
drainage pipe and tile	rotary blade mowers; not lawn mowers
dusters*	rotary hoes
ensilage cutters	seeders
ensilage forks and trucks (a pickup does not qualify)	seed cleaners*
farm wagons and accessories	seed planters
fertilizer, agricultural	seeds
fertilizer spreaders	self-propelled implements
filters	shellers*
forage harvesters, boxes	silo blowers, unloaders*
fuel for grain drying or other agricultural production	sowers
gaskets	spark plugs for exempt machinery

grain augers, portable*	sprayers*
grain drills	spreaders
grain dryer, heater and blower only	sprinklers
grain planters	subsoilers
harrows	surfactants
hay conditioners	tillers
hay hooks	tires for exempt machinery
hay loaders	tractor chains
herbicides	tractors, farm
implements customarily drawn or attached to a self-propelled implement	tractor weights
insecticides	vegetable harvesters
	weeders*

*Exempt if drawn or attached to a self-propelled farm implement and directly and primarily used in agricultural production or, if portable, used directly and primarily in agricultural production.

214.19(2) *Exempt for dairy and livestock production.*

adjuvants	heaters, portable
alternators and generators ¹	hog feeders, portable
artificial insemination equipment	hog ringers ³
auger systems	hoof trimmers, portable ³
automatic feeding systems, portable	hypodermic syringes and needles, nondisposable
batteries for exempt machinery	implements customarily drawn or attached to a self-propelled implement
barn ventilators	incubators, portable
bedding materials ²	inlets and inlet systems
breeding stock, agricultural	inoculation materials
bulk feeding tanks, portable	insecticides
bulk milk coolers and tanks, portable	kill cones
calf weaners and feeders, portable	livestock feeding, watering and handling equipment, portable
cattle feeders, portable	loading chutes, portable
chain and rope hoists, portable ¹	manure brooms, portable ³
chicken pickers, plucking equipment	manure handling equipment, including front- end and rear-end loaders, portable ³
chick guards	manure scoops, portable ¹
clipping machines, portable ³	medications
conveyors, temporary or portable ¹	milk coolers, portable
cow stalls, portable	milking equipment, including cans, etc. ³
cow ties, portable	milking machines
cow watering and feeding bowls, portable	milk strainers and strainer disks, if not disposable
crawlers, tractor	milk tanks, portable
currying and oiling machines, portable	pesticides
curtains and curtain systems	poultry feeders, portable
dehorers	poultry founts, portable
domestic fowl	poultry litters, portable

draft horses	poultry nests, portable
drip systems	refrigerators
electric fence equipment, portable	replacement parts
fans and fan systems	sawdust ²
farm wagons and accessories	self-propelled implements
farrowing houses, crates, stalls, portable	shutters and shutter systems
feed	space heaters, portable
feed bins, portable	specialized flooring, portable
feed carts, portable	sprayers ¹
feed elevators, portable	squeeze chutes, stalls, portable
feed grinders, portable	stanchions, portable
feed scoops ³	surfactants
feed tanks, portable	tires for exempt machinery
feeder chutes, portable	thermometers ³
feeders, portable	tractor chains
fence and fencing supplies, temporary or portable	tractors, farm
foggers	tractor weights
fuel to heat or cool livestock buildings	vacuum coolers
gaskets	ventilators
gates, portable	water filters, heaters, pumps, softeners, portable
gestation stalls, portable	waterers/watering tanks, portable
grooming equipment, portable ³	weaners
head gates, portable	wood chips ²

¹Exempt if drawn or attached to a self-propelled farm implement and directly and primarily used in dairy or livestock production or, if portable, used directly and primarily in dairy or livestock production.

²Exempt when used as livestock and poultry bedding.

³Designed for farm use.

214.19(3) *Exempt for flowering, ornamental, or vegetable plant production.*

air-conditioning pads	greenhouse monorail systems*
airflow control tubes	greenhouse thermometers
atmospheric CO ₂ control and monitoring equipment	handcarts used to move plants
backup generators	lighting that provides artificial sunlight
bins holding sterilized soil	overhead heating, lighting, and watering systems*
control panels for heating and cooling systems*	overhead tracks for holding potted plants*
coolers used to chill plants*	plant tables*
cooling walls* or membranes	plant watering systems*
equipment used to control water levels for subirrigation	portable buildings used to grow plants*
fans used for cooling and ventilating*	seeding and transplanting machines
floor mesh for controlling weeds	soil pot and soil flat filling machines
germination chambers	steam generators for soil sterilization*
greenhouse boilers*	warning devices that monitor excess heat or cold
greenhouse netting or mesh when used for light and heat control	watering booms

*Exempt if not real property. "Real property" is defined in Iowa Code section 4.1(13) as "lands, tenements, hereditaments, and all rights thereto and interests therein, equitable as well as legal." More information can be found in 701—Chapter 219.

214.19(4) *Taxable even if used in agricultural production.*

additives	lubricants and fluids
air compressors	lumber*
air conditioners, unless a replacement part for exempt machinery	marking chalk
air tanks	mops
antifreeze	motor oils
axes	nails
barn cleaner, permanent	office supplies
baskets	oxygen
belt dressing	packing room supplies
bins, permanent^	paint and paint sprayers
brooms	pliers
buckets	posthole diggers, hand tool
building materials* and supplies	poultry brooders, permanent
burlap cleaners	poultry feeders, permanent
cattle feeders, permanent	poultry nests, permanent
cement#	pruning tools
chain saws	pumps for household or lawn use
cleaning brushes	radios, unless a replacement part for exempt machinery
cleansing agents and materials	refrigerators for home use
computers (including laptop), for personal use	repair tools
computer software	road maintenance equipment
construction tools	road scraper
concrete#	roofing
conveyors, permanent	sanders
cow ties, permanent	scrapers
ear tags	screwdrivers
fence, posts, wire, permanent	shingles
field toilets	shovels
fire prevention equipment	silos
freon	snow fence, unless portable and used directly in dairy and livestock production
fuel additives	snow plows and snow equipment
fuel tanks and pumps	space heaters, permanent
garden hoses and rakes	specialized flooring, permanent
glass	sprinklers, permanent
grain tanks, permanent*^	stalls, permanent
grease	staples
grease guns	stanchions, permanent
hammers	storage tanks
hog rings	tarps
hydraulic fluids	tiling machinery and equipment
hypodermic syringes, disposable	tractors, garden
lamps	welders

lanterns

wheel barrows

light bulbs (for household use)

wrenches

* Contractors and sponsors that purchase building materials, other than grain bin materials, are responsible for paying sales tax to the vendor or supplier or accruing and remitting use tax on those materials.

^ Does not include grain bins used to hold loose grain for drying or storage.

Does not include cement or concrete used in pads or foundations under grain bins.

This rule is intended to implement Iowa Code sections 423.3(6), 423.3(8) and 423.3(11).

701—214.20(423) Grain bins. The Iowa Code exempts from sales and use tax the sales price from the sale of a grain bin, including material or replacement parts used to construct or repair a grain bin. “Grain bin” is defined by Iowa Code section 423.3(16A). Grain bins are real property, and grain bin materials are building materials as that term is used in rule 701—219.3(423).

214.20(1) *Property considered to be a grain bin or material used to construct a grain bin.* In general, materials that are permanently attached to a grain bin and are required to hold loose grain for drying or storage are used to construct a grain bin and thus exempt from sales and use tax. This generally does not include equipment used to move loose grain into or out of a grain bin. The following lists of exempt or taxable property are not exhaustive.

a. Exempt property:

- (1) Grain bins, including hopper bins.
- (2) Corrugated metal or other similar material for the sides or roof of a grain bin.
- (3) Steps, ladders, or staircases permanently attached to a grain bin.
- (4) Structural support towers for a grain bin or for steps, ladders, or staircases providing access to a grain bin.
- (5) Catwalks.
- (6) Roof vents permanently attached to a grain bin.
- (7) Grain bin flooring and floor supports.
- (8) Concrete pad or foundation under a grain bin.
- (9) Stirring equipment permanently attached in a grain bin.
- (10) Fans permanently attached to a grain bin.
- (11) Temperature sensors or temperature cables permanently attached in a grain bin.
- (12) Spreaders permanently attached in a grain bin.
- (13) Sweeps or augers permanently attached in a grain bin.
- (14) Bolts and other builders’ hardware permanently attached to a grain bin.
- (15) Controls and devices to operate the above-listed property.
- (16) Motors for the above-listed property.
- (17) Replacement parts for the above-listed property.

b. Taxable property:

- (1) Bucket elevators.
- (2) Distributors.
- (3) Receiving stations, including drag conveyors and dump pits.
- (4) Pneumatic or air systems.
- (5) Conveyors, including chain conveyors, belt conveyors, and drag conveyors.
- (6) Anchors, bin jacks, or other construction equipment used to assemble, construct, repair, or replace a grain bin or part of a grain bin.
- (7) Samplers.
- (8) Scales or weighers.
- (9) Other items that remain tangible personal property and are not permanently attached to a grain bin.

214.20(2) *Primarily used to hold loose grain for drying or storage.* Property is deemed to be “primarily used to hold loose grain for drying or storage” if it is used more than 50 percent of the time to hold loose grain for drying or storage.

214.20(3) *Claiming the exemption.*

a. A contractor must provide an exemption certificate to its supplier when purchasing grain bins, grain bin materials, or grain bin replacement parts in order to purchase them free from sales tax. The contractor entering into a construction contract with a sponsor to erect a grain bin or entering into a contract to repair a grain bin must also obtain an exemption certificate from the sponsor of the construction/repair contract to avoid accruing and remitting use tax on the grain bins, grain bin materials, and the grain bin replacement parts that were purchased tax-free from the contractor's supplier.

b. The contractor must accrue use tax on the purchase price of the grain bins, grain bin materials, and grain bin replacement parts unless the contractor obtains an exemption certificate from the sponsor of the construction or repair contract. If the grain bin materials or replacement parts are not used in an exempt manner or if an exemption certificate is not obtained, it is the contractor's responsibility to accrue and remit use tax. The contractor must not charge sales tax to the sponsor of a construction or repair contract because those materials and replacement parts remain building materials used in the performance of a construction contract.

EXAMPLE 1: Company A is in the business of constructing and repairing grain bins. Company A regularly purchases grain bin materials and replacement parts from its supplier. Company A may provide to its supplier an exemption certificate pursuant to Iowa Code section 423.3(16A) so that the materials and replacement parts are purchased tax-free.

A person, also known as a sponsor, enters into a construction contract with Company A to construct a grain bin on the sponsor's property. The sponsor provides an exemption certificate to Company A also pursuant to Iowa Code section 423.3(16A). Company A may now fulfill the construction contract without accruing and remitting use tax on the grain bin materials purchased from its supplier tax-free.

EXAMPLE 2: Assume the same facts as in Example 1, except that Company A does not provide an exemption certificate to its supplier when it purchases grain bin materials and replacement parts. The supplier must charge and collect from Company A sales tax on the full sales price of the grain bin materials and replacement parts.

The sponsor enters into a construction contract with Company A to erect a grain bin. Whether or not the sponsor provides an exemption certificate to Company A pursuant to Iowa Code section 423.3(16A), Company A may now fulfill the construction contract without accruing and remitting use tax on the grain bin materials because Company A paid sales tax on the sales price of the grain bin materials when it purchased them from its supplier.

EXAMPLE 3: Assume the same facts as in Example 2. The sponsor enters into a construction contract with Company A to erect a grain bin and provides an exemption certificate to Company A pursuant to Iowa Code section 423.3(16A). Company A may now file a refund claim with the department requesting that the department refund the sales tax that Company A paid to its supplier when it purchased the grain bin materials used in fulfilling the construction contract with the sponsor. Alternatively, Company A may claim a credit on its sales tax return(s) equal to the amount of sales tax paid to its supplier when it purchased the grain bin materials used in fulfilling the construction contract with the sponsor. The burden is on Company A to prove that the building materials for which the credit or refund is claimed were used in erecting a grain bin.

EXAMPLE 4: Assume the same facts as in Example 1, except that the sponsor does not provide an exemption certificate to Company A. Company A must now accrue and remit use tax on the cost of the materials used in fulfilling this construction contract.

EXAMPLE 5: Assume the same facts as in Example 1, except that the sponsor enters into a construction contract with Company A for the construction of a structure that is not a grain bin. Company A uses the materials that it had purchased tax-free from its supplier to fulfill this contract. Company A must now accrue and remit use tax on the cost of the materials used in fulfilling this construction contract.

EXAMPLE 6: Assume the same facts as in Example 1, except that the sponsor enters into a contract with Company A for the repair of a structure that is not a grain bin. Company A uses the materials that it had purchased tax-free from its supplier to fulfill this contract. When invoicing the sponsor, Company A must separately itemize the materials and the labor charges incurred in fulfilling this repair contract, and

the sales price of the materials included on the invoice must include any mark-up. Company A is obligated to charge and collect sales tax on the materials and labor charges listed on the invoice.

EXAMPLE 7: Assume the same facts as in Example 1 except that, in addition to constructing the grain bin, the contractor provides and installs property, such as portable equipment, that remains tangible personal property after installation. As with the grain bin, grain bin materials, and grain bin replacement parts, the contractor purchases the portable equipment tax-free, not because it is exempt under this subrule, but because it is a purchase for resale. Unless the portable equipment qualifies for another exemption (such as in rule 701—214.1(423)), even if the contractor obtains an exemption certificate from the sponsor for the grain bin, grain bin materials, and replacement parts, the contractor must charge sales tax to the sponsor because the portable equipment remains tangible personal property and the contractor sells that equipment to the sponsor at retail.

This rule is intended to implement Iowa Code section 423.3.

701—214.21(423) Warehousing of raw agricultural products.

214.21(1) *In general.* The sales price on the warehousing of raw agricultural products is subject to sales tax unless the warehousing of raw agricultural products is storage in transit and has a destination outside of Iowa, regardless of whether the raw agricultural products originated within or outside of Iowa. Because the tax imposed by Iowa Code section 423.2(6) “ax” is imposed on the warehousing and not the sale of raw agricultural products, the interstate commerce exceptions found in Iowa Code section 423.3 do not apply.

214.21(2) *Definition.* For purposes of this rule:

“Raw agricultural products” includes but is not limited to corn, beans, oats, milo, fruits, vegetables, animal semen, and like items that have not been subjected to any form of processing. For purposes of this rule, grain drying is not considered processing.

214.21(3) *Other charges.* Other charges relating to warehousing of raw agricultural products may be subject to sales tax when separately invoiced. 701—Chapter 206 contains more information about bundled transactions.

214.21(4) *Transit warehouses.* The warehousing of raw agricultural products to be delivered within Iowa is subject to sales tax, while the warehousing of those products placed into interstate commerce is not subject to sales tax.

a. Formula. Transit warehouses may compute the tax on warehousing fees based upon a formula consisting of a numerator that is the quantity of raw agricultural products housed at the warehouse with intended intrastate delivery in Iowa and a denominator that is the total quantity of raw agricultural products housed in the warehouse.

b. Definition. For purposes of this rule:

“Transit warehouses” are those warehouses where raw agricultural products in bulk quantities are transported to and then shipped to different locations at different times.

c. Numerator. Raw agricultural products picked up at the warehouse or delivered to a location in Iowa must be included in the numerator, even if the products may be or are subsequently delivered to a common carrier for shipment outside of Iowa.

d. Information used to calculate tax. The information used in the formula for the computation of tax on storage fees must be, in most cases, supplied by the principal storing the products in the warehouse. The warehouse is responsible for acquiring and verifying the information used in the formula with the principal at least once every 90 days.

214.21(5) *Exemptions.* Warehousing service will not be subject to sales tax if a contract for the warehousing of raw agricultural products is with a tax-certifying or tax-levying body of the state of Iowa; any instrumentality of the state, county, or municipal government; the federal government or its instrumentalities; a tribal government as defined in Iowa Code section 216A.161; or an agency or instrumentality of a tribal government if used for public purposes.

a. Consignment to federal government. Fees for the warehousing of raw agricultural products placed into storage by a producer that are later consigned to the federal government under a loan agreement are subject to sales tax.

b. Federal government activity. Warehousing of raw agricultural products is exempt from sales tax only if the federal government makes payment to the warehouse for warehousing and the federal government actually owns the products or goods during the time the products or goods are warehoused.

This rule is intended to implement Iowa Code sections 423.2(6) “ax” and 423.3(31).

[Filed 7/2/24, effective 8/28/24]

[Published 7/24/24]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/24.

ARC 8160C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rulemaking related to exemptions primarily benefiting manufacturers and other persons engaged in processing

The Revenue Department hereby rescinds Chapter 215, “Exemptions Primarily Benefiting Manufacturers and Other Persons Engaged in Processing,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.3(47) through 423.3(53), 423.3(82), 423.3(92), 423.3(93), 423.3(95), 423.4(7) and 423.4(8).

Purpose and Summary

The purpose of this rulemaking is to rescind and readopt Chapter 215, which describes the Department’s interpretation of the underlying statutes to aid the public in understanding the taxability and exemption provisions and processes that are primarily applicable to taxpayers engaged in processing and manufacturing. The Department made revisions to the rules to provide clarification and to remove obsolete, unnecessary, and duplicative statutory language. The Department also renumbered some rules due to other changes and for organizational reasons.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7182C**. A public hearing was held on the following date(s):

- January 3, 2024

Public comment was received. The Iowa Taxpayers’ Association provided comments both orally at the public hearing and via written comment through Iowa Taxpayers’ Association President and CEO Thomas R. Sands. Larry Nordeen with Iowa Taxes LLC also provided written comment. These comments are summarized as follows:

1. Rule 701—215.2(423) no longer references sterilization. The Department did not adopt the reference to sterilization as part of its efforts to clarify the rules. No substantive change is intended, and sterilization is still exempt under the rule if it fits the processing definition.
2. New language was noted in paragraph 215.3(1)“a” that excludes “services used to repair or replace defective or broken-down machinery and equipment” from the exemption for services used in processing. Such services may be exempt when used in processing by a manufacturer of food or food

ingredients, which is addressed in paragraph 215.2(2)“a.” Because rule 701—215.3(423) addresses the separate, general exemption for services used in processing, the Department determined that rule 701 — 215.3(423) does not need to address repair and replacement services that may be exempt under rule 701 — 215.2(423). As the commenter requested, the Department added a cross reference to rule 701 —215.2(423) in rule 701—215.3(423).

3. Regarding subrule 215.17(5), an example of exempt computers used in research and development was requested. The Department added this example to the subrule.

Adoption of Rulemaking

This rulemaking was adopted by the Department on June 24, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on August 28, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 215 and adopt the following **new** chapter in lieu thereof:

CHAPTER 215 EXEMPTIONS PRIMARILY BENEFITING MANUFACTURERS AND OTHER PERSONS ENGAGED IN PROCESSING

701—215.1 Reserved.

701—215.2(423) Carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used in processing. An expanded definition of “processing” is allowed to manufacturers of food or food ingredients using carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services. For the purposes of this rule, the rental or leasing of tangible personal property is treated as the furnishing of a taxable service and not as the sale of tangible personal property.

215.2(1) “Food or food ingredients” means the same as defined in Iowa Code section 423.3(49) “b.” This means that for purposes of this exemption, “food or food ingredients” means the same as “food and food ingredients” as defined in Iowa Code section 423.3(57)“d” and implemented by rule 701—220.3(423) but also includes tangible personal property that could be sold for ingestion or chewing by humans but is sold for another use.

EXAMPLE 1: Manufacturer A produces gelatin that qualifies as a food or food ingredient. Manufacturer A only sells the gelatin to a cosmetics manufacturer. The sales price of any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used by Manufacturer A to produce the gelatin is exempt from sales tax even though the gelatin was not sold for human consumption.

EXAMPLE 2: Manufacturer B produces two types of gelatin products. Product 1 is manufactured at a quality such that it may be used for technical purposes, such as an ingredient in wood glue, but humans could not consume Product 1 safely. Product 2 is manufactured at a quality such that humans could safely eat it, though it can also be sold for technical purposes like Product 1. Product 1 is not a food or food ingredient. Product 2 is a food or food ingredient.

EXAMPLE 3: Manufacturer C produces alcohol, all of which qualifies as a food or food ingredient. Manufacturer C sells one-third of its product to vodka Manufacturer V, one-third to fuel ethanol Manufacturer F, and one-third to perfume Manufacturer P. The sales price of any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used by Manufacturer C to produce the alcohol is exempt from sales tax regardless of whether Manufacturer C sells the alcohol to Manufacturer V, F, or P.

Manufacturer V's product is food-grade vodka sold at grocery and convenience stores. Manufacturer V may claim exemption for the same inputs used in producing its vodka as Manufacturer C.

Manufacturer F's product is only sold to be used in motor vehicles and is harmful to humans if consumed. Manufacturer F cannot claim exemption under Iowa Code section 423.3(49) for any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used to produce its ethanol fuel. Manufacturer F may qualify for exemptions provided under other Iowa Code sections.

Manufacturer P's product is only sold for cosmetic purposes and is harmful to humans if consumed. Manufacturer P cannot claim exemption under Iowa Code section 423.3(49) for any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used to produce its perfume. Manufacturer P may qualify for exemptions provided under other Iowa Code sections.

a. Certain entities eligible. An entity that processes a product owned by another entity is eligible for this exemption, subject to satisfying the other requirements to properly claim the exemption.

EXAMPLE: Company A owns and operates a processing facility. Company B owns corn and contracts with Company A to process the corn. Company B maintains ownership of the corn the entire time it is processed and in possession of Company A. Company B sells the processed corn to Company C, which will make retail sales of the processed corn. Company A is eligible to claim this exemption for any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used to process the corn.

b. Determination. The burden is on the taxpayer seeking to claim this exemption to establish that a product is a food or food ingredient for purposes of this exemption. The department's determination is a fact-based determination based on the information provided by a manufacturer and the individual circumstances at issue.

EXAMPLE: A manufacturer produces products, such as glucosamine, that are used as ingredients in orange juice, which is produced by a different entity. The glucosamine and the orange juice are both food or food ingredients for purposes of this exemption.

215.2(2) The following activities constitute processing when performed by a manufacturer to create food or food ingredients. Any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, or other taxable services primarily used in the performance of these activities is exempt from tax.

a. Treatment of material that changes its form, context, or condition in order to produce the food or food ingredient. Washing, sorting, and grading fruits or vegetables; washing, sorting, and grading eggs; repairing or replacing defective or broken-down machinery and equipment; and mixing or agitating liquids are examples of activities that do not qualify as "processing."

b. Maintenance of the quality or integrity of the food or food ingredient and the maintenance or the changing of temperature levels necessary to avoid spoilage or to hold the food or food ingredient in marketable condition. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service used in freezers, heaters, coolers, refrigerators, or evaporators used in cooling or heating

that holds the food or food ingredient at a temperature necessary to maintain quality or integrity or to avoid spoilage of the food or food ingredient or to hold the food or food ingredient in marketable condition is exempt from tax. It is not necessary that the taxable service be used to raise or lower the temperature of the food or food ingredient. Also, processing of food or food ingredients does not cease when the food or food ingredient is in marketable form. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used to maintain or to change a temperature necessary to keep the food or food ingredient marketable is exempt from tax.

c. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or other taxable service primarily used in the maintenance of environmental conditions necessary for the safe or efficient use of machinery or material used to produce the food or food ingredient is exempt from tax. For example, electricity used to air-condition a room in which meat is stored is exempt from tax if the purpose of the air conditioning is to maintain the meat in a condition in which it is easy to slice rather than for the comfort of the employees who work in the room.

d. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service primarily used in sanitation and quality control activities is exempt from tax. Nonexclusive examples exempt from tax include taxable services used in pH meters, microbiology counters and incubators used to test the purity or sanitary nature of the food or food ingredient. For example, electricity used in egg-candling lights would be exempt from tax. Also, electricity, steam, or any taxable service used to power equipment that cleans and sterilizes food production equipment would be exempt from tax. Electricity used to power refrigerators used to store food or food ingredient samples for testing would be exempt from tax. Finally, electricity used to power “bug lights” or other insect-killing equipment used in areas where food or food ingredients are manufactured or stored would be exempt from tax.

e. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used in the formation of packaging for food or food ingredients is exempt from tax. For example, electricity used in plastic bottle-forming machines by a food manufacturer is exempt from tax if the plastic bottles will be used to hold the food or food ingredient, such as milk. Any electricity, steam, or other taxable service used in the heating, compounding, liquefying and forming of plastic pellets into these plastic bottles is exempt.

f. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used in placement of the food or food ingredient into shipping containers is exempt from tax. For example, electricity used by a food manufacturer to place food or food ingredients into packing cases, pallets, crates, shipping cases, or other similar receptacles is exempt.

g. Any carbon dioxide in liquid, solid, or gaseous form, electricity, steam, or taxable service used to move material that will become a food or food ingredient or used to move the food or food ingredient itself until shipment from the building of manufacture is exempt from tax. This includes but is not limited to taxable services used in pumps, conveyors, forklifts, and freight elevators moving the material or the food or food ingredient and taxable services used in door openers that open doors for forklifts or other devices moving the material or the food or food ingredient. Any loading dock that is attached to a building of manufacture is a part of that building. Any electricity, steam, or taxable service used to move any food or food ingredient to a loading dock is exempt from tax. If the food or food ingredient is carried outside its building of manufacture by any conveyor belt system, electricity used by any portion of the system located outside the building is taxable.

This rule is intended to implement Iowa Code section 423.3(49).

701—215.3(423) Services used in processing.

215.3(1) Electricity, steam, or any taxable service is used in processing only when used in any operation that subjects raw material to some special treatment that changes, by artificial or natural means, the form, context, or condition of the raw material and results in a change of the raw material into marketable tangible personal property intended to be sold ultimately at retail. Rule 701—215.2(423) contains information about the expanded definition of “processing” allowed to manufacturers of food or food ingredients using taxable services. The following are nonexclusive examples of what would and would not be considered electricity, steam, or taxable services used in processing under this rule:

a. The sales price from the sale of electricity or steam consumed as power or used in the actual processing of tangible personal property intended to be sold ultimately at retail would be exempt from tax. The sales price of electricity or steam consumed for the purpose of lighting, ventilating, or heating manufacturing plants; warehouses; or offices is subject to tax. Also subject to tax is the sales price of any taxable services used to repair or replace defective or broken-down machinery and equipment.

b. The sales price from electricity used in the freezing of tangible personal property, ultimately to be sold at retail, to make the property marketable would be exempt from sales tax.

c. Electricity used merely in the refrigeration or the holding of tangible personal property for the purpose of preventing spoilage or to preserve the property in its present state would not be “used in processing” and, therefore, its sales price would be subject to tax.

215.3(2) Measurement of taxable and nontaxable use of electricity and steam. The exemption provided in the case of electricity or steam applies only upon the sales price from the sale of electricity or steam when the energy is consumed as power or is used in the processing of food products or other tangible personal property intended to be sold ultimately at retail, as distinguished from electricity or steam that is consumed for taxable purposes. When practical, electricity or steam consumed as power or used in processing must be separately metered and separately billed by the supplier thereof to clearly distinguish energy so consumed from electricity or steam that is consumed for purposes or under conditions in which the exemption would not apply. If it is impractical to separately meter electricity or steam which is exempt from that electricity or steam upon which tax will apply, the purchaser must furnish an exemption certificate to the supplier with respect to what percentage of electricity or steam in the case of each purchaser is subject to the exemption. The exemption certificate must be supported by a study showing how the percentage was developed. When a certificate and study are accepted by the supplier as a basis for determining exemption, any changes in the processing method, changes in equipment, or alterations in plant size or capacity affecting the percentage of exemption will necessitate the filing of a new and revised statement by the purchaser. When the electric or steam energy is separately metered, enabling the supplier to accurately apply the exemption in the case of processing energy, the purchaser need only file an exemption certificate since the supplier, under such conditions, will separately record and compute the consumption of energy which is exempt from tax apart from that energy which is subject to tax.

This rule is intended to implement Iowa Code section 423.3(50).

701—215.4(423) Chemicals, solvents, sorbents, or reagents used in processing.

215.4(1) Chemicals, solvents, sorbents, and reagents directly used and consumed, dissipated, or depleted in processing tangible personal property intended to be sold ultimately at retail are exempt from sales and use tax. For the purpose of this processing exemption rule, free newspapers and shoppers’ guides are considered to be retail sales. The terms “chemical,” “solvent,” “sorbent,” and “reagent” are defined in rule 701—200.1(423).

215.4(2) For the purpose of this rule, a catalyst is considered to be a chemical, solvent, sorbent, or reagent. A catalyst is a substance which promotes or initiates a chemical reaction and, as such, is exempt from tax if consumed, dissipated, or depleted during processing of tangible personal property intended to be ultimately sold at retail.

215.4(3) To qualify for this exemption, all of the following conditions must be met:

- a.* The item must be a chemical, solvent, sorbent, or reagent.
- b.* The chemical, solvent, sorbent, or reagent must be directly used and consumed, dissipated, or depleted during processing.
- c.* The processing must be performed on tangible personal property intended to be sold ultimately at retail.
- d.* The chemical, solvent, sorbent, or reagent need not become an integral or component part of the processed tangible personal property.

This rule is intended to implement Iowa Code section 423.3(51).

701—215.5(423) Exempt sales of gases used in the manufacturing process. Sales of argon and other similar gases to be used in the manufacturing process are exempt from tax. For the purposes of this rule, only inert gases are gases that are similar to argon. An “inert gas” is any gas that is normally chemically inactive. It will not support combustion and cannot be used as either a fuel or as an oxidizer. Argon, helium, neon, krypton, radon, and xenon are inert gases. Oxygen, hydrogen, and methane are nonexclusive examples of gases that are not inert. These sales are exempt only if the gas is purchased by a “manufacturer,” for use in “processing,” as those terms are defined in Iowa Code section 423.3(47) “d.”

This rule is intended to implement Iowa Code section 423.3(52).

701—215.6(423) Sale of electricity to water companies. The sales price from the sale of electricity to water companies assessed for property tax pursuant to Iowa Code sections 428.24, 428.26, and 428.28, that is used solely for the purpose of pumping water from a river or well is exempt from sales tax. For the purposes of this rule, “river” means a natural body of water or waterway that is commonly known as a river. “Well,” for the purposes of this rule, means an issue of water from the earth; a mineral spring; a pit or hole sunk into the earth to reach a water supply; a shaft or hole sunk to obtain water.

This rule is intended to implement Iowa Code section 423.3(53).

701—215.7 Reserved.

701—215.8(423) Exempt sales or rentals of core-making and mold-making equipment, and sand-handling equipment.

215.8(1) Exempt sales and rentals of machinery and equipment. The sales price from sales or rentals of core-making, mold-making, and sand-handling machinery and equipment, including replacement parts, directly and primarily used by a foundry in the mold-making process is exempt from tax. For the purposes of this rule, a “foundry” is an establishment where metal, but not plastic, is melted and poured into molds. A nonexclusive list of equipment that may be exempt includes sand storage tanks, conveyors, patterns, mallor controllers, and sand mixers. A nonexclusive list of items that would not be exempt includes sand and other materials (as opposed to equipment) used to build molds or cores, and supplies. Services used in the mold-making process are not exempted from tax by this rule. Subrule 215.14(2) provides definitions of “directly used,” “equipment,” and “machinery.” Iowa Code section 423.3(47) “d” provides definitions of “replacement part” and “supplies.”

215.8(2) Exempt sales of fuel and electricity. The sales price from sales of fuel used in creating heat, power, or steam for, or used for generating electric current for, or electric current sold for use in machinery or equipment the sale or rental of which is exempt under subrule 215.8(1) is exempt from tax.

215.8(3) Exempt design and installation services. The sales price from furnishing design and installation services, including electrical and electronic installation, of machinery and equipment the sale or rental of which is exempt under subrule 215.8(1) is exempt from tax.

This rule is intended to implement Iowa Code section 423.3(82).

701—215.9(423) Chemical compounds used to treat water. Chemical compounds placed in water that is ultimately sold at retail should be purchased exempt from the tax. The chemical compounds become an integral part of property sold at retail. Chemical compounds placed in water that is directly used in processing are exempt from the tax, even if the water is consumed by the processor and not sold at retail.

Chemical compounds that are used to treat water that is not sold at retail or that are not used directly in processing are subject to tax. An example would be chlorine or other chemicals used to treat water for a swimming pool.

Special boiler compounds used by processors when live steam is injected into the mash or substance, whereby the steam liquefies and becomes an integral part of the product intended to be sold at retail and also becomes a part of the finished product, is exempt from tax.

This rule is intended to implement Iowa Code section 423.3(51).

701—215.10(423) Exclusive web search portal business and its exemption. A business that qualifies as a web search portal business that has a physical location in Iowa and that meets specific criteria may obtain an exemption from sales and use tax on specific purchases that are used in the operation and maintenance of the web search portal business. This exemption from sales and use tax also applies to the affiliates of a qualifying web search portal business.

215.10(1) Definitions. For the purpose of this exemption, “affiliate,” “control,” and “web search portal business” mean the same as defined in Iowa Code section 423.3(92)“e.”

215.10(2) Claiming the exemption. Iowa Code section 423.3(92)“b” provides the criteria to claim this exemption. If a business fails to meet the investment qualification found in Iowa Code section 423.3(92)“d,” the web search portal business loses the right to claim the exemption and the business is required to pay all sales or use taxes that would have been due on the purchase or rental of all purchases previously claimed exempt from sales and use tax, plus any and all applicable statutory penalty and interest due on the tax.

215.10(3) Exempt purchases. Sales and leases of the following are exempt from sales and use tax when sold or leased to a qualifying web search portal business:

a. Computers and equipment that are necessary for the maintenance and operation of the web search portal business;

b. All equipment used for the operation and maintenance of the cooling system for the computers and equipment used in the operation of the web search portal;

c. All equipment used for the operation and maintenance of the cooling towers for the cooling system referenced in paragraph 215.10(3)“b”;

d. All equipment used for the operation and maintenance of the temperature control infrastructure for the computers and equipment used in the operation of the web search portal;

e. All equipment used for the operation and maintenance of the power infrastructure that is used for the transformation, distribution, or management of electricity used for the operation and maintenance of the web search portal. This equipment includes, but is not limited to, exterior dedicated business-owned power substations, backup power generation systems, battery systems, and related infrastructure;

f. All equipment used in the racking system, including cabling and trays;

g. Fuel purchased by the web search portal business that is used in the backup power generation system and in all items listed in paragraphs 215.10(3)“a” through “f.” This provision includes the fuel used in backup generators that may be located outside of the building that are used if power is interrupted to ensure the web search portal continues operation; and

h. Electricity purchased for use in operating the web search portal.

215.10(4) Limitation of exemption. The purchases or leases of the items listed in subrule 215.10(3) are only exempt if the items being purchased or leased are being used in the operation or maintenance of the web search portal business. Such purchases or leases will not be exempt from sales or use tax if the item is to be used in the business for another purpose not related to operations or maintenance. Examples of items included in this limitation include but are not limited to:

a. Electricity not used for operation or maintenance, such as in the office or employee break room;

b. Tangible personal property used in areas of the web search portal facility that is not used for operation or maintenance, such as cleaning equipment and supplies;

c. Building materials that become part of real property, such as concrete, steel or roofing; and

d. Tangible personal property that becomes part of real property, such as a dishwasher.

215.10(5) Initial date of exemption. The exemption from sales and use tax begins on and after the date of the initial investment in or the initiation of site preparation activities for the facility that will contain the qualifying web search portal business.

This rule is intended to implement Iowa Code section 423.3(92).

701—215.11(423) Web search portal business and its exemption. A business that qualifies as a web search portal business that has a physical location in Iowa and that meets specific criteria may obtain an exemption from sales and use tax on specific purchases that are used in the operation and maintenance of

the web search portal business. This exemption from sales and use tax also applies to the affiliates of a qualifying web search portal business.

215.11(1) Definitions. For the purpose of this exemption, “affiliate,” “control,” and “web search portal business” mean the same as defined in Iowa Code section 423.3(93) “e.”

215.11(2) Claiming the exemption. Iowa Code section 423.3(93) “b” provides the criteria to claim this exemption. If a business fails to meet the investment qualification found in Iowa Code section 423.3(93) “d,” the web search portal business loses the right to claim the exemption and the business is required to pay all sales or use taxes that would have been due on the purchase or rental of all purchases previously claimed exempt from sales and use tax, plus any and all applicable statutory penalty and interest due on the tax.

215.11(3) Exempt purchases. Sales and leases of the following are exempt from sales and use tax when sold or leased to a qualifying web search portal business:

- a. Computers and equipment that are necessary for the maintenance and operation of the web search portal business;
- b. All equipment used for the operation and maintenance of the cooling system for the computers and equipment used in the operation of the web search portal business;
- c. All equipment used for the operation and maintenance of the cooling towers for the cooling system referenced in paragraph 215.11(3) “b”;
- d. All equipment used for the operation and maintenance of the temperature control infrastructure for the computers and equipment used in the operation of the web search portal business;
- e. All equipment used for the operation and maintenance of the power infrastructure that is used for the transformation, distribution, or management of electricity used for the operation and maintenance of the web search portal business. This equipment includes but is not limited to exterior dedicated business-owned power substations and backup power generation systems, battery systems, and related infrastructure;
- f. All equipment used in the racking system, including cabling and trays;
- g. Fuel purchased by the web search portal business that is used in the back-up power generation system and in all items listed in paragraphs 215.11(3) “a” through “f.” This includes the fuel used in the backup generators that may be located outside the building and that are used if power is interrupted to ensure the web search portal business continues operation; and
- h. Electricity purchased for use in operating the web search portal business.

215.11(4) Limitation of exemption. The purchase or lease of the items listed in subrule 215.11(3) is only exempt if the items being purchased or leased are being used in the operation or maintenance of the web search portal business. Such purchases or leases will not be exempt from sales or use tax if the item is to be used in the business for another purpose. For example, the purchase of electricity for use in the office portion of the web search portal facility would not be exempt. The purchase of building materials that become real property would not be exempt. For example, the purchase of a dishwasher that will be built into a kitchen area in the break room for employees would not be exempt from tax. The purchase of a dishwasher is the purchase of tangible personal property. However, upon installation, the dishwasher becomes part of the building and realty and is not exempt from Iowa sales or use tax.

This rule is intended to implement Iowa Code section 423.3(93).

701—215.12(423) Large data center business exemption. A data center business that has a physical location in Iowa and that meets specific criteria may obtain an exemption from sales and use tax on specific purchases that are used in the operation and maintenance of the data center business.

215.12(1) Definitions. For the purpose of this rule, “data center” and “data center business” mean the same as defined in Iowa Code section 423.3(95) “e.”

215.12(2) Claiming the exemption. Iowa Code section 423.3(95) “b” provides the criteria to claim this exemption. If a business fails to meet the investment qualification found in Iowa Code section 423.3(95) “d,” the data center business loses the right to claim the exemption and the business is required to pay all sales or use taxes that would have been due on the purchase or rental of all purchases

previously claimed exempt from sales and use tax, plus any and all applicable statutory penalty and interest due on the tax.

215.12(3) Exempt purchases. Paragraphs 215.11(3)“a” through “h” are incorporated in full by this reference.

215.12(4) Limitation of exemption. The purchase or lease of the items listed in subrule 215.12(3) is only exempt if the items being purchased or leased are being used in the operation or maintenance of the data center business. Such purchases or leases will not be exempt from sales or use tax if the item is to be used in the business for another purpose. For example:

a. The purchase of electricity for use in the office portion of the data center business facility would not be exempt.

b. The purchase of building materials that become real property would not be exempt. For example, the purchase of a dishwasher that will be built into a kitchen area in the break room for employees would not be exempt from tax. Although the purchase of a dishwasher is the purchase of tangible personal property, upon installation, the dishwasher becomes part of the building and realty and, therefore, is not exempt from Iowa sales and use tax.

This rule is intended to implement Iowa Code section 423.3(95).

701—215.13(423) Data center business sales and use tax refunds. Data center businesses in Iowa meeting certain criteria may make an annual application to the department for a refund of 50 percent of the sales and use tax paid on the sales price of certain computers, equipment, fuel, and electricity used in the operation of the data center business.

215.13(1) Definitions. For the purpose of this rule, “data center” and “data center business” mean the same as defined in Iowa Code section 423.3(95)“e.”

“*Refund year*” means the year beginning with the date of initial site preparation of the data center facility.

“*Rehabilitation*” means a process of substantial repair, remodeling, or alteration, which may include but is not limited to upgrading mechanical systems, plumbing, roofing, wiring, windows, and heating and cooling systems, and performing significant interior or exterior structural modification. Although they may be included as part of an overall rehabilitation project, singular actions such as the installation of a new information system or cosmetic changes to the interior or exterior appearance of a building do not, in and of themselves, constitute a rehabilitated building.

215.13(2) Basis and criteria for refunds. The amount, type, and length of refunds available to data center businesses depend upon the dollar amount of investment made, the type of construction undertaken, and the size in square feet of the facility.

a. *Investment of \$136 million to \$200 million.* Data center businesses which make investments in an Iowa facility of \$136 million to \$200 million in the first six years of operations and which facility contains at least 5,000 square feet are eligible for a refund of 50 percent of the sales and use tax paid on qualifying computers and equipment, backup fuel, and electricity for the first seven years of operation.

b. *Investment of \$10 million to \$136 million—new construction.* Data center businesses which make investments of \$10 million to \$136 million in the first six years of operations in the new construction of an Iowa facility that is at least 5,000 square feet are eligible for a refund of 50 percent of the sales and use tax paid on qualifying computers and equipment, backup fuel, and electricity for the first ten years of operation.

c. *Investment of \$5 million to \$136 million—rehabilitation.* Data center businesses which make investments of \$5 million to \$136 million in the first six years of operations in the rehabilitation of an Iowa facility that is at least 5,000 square feet are eligible for a refund of 50 percent of the sales and use tax paid on qualifying computers and equipment, backup fuel, and electricity for the first ten years of operation.

d. *Investment of \$1 million to \$10 million—new construction.* Data center businesses which make investments of \$1 million to \$10 million in the first three years of operations in the new construction of an Iowa facility of any size are eligible for a refund of 50 percent of the sales and use tax paid on fuel and electricity for the first five years of operation.

e. Investment of \$1 million to \$5 million—rehabilitation. Data center businesses which make investments of \$1 million to \$5 million in the first three years of operations in the rehabilitation of an Iowa facility of any size are eligible for a refund of 50 percent of the sales and use tax paid on fuel and electricity for the first five years of operation.

215.13(3) Purchases eligible for refunds. Paragraphs 215.11(3)“a” through “h” are incorporated in full by this reference.

215.13(4) Sustainable design standards. In order to claim the refunds detailed in paragraphs 215.13(3)“a” through “h,” data center businesses must comply with the sustainable design and construction standards as required by 661—Chapter 310 as established by the state building code commissioner pursuant to Iowa Code section 103A.8B.

215.13(5) Failure to meet investment qualifications. If a business fails to meet the investment qualification found in Iowa Code section 423.3(95)“d,” the data center business loses the right to claim the refund and the business is required to return the refund of sales and use tax paid on qualifying computers, equipment, fuel, and electricity, plus any and all applicable statutory penalty and interest due on the tax.

215.13(6) Limitation of refunds.

a. Use in operation or maintenance. The purchase or lease of the items listed in subrule 215.13(3) is only eligible for a refund of sales and use tax if the items being purchased or leased are being used in the operation or maintenance of the data center business. Such purchases or leases will not be eligible for a refund of sales and use tax if the item is to be used in the business for another purpose. For example:

(1) The purchase of electricity for use in the office portion of the data center business facility would not be eligible for a refund.

(2) The purchase of building materials that become real property would not be eligible for a refund. For example, the purchase of a dishwasher that will be built into a kitchen area in the break room for employees would not be eligible for a refund of tax. Although the purchase of a dishwasher is the purchase of tangible personal property, upon installation, the dishwasher becomes part of the building and realty and, therefore, is not eligible for a refund of Iowa sales and use tax.

b. State sales tax only. Refunds issued under this rule may not exceed 6 percent of the sales price of computers and equipment listed in subrule 215.13(3) and the fuel used to create heat, power and steam for processing or generating electrical current or from the sales price of electricity consumed by computers, machinery, or other equipment for operation of the data center business facility. The refund will not include any local option sales and services taxes.

c. Qualifying dates for fuel and electricity refund. To qualify for the 50 percent refund, the following must be on or after the first day of the first month through the last day of the last month of the refund year:

(1) The dates of the utility billing or meter reading cycle for the sale or furnishing of metered gas and electricity;

(2) The dates of the sale or furnishing of fuel for purposes of commercial energy; and

(3) The delivery of the fuel used for purposes of commercial energy.

215.13(7) Form and filing requirements.

a. Form. The owner of a data center business seeking a refund of sales and use tax imposed upon the sale or lease of any qualifying computers, equipment, fuel, and electricity must complete and file with the department Form IA 843, Claim for Refund. All of the information on the Claim for Refund must be completed.

b. Due date. The refund request form must be filed with the department no later than one year after the purchase of the qualifying computers, equipment, fuel, or electricity and within three months after the end of the refund year. The refund for sales and use tax begins with purchases made on and after July 1, 2009, or on and after the date of the initial investment in or the initiation of site preparation activities for the facility that will contain the qualifying data center business.

c. Date required. The refund request must include detailed schedules of the items being claimed including dates of purchase of tangible personal property, amount of purchase, and tax paid. The purchase of fuel and electricity must be computed and documented separately from other purchases.

d. *Affidavit.* In addition to completing and filing Form IA 843, Claim for Refund, the owner of a data center business seeking a refund as specified in this rule must also complete and file with the department an affidavit certifying that qualifications for the refund have been met. The affidavit must be approved by the department before a refund claim can be reviewed. The following format must be used for the affidavit:

Iowa Department of Revenue
Sales Tax Refund Affidavit

NAME OF AFFIANT
ADDRESS OF AFFIANT



AFFIDAVIT FOR
DATA CENTER BUSINESS

The undersigned duly swears that the named data center business complies with criteria to be entitled to refund of sales tax as required in Iowa Code section 423.4 as follows:

1. The facility is a data center business as defined by Iowa Code section 423.4(7) or 423.4(8);
2. The data center business facility will be a minimum of 5,000 square feet, as applicable, located upon Iowa land; and located at _____; with total square footage of _____;
3. The data center business will make an investment of (check only one):
 - \$136 million to \$200 million within the first six years of operation (refund available for first seven years).
 - \$10 million to \$136 million for new construction within the first six years of operation (refund available for first ten years).
 - \$5 million to \$136 million for rehabilitation of an existing facility within the first six years of operation (refund available for first ten years).
 - \$1 million to \$10 million for new construction within the first three years of operation (refund of tax paid on fuel and electricity only; refund available for first five years).
 - \$1 million to \$5 million for rehabilitation of an existing facility within the first three years of operation (refund of tax paid on fuel and electricity only; refund available for first five years).
4. The data center business facility will be constructed in accordance with the sustainable design and construction standards as required by Iowa Administrative Code 661—Chapter 310 and established by the building code commissioner pursuant to Iowa Code section 103A.8B;
5. Construction of the data center business facility was commenced on or after July 1, 2009; and the date of the initial site preparation or building rehabilitation was _____; and
6. Purchases of qualifying computers, equipment, fuel or electricity were made on or after July 1, 2009.

The undersigned duly swears that he or she is the owner of the qualifying data center business or that the undersigned is the authorized representative of the qualifying data center business and has the authority to sign this document. The undersigned swears that he or she has personal knowledge regarding the facts contained in this affidavit and that the statements set forth in this affidavit are true and accurate and that the qualifying data center business has met all of the requirements as contained herein.

Name of Affiant

Date

Position of Affiant

This rule is intended to implement Iowa Code section 423.4(7) and 423.4(8).

701—215.14(423) Exemption for the sale of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies used for certain manufacturing purposes. The sales price of computers, computer peripherals, machinery,

equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt when used for an exempt manufacturing purpose. Rule 701—215.21(423) exempts the purchase of fuel used in such computers, computer peripherals, machinery, and equipment. Rule 701—215.22(423) exempts the service of designing or installing new industrial machinery and equipment.

215.14(1) *Generally.* The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax if the property is any of the following:

a. Directly and primarily used in processing by a manufacturer (as described in rule 701—215.15(423)).

b. Directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product (as described in rule 701—215.16(423)).

c. Directly and primarily used in research and development of new products or processes of processing (as described in rule 701—215.17(423)).

d. Directly and primarily used in recycling or reprocessing of waste products (as described in rule 701—215.19(423)).

e. Pollution-control equipment used by a manufacturer, including but not limited to that required or certified by an agency of this state or of the United States government (as described in rule 701—215.20(423)).

f. Fuel used in creating heat, power, steam, or for generating electrical current, or from the sale of electricity, consumed by computers, computer peripherals, machinery, or equipment used in an exempt manner described in paragraphs 215.14(1)“*a*” through “*e*” (as described in rule 701—215.21(423)).

215.14(2) *Computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies.*

a. Computers and computer peripherals. “Computer” and “computer peripheral” mean the same as defined in Iowa Code section 423.1.

b. Machinery. “Machinery” is any mechanical, electrical, or electronic device designed and used to perform some function and to produce a certain effect or result. The term includes not only the basic unit of the machinery but also any adjunct or attachment necessary for the basic unit to accomplish its intended function. “Machinery” also includes all devices used or required to control, regulate, or operate a piece of machinery, provided such devices are directly connected with or are an integral part of the machinery and are used primarily for control, regulation, or operation of machinery. Other devices necessary to the operation of or used in conjunction with the operation of what would be ordinarily thought of as machinery are also considered to be machinery. “Machinery” does not include tangible personal property that becomes a structure or a part of real property after installation.

c. Equipment. In general usage, “equipment” refers to devices or tools used to produce a final product or achieve a given result. Exempt “equipment” under these rules includes tables on which property is assembled on an assembly line, if those tables are directly and primarily used in processing by a manufacturer. “Equipment” does not include tangible personal property that becomes a structure or a part of real property after installation.

d. Replacement parts. “Replacement part” means the same as defined in Iowa Code section 423.3(47)“*d.*”

e. Supplies. “Supplies” means the same as defined in Iowa Code section 423.3(47)“*d.*”

f. Materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies. “Materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies” means tangible personal property that is incorporated into a computer, computer peripheral, machinery, equipment, replacement

part, or supply when the computer, computer peripheral, machinery, equipment, replacement part, or supply is constructed or assembled.

g. Exclusions. Sales of the following property, or materials used to construct or self-construct the following property, are not exempt under rules 701—215.14(423) through 701—215.20(423), regardless of how the property is used.

(1) Land.

(2) Intangible property.

(3) Hand tools. “Hand tool” means a tool that can be held in the hand or hands and is powered by human effort.

(4) Point-of-sale equipment, computers, and computer peripherals. “Point-of-sale equipment, computers, and computer peripherals” means input, output, and processing equipment, computers, and computer peripherals used to consummate a sale and to record or process information pertaining to a sale transaction at the time the sale takes place and is located at the counter, desk, or other specific point where the transaction occurs. Point-of-sale equipment, computers, and computer peripherals do not include equipment, computers, and computer peripherals used primarily for depositing or withdrawing funds from financial institution accounts.

(5) Certain centrally assessed industrial machinery, equipment, computers, and computer peripherals. Property that is centrally assessed by the department of revenue under Iowa Code sections 428.24 to 428.29 or chapters 433, 434, 437, 437A, 437B, and 438 does not qualify for exemption under rules 701—215.14(423) through 701—215.20(423). Property used but not owned by persons whose property is defined by such provisions of the Iowa Code, which would be assessed by the department of revenue if the persons owned the property, also does not qualify for exemption under rules 701—215.14(423) through 701—215.20(423).

(6) Vehicles subject to registration. The general sales and use tax does not apply to vehicles subject to registration under Iowa Code chapter 321. Instead, such vehicles are subject to the fee for new registration under Iowa Code section 321.105A. Vehicles subject to registration are not exempt from the fee for new registration under rules 701—215.14(423) through 701—215.20(423), unless the vehicle is directly and primarily used in recycling or reprocessing of waste products (as described in rule 701—215.19(423)).

h. Examples. When used for an exempt purpose under rules 701—215.14(423) through 701—215.20(423), the following items may be exempt computers, computer peripherals, machinery, equipment, replacement parts, or supplies. This list is not all-inclusive.

(1) Coolers, including coolers that do not change the nature of materials stored in them.

(2) Equipment that eliminates bacteria.

(3) Palletizers.

(4) Storage bins.

(5) Property used to transport raw, semifinished, or finished goods.

(6) Vehicle-mounted cement mixers.

(7) Self-constructed machinery and equipment.

(8) Packaging and bagging equipment, including conveyor systems.

(9) Equipment that maintains an environment necessary to preserve a product’s integrity.

(10) Equipment that maintains a product’s integrity directly.

(11) Quality control equipment.

(12) Water used for cooling.

215.14(3) Leased and rented property. The exemptions under rules 701—215.14(423) through 701—215.22(423) apply to property regardless of how it is sold, including leased or rented property. The lease of computers, computer peripherals, machinery, equipment, replacement parts, or supplies may be exempt from sales and use tax if the lessee uses the property in an exempt manner under rules 701—215.14(423) through 701—215.20(423). Additionally, a lessor’s purchase of computers, computer peripherals, machinery, equipment, replacement parts, or supplies for lease or resale may be an exempt sale for resale under Iowa Code section 423.3(2).

215.14(4) Recordkeeping. Individuals claiming an exemption must always be able to prove they qualify for the exemption. To claim the exemptions described in this rule, purchasers must be able to prove that computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct the same are used for an exempt purpose under rules 701—215.14(423) through 701—215.20(423). When both exempt and nonexempt machinery and equipment are used in the same facility, replacement parts and supplies used in the machinery and equipment are exempt under these rules only to the extent the purchaser can prove which replacement parts and supplies were used in the exempt machinery and equipment. Detailed, contemporaneous records should be maintained to verify that qualifying property is used for an exempt purpose. The precise records required may vary from purchaser to purchaser. Computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct the same are not exempt under rules 701—215.14(423) through 701—215.20(423) if the property is not used for an exempt purpose.

This rule is intended to implement Iowa Code section 423.3(47).

701—215.15(423) Exemption for the sale of property directly and primarily used in processing by a manufacturer. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used in processing by a manufacturer.

215.15(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

- a. Computers, computer peripherals, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies as described in subrule 215.14(2);
- b. Directly used as described in subrule 215.15(2);
- c. Primarily used as described in subrule 215.15(2);
- d. Used in processing as described in subrule 215.15(3); and
- e. Used by a manufacturer as described in subrule 215.15(4).

215.15(2) Directly and primarily used.

a. *Directly used.*

(1) Generally. Property is “directly used” only if it is used to initiate, sustain, or terminate an exempt activity. In determining whether any property is “directly used,” consideration should be given to the following factors:

1. The physical proximity of the property to the exempt activity;
2. The temporal proximity of the use of the property to the use of other property that is directly used in the exempt activity; and
3. The active causal relationship between the use of the property and the exempt activity. The fact that a particular piece of property may be essential to the conduct of the activity because its use is required either by law or practical necessity does not, of itself, mean that the property is directly used.

(2) Examples. The following property typically is not directly used in an exempt manner:

1. Property used exclusively for the comfort of workers, such as air cooling, air conditioning, or ventilation systems.
2. Property used in support operations, such as a machine shop, where production machinery is assembled, maintained, or repaired.
3. Property used by administrative, accounting, or personnel departments.
4. Property used by security, fire prevention, first aid, or hospital stations.
5. Property used in communications or safety.

b. *Primarily used.* The primary use of property is the activity or activities for which the property is used more than half of the time.

215.15(3) Processing.

a. *Generally.* “Processing” and “receipt or producing of raw materials” mean the same as defined in Iowa Code section 423.3(47) “d.” With respect to raw materials produced from or upon real estate, “production of raw materials” is deemed to occur immediately following the severance of the raw materials from the real estate.

b. *The beginning of processing.* Processing begins with a processor’s receipt or production of raw material. Thus, when a processor produces its own raw material, it is engaged in processing. Processing also begins when a supplier transfers possession of raw materials to a processor.

c. *The completion of processing.* Processing ends when the finished product is transferred from the processor or delivered for shipment by the processor. Therefore, a processor’s packaging, storage, and transport of a finished product after the product is in the form in which it will be sold at retail are part of the processing of the product.

d. *Examples of the beginning, intervening steps, and the ending of processing.* Of the following, Examples A and B illustrate when processing begins under various circumstances, Example C demonstrates the middle stages of processing, and Example D demonstrates when the end of processing takes place.

EXAMPLE A: Company A manufactures fine furniture. Company A owns a grove of walnut trees that it uses as raw material. Company A’s employees cut the trees, transport the logs to Company A’s facility, store the logs in a warehouse to begin the curing process, and eventually take the logs to Company A’s sawmill. The walnut trees are real property while they are growing. Thus, no “production of raw materials” has occurred with regard to the trees until they have been severed from the soil and transformed into logs. Processing of the logs begins when they are placed on vehicles for transport to Company A’s factory. However, if the transport vehicles are “vehicles subject to registration,” the vehicles are not exempt from the fee for new registration under this rule (as described in subparagraph 215.14(2) “g”(6)).

EXAMPLE B: Company A from the previous example also buys mahogany logs from a supplier in Honduras. Company A uses its equipment to offload the logs from railroad cars at its facility. Company A then stores and saws the logs as previously described in Example A. Processing begins when Company A offloads the logs from the railroad cars.

EXAMPLE C: Company C is a microbrewery. It uses a variety of kettles, vats, tanks, tubs, and other containers to mix, cook, ferment, settle, age, and store the beer it brews. Company C also uses a variety of pipes and pumps to move the beer among the various containers involved in the activity of brewing. All stages of this brewing are part of processing, including fermentation or aging (the transformation of the raw materials from one state to another) as well as the storage of hops in a bin and the storage of beer prior to bottling (the holding of materials in an existing state). Any movement of the product between containers is also a part of processing.

EXAMPLE D: After the brewing process is complete, Company C places its beer in various containers, stores the beer, and moves the beer to Company C’s customers by a common carrier that picks up the beer at Company C’s facility. Company C’s activities of placing the beer into bottles, cans, and kegs, storing the beer after packaging, and moving the beer by use of a forklift to the common carrier’s pickup site are part of processing.

215.15(4) Manufacturer.

a. *Generally.* Iowa Code section 423.3(47) “d”(4) abrogates *The Sherwin-Williams Company v. Iowa Department of Revenue*, 789 N.W.2d 417 (Iowa 2010).

b. *Definitions.*

“Construction contracting” means engaging in or performing a construction contract as described in rule 701—219.8(423).

“Manufacturer” means the same as defined in Iowa Code section 423.3(47).

“Transporting for hire” means the service of moving persons or property for consideration, including but not limited to the use of a “personal transportation service” as that term is described in Iowa Code section 423.2(6) and rule 701—211.51(423).

c. *Primarily engaged in an excluded activity.* A person is not considered a manufacturer if the person is “primarily engaged” in any of the activities listed in Iowa Code section 423.3(47) “d”(4)(c). A

person is “primarily engaged” in an activity if the person generates more than 50 percent of the person’s gross revenue from its operating business from, or spends more than 50 percent of the person’s time engaging in, any combination of those activities during the 12-month period after the date the person engages in one of the listed activities.

EXAMPLE 1: Company A makes widgets and repairs widgets damaged during use by its customers. Company A generates 70 percent of its revenue making widgets, and its employees spend 80 percent of their time making widgets. The remainder of its revenue and time are attributed to widget repair. Company A is not primarily engaged in “repairing tangible personal property or real property” (Iowa Code section 423.3(47) “d”(4)(c)(ii)) or any of the other enumerated activities from Iowa Code section 423.3(47) “d”(4)(c) because only 30 percent of its revenue and 20 percent of employee time are attributed to widget repair.

EXAMPLE 2A: Company B makes concrete and sells it for resale or directly to individual consumers without entering into a construction contract. Company B generates 100 percent of its revenue from such sales of concrete, and its employees spend 95 percent of their time making concrete during the 12-month period after it claims to be a manufacturer. Company B is not excluded from being considered a manufacturer because Company B’s production and sale of concrete are not part of construction contracting (Iowa Code section 423.3(47) “d”(4)(c)(i)).

EXAMPLE 2B: Company B begins construction contracting to sell its concrete. After 12 months of construction contracting (Iowa Code section 423.3(47) “d”(4)(c)(i)), Company B generates 55 percent of its revenue from construction contracting and 45 percent from resale sales or sales directly to consumers and spends 40 percent of its time performing construction contracts. Company B is no longer considered a manufacturer starting 12 months from the date it began construction contracting because it generates more than 50 percent of its gross revenue from construction contracting.

215.15(5) Manufacturing.

a. *Activities commonly understood to be manufacturing.* “Manufacturing” means the same as defined in Iowa Code section 423.3(47).

b. *Premises primarily used to make retail sales.*

(1) A person engaged in activities on a premises primarily used to make retail sales is not engaged in manufacturing at that premises and cannot claim this exemption for items used at that premises.

(2) The following are “premises primarily used to make retail sales”:

1. Restaurants.
2. Mobile food vendors, vehicles, trailers, and other facilities used for retail sales.
3. Retail bakeries.
4. Prepared food retailers establishments.
5. Bars and taverns.
6. Racing and gaming establishments.
7. Racetracks.
8. Casinos.
9. Gas stations.
10. Convenience stores.
11. Hardware and home improvement stores.
12. Grocery stores.
13. Paint or paint supply stores.
14. Floral shops.
15. Other retail stores.

c. *Rebuttable presumption.* In addition to the premises listed in paragraph 215.15(5) “b,” a premises shall be presumed to be “primarily used to make retail sales” when more than 50 percent of the gross sales of a business and its affiliates attributable to the premises are retail sales sourced to the premises under Iowa Code section 423.15(1) “a.”

(1) For purposes of paragraph 215.15(5) “c”:

“Attributable to the premises” means sales of tangible personal property at the premises or shipped from the premises to another location for sale or eventual sale.

“Premises” means any contiguous parcels, as defined in Iowa Code section 426C.1, which are owned, leased, rented, or occupied by a business or its affiliates and are operated by that business or its affiliates for a common business purpose. A “common business purpose” means the participation in any stage of manufacturing, production, or sale of a product. Whether a business is operating for a common business purpose is a fact-based determination that will depend on the individual circumstances at issue.

(2) Calculation. If a business seeking to claim this exemption makes retail sales sourced to a premises under Iowa Code section 423.15(1) “a” and the location is not one of those listed in paragraph 215.15(5) “b,” the business shall determine whether a specific premises is primarily used to make retail sales by determining the amount of retail sales sourced to the premises under Iowa Code section 423.15(1) “a” during the 12-month period after the date the tangible personal property claimed to be exempt is used at the premises. The calculation should be done as follows:

$$\frac{\text{Retail sales sourced to the premises}}{\text{Gross sales attributable to the premises}}$$

If the result is less than or equal to 0.5 (or 50 percent), the premises is not primarily used to make retail sales. If the result is greater than 0.5, the premises is presumed to be primarily used to make retail sales.

(3) Rebutting the presumption. If a premises is presumed to be primarily used to make retail sales under subparagraph 215.15(5) “c”(2), a manufacturer may prove to the department the premises is not primarily used to make retail sales by providing information regarding the following nonexclusive list of factors to support its assertion:

1. The square footage of the premises allocated to the manufacturing process.
2. The number of employees or employee work hours allocated to the manufacturing process.
3. The wages and salaries of employees working at the premises allocated to the manufacturing process.
4. The cost of operating the premises attributable to the manufacturing process.

The department’s determination is a fact-based determination based on the information provided by a manufacturer and the individual circumstances at issue.

EXAMPLE 1: Company A owns a centralized facility where it makes widgets and distributes them to several of its own retail stores for retail sale. The retail stores are not contiguous to the centralized facility. Company A purchases a widget maker for its centralized facility and seeks to claim this exemption. Because the widgets sold are sold at the retail stores, the sales of those widgets are sourced to the retail stores where the sales occur. Therefore, none of the sales are retail sales sourced to the centralized facility. Because Company A does not make retail sales sourced to the centralized facility, the centralized facility is not primarily used to make retail sales.

EXAMPLE 2A: Company A makes widgets at its premises in Iowa, known as Location 1. Company A sells its widgets to retailers for resale and also makes some retail sales that are sourced to Location 1.

Twelve months ago, Company A purchased and put into use at Location 1 a new molding machine for making new widgets. Company A paid tax on the sales price of the molding machine at the time of purchase. During the 12-month period after Company A first used the molding machine, 2 percent of the gross sales attributable to Location 1 were from retail sales sourced to Location 1 and 98 percent of the gross sales attributable to Location 1 were from sales of widgets to retailers.

Because less than half of the sales attributable to Location 1 during the 12-month period after the molding machine was first used at Location 1 were generated from retail sales sourced to Location 1, Location 1 is not primarily used to make retail sales. Therefore, if Company A’s use of the molding machine satisfies all other requirements of the exemption, Company A’s activities occurring on the premises constitute manufacturing.

EXAMPLE 2B: Same facts as in Example 2A, except that Company A also owns a second, noncontiguous premises in Iowa, known as Location 2. At Location 2, Company A operates a factory that makes the same types of widgets as Location 1. Company A also makes substantial retail sales that are sourced to Location 2.

Twelve months ago, Company A purchased new molding machines for Location 1 and Location 2. Company A paid tax on the sales price of the molding machines. During this 12-month period, 2 percent of the gross sales attributable to Location 1 were retail sales sourced to Location 1 and 98 percent of the gross sales attributable to Location 1 were from sales of widgets to distributors. Also during this 12-month period, 60 percent of the gross sales attributable to Location 2 were retail sales sourced to Location 2 and 40 percent of the gross sales attributable to Location 2 were from sales of widgets to distributors.

With respect to Location 1, the outcome is the same as in Example 1A. Because less than half of the sales attributable to Location 1 during the 12-month period after the molding machine was used at Location 1 were generated from retail sales sourced to Location 1, Location 1 is not primarily used to make retail sales.

However, Location 2 is presumed to be primarily used to make retail sales because more than half of the gross sales attributable to Location 2 are from retail sales sourced to Location 2.

EXAMPLE 2C: Same facts as in Example 2B. Company A decides to purchase new molding machines for both Location 1 and Location 2. Relying on the exemption determinations for the prior year, Company A pays sales tax on the purchase price of the molding machine for Location 2 but tenders an exemption certificate for the purchase of the molding machine for Location 1 and does not pay sales tax on that transaction.

Twelve months pass since the new molding machines were used at their respective locations. At Location 1, the gross sales attributable to the premises and retail sales sourced to the premises remained the same. However, at Location 2, Company A experienced a decrease in on-site retail sales and an increase in distribution sales. Because of a shift in sales, 45 percent of the gross sales attributable to Location 2 were retail sales sourced to Location 2, and 55 percent of the gross sales attributable to Location 2 were from sales of widgets to distributors.

Therefore, this year, Location 2 is no longer presumed to be primarily used to make retail sales because in the 12 months after the machine was used at Location 2, less than half of the gross sales attributable to Location 2 were from retail sales sourced to Location 2.

EXAMPLE 3A: Company A owns a premises on which it makes baseball bats. A portion of the premises is leased to Company B, which operates a retail store on the premises that sells clothing and is not commonly understood to be a manufacturer. Company A and Company B are unaffiliated entities.

Company A is seeking to purchase several new lathes to use in its bat production. In the last year, 95 percent of Company A's gross sales attributable to the premises came from selling bats to distributors, and 5 percent of Company A's gross sales attributable to the premises were from retail sales at a small on-site location. Also in the last year, 100 percent of Company B's gross sales attributable to the premises were from on-site retail sales.

Because Company A and Company B are not affiliated in any way, none of Company B's sales are attributable to Company A. Therefore, for purposes of Company A's determining its eligibility to claim the exemption, Company A's premises are not primarily used to make retail sales because less than half of its gross sales attributable to the premises are from retail sales sourced to the premises.

EXAMPLE 3B: Same facts as in Example 3A, except that Company B is an affiliate of Company A.

The result is the same; while Company B is an affiliate of Company A, the premises are not being operated for a common business purpose because Company B is not selling any of the bats manufactured by Company A. Therefore, none of Company B's business is attributable to Company A. For purposes of Company A's determining its eligibility to claim the exemption, Company A's premises are not primarily used to make retail sales because less than half of its gross sales attributable to the premises are from retail sales sourced to the premises.

EXAMPLE 3C: Same facts as in Example 3A, except that Company B is an affiliate of Company A and instead of operating a clothing store, Company B operates a sporting goods store where it sells some of the bats manufactured by Company A.

In this case, Company B's sales are attributable to Company A because both companies use the premises for a common business purpose: the sale of baseball bats manufactured by Company A. Therefore, the gross sales attributable to the premises of both Company A and Company B must be

included in Company A's gross sales attributable to the premises. The premises will be presumed to be primarily used to make retail sales if the combined retail sales by Company A and Company B that are sourced to the premises exceed 50 percent of the gross sales attributable to the premises.

EXAMPLE 4: Company A owns premises not included in the list above at which it makes widgets. Company A sells 15 percent of its widgets by delivery to customers' homes, 30 percent to wholesalers, and the remaining 55 percent directly to customers who pick up widgets at the premises. Company A's premises is presumed to be primarily used to make retail sales.

Company A dedicates 75 percent of the square footage of the premises to the production of widgets, 20 percent to storage, and 5 percent to a loading dock. Company A employs a total of 50 people, 40 of whom work on the production floor making widgets. Company A's production staff accounts for 80 percent of its total wages and salaries paid to all employees. The cost of operating the widget production area accounts for 90 percent of Company A's total expenses. Upon claiming this exemption, Company A provides information satisfactory to the department to demonstrate these facts. Company A qualifies for the exemption.

215.15(6) *Replacement parts and supplies.*

a. Replacement parts. To qualify for exemption under this rule, replacement parts must satisfy the definition contained in Iowa Code section 423.3(47) "d." In addition to the other requirements, an exempt replacement part must replace a component of a computer, computer peripheral, machinery, or equipment that is directly and primarily used in processing by a manufacturer. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in processing by a manufacturer.

b. Supplies. To qualify for exemption under this rule, supplies must satisfy the definition contained in Iowa Code section 423.3(47) "d." In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, computer peripheral, machinery, or equipment that is directly and primarily used in processing by a manufacturer, or an exempt supply must itself be directly and primarily used in processing by a manufacturer. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in processing by a manufacturer.

This rule is intended to implement Iowa Code section 423.3(47) "a"(1).

701—215.16(423) Exemption for the sale of property directly and primarily used by a manufacturer to maintain integrity or unique environmental conditions. The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer, including test equipment used to control quality and specifications of the product.

215.16(1) *Required elements.* To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, computer peripherals, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies as described in subrule 215.14(2);

b. Directly used as described in subrule 215.15(2);

c. Primarily used as described in subrule 215.15(2);

d. Used by a manufacturer as described in subrule 215.15(4); and

e. Used to maintain:

(1) A manufactured product's integrity;

(2) Unique environmental conditions required for a manufactured product; or

(3) Unique environmental conditions required for other computers, computer peripherals, machinery, equipment, replacement parts, or supplies directly and primarily used in processing by a manufacturer.

215.16(2) *Replacement parts and supplies.*

a. Replacement parts. To qualify for exemption under this rule, replacement parts must satisfy the definition contained in Iowa Code section 423.3(47) “d.” In addition to the other requirements, an exempt replacement part must replace a component of a computer, computer peripheral, machinery, or equipment that is directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, computer peripheral, machinery, or equipment that is not directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer.

b. Supplies. To qualify for exemption under this rule, supplies must satisfy the definition contained in Iowa Code section 423.3(47) “d.” In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, computer peripheral, machinery, or equipment that is directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer, or an exempt supply must itself be directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, computer peripheral, machinery, or equipment that is not directly and primarily used to maintain the integrity of the product or to maintain unique environmental conditions required for either the product or the computers, computer peripherals, machinery, and equipment used in processing by a manufacturer.

215.16(3) *Example of property directly and primarily used to maintain integrity or unique environmental conditions.* A manufacturer purchases a cooling system or heating system that qualifies as machinery. The manufacturer uses the system to directly and primarily maintain the proper temperature of other machinery and equipment. The manufacturer uses such machinery and equipment directly and primarily in processing. The system is not used for the comfort of the workers. Because the system directly and primarily maintains the environmental conditions necessary for machinery and equipment directly and primarily used in processing, the system is exempt from sales and use tax under this rule.

This rule is intended to implement Iowa Code section 423.3(47) “a”(2).

701—215.17(423) **Exemption for the sale of property directly and primarily used in research and development of new products or processes of processing.** The sales price of computers, computer peripherals, machinery, equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used in research and development of new products or processes of processing.

215.17(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, computer peripherals, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies as described in subrule 215.14(2);

b. Directly used as described in subrules 215.15(2) and 215.17(3);

c. Primarily used as described in subrule 215.15(2); and

d. Used in research and development as described in subrule 215.17(2) of:

(1) New products; or

(2) Processes of processing.

215.17(2) “Research and development” means experimental or laboratory activity that has as its ultimate goal the development of new products or processes of processing.

215.17(3) Property is used “directly” in research and development only if it is used in actual experimental or laboratory activity that qualifies as research and development under this rule.

215.17(4) Replacement parts and supplies.

a. Replacement parts. To qualify for exemption under this rule, replacement parts must satisfy the definition contained in Iowa Code section 423.3(47) “d.” In addition to the other requirements, an exempt replacement part must replace a component of a computer, computer peripheral, machinery, or equipment that is directly and primarily used in research and development of new products or processes of processing. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in research and development of new products or processes of processing.

b. Supplies. To qualify for exemption under this rule, supplies must satisfy the definition contained in Iowa Code section 423.3(47) “d.” In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, computer peripheral, machinery, or equipment that is directly and primarily used in research and development of new products or processes of processing, or an exempt supply must itself be directly and primarily used in research and development of new products or processes of processing. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in research and development of new products or processes of processing.

215.17(5) Examples.

EXAMPLE A: Company A is a hybrid seed producer. Company A maintains a research and development laboratory for use in developing new varieties of corn seed. Company A purchases the following items for use in its research and development laboratory: a laboratory computer for processing data related to the genetic structure of various corn plants, an electron microscope for examining the structure of corn plant genes, a steam cleaner for cleaning rugs in the laboratory offices, and office furniture for use in the laboratory offices. The laboratory computer and the microscope are “directly” used in the research in which the laboratory is engaged; the steam cleaner and the office furniture are not directly used in research. Therefore, the sales prices of the laboratory computer and the microscope are exempt from sales and use tax. The sales prices of the steam cleaner and the office furniture are not exempt from tax under this rule.

EXAMPLE B: Company B is a manufacturer of agricultural equipment. Company B is researching and developing a new tractor. Company B purchases materials to produce a prototype of its new tractor. The prototype tractor will be tested in various settings, including a laboratory and actual agricultural production. The materials used to produce the prototype tractor are exempt supplies directly and primarily used in research and production of new products. The sales price for the materials is exempt regardless of whether Company B sells the prototype tractor after testing, or if it scraps the prototype tractor after testing.

EXAMPLE C: Company C develops, designs, and manufactures construction equipment. Company C purchases computers that are directly and primarily used in research and development of new products or processes of processing for the products they manufacture. The sales prices of the computers used in this manner are exempt under this rule.

This rule is intended to implement Iowa Code section 423.3(47) “a”(3).

701—215.18 Reserved.

701—215.19(423) Exemption for the sale of property directly and primarily used in recycling or reprocessing of waste products. The sales price of computers, computer peripherals, machinery,

equipment, replacement parts, supplies, and materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, and supplies is exempt from sales and use tax when the property is directly and primarily used in recycling or reprocessing of waste products.

215.19(1) *Required elements.* To qualify for exemption under this rule, the purchaser must prove the property is:

a. Computers, computer peripherals, machinery, equipment, replacement parts, supplies, or materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies as described in subrule 215.14(2);

b. Directly used as described in subrule 215.15(2);

c. Primarily used as described in subrule 215.15(2); and

d. Used in:

(1) Recycling of waste products as described in subrule 215.19(2); or

(2) Reprocessing of waste products as described in subrule 215.19(2).

215.19(2) *Recycling and reprocessing.*

a. “Recycling” is any process by which waste or materials that would otherwise become waste are collected, separated, or processed and revised or returned for use in the form of raw materials or products. Recycling includes but is not limited to the composting of yard waste that has been previously separated from other waste. Recycling does not include any form of energy recovery.

b. “Reprocessing” is not a subcategory of processing. Reprocessing of waste products is an activity separate and independent from the processing of tangible personal property.

c. Recycling or reprocessing generally begins when the waste products are collected or separated. Recycling or reprocessing generally ends when waste products are in the form of raw material or another nonwaste product. Activities that occur between these two points and are an integral part of recycling or processing qualify as recycling or reprocessing.

215.19(3) *Replacement parts and supplies.*

a. *Replacement parts.* To qualify for exemption under this rule, replacement parts must satisfy the definition contained in Iowa Code section 423.3(47) “*d.*” In addition to the other requirements, an exempt replacement part must replace a component of a computer, computer peripheral, machinery, or equipment that is directly and primarily used in recycling or reprocessing of waste products. Tangible personal property is not an exempt replacement part under this rule if the property exclusively replaces a component of a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in recycling or reprocessing of waste products.

b. *Supplies.* To qualify for exemption under this rule, supplies must satisfy the definition contained in Iowa Code section 423.3(47) “*d.*” In addition to the other requirements, an exempt supply must be connected to, be used in conjunction with, or come into physical contact with a computer, computer peripheral, machinery, or equipment that is directly and primarily used in recycling or reprocessing of waste products, or an exempt supply must itself be directly and primarily used in recycling or reprocessing of waste products. Tangible personal property is not an exempt supply under this rule if the property exclusively is connected to, is used in conjunction with, or comes into physical contact with a computer, computer peripheral, machinery, or equipment that is not directly and primarily used in recycling or reprocessing of waste products.

215.19(4) *Examples.*

a. Computers, computer peripherals, machinery, and equipment that may be exempt from sales and use tax under this rule include, but are not limited to, compactors, balers, crushers, grinders, cutters, and shears if directly and primarily used in recycling or reprocessing.

b. End loaders, forklifts, trucks, conveyor systems, and other moving devices directly and primarily used in the movement of waste products during recycling or reprocessing may be exempt from sales and use tax under this rule.

c. A bin or other container used to store waste products before collection for recycling or reprocessing is not directly and primarily used in recycling or reprocessing, and its sales price is not exempt from sales and use tax under this rule.

d. A vehicle used directly and primarily for collecting waste products for recycling or reprocessing could be a vehicle used for an exempt purpose under this rule, and such a vehicle could be exempt from the fee for new registration. Thus, a garbage truck could qualify for this exemption if the truck is directly and primarily used in recycling; however, a garbage truck primarily used to haul garbage to a landfill does not qualify for exemption under this rule.

EXAMPLE A: Company A recycles household waste. Company A uses several machines in its facility to separate waste products into recyclable and nonrecyclable materials and to further separate the recyclable materials into paper, plastic, or glass. The sales prices of all separating machines are exempt from sales and use tax as machines directly and primarily used in recycling of waste products.

EXAMPLE B: Company B uses grinding machines to convert logs, stumps, pallets, crates, and other waste wood into wood chips. Company B then uses its trucks to deliver the wood chips to local purchasers. The sales prices of the grinding machines are exempt from sales and use tax as machines directly and primarily used in recycling or reprocessing of waste products. The trucks used to transport the wood chips are not used in recycling or reprocessing because the wood chips are in their final form when loaded onto the trucks.

This rule is intended to implement Iowa Code sections 321.105A(2) “c”(24) and 423.3(47) “a”(5).

701—215.20(423) Exemption for the sale of pollution-control equipment used by a manufacturer.

The sales price of pollution-control equipment, including but not limited to equipment required or certified by an agency of Iowa or of the United States government, is exempt from sales and use tax when the property is used by a manufacturer.

215.20(1) Required elements. To qualify for exemption under this rule, the purchaser must prove the property is:

- a.* Pollution-control equipment as described in subrule 215.20(2); and
- b.* Used by a manufacturer as described in subrule 215.15(4).

215.20(2) “Pollution-control equipment” is any disposal system or apparatus used or placed in operation primarily for the purpose of reducing, controlling, or eliminating air or water pollution. Other property, including replacement parts and supplies, is not exempt under this rule. Pollution-control equipment does not include any apparatus used to eliminate noise pollution. Liquid, solid, and gaseous wastes are included within the meaning of the word “pollution.” Pollution-control equipment specifically includes, but is not limited to, any equipment the use of which is required or certified by an agency of this state or of the United States government. Wastewater treatment equipment, dust mitigation systems, and scrubbers used in smokestacks are examples of pollution-control equipment. However, pollution-control equipment does not include any equipment used only for worker safety, such as a gas mask.

EXAMPLE: A manufacturer constructs a wastewater treatment facility to treat wastewater from its manufacturing facility. The wastewater treatment facility diverts wastewater from the local water treatment plant. The facility then converts wastewater into a biogas, which the manufacturer uses as an energy source in its manufacturing facility. The sales price of the pollution-control equipment used in the wastewater treatment facility is exempt from sales and use tax.

This rule is intended to implement Iowa Code section 423.3(47) “a”(6).

701—215.21(423) Exemption for the sale of fuel or electricity used in exempt property.

The sales price of fuel or electricity consumed by computers, computer peripherals, machinery, or equipment that is exempt from sales and use tax under rule 701—215.14(423), 701—215.15(423), 701—215.16(423), 701—215.17(423), 701—215.19(423), or 701—215.20(423) is also exempt from sales and use tax. The sales price of electricity or other fuel consumed by replacement parts, supplies, computers, or computer peripherals used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise remains subject to tax even if such property is exempt under rules 701—215.14(423) through 701—215.20(423).

EXAMPLE: A manufacturer operates a power plant. The manufacturer uses energy from the power plant to operate machinery and equipment used directly and primarily in processing at its manufacturing facility. The fuel consumed in the manufacturer’s power plant is exempt from sales and use tax.

This rule is intended to implement Iowa Code section 423.3(47) “b.”

701—215.22(423) Exemption for the sale of services for designing or installing new industrial machinery or equipment. The sales price from the services of designing or installing new industrial machinery or equipment is exempt from sales and use tax. The enumerated services of electrical or electronic installation are included in this exemption.

215.22(1) Required elements. To qualify for the exemption, the purchaser must prove the service is:

- a. A design or installation service as described in subrule 215.22(2);
- b. Of new as described in subrule 215.22(3); and
- c. Industrial machinery or equipment as described in subrule 215.22(4).

215.22(2) Design or installation services include electrical and electronic installation. “Design or installation” services do not include any repair service.

215.22(3) “New” means never having been used or consumed by anyone. The exemption does not apply to design or installation services on reconstructed, rebuilt, repaired, or previously owned machinery or equipment.

215.22(4) Industrial machinery or equipment.

a. *Generally.* “Industrial machinery or equipment” means machinery or equipment, as defined in subrule 215.14(2). The sale of industrial machinery or equipment must also qualify for exemption under any of the following:

(1) Property used directly and primarily in processing by a manufacturer as described in rule 701—215.15(423).

(2) Property used directly and primarily by a manufacturer to maintain the integrity of the manufacturer’s product or to maintain unique environmental conditions for computers, computer peripherals, machinery, or equipment as described in rule 701—215.16(423).

(3) Property used directly and primarily in research and development of new products or processes of processing as described in rule 701—215.17(423).

(4) Property used directly and primarily in recycling or reprocessing of waste products as described in rule 701—215.19(423).

(5) Pollution-control equipment used by a manufacturer as described in rule 701—215.20(423).

b. *Exclusions.* The following property is not industrial machinery or equipment regardless of how the purchaser uses it:

(1) Computers or computer peripherals as described in Iowa Code section 423.1.

(2) Replacement parts as described in Iowa Code section 423.3(47) “d.”

(3) Supplies as described in Iowa Code section 423.3(47) “d.”

(4) Materials used to construct or self-construct computers, computer peripherals, machinery, equipment, replacement parts, or supplies as described in paragraph 215.14(2) “f.”

215.22(5) Billing. The sales price for designing or installing new industrial machinery or equipment must be separately identified, charged separately, and reasonable in amount for the exemption to apply. The exemption applies to new industrial machinery or equipment regardless of how it is purchased, including leased or rented machinery or equipment.

EXAMPLE: Dealer sells and installs two new machines for Manufacturer. Manufacturer uses one machine on its production floor, where the machine is directly and primarily used in processing. Manufacturer uses the other machine in its machine shop, where the machine is not directly and primarily used in processing. Dealer gives an invoice to Manufacturer that separately itemizes the sales prices for each machine and each installation. The machine used on the production floor is new industrial machinery or equipment, and the sales prices of the machine and its installation are exempt from sales and use tax. The machine used in the machine shop is not new industrial machinery or equipment, and the sales prices of the machine and its installation are taxable.

This rule is intended to implement Iowa Code section 423.3(48).

[Filed 7/2/24, effective 8/28/24]

[Published 7/24/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/24.

ARC 8161C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rulemaking related to sales and use tax on construction activities

The Revenue Department hereby rescinds Chapter 219, "Sales and Use Tax on Construction Activities," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.2, 423.2(1)"b" and "c," 423.2(6), 423.3, 423.3(31), 423.3(37), 423.3(45), 423.3(64), 423.3(80), 423.3(85), 423.4(1), 423.5, 423.5(1)"b," 423.5(2), 423.6(9) and 423.6(10).

Purpose and Summary

The purpose of this rulemaking is to rescind and readopt Chapter 219, which describes the Department's interpretation of the underlying statutes to aid the public in understanding the application of sales and use tax statutes that are primarily applicable to taxpayers engaged in construction activity. The Department made revisions to the rules to provide clarification and to remove language that is obsolete, unnecessary, and duplicative of statute. The Department also renumbered some rules due to other edits and for organizational reasons.

Included within the revisions is an addition to rule 701—219.7(423) from rule 701—281.3(423). Although Chapter 281 was rescinded, the Department determined that it would retain and repromulgate rule 701—281.3(423) on mobile homes and manufactured housing and add that to rule 701—219.7(423) with revisions, since the subject matters of these rules are similar and would allow the public an easier means to find the information.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7201C**. A public hearing was held on the following date(s):

- January 16, 2024

Public comment was received. The Iowa Taxpayers' Association provided comments both orally at the public hearing and via written comment through Iowa Taxpayers' Association President and CEO Thomas R. Sands. Larry Nordeen with Iowa Taxes LLC also provided written comment. These comments are summarized as follows:

1. Regarding the business classification types in subrule 219.1(2), the commenter noted that these types are interpreted very rigidly in practice by taxpayers. The commenter asked for additional guidance on these classifications. This election is important for streamlining the business's reporting, but taxability ultimately depends on the nature of the work done. The Department declined to make further changes to this subrule at this time, but the Department will consider further rulemaking or guidance on the classifications.

2. The distinction between the terms “construction equipment,” “building equipment,” and “equipment” in Chapter 219 was questioned. The term “construction equipment” appears once in Chapter 219 in subrule 219.3(3). This subrule directs the reader to rule 701—219.20(423) on the treatment of equipment subject to the equipment tax in Iowa Code chapter 423D. Because subrule 219.3(3) refers to equipment in general, the rule now uses the term “equipment.” The Department also corrected a cross-reference to rule 701—219.20(423) in rule 701—219.3(423).

3. The commenter suggested using “tax period” instead of “quarter” in rules 701—219.3(423) and 701—219.19(423). The Department agreed and made this change.

4. A grammatical error was found in subrule 219.4(2). The Department corrected the error.

5. Clarification whether subrule 219.4(2) applies solely to contractor-retailers or whether it is more broadly applicable was sought. The Department used “contractor-retailers” in this subrule because that is the largest category of contractor. The same principles apply to other types of contractors.

6. A suggestion was made to reorganize rule 701—219.4(423) to place the examples after subrule 219.4(1). The Department determined that keeping the examples at the end of rule 701—219.4(423) is the best placement structurally. However, the Department added a sentence to the end of subrule 219.4(1) directing the reader to the examples at the end of the rule.

Adoption of Rulemaking

This rulemaking was adopted by the Department on June 24, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on August 28, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 219 and adopt the following **new** chapter in lieu thereof:

CHAPTER 219 SALES AND USE TAX ON CONSTRUCTION ACTIVITIES

701—219.1(423) General information and definitions.

219.1(1) Definitions. For purposes of this chapter, terms mean the same as defined in Iowa Code section 423.1 and as defined in this rule.

“*Building equipment*” means any vehicle, machine, tool, implement, or other device used by a contractor in erecting structures for others, or reconstructing, altering, expanding, or remodeling property of others, which does not become a physical component part of the property upon which work is performed, and which is not necessarily consumed in the performance of such work.

“*Building materials*” means materials used in construction work and is not limited to materials used in a construction contract. The term may also include any type of materials used for reconstruction, alteration, expansion, or remodeling of the premises or anything essential to the completion of a building or other structure for the use intended. Building materials generally consist of items that are incorporated into real property, lose their identity as tangible personal property, and cannot be removed without altering the realty, or that are consumed by the contractor during the performance of the construction contract.

“*Building supplies*” means anything that is furnished for and used directly in the carrying on of the work of an owner, contractor, subcontractor, or builder and which is used or consumed in the course of completing the project. Such items do not have to enter into and become a physical part of the structure like building materials, but they do become as much a part of the structure as the labor that is performed on it.

“*Construction contract*” means an agreement between a contractor and a sponsor under the terms of which the contractor agrees to provide labor, materials, supplies, and equipment to build a structure for the sponsor.

“*Fabricated cost*” means and includes the cost of all materials as well as the cost of labor, power, transportation to the plant, and other plant expenses but not installation on the job site.

“*Prefabricated structure*” means any structure assembled in a factory and capable of transport to the location where it will be used in the performance of a construction contract by placement on a foundation either by the buyer or a designated contractor.

“*Repair*” means the same as mend, restore, maintain, replace and service. A repair contemplates an existing structure or tangible personal property that has become imperfect and constitutes the restoration to a good and sound condition.

“*Structure*” means that which is artificially built up or composed of parts joined together in some definite manner and which also has some obvious or apparent functional use or purpose. Nonexclusive examples of structures include buildings; roads, whether paved or otherwise; dikes; drainage ditches; and ponds.

219.1(2) Classification and obligations. The classification of persons and business determines their obligations to pay or collect sales or use tax or claim an exemption on the sales price from sales of building materials, supplies, equipment, other tangible personal property, and labor.

a. *Classification types.* Persons and businesses can be classified as an owner, contractor, contractor-retailer, retailer, or repairperson.

b. *Classification.* A specific classification must be chosen and once chosen should not be changed unless it has become clear from an extended course of dealing that the business has become something other than what it was established to be.

c. *Assessment for new businesses.* It can be difficult for a person starting a business to determine whether that business will be engaged in contracting, retailing, a combination of the two, or providing repair; however, any reasonable assessment of a new business’s status will be honored by the department.

d. *Prohibited.* Changing the status of a business from job to job to avoid the obligation to pay or collect tax is not a lawful activity.

e. *Example.* A business is founded to engage in contracting and purchases construction materials based on the fact that it is a contractor, but the founder must sell construction materials at retail if the business is to survive. If, after two years’ operation, half the revenue is from construction contracts and half from retail sales, then the business has become a contractor-retailer and henceforth should purchase construction materials based on that status.

This rule is intended to implement Iowa Code chapter 423.

701—219.2(423) Contractors—consumers of building materials, supplies, and equipment by statute.

219.2(1) *Inapplicability of resale exemption.* A contractor, subcontractor, or builder cannot claim an exemption for resale when purchasing building materials or supplies even if the contractor, subcontractor, or builder later separately itemizes material and labor charges for construction contracts or contracts for reconstruction, alteration, expansion, or remodeling.

219.2(2) *Bidding considerations.* When bidding on a contract, a contractor (general, special or subcontractor) should anticipate that sales or use taxes will increase the cost of materials by the tax unless the sponsor is a designated exempt entity. The necessary allowance should be made in figuring the bid inasmuch as the contractor will be held responsible for paying the tax on building supplies, materials and equipment. The tax should not be identified as a separate item in the formal bid since the contractor cannot charge sales tax.

This rule is intended to implement Iowa Code section 423.2(1) “b.”

701—219.3(423) Sales of building materials, supplies, and equipment to contractors, subcontractors, builders, or owners. Suppliers or dealers that sell materials, and supplies, and equipment to contractors, subcontractors, builders, or owners are required to collect Iowa sales tax from those persons based upon the sales price from such sales. Reference 701—subrule 219.23(4), which deals with construction contracts with designated exempt entities, for an explanation of one of the few exceptions to this requirement. The fact that a contractor, subcontractor, or builder holds an Iowa retail sales tax permit and has a tax number does not entitle that person to purchase building materials, supplies, and equipment without paying sales tax to the vendor, unless the building materials, supplies, or equipment are purchased for resale. Materials purchased out of state for use in Iowa are subject to the Iowa use tax, which is payable in the tax period that the materials are delivered into the state.

219.3(1) *Examples of building materials and supplies.* The following is a nonexhaustive list of typical items that are building materials and supplies:

- Asphalt
- Bricks
- Builders’ hardware
- Caulking material
- Cement
- Central air-conditioning
- Cleaning compounds
- Conduit
- Doors
- Ducts
- Electric wiring, connections, and switching devices
- Fencing materials
- Flooring¹
- Glass
- Gravel
- Insulation
- Lath
- Lead
- Lighting fixtures
- Lime
- Linoleum¹
- Lubricants
- Lumber
- Macadam
- Millwork
- Modular and mobile homes

Mortar
Oil
Paint
Paper
Piping, valves, and pipe fittings
Plaster
Plates and rods used to anchor masonry foundations
Plumbing supplies
Polyethylene covers
Power poles, towers, and lines
Putty
Reinforcing mesh
Rock salt
Roofing
Rope
Sand
Sheet metal
Steel
Stone
Stucco
Tile
Wallboard
Wall coping
Water conditioners
Weather stripping
Windows
Window screens
Wire netting and screen
Wood preserver

219.3(2) *Examples of building equipment.* Building equipment includes but is not limited to such items as:

Compressors
Drill presses
Electric generators
Forms
Hand tools
Lathes
Replacement parts for equipment
Scaffolds
Tools
Vehicles including grading, lifting and excavating vehicles

219.3(3) *Taxability of equipment.* Construction equipment purchased by a contractor that is intended for use in the performance of an Iowa construction contract is subject to the Iowa sales or use tax. Equipment that is rented for use on or in connection with an Iowa construction contract would normally be rented subject to tax. Rule 701—219.20(423) provides an explanation of the existing exemption in favor of rented machinery used by a contractor on a job site.

This rule is intended to implement Iowa Code sections 423.2(1) “b” and 423.5.

¹ Floor coverings that are shaped to fit a particular room or area and that are attached to the supporting floor with cement, tacks or tack strips, or by some other method making a permanent attachment are considered to be building materials. Carpeting (whether attached to the floor or not) is not treated as a building material for the purposes of this chapter. Rugs, mats, and linoleum types of floor coverings that are not attached but are simply laid on finished floors are also not considered to be building materials.

701—219.4(423) Contractors, subcontractors, or builders who are retailers. In some instances, contractors, subcontractors, and builders are in a dual business that includes reselling to the general public on a recurring over-the-counter basis the same type of building materials and supplies that are used by the contractors, subcontractors, and builders in their own construction work. A person operating in such a manner is referred to in this chapter as a contractor-retailer.

219.4(1) *Determination of contractor-retailer or contractor.* Any person who is engaged in the performance of construction contracts or contracts for reconstruction, alteration, expansion, or remodeling and who also sells building materials or other items at retail is obligated to examine the person's business and determine if it is that of a contractor or a contractor-retailer. Subrule 219.4(5) provides examples of entities that qualify as contractor-retailers or contractors and their tax obligations.

219.4(2) *Taxability of sales by contractor-retailers.* A sale by a contractor-retailer of building materials, supplies, or equipment to owners is a retail sale and subject to sales tax. Purchases by contractors, subcontractors, or builders of building materials, supplies, or equipment to be used in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling are also retail sales and subject to sales tax. Contractors, subcontractors, or builders who purchase building materials, supplies, or equipment to be used in the performance of a job, which does not rise to the level of a new construction, reconstruction, alteration, expansion, or remodeling, are acting as retailers and not as contractors and must charge and collect from their customers sales tax on the sales price charged for materials, supplies, or equipment used in completing the job and on the sales price charged for any taxable service labor used in completing the job or on the entire charge, if materials and labor are not separately invoiced.

219.4(3) *Withdrawals from inventory.* When a contractor-retailer withdraws from inventory building materials, supplies, or equipment to be used in a construction contract performed by the contractor-retailer or in a contract for reconstruction, alteration, expansion, or remodeling performed by the contractor-retailer, the contractor-retailer must pay use tax on the cost of the materials, supplies, or equipment withdrawn from inventory. When a contractor-retailer does repair work, the contractor-retailer is acting as a retailer and not a contractor and must collect tax on the sales price charged for materials used in the repair and on the sales price charged for any labor used in the repair, which is a taxable service, or on the entire charge if materials and labor are not separately invoiced.

219.4(4) *Characteristics of contractor-retailer.* The following is a list of the characteristics of the usual contractor-retailer:

a. A contractor-retailer is a business that makes frequent retail sales to the public or to other contractors and also engages in the performance of construction contracts or contracts for reconstruction, alteration, expansion, or remodeling of structures. In determining whether a business is a contractor-retailer or a retailer only, the department looks to the totality of business activity and not only to one portion of the business's activity. Thus, the maintenance of a small retail outlet does not automatically transform a contractor-retailer into a retailer, and a large number of retail sales without a retail outlet can qualify a business as a contractor-retailer.

b. A business cannot claim the status of a contractor-retailer unless the business is in possession of a valid sales tax permit to report tax due from retail sales and from withdrawals of materials or supplies from inventory for use in construction contracts.

c. A contractor-retailer must purchase building materials, supplies, and equipment placed in its inventory for resale; the contractor-retailer should not pay sales or use tax to its suppliers for these items. Instead, the contractor-retailer should provide suppliers with valid resale exemption certificates. When a valid certificate is furnished, the vendor is relieved from the responsibility of collecting the tax if the purchaser has demonstrated that the purchaser is a contractor-retailer under the provisions of this rule.

d. A contractor-retailer purchasing construction material that will not be placed in its inventory must purchase that material subject to Iowa sales or use tax. For example, if a contractor-retailer purchases wet concrete for use in a construction project, that purchase is taxable.

e. A contractor-retailer usually has a retail outlet, but if not, frequent sales to individuals or other contractors qualify a business as a contractor-retailer.

f. Contractor-retailers do not pay tax on materials withdrawn from inventory for use in construction projects performed outside Iowa.

g. The business records of a contractor-retailer must clearly reflect the use made of items purchased, and the records must be in such form that the director can readily determine that the proper sales and use tax liability is being reported and paid.

219.4(5) Examples. The following examples are offered to illustrate the responsibility for paying and remitting sales tax under this rule:

EXAMPLE 1: Company A operates a retail outlet that sells lumber and other building materials and supplies. Company A is also a contractor that builds residential and commercial structures. Company A would be considered a contractor-retailer and would, therefore, purchase all inventory items for resale. Those items that are used in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling would be subject to tax in the period that they are withdrawn from inventory. The tax would be computed on the cost of the items withdrawn from inventory. Those items that are sold over the counter in the retail outlets would be subject to tax at the time of sale. The tax would be computed on the over-the-counter sales price.

EXAMPLE 2: Company B is a mechanical contractor and has no retail outlets. Company B rarely sells any of its inventory to other persons or to other contractors. Company B would not be considered a contractor-retailer under this rule. However, Company B would be considered a contractor and must pay tax to its vendor at the time it purchases any building materials, supplies, and equipment. However, on those rare occasions when an inventory item is sold to another person or to another contractor, tax must be collected at the time of sale; therefore, Company B should have a sales tax permit. An adjustment can be made to the sales tax report by taking a credit for tax previously paid on the item sold.

EXAMPLE 3: Company C is owned and operated by two individuals in a rural Iowa farming community. The owners and operators do not have a retail outlet, but they frequently make sales of building materials that are in their inventory to local residents. Company C would be a contractor-retailer and could purchase all inventory items for resale. Those items that are used in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling would be subject to tax in the period they are withdrawn from inventory. The tax would be computed on the cost of the items withdrawn from inventory. Those items that are sold to residents would be subject to the tax at the time of sale. The tax would be computed on the sales price of the items.

EXAMPLE 4: Company D is operated by two individuals in a rural Iowa farming community. The operators do not have a retail outlet and rarely make sales of building materials from their inventory to local residents. Company D would not be considered a contractor-retailer under this rule. Rather, Company D would be considered a contractor and must pay tax to its vendor at the time it purchases any building materials, supplies, and equipment. When sales are made to local residents, tax must be collected at the time of sale; therefore, Company D should have a sales tax permit. However, Company D can adjust its sales tax report by taking a credit for tax paid to its vendor on an item sold to a local resident.

EXAMPLE 5: Company E places modular homes on slabs or basement foundations; makes electrical, plumbing and other connections; and otherwise prepares the modular homes for sale as real estate. Company E also has a sales tax permit, maintains an inventory of modular homes for sale, and sells homes from the inventory as tangible personal property to owners who later convert the property to real estate. Company E is a contractor-retailer and is obligated to pay or collect sales tax, respectively, at the time a modular home is withdrawn from inventory for use as material in a construction contract or at the time a modular home is withdrawn from inventory for sale to an owner.

EXAMPLE 6: Company F has a retail store in Davenport, but it also installs plumbing fixtures and lines in new construction and remodeling projects. Plumbing supplies that are taken from an inventory in Davenport for a new home being built in Rock Island, Illinois, are withdrawn exempt from Iowa sales tax because the construction contract is performed outside Iowa. However, those supplies may be subject to Illinois sales or use tax.

This rule is intended to implement Iowa Code section 423.2(1)“b.”

701—219.5(423) Building materials, supplies, and equipment used in the performance of construction contracts within and outside Iowa.

219.5(1) Use by manufacturer.

a. Outside of Iowa. The use of building materials, supplies, or equipment in the performance of construction contracts or contracts for reconstruction, alteration, expansion, or remodeling by the manufacturer outside Iowa is not a sale of tangible personal property and, therefore, is not a taxable event.

b. Within Iowa. The use of tangible personal property as building materials, supplies, or equipment by the manufacturer in the performance of construction contracts or contracts for reconstruction, alteration, expansion, or remodeling in Iowa is a sale at retail and a taxable event. The tax is computed on the manufacturer's fabricated cost or cost of production.

219.5(2) Use by contractor-retailer outside of Iowa. A contractor-retailer's withdrawal of materials from inventory for use in construction contracts or contracts for reconstruction, alteration, expansion, or remodeling outside this state is not a taxable event.

219.5(3) Use by contractor in and outside of Iowa. A contractor is a consumer by statute. A contractor's purchase of materials for use in a construction contract or a contract for reconstruction, alteration, expansion, or remodeling is subject to tax whether the materials are purchased for use in construction contracts performed in Iowa or outside this state.

219.5(4) Purchase by manufacturer. A manufacturer's purchase of tangible personal property consumed as building materials in the manufacturer's or the manufacturer's subcontractor's performance of construction contracts or contracts for reconstruction, alteration, expansion, or remodeling within Iowa is taxable. The tax is computed on the fabricated cost or cost of production of the materials. The purchase of tangible personal property consumed by a manufacturer as building materials in the manufacturer's or the manufacturer's subcontractor's performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling outside Iowa is not subject to tax.

219.5(5) Purchases from and used outside of Iowa. Building materials, supplies, or equipment purchased outside Iowa, brought into this state, and subsequently used in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling outside this state is exempt from use tax.

This rule is intended to implement Iowa Code section 423.2(1) "c."

701—219.6(423) Tangible personal property used or consumed by the manufacturer thereof. When a person who is primarily engaged in the manufacture of building materials, supplies, or equipment for sale and not for the person's own use or consumption, considering the totality of the business, from time to time uses or consumes the building materials, supplies, or equipment for construction purposes, the person is deemed to be making retail sales to one's self and subject to tax on the basis of the fabricated cost of the items so used or consumed for construction purposes. If equipment, building materials, or supplies are used by a manufacturer in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling, a "sale" occurs only if the equipment, materials, or supplies are used in the performance of such contract in Iowa.

This rule is intended to implement Iowa Code section 423.2(1) "c."

701—219.7(423) Prefabricated structures.

219.7(1) Basic concepts. Prefabricated structures include modular homes, mobile homes, manufactured housing, sectionalized housing, precut housing packages, and panelized construction.

219.7(2) Taxability.

a. Sales or use tax on the full purchase price is due when prefabricated structures are sold to or used by owners, contractors, subcontractors, or builders, or delivered under a contract for sale or sold for use in Iowa.

b. Sales of prefabricated structures that have not been erected on a foundation are considered sales of tangible personal property and thus are taxable on the purchase price charged to a consumer or user by the seller at the time of retail sale.

219.7(3) Exceptions. The following are exceptions to the general taxability rule described above, applicable to modular and mobile homes and manufactured housing:

a. Modular homes. Modular homes, as defined in Iowa Code section 435.1, cannot be attached or towed behind a motor vehicle, and which does not have permanently attached to its body or frame any wheels or axles. Only 60 percent of the sales price from the sale of a modular home is subject to Iowa tax. This 60 percent rule is applicable only to structures that meet the definition of “modular home” and not to other types of prefabricated structures that do not meet the definition of the term “modular home” such as sectionalized housing or panelized construction. Also, the 60 percent rule is not applicable to the sale of materials used in the assembly of a modular home, only to the sale of the finished product.

b. Mobile homes and manufactured housing.

(1) Use tax. Mobile homes and manufactured housing, as defined in Iowa Code section 321.1, are subject to use tax at the rate of 20 percent of the purchase price. All mobile homes sold in Iowa or sold outside Iowa for use in this state are sold subject to Iowa use tax, whether sold for placement within or outside a mobile home park. See Iowa Code section 423.26A on the collection of use tax and certificates of title for manufactured housing.

(2) Exemption. To be eligible for the use tax exemption provided in Iowa Code section 423.6(9), the purchaser of a mobile home or manufactured housing must provide sufficient documentation to the county treasurer that verifies the Iowa use tax under Iowa Code section 423.5 has been previously imposed and paid.

(3) Trade-in allowance. A trade-in allowance will result in a reduction in the price of mobile homes and manufactured housing subject to tax if all the conditions found in Iowa Code section 423.3(59) are met.

1. The property traded for the mobile home or manufactured housing is a type of property normally sold in the regular course of business of the retailer selling the home or housing, and

2. The retailer intends ultimately to sell the traded property at retail or to use the traded property in the manufacture of a like item.

EXAMPLE 1: A manufactured housing dealer receives from the factory a new manufactured home that has a sales price of \$20,000. The dealer sells it and takes the purchaser’s old manufactured home worth \$5,000 in trade. The dealer keeps the traded-in manufactured home as an office. The Iowa use tax is computed as follows:

Sales price	\$20,000
Trade-in value	\$5,000
Buyer’s price (Sales price minus trade-in)	\$15,000
Amount subject to tax (Full sales price multiplied by 20%)	\$4,000
Use tax due (5%)	\$200

Because the manufactured home will not be ultimately sold at retail or used to manufacture a like item, the trade-in value does not result in a reduction of the price subject to tax.

EXAMPLE 2: Same facts as Example 1; however, instead of keeping the traded-in manufactured housing, the dealer intends to and lists the trade-in for sale.

Sales price	\$20,000
Trade-in value	\$5,000
Buyer’s price (Sales price minus trade-in)	\$15,000
Amount subject to tax (Full sales price multiplied by 20%)	\$3,000
Use tax due (5%)	\$150

In this example, the trade-in value does result in a reduction of the price subject to tax because the dealer intends to sell the traded-in manufactured housing at retail.

219.7(4) Tax consequences of sales of modular homes by various parties, some operating in a dual capacity.

a. A retailer (dealer) that is not additionally a contractor or manufacturer of modular homes purchases those homes tax-free from a wholesaler or manufacturer for subsequent resale to contractors or owners. Tax must be collected when the dealer sells the modular home to an owner or contractor.

b. A contractor that is not a dealer must pay tax when purchasing a modular home for use in a construction contract or for some other purpose. A contractor's sale of a modular home to an owner or another contractor is treated as explained in Examples 2 and 4 of subrule 219.4(5).

c. A dealer that is also a contractor will purchase homes tax-free for inclusion in its inventory. Tax is imposed when the dealer withdraws a home from inventory for sale or use in the performance of a construction contract as explained in rule 701—219.4(423).

d. A manufacturer that acts as its own dealer and sells its own modular homes at retail to contractors or owners will collect tax on the sales price from its sales of those modular homes to its customers. This situation is in contrast to that described in subrule 219.7(5) in which a manufacturer uses its own modular homes in the performance of construction contracts and the tax due is computed on a sum other than the sales price from the sale of a home.

What is stated in this subrule concerning sales of modular homes is generally applicable to the use tax on mobile homes and manufactured housing. However, one distinct difference is that mobile homes and manufactured housing are seldom, if ever, purchased by a dealer for any subsequent use in the performance of construction contracts. A dealer will often purchase a mobile home or manufactured housing for subsequent resale to a customer as tangible personal property and then will place or install the mobile home or manufactured housing on a site prepared by the customer. This is not the performance of a construction contract, and the dealer is a retailer who installs tangible personal property and is not a construction contractor.

219.7(5) *Manufacturers who perform construction contracts.* When companies whose principal business is the manufacture of prefabricated structures use those structures in the performance of construction contracts, this use is treated as a retail sale of the structures on the manufacturer's part. Rule 701—219.6(423) provides a description of the sales tax treatment of this sort of transaction. The 60 percent rule, as described in subrule 219.7(3), is not applicable when calculating the amount of tax owed by a manufacturer.

219.7(6) *Examples.* The following examples are intended to illustrate who must collect or remit sales or use tax when a manufacturer sells a modular home to a contractor or owner or acts as a contractor in erecting the home. The incidence of tax depends on several factors, such as the nature of the manufacturer's business, the point of delivery, the contractual agreement, and whether or not a sale for resale has occurred.

EXAMPLE 1: The manufacturer is located outside Iowa. The manufacturer contracts with an Iowa customer to build a home in the manufacturer's factory. The manufacturer also contracts to completely erect the home, install the furnace, and do electrical and other necessary work to make the home ready for occupancy. The main source of the manufacturer's income relates to on-site construction. The manufacturer has paid a sales tax equal to Iowa tax in its state of residency. The manufacturer would be considered to be performing a construction contract in Iowa and would owe use tax in Iowa; however, a sales tax credit would be allowed for tax paid to the other state.

EXAMPLE 2: The manufacturer is located outside Iowa. An Iowa unrelated builder/dealer contracts with the customer for the home and then contracts with the manufacturer for construction, delivery, and installation on the customer's foundation. The manufacturer delivers the home into Iowa on the manufacturer's own truck. The customer, by contractual agreement, is obligated to pay for the home on delivery of the property, so the sale takes place in Iowa. In this situation, the manufacturer is involved in the sale of tangible personal property rather than the sale of real estate and must collect Iowa sales tax on 60 percent of the sales price to the Iowa builder/dealer.

EXAMPLE 3: The manufacturer is located outside Iowa. The manufacturer contracts to sell a home to a customer (owner) in Iowa. The manufacturer hires a common carrier to deliver the home to the Iowa customer. The manufacturer has no activity in Iowa that would create a "nexus" requiring the manufacturer to collect Iowa tax. In this situation, the Iowa customer is required to remit use tax on 60 percent of the purchase price of the home.

EXAMPLE 4: The manufacturer may be located in Iowa or outside Iowa. The manufacturer sells a home to a dealer in Iowa that will resell the home to the final customer. The manufacturer may deliver the home, or delivery may be made by a common carrier. The manufacturer has no contractual obligation

for erection. In this situation, the manufacturer is making a sale for resale and is not required to collect tax. The manufacturer must have a valid resale certificate on file from the dealer. The dealer, if in Iowa, would be required to collect tax when the home is sold.

EXAMPLE 5: The manufacturer is located in Iowa. The manufacturer contracts to furnish, deliver, and perform the setup on a home in a state other than Iowa. The manufacturer withdraws the home from inventory and transports the home to the other state for setup. In this situation, the Iowa manufacturer does not owe any Iowa tax because Iowa Code section 423.2(1) “b” exempts building materials and supplies that manufacturers withdraw from inventory for construction outside Iowa.

EXAMPLE 6: The manufacturer is located in Iowa. The manufacturer sells a home to an Iowa customer and agrees, under separate contract, to transport the home to the job site and perform the setup. The manufacturer should collect tax on 60 percent of the sales price of the home. The customer also wants a garage. The manufacturer agrees to sell the lumber, nails, and shingles to the customer who would build the garage. This sale would be considered a sale at retail, and the manufacturer should collect tax on the entire sales price of these materials. The same would be true if the manufacturer sold appliances separate from the sale of the home; sales tax would be due on the entire sales price of the appliances.

EXAMPLE 7: The manufacturer may be located inside or outside Iowa. The manufacturer sells a modular home to a dealer that is a general contractor. The dealer subcontracts the work of placing the home on a foundation to various third parties, which transport the home to its site, excavate for and pour the concrete slab, and perform plumbing, electrical hookup, and all other services that are part of the construction contract for placing the modular home at its location. Since the sale of the modular home is to a dealer that is a contractor, the manufacturer will collect and the dealer will pay tax on 60 percent of the modular home’s invoice price.

This rule is intended to implement Iowa Code sections 423.2(1) “b,” 423.3(64), 423.5(1) “b,” 423.6(9), and 423.6(10).

701—219.8(423) Types of construction contracts.

219.8(1) *Types of construction contracts.* Construction contracts include lump-sum contracts; cost plus contracts; time and material contracts; unit price contracts; guaranteed maximum or upset price contracts; construction management contracts; design-built contracts; and turnkey contracts.

219.8(2) *Scope.* A contract for the installation of one or more of the items listed below does not necessarily transform that contract into a construction contract or a contract for reconstruction, alteration, expansion, or remodeling. Thus, for example, hiring a contractor to install a light fixture in an existing building is not, without more, a construction contract or a contract for reconstruction, alteration, expansion, or remodeling.

219.8(3) *Examples.* The following is a nonexhaustive list of activities and items that could fall within the scope of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling of a structure. This list should not be used to distinguish machinery and equipment from real property or structures since such a determination is factual.

- Ash removal equipment (installed as distinguished from portable units)
- Automatic sprinkler systems (fire protection)
- Awnings and venetian blinds that become attached to real property
- Boilers (installed as distinguished from portable units)
- Brick work
- Builder’s hardware
- Burglar alarm and fire alarm fixtures
- Caulking materials work
- Cement work
- Central air conditioner installation
- Coal handling equipment (installed as distinguished from portable units)
- Concrete work
- Counters, lockers (installed as distinguished from portable units), and prefabricated cabinets
- Drapery installation

Electric conduit work and items relating thereto
Electric distribution lines
Electric transmission lines
Floor covering that is permanently installed. Subrule 219.3(3) provides information on an exception to this regarding carpeting
Flooring work
Furnaces, heating boilers and heating units
Glass and glazing work
Gravel work (excluding landscaping)
Installation of modular homes on foundations
Lathing work
Lead work
Lighting fixtures
Lime work
Lumber and carpenter works
Macadam work
Millwork installation
Mortar work
Oil work
Paint booths and spray booths (installed as distinguished from portable units)
Painting work
Paneling work
Papering work
Passenger and freight elevators
Piping valves and pipe fitting work
Plastering work
Plumbing work
Prefabricated cabinets, counters, and lockers (installed as opposed to portable units)
Putty work
Refrigeration units (central plants installation as distinguished from portable units)
Reinforcing mesh work
Road construction (concrete, bituminous, gravel, etc.)
Roofing work
Sheet metal work
Sign installation (other than portable sign installation)
Steel work
Stone work
Stucco work
Tile work—ceiling, floor and walls
Underground gas mains
Underground sewage disposal
Underground water mains
Vault doors and equipment
Wallboard work
Wall coping work
Wallpaper work
Water heater and softener installation
Weather stripping work
Wire net screen work
Wood preserving work
This rule is intended to implement Iowa Code sections 423.2(1) “c” and 423.3(37).

701—219.9(423) Machinery and equipment sales contracts with installation.

219.9(1) *Machinery and equipment sales with installation.* Machinery and equipment sales contracts with installation are transactions that are considered a sale of tangible personal property to a final consumer. Therefore, the individual who sells the equipment with installation must purchase the machinery and equipment tax-free as a purchase for resale. This rule should not be confused with subrule 219.3(3) regarding equipment. The contract should itemize the sales tax separately. If a contractor wishes to avoid an itemization of sales and use tax on machinery and equipment that remains tangible personal property, the contractor can do so by figuring the tax as a general overhead expense and including a statement in the contract and related invoices that “sales tax is included in the contract price.”

If the sales transaction is one completed out of state and shipped in interstate commerce to a consumer or a user in Iowa, and not otherwise exempt from tax, the final purchaser is required to pay Iowa use tax on the purchase price of the machinery and equipment.

219.9(2) *Taxable services sales with installation.* Certain services that are enumerated in Iowa Code section 423.2 are subject to tax when performed under a contract for the installation of machinery and equipment that is not done in connection with new construction, reconstruction, alteration, expansion, or remodeling of a building or structure. Examples of enumerated services include electrical installation; plumbing; welding; and pipe fitting. Other labor charges for job site installation that do not involve a taxable enumerated service are not subject to tax if the charges are separately contracted or, if no written contract exists, are separately itemized on the billing from the seller to the purchaser.

EXAMPLE: Company B contracts with Company A to furnish and install a portable conveyor unit in Company A's new building. Company B can purchase the portable conveyor unit tax-free because the portable conveyor unit maintains its identity as tangible personal property after installation and does not become a component part of the real property. Company B would then charge tax to Company A on the sale of the portable conveyor unit. Installation charges would be part of the total sales price subject to tax unless they are separately contracted or, if no written contract exists, separately itemized on the billing from Company B to Company A. If the installation charges involve the performance of one or more enumerated services, they would be subject to sales tax even when separately contracted for or separately itemized on the billing from Company B to Company A.

This rule is intended to implement Iowa Code sections 423.2(6), 423.3, and 423.5.

701—219.10(423) Contracts with equipment sales (mixed contracts). Construction contracts or contracts for reconstruction, alteration, expansion, or remodeling with equipment sales, commonly known as mixed contracts, place a dual burden on the contractor, as a contractor is a consumer of construction materials and also a retailer of the machinery and equipment.

219.10(1) *Out-of-state supplier.* As a consumer by statute of construction building materials, supplies, and building equipment, a contractor is required to pay sales tax to the supplier at the time of purchase or remit use tax to the department if purchasing building materials, supplies, and building equipment from an out-of-state supplier.

219.10(2) *When machinery and equipment do not become real property.* Machinery and equipment must be purchased for resale by the contractor if the machinery and equipment does not become real property. This means that the contractor does not pay tax to a supplier at the time of purchase of machinery and equipment, but instead, the contractor is responsible for collecting sales tax on the sales price from a sponsor and remitting it to the department.

EXAMPLE: Company A contracts with Company B to have Company B build a new building and install all of the production machinery and equipment for the new building. Company B must pay tax on its purchases of building materials and supplies that lose their identity as tangible personal property and become a component part of the real property. Company B also purchases some refrigeration units for the new building that maintain their identity as tangible personal property. These units must be purchased tax-free by Company B because they will be resold. Company B would then charge Company A the tax on the units that retain their identity as tangible personal property. The installation charges for the units that remain as tangible personal property would be part of the total sales price subject to tax unless they are separately contracted or, if no written contract exists, are separately itemized on the

billing from Company B to Company A. If the installation charges involve the performance of one or more enumerated services, they would be subject to sales tax even when separately contracted for or separately itemized on the billing from Company B to Company A.

219.10(3) Lump-sum amount. In a mixed contract, the elements of the contract should be separated for sales tax purposes. When a mixed construction contract is let for a lump-sum amount, the machinery and equipment furnished and installed shall be considered, for the purposes of this rule only, as being sold by the contractor for an amount equal to the cost of the machinery and equipment.

219.10(4) Permits. Persons required to collect sales tax in Iowa under machinery and equipment contracts or a mixed contract are required to have a sales and use tax permit.

This rule is intended to implement Iowa Code section 423.2(1) "b."

701—219.11(423) Distinguishing machinery and equipment from real property. A construction contract or a contract for reconstruction, alteration, expansion, or remodeling does not include a contract for the sale and installation of machinery or equipment. Machinery and equipment are tangible personal property when it is purchased and remains tangible personal property after installation. Generally, tangible personal property can be moved without causing damage or injury to itself or to the structure, does not bear the weight of the structure, and does not in any other manner constitute an integral part of a structure. Manufactured machinery and equipment that does not become permanently annexed to the realty remains tangible personal property after installation.

219.11(1) Examples of tangible personal property that remains tangible personal property after installation. Under normal conditions, the following nonexclusive list remains tangible personal property after installation.

a. Furniture, including office furniture and equipment, washers and dryers, portable lamps, home freezers, portable appliances, and window air-conditioning units.

b. Portable items such as casework, tables, counters, cabinets, lockers, athletic and gymnasium equipment, and other related easily movable property attached to the structure.

c. Machinery, equipment, tools, appliances, and materials used exclusively as such by manufacturers, industrial processors, and others performing a processing function with the items.

d. Radio and television sets and antennas, including radio, television, and cable television station equipment, but not broadcasting or telecommunications towers.

e. Certain equipment used by restaurants and in institutional kitchens; for instance, dishwashers, stainless steel wall cabinets, stainless steel natural gas stoves, stainless steel natural gas convection ovens, and combination ovens and steamers with stands. This paragraph is not applicable to similar items used in residential kitchens.

Therefore, sales of items that remain tangible personal property after installation are subject to sales tax. If the installation of such items involves the performance of one or more enumerated services, the labor charges are also subject to sales tax, unless an exemption applies.

219.11(2) Examples of tangible personal property that becomes realty after installation.

a. Under normal conditions, the following nonexhaustive list becomes a part of realty.

(1) Boilers and furnaces.

(2) Built-in household items such as kitchen cabinets, dishwashers, sinks (including faucets), fans, garbage disposals and incinerators.

(3) Buildings, and structural and other improvements to buildings, including awnings; canopies; foundations for machinery; floors (including computer room floors); walls; general wiring and lighting facilities; roofs; stairways; stair lifts; sprinkler systems; storm doors and windows; door controls; air curtains; loading platforms; central air-conditioning units; building elevators; sanitation and plumbing systems; decks; and heating, cooling and ventilation systems.

(4) Fixed (year-round) wharves and docks.

(5) Improvements to land including patios; retaining walls; roads; walks; bridges; fencing; railway switch tracks; ponds; dams; ditches; wells; underground irrigation systems; drainage; storm and sanitary sewers; and water supply lines for drinking water, sanitary purposes and fire protection. Rule 701—214.10(423) provides more information on drainage tile.

- (6) Mobile and modular homes installed on foundations.
- (7) Planted nursery stock.
- (8) Residential water heaters, water softeners, intercoms, garage door opening equipment, pneumatic tube systems and music and sound equipment (except portable equipment).
- (9) Safe deposit boxes, drive-up and walk-up windows, night depository equipment, remote TV auto teller systems, vault doors, and camera security equipment (except portable equipment).
- (10) Seating in auditoriums and theaters and theater stage lights (except portable seating and lighting).
- (11) Silos and grain storage bins.
- (12) Storage tanks constructed on the site.
- (13) Swimming pools (wholly or partially underground (except portable pools)).
- (14) Truck platform scale foundations.
- (15) Walk-in cold storage units that become a component part of a building.

b. Exception for installation of new or replacement items. Sales of items that become a part of a structure to contractors, subcontractors, or builders for use in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling of a structure are retail sales subject to sales tax to be paid by the contractor, subcontractor, or builder. However, a contract for installation of new or replacement items in an existing structure is not necessarily a construction contract or a contract for reconstruction, alteration, expansion, or remodeling of that structure.

EXAMPLE: A homeowner hires a contractor to replace the existing garbage disposal in the homeowner's house. This is not a construction contract or a contract for reconstruction, alteration, expansion, or remodeling of the house. Therefore, the contractor must charge the homeowner sales tax on the full sales price of the garbage disposal. Additionally, because the installation of the garbage disposal involves the performance of enumerated services, the installation labor charges are also subject to sales tax.

This rule is intended to implement Iowa Code sections 423.2(6) and 423.3(37).

701—219.12(423) Tangible personal property that becomes structures. Items that are manufactured as tangible personal property can, by their nature, become structures. However, the determination is factual and must be made on an item-by-item basis.

219.12(1) *Criteria to determine if tangible personal property has become a structure.* The following are intended only to be a summation of factors that the department will consider in determining whether or not a project involves construction:

- a.* The degree of architectural and engineering skills necessary to design and construct the structure.
- b.* The overall scope of the business and the contractual obligations of the person designing and building the structure.
- c.* The amount and variety of materials needed to complete the structure, including the identity of materials prior to assembly and the complexity of assembly.
- d.* The size and weight of the structure.
- e.* The permanency or degree of annexation of the structure to other real property, which would affect its mobility.
- f.* The cost of building, moving or dismantling the structure.

219.12(2) *Example.* A farm silo, which is a prefabricated glass-lined structure, is intended to be permanently installed. The prefabricated glass-lined structure is 70 feet high and 20 feet around, weighs 30 tons, and is affixed to a concrete foundation weighing 60 tons, which is set in the ground specifically for the purpose of supporting the silo. The assembly kit includes 105 steel sheets and 7,000 bolts. The silo can be removed without material injury to the realty or to the unit itself at a cost of \$7,000. In view of its massive size, the firm and permanent manner in which it is erected on a most substantial foundation, its purpose and function, the expense and size of the task and the difficulty of removing it, the silo is considered a structure and not machinery or equipment.

This rule is intended to implement Iowa Code section 423.3(37).

701—219.13(423) Tax on enumerated services. The tax on the services enumerated in Iowa Code section 423.2 is a tax on labor. When such services are performed on or connected with new construction, reconstruction, alteration, expansion or remodeling of structures, the services are exempt from tax. Neither the repair nor the rental of machinery on the job site is exempt from tax under this rule. Rule 701—219.21(423) provides an explanation of the exemption in favor of rented machinery used by a contractor on a job site.

The distinction between a repair and new construction, reconstruction, alteration, expansion, and remodeling activities can, oftentimes, be difficult to grasp. Therefore, the intent of the parties and the scope of the project are factors that determine whether certain enumerated services are exempt. An area of particular difficulty is the distinction between repair and remodeling. Remodeling a building or other structure means much more than making repairs or minor changes to it. Remodeling is a reforming or reshaping of a structure or some substantial portion of it to the extent that the remodeled structure or portion of the structure is in large part the equivalent of a new structure or part thereof.

219.13(1) Repair. Since retailers, as defined in Iowa Code section 423.1(47), may purchase building materials, supplies, and equipment for resale, persons making taxable repairs are not considered to be owners, contractors, subcontractors, or builders and are not subject to the provisions of Iowa Code section 423.2(1)“b.” Repairpersons and servicepersons will normally purchase building materials and supplies free of tax for subsequent resale to their customers; contractor-retailers will also do this. However, contractors, subcontractors, or builders who may make repairs are subject to Iowa Code section 423.2(1)“b” and must pay tax at the time building materials, supplies, and equipment are purchased from vendors even though the contractors, subcontractors, or builders hold a valid sales tax permit. In determining who is a contractor and who is a retailer of repair services, the department looks to the total business of the entity in question and not to any one portion of it. Thus, the fact that a business whose overall activity is contracting has a division engaged in taxable repair services does not transform that business into a retailer providing services rather than a contractor. When contractors do repair work, they may separately itemize labor and materials charges and collect sales tax on all charges; if the labor and materials charges are billed as one lump sum, the entire amount is subject to sales tax. A contractor’s markup on a materials charge is part of any taxable sale. A contractor can take a credit for any tax paid on the purchase of materials that are sold as part of a service transaction.

When other persons making repairs sell tangible personal property at retail in connection with any taxable service enumerated in Iowa Code section 423.2, those persons shall collect and remit tax on the sales price. The person making repairs shall purchase tangible personal property for resale when the property is used in the repair job and is resold to a customer. Rule 701—225.3(423) provides an explanation of when persons performing services sell the property that the persons use in performing those services to their customers. Nonexclusive examples of repair situations are as follows:

- a. Repair of broken or defective glass.
- b. Replacement of broken, defective, or rotten windows.
- c. Replacing individual or damaged roof shingles.
- d. Replacing or repairing a segment of worn-out or broken kitchen cabinets.
- e. Repair or replacement of broken or damaged garage doors or garage door openers.
- f. Replacing or repairing a part of a broken or worn tub, shower, or faucets.
- g. Replacing or repairing a broken water heater, furnace, or central air conditioning compressor.
- h. Restoration of original wiring in a house or building.

219.13(2) New construction, reconstruction, alteration, expansion, and remodeling. The following are examples of new construction, reconstruction, alteration, expansion, and remodeling activities:

- a. The building of a garage or adding a garage to an existing building is considered new construction.
- b. Adding a wooden redwood deck to an existing structure is considered new construction.
- c. Replacing the entire roof on an existing structure is considered reconstruction.
- d. Adding a new room to an existing building is considered new construction.
- e. Adding a new room by building interior walls is considered alteration.

f. Replacing kitchen cabinets with some structural modification to the kitchen layout is considered remodeling.

g. Laying a new floor over an existing floor is considered remodeling.

h. Building a new wing to an existing building is considered an expansion.

i. Rearranging the interior physical structure of a building is considered remodeling or alteration.

j. Installing manufactured housing or a modular or mobile home on a foundation is considered new construction. However, rule 701—282.8(423) provides a description of the special treatment of taxable installation charges when the taxable sale of manufactured housing as real estate occurs.

k. Replacing an entire water heater, water softener, furnace, or central air-conditioning unit.

In all instances of new construction, reconstruction, alteration, expansion, or remodeling, the contractor is the final consumer of the materials, supplies, or equipment used in completing the job and is therefore responsible for paying sales tax to its supplier on the full sales price of the materials, supplies, or equipment used in the project. However, the contractor is not to charge the owner sales tax on any labor charges associated with completing the job.

219.13(3) *“On or connected with.”* The term “on or connected with” is broad and should be used to convey generally accepted meaning. Therefore, in a specific situation, the facts relating thereto are controlling in determining whether the exemption is applicable. “On or connected with” does not connote that those things connected have to be primary or subsidiary to the construction, reconstruction, alteration, expansion or remodeling of the real property. An incidental relationship can qualify the activity for exemption if the relationship forms an intimate connection with the construction activity. For example, the service of excavating and grading relating to the clearing of land to begin construction of a building would qualify for the exemption; however, excavating and grading land without motive toward construction would not qualify for exemption even though at some later date plans to construct a building were created and a structure was actually erected.

219.13(4) *Time and physical relationship.*

a. Time. The presence of a time relationship can also be a factor in determining the applicability of exemption. For example, tax would not apply to separate labor charges relating to the installation of production machinery and equipment in a building while remodeling of the real property was in progress. However, if a year after all construction activity has ended, the owner decides to install a piece of production machinery in the building, any taxable enumerated services relating thereto would be subject to tax. Further, if, following construction, the land is graded for the purpose of seeding a new lawn, the exemption would be applicable. However, if the lawn does not grow and the land is regraded the following year, the exemption would not be applicable. Therefore, the motive behind the activity and the course of events that could reasonably be expected to occur would be a further consideration in determining if the exemption is applicable.

b. Physical. A physical relationship is also a factor that should be evaluated. If a building is constructed to house machinery, any enumerated services relating to the installation of that machinery would be exempt from tax. For example, piping joining two pieces of equipment housed in separate buildings would qualify for exemption if the equipment in either building was installed while such new construction, reconstruction, alteration, expansion or remodeling to the structure was also taking place to house the equipment.

c. Incidental relationship. On the other hand, an incidental relationship, a time relationship and close physical proximity may not be enough to support the conclusion that a taxable service is performed in connection with new construction or reconstruction. For example, a homeowner hires a contractor to add a new room to an existing home. The existing home is in need of a number of the repairs described in subrule 219.13(1); for example, it is in need of rewiring and replacement of a broken window. The contractor rewires the home and repairs the window in addition to building the new room. The taxable services that the general contractor performs while rewiring the home and repairing the window are not performed in connection with the construction of the new room simply because those services happen to be performed at the same time and on the same home as the new construction. If the addition of the new room were the cause of the need for the taxable service (e.g., the window was broken during

construction of the new room) and not just a convenient occasion for performance of the service, that performance would be exempt from tax.

d. Determination of taxability. Facts and motives are important in the determination of the taxability of services relating to construction activities. It should also be noted that taxes on enumerated services are applicable to repair or installation work that is not on or connected with new construction, reconstruction, alteration, expansion, or remodeling.

219.13(5) Various nontaxable services. Services associated with new construction or reconstruction, for example, that are not taxable include but are not limited to brick laying, concrete finishing, tiling, siding installation, laying of linoleum and other flooring and carpet installation. No tax can be collected on the performance of these services even when they are furnished in connection with the performance of repairs.

219.13(6) Taxable construction-related services.

a. Carpentry repair or installation. Persons engaged in the business of carpentry, as the trade is known in the usual course of business, are selling a service subject to sales tax, regardless of whether they perform repair or installation. The carpentry services can be conducted on or within real or personal property.

b. Roof, shingle, and glass repair. Persons engaged in the business of repairing, restoring, or renovating roofs or shingles or restoring or replacing glass, whether the glass is personal property or affixed to real property, are selling a service subject to sales tax.

c. Electrical and electronic repair and installation.

(1) In general. Persons engaged in the business of repairing or installing electrical wiring, fixtures, or switches in or on real property, or repairing or installing any article of tangible personal property powered by electric current, are selling a service subject to sales tax. This includes installation of semiconductors, such as vacuum tubes, transistors, or integrated circuits, or installation or repair of machinery or equipment that functions mainly through the use of semiconductors.

(2) New machinery or equipment. The sales price of the electrical or electronic installation is exempt from tax if the sales price is charged for the installation of new machinery or equipment.

(3) Definition. For purposes of this subrule:

“*Installation*” includes affixing electrical wiring, fixtures or switches to real property; affixing any article of personal property powered by electric current to any other article of personal property; or making any article of personal property powered by electric current operative with respect to its intended function or purpose.

d. Excavating and grading.

(1) In general. Persons engaged in the business of excavating and grading are selling services subject to sales tax.

(2) Definitions. For purposes of this subrule:

“*Excavation*” means the digging, hauling, hollowing out, scooping out or making of a cut or hole in the earth. “*Excavation*” ordinarily includes not only the digging down into the earth but also the removal of whatever material or substance is found beneath the surface.

“*Grading*” means a physical change of the earth’s structure by scraping and filling in the surface to reduce it to a common level. “*Grading*” includes the reducing of the surface of the earth to a given line fixed as the grade, involving excavating, filling, or both.

e. Painting, papering and interior decorating.

(1) In general. Persons engaged in the business of painting, papering, and interior decorating are selling a service subject to sales tax.

(2) Definitions. For purposes of this subrule:

“*Interior decoration*” means the designing or decoration of the interior of houses or buildings, counseling with respect to such design or decoration, or the procurement of furniture fixtures or home or building decorations.

“*Painting*” means the covering of both interior and exterior surfaces of tangible personal or real property with a coloring matter and mixture of a pigment or sealant, with some suitable liquid to form a solid adherent when spread on the surface in thin coats for decoration, protection, or preservation

purposes. This includes all necessary preparations, including surface preparation. “Painting” does not include automobile undercoating, the coating of railroad cars, storage tanks, or the plating of tangible personal property with metal such as but not limited to chromium, bronze, tin, galvanized metal, or platinum.

“*Papering*” means the application of wallpaper or wall fabric to the interior of a house or building and any necessary preparations, including surface preparation.

(3) Incidental service. When a person provides interior decorating services without charge, incidental to the sale of real or tangible personal property, no sales tax shall be charged in addition to the tax paid on the sales price or any part thereof of the real or tangible personal property.

f. Pipe fitting and plumbing.

(1) In general. Persons engaged in the business of pipe fitting and plumbing are selling a service subject to sales tax.

(2) Definition. For purposes of this rule:

“*Pipe fitting and plumbing*” means the trade of fitting, threading, installing, and repairing pipes, fixtures, or apparatus used for heating, refrigeration, or air conditioning, or concerned with the introduction, distribution, and disposal of a natural or artificial substance.

g. Wood preparation.

(1) In general. Persons engaged in the business of wood preparation or treatment for others are selling a service subject to sales tax.

(2) Definition. For purposes of this rule:

“*Wood preparation*” includes all processes whereby wood is sawed from logs in measured dimensions, planed, sanded, oiled, or treated in any manner before being used to repair an existing structure or create or become a part of a new structure. If such preparation is engaged solely for the purpose of processing lumber or wood products for ultimate sale at retail, such preparation may not be deemed as selling a service subject to sales tax.

h. Well drilling. Persons engaged in the business of well drilling are selling a service subject to sales tax.

i. Landscaping. Landscaping services performed on or in connection to new construction, reconstruction, alteration, expansion, or the remodeling of a building or structure are not subject to sales tax. Rule 701—211.24(423) provides more information about landscaping services.

j. House and building moving. Persons engaged in the business of moving houses or buildings from one location to another, for any reason, are selling a service subject to sales tax. The sales price from this service is not considered a transportation charge.

This rule is intended to implement Iowa Code section 423.2(6).

701—219.14(423) Transportation cost. Transportation charges and delivery charges are not subject to the Iowa sales and use tax when they are separately contracted or, if no written contract exists, are separately itemized on the billing from the seller to the purchaser. More information can be found in rule 701—204.8(423).

This rule is intended to implement Iowa Code sections 423.2 and 423.3.

701—219.15(423) Liability of subcontractors. A subcontractor providing materials and labor on the actual construction of a structure has the same status and tax responsibilities as a contractor under Iowa statutes. However, where an individual or firm is hired to provide machinery and equipment to a contractor or a subcontractor, the individual or firm is considered a materials supplier rather than a subcontractor. This is true even though the machinery and equipment are supplied with installation. Items of machinery and equipment sold by materials suppliers to contractors shall be sold for resale, and the contractor must provide the materials supplier with a valid resale certificate.

This rule is intended to implement Iowa Code sections 423.2 and 423.3.

701—219.16(423) Liability of sponsors. The sponsor cannot be held responsible for a tax liability incurred on building materials, supplies, and equipment by a contractor or subcontractor in the completion of a construction contract or a contract for reconstruction, alteration, expansion, or

remodeling. Likewise, a contractor cannot be held responsible for the tax liability incurred on building materials, supplies, and equipment by a subcontractor in the completion of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling. The tax responsibility regarding machinery and equipment contracts depends on where the sale was consummated. If the sale was consummated in Iowa, the seller is responsible for the collection and remittance of tax unless a valid exemption certificate is given by the purchaser. If the sale was consummated outside Iowa and the seller does not remit use tax to the department, then a use tax would be due from the Iowa user.

This rule is intended to implement Iowa Code sections 423.2 and 423.5.

701—219.17(423) Withholding. A sponsor of a contract with a nonregistered out-of-state (nonresident) contractor may be asked to withhold the final payment of the contract as a guarantee that sales and use taxes will be paid. The withholding requirement may also apply to registered out-of-state contractors at the discretion of the department. The department will issue a notice to the sponsor to support the withholding of funds. In order to seek a release of the notice, the out-of-state contractor is required to file a report with the department consisting of the following departmental forms:

1. Form 35-012, which is a listing of subcontractors to whom the out-of-state contractor has awarded a construction contract. This statement should be submitted on each project as it becomes available.

2. Form 35-013, which is a list of material suppliers both in state and out of state from whom tangible personal property has been purchased for use in completing each project or contract.

3. Form 35-001, which is a summary of the provisions of the actual contract.

All letters of release furnished by the department are subject to audit and, therefore, are not unconditional release from any Iowa sales or use tax liability. All letters of release will be issued within 60 days upon receipt of the proper information unless an error or discrepancy is noted.

This rule is intended to implement Iowa Code sections 423.2 and 423.5.

701—219.18(423) Resale certificates. Whenever machinery and equipment that will remain tangible personal property after installation is purchased for a machinery and equipment contract by a contractor from a supplier, it should be purchased for resale. Rule 701—219.9(423) provides more information on this topic. Resale purchases are most commonly related to machinery and equipment sales contracts with installation and mixed construction contracts. Contractor-retailers and persons making repairs may also purchase materials for resale as long as they collect tax on their retail sales and pay the tax themselves on items withdrawn from inventory for use in the performance of a construction contract or a contract for reconstruction, alteration, expansion, or remodeling. Rule 701—219.4(423) and subrule 219.13(1) provide more information.

This rule is intended to implement Iowa Code section 423.45.

701—219.19(423) Reporting for use tax. An Iowa contractor can report use tax as consumed goods on a sales and use tax return. Tax is due in the tax period the materials are delivered into Iowa. Nonresident contractors should report use tax on a sales and use tax return, which is available directly from the department of revenue, unless the contractor is registered with the department.

This rule is intended to implement Iowa Code section 423.31.

701—219.20(423) Exempt sale, lease, or rental of equipment used by contractors, subcontractors, or builders.

219.20(1) Exempt lease or rental of machinery and equipment. The sales price on the lease or rental only of the following types of machinery and equipment is exempt from tax: all machinery, equipment, and replacement parts directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of structures and all machinery, equipment, and replacement parts that improve the performance, safety, operation, or efficiency of the equipment and replacement parts so used. A contractor's, subcontractor's, or builder's purchases of this equipment would continue to be taxable, as would a lessor's purchases of machinery, equipment, or replacement parts for subsequent exempt rental to a contractor, subcontractor, or builder.

219.20(2) *Exempt sales, including lease or rental of equipment.* The sales price on the sale in any form, including lease or rental, of the following types of equipment is exempt from the tax imposed by Iowa Code chapter 423: self-propelled building equipment, self-constructed cranes, pile drivers, structural concrete forms, regular and motorized scaffolding, generators, or attachments customarily drawn or attached to those items of equipment, including auxiliary attachments that improve the performance, safety, operation, or efficiency of the equipment and replacement parts and are directly and primarily used by contractors, subcontractors, and builders for new construction, reconstruction, alterations, expansion, or remodeling of real property or structures. The sales price from a sale in a form other than that of a lease or rental is not exempt from all excise tax.

This rule is intended to implement Iowa Code sections 423.3(37) and 423.3(85).

701—219.21(423) Gravel and stone. When a contract is entered between a contractor and a governmental body and the contract calls for a stockpile delivery along a road to be improved, it is a sale of tangible personal property to the governmental body. Transactions of this type are exempt from tax. When a contract provides for the sale and delivery of materials and also the conversion of the materials into realty improvements, the contractor is the ultimate consumer of the material used and is liable for sales tax. Tax applies on the sales price of the material.

This rule is intended to implement Iowa Code section 423.3(31).

701—219.22(423) Construction contracts with designated exempt entities. This rule applies to exempt sales of building materials, supplies, equipment, or services to certain persons performing construction contracts for sponsors that are designated exempt entities and the continuing right of designated exempt entities and other persons to seek refund of taxes paid by persons performing construction contracts.

219.22(1) Definitions.

“*Construction contract*” means the same as defined in rule 701—219.8(423).

“*Designated exempt entity*” means the same as defined in Iowa Code section 423.3(80).

“*GovConnectIowa*” means the e-services portal of the department.

219.22(2) Registration with the department. A designated exempt entity seeking to issue exemption certificates to contractors, subcontractors, builders, or manufacturers performing construction contracts shall register with the department through GovConnectIowa. The designated exempt entity shall provide the following information:

- a. The name and address of the designated exempt entity.
- b. The federal identification number of the designated exempt entity.
- c. The name of the construction project or the project number for which exemption is requested.
- d. A general description of the construction project.
- e. The name and address of all contractors, subcontractors, builders, or manufacturers to which the designated exempt entity shall provide exemption certificates.
- f. Additional information as requested by the department if the status of the entity seeking registration as a designated exempt entity is unclear.

219.22(3) Exemption certificates. Once a designated exempt entity’s registration is completed and approved, the designated exempt entity can obtain exemption certificates to provide to its contractors, subcontractors, builders, or manufacturers. The contractors, subcontractors, builders, or manufacturers may then provide these exemption certificates to retailers when purchasing building materials, supplies, equipment, or services to be used in completion of the construction contract with the designated exempt entity in order to make those purchases exempt from sales tax.

219.22(4) Exempt purchases, withdrawals from inventory, and manufacturers’ fabrication costs.

- a. A contractor, subcontractor, or builder who purchases building materials, supplies, equipment, or services intending to use such property or services in the performance of a construction contract with a designated exempt entity shall purchase the property or services from a retailer exempt from tax if the property or services are subsequently used in the performance of that contract and the contractor,

subcontractor, or builder presents an exemption certificate issued by the designated exempt entity to the retailer.

b. The withdrawal of building materials, supplies, or equipment from inventory by a contractor, subcontractor, or builder who is also a retailer is exempt from tax if the materials are withdrawn for use in construction performed for a designated exempt entity and an exemption certificate is received from the designated exempt entity.

c. The fabricated cost, as defined in rule 701—219.6(423), of building materials, supplies, or equipment purchased and consumed by the manufacturer of such property in the performance of a construction contract for a designated exempt entity is exempt from tax if an exemption certificate is received from the exempt entity and presented to a retailer.

d. Sales, withdrawals, or a manufacturer’s consumption of building materials, supplies, equipment, or services used in the performance of a construction contract for purposes other than incorporation into real property with subsequent loss of identity as tangible personal property are not eligible for the exemption described by this rule.

219.22(5) Refunds. A designated exempt entity that does not complete the registration process in order to provide exemption certificates to contractors, subcontractors, builders, or manufacturers in advance of its construction project may request a refund of sales tax the designated exempt entity paid to its contractors, subcontractors, builders, or manufacturers. The contractors, subcontractors, builders, or manufacturers should provide the designated exempt entity with completed Iowa Contractor’s Statement forms. The designated exempt entity shall then submit a Construction Contract Claim for Refund form and all accompanying Iowa Contractor’s Statement forms to the department.

219.22(6) Other sales. 701—Chapter 212 provides more information regarding the taxability of other types of sales to entities that qualify as designated exempt entities.

This rule is intended to implement Iowa Code sections 423.3(80) and 423.4(1).

[Filed 7/2/24, effective 8/28/24]

[Published 7/24/24]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/24.

ARC 8162C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rulemaking related to exemptions primarily of benefit to consumers

The Revenue Department hereby rescinds Chapter 220, “Exemptions Primarily of Benefit to Consumers,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.2 and 423.3.

Purpose and Summary

The purpose of this rulemaking is to rescind and adopt a new Chapter 220. The Department made revisions to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. The chapter describes the Department’s interpretation of the underlying statutes to help the public understand exemptions that primarily benefit consumers.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7202C**. A public hearing was held on the following date(s):

- January 16, 2024

Public comment was received. The Iowa Taxpayers' Association provided comments both orally at the public hearing and via written comment through Iowa Taxpayers' Association President and CEO Thomas R. Sands. These comments are summarized as follows:

1. Incorrect cross-references were identified in rules 701—220.2(423), 701—220.3(423), and 701—220.5(423) through 701—220.8(423). The Department corrected those cross-references.
2. Regarding subrule 220.8(7), the list of items that are exempt during the sales tax holiday no longer need to include diapers. Also, regarding paragraph 220.7(3)“g,” the list of taxable medical equipment and supplies should not include diapers. The Department made those changes.

Adoption of Rulemaking

This rulemaking was adopted by the Department on June 24, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on August 28, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 220 and adopt the following **new** chapter in lieu thereof:

CHAPTER 220
EXEMPTIONS PRIMARILY OF BENEFIT TO CONSUMERS

701—220.1(423) Newspapers, free newspapers and shoppers' guides.

220.1(1) *In general.* The sales price from the sale of newspapers, free newspapers, and shoppers' guides is exempt from tax. The sales price from the sale of magazines, newsletters, and other periodicals that are not newspapers is taxable.

220.1(2) *General characteristics of a newspaper.* A “newspaper” is a periodical, published at short, stated, and regular intervals, usually daily or weekly. It is printed on newsprint with news ink, and usually contains photographs. The format of a newspaper is that of sheets folded loosely together

without stapling. The larger the cross section of the population that reads a periodical in the area where the periodical circulates, the more likely it is that the department will consider that periodical to be a “newspaper.”

This rule is intended to implement Iowa Code section 423.3(55).

701—220.2(423) Food and food ingredients.

220.2(1) Most substances can easily be classified either as food, food ingredients, or nonfood items in accordance with Iowa Code section 423.3(57). There are, however, certain substances that are not readily distinguishable as food or nonfood and may present problems in judgment. The following guidelines apply to some of the more unique categories of eligible foods and food ingredients and ineligible nonfood items about which questions may arise. The guidelines and their lists are not to be considered all-inclusive:

a. Foods eligible for purchase with food coupons. Sales of almost all substances that may be purchased with food coupons issued by the United States Department of Agriculture are exempt from Tax. Sales of certain substances that can be purchased with food stamps but are neither food nor food ingredients are taxable.

These taxable sales include garden seeds and plants sold for use in gardens to produce food for human consumption. Seeds and plants eligible for purchase with food coupons include vegetable seeds and food-producing plants such as tomato and green pepper plants and fruit trees, food-producing roots, bushes, and bulbs (e.g., asparagus roots and onion sets) and seeds and plants used to produce spices for use in cooking foods. Sales of all these substances are taxable. Sales of chewing gum are taxable as sales of “candy.”

b. Distilled water and ice. These substances, although having some nonfood uses, are largely used as food or as ingredients in food for human consumption. Unless these substances are specifically labeled for nonfood use or the recipient indicates that they will be used for some purpose other than as food for human consumption or as ingredients in food for human consumption, their sales are exempt from tax.

c. Specialty foods. This category of exempt foods includes special dietary foods (e.g., diabetic and dietetic), enriched or fortified foods, infant formulas, and certain foods commonly referred to as health food items. These substances are food products that are substituted for more commonly used food items in the diet, and thus they are purchased for ingestion by humans and are consumed for their taste or nutritional value. Examples of items in this category of eligible foods are Metrecal, Enfamil, Sustegen, wheat germ, brewer’s yeast, sunflower seeds that are packaged for human consumption, and rose hips powder that is used for preparing tea. It is not possible to formulate a comprehensive list of exempt specialty foods. The guideline to be used to determine the eligibility of a specific product is the ordinary use of the product.

NOTE: If the product is primarily used as a food or as an ingredient in food, then it is an exempt item; if it is primarily used for medicinal purposes as either a therapeutic agent or a deficiency corrector and only occasionally used as a food, the product is not exempt under this provision.

d. Snack foods. These substances are food items and, therefore, are usually eligible for the exemption. Typical examples of snack foods are cheese puffs; corn chips; popcorn; peanuts; potato chips and sticks; packaged cookies, cupcakes, and donuts; and pretzels. Subrule 220.3(2) contains more information on candy and snack foods that are not exempt from tax and remain taxable.

e. Others. There are certain eligible food substances that are normally consumed only after being incorporated into foods sold for ingestion or chewing by humans. Sales of substances that are ingredients of items identical to those that are eligible for exemption when sold as finished products are sales eligible for exemption. Since these substances are food ingredients, their sales are exempt. An example is pectin. Pectin is the generic term for products marketed under various brand names and commonly used as a base in making jams and jellies. When pectin is incorporated into jams or jellies, it becomes part of a food for human consumption and, therefore, is an eligible food item. Other examples are lard and vegetable oils.

f. The following general classifications of food products are also exempt from tax unless taxable as prepared food; see rule 701—220.4(423):

Bread and flour products

Bottled water, unless it is a sweetened bottled water and thus taxable as a soft drink

Cereal and cereal products

Cocoa and cocoa products, unless taxable in the form of candy as in rule 701—220.3(423)

Coffee and coffee substitutes, unless taxable as soft drinks; see paragraph 220.2(2) “*f*”

Dietary substitutes, other than dietary supplements; see paragraph 220.2(2) “*c*”

Eggs and egg products

Fish and fish products

Frozen foods

Fruits and fruit products including fruit juices, unless taxable as soft drinks; see paragraph 220.2(2) “*f*”

Margarine, butter, and shortening

Meat and meat products

Milk and milk products, including packaged ice cream products

Milk substitutes, such as soy and rice milk substitutes

Spices, condiments, extracts, and artificial food coloring

Sugar and sugar products and substitutes, unless taxable in the form of candy as in rule 701—220.3(423)

Tea, unless taxable as a soft drink; see paragraph 220.2(2) “*f*”

Vegetables and vegetable products

220.2(2) Substances excluded from the term “food and food ingredients.” Sales of alcoholic beverages, candy, dietary supplements, food sold through vending machines, prepared food, soft drinks, and tobacco are not sales of “food” and are not exempt from tax by this rule.

a. “Alcoholic beverages” means beverages that are suitable for human consumption and contain one-half of 1 percent or more of alcohol by volume.

b. “Candy.” See rule 701—220.3(423).

c. “Dietary supplement” means any product, other than tobacco, intended to supplement the diet that contains one or more of the following dietary ingredients:

(1) A vitamin.

(2) A mineral.

(3) An herb or other botanical.

(4) An amino acid.

(5) A dietary substance for use by humans to supplement the diet by increasing the total dietary intake.

(6) A concentrate, metabolite, constituent, extract, or combination of any of the ingredients in subparagraphs 220.2(2) “*c*” (1) through (5) that is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not intended for ingestion in such a form, is not represented as conventional food and is not represented for use as a sole item of a meal or of the diet; and is required to be labeled as a dietary supplement, identifiable by the “supplement facts” box found on the label and as required pursuant to 21 Code of Federal Regulations 101.36.

Dietary supplements, as their name indicates, serve as supplements to food or food products rather than as “food,” and, therefore, are not included within the definition of that word. Since these substances serve as deficiency correctors or therapeutic agents to supplement diets deficient in essential nutrition rather than as foods, they are not eligible for the food and food ingredients exemption. In addition to vitamin and mineral tablets or capsules, this category includes substances such as cod liver oil, which is used primarily as a source of vitamins A and D. It is not possible to provide a comprehensive list of other such items that are primarily used for medicinal purposes or as health aids and that may be stocked by authorized firms.

d. “Food sold through vending machines” means food dispensed from a machine or other mechanical device that accepts payment, other than food that would be qualified for exemption if

purchased with coupons (commonly known as “food stamps”) issued under the federal Food Stamp Act of 1977, 7 United States Code 2011 et seq. Alcoholic beverages, candy, dietary supplements, prepared food, soft drinks, and tobacco sold through vending machines are sold subject to tax in all instances because they are specifically excluded from this rule’s definition of “foods”; see subrule 220.2(2) generally. This paragraph “d” should be interpreted in such a fashion that if the sale of a substance is exempt from tax because it is a sale of “food” when the substance is sold by means other than a vending machine, then the sale of that same substance through a vending machine will also be exempt from tax. Conversely, if the sale of a substance by any means other than through a vending machine is taxable, then the sale of that same substance through a vending machine will also be taxable.

e. “Prepared food.” See rule 701—220.4(423).

f. “Soft drinks” means nonalcoholic beverages that contain natural or artificial sweeteners. Soft drinks may be noncarbonated. “Soft drinks” does not include beverages that contain milk or milk products; soy, rice, or similar milk substitutes; coffee and tea that are not sweetened; effervescent, noneffervescent, and mineral water sold in containers; and beverages that contain greater than 50 percent of vegetable or fruit juice by volume.

Taxable soft drinks are noncarbonated water and soda water if naturally or artificially sweetened; soft drinks carbonated and noncarbonated including but not limited to colas, ginger ale, near beer, and root beer; bottled and sweetened tea and coffee; lemonade, orangeade, and all other drinks or punches with natural fruit or vegetable juice less than 50 percent by volume.

Beverage mixes and ingredients intended to be made into soft drinks are taxable. Beverage mixes or ingredients may be liquid or frozen, concentrated or nonconcentrated, dehydrated, powdered, granulated, sweetened or unsweetened, seasoned or unseasoned. Sales of beverage mixes to which a sweetener is to be added before drinking are taxable. Concentrates intended to be made into beverages that contain natural fruit or vegetable juice of less than 50 percent by volume are taxable.

Beverages, the sales of which are otherwise exempt, are taxable if sold as prepared food under rule 701—220.4(423).

Nondairy coffee “creamers” in liquid, frozen or powdered form are not beverages. Sugar or other artificial or natural sweeteners sold separately are not taxable as beverage ingredients. Specialty foods that are liquids or that are to be added to a liquid and that are intended to be a substitute in the diet for more commonly used food items are not beverages and are not taxable as beverages. These foods include infant formula.

g. “Tobacco” means cigarettes, cigars, chewing or pipe tobacco, or any other item that contains tobacco.

220.2(3) Other substances that are not food or food ingredients. Various products are not purchased for ingestion or chewing by humans or, if they are, are not consumed for their taste or nutritional value. Therefore, they are not purchased exempt from tax under this rule. They include, but are not limited to, the following:

a. Health aids. Over-the-counter medicines and other products used primarily as health aids or therapeutic agents are not foods since they are consumed for their medicinal value as opposed to their nutritional value or taste. Such products include aspirin, cough drops or syrups and other cold remedies, antacids, and all over-the-counter medicines or other products used as health aids. In addition to these commonly used health aids, any product used primarily for medicinal purposes is ineligible. An example of such products is slippery elm powder, a demulcent that is used to soothe sore throats.

b. Items not exempt. The following general classifications of products are subject to tax:

Cosmetics

Household supplies

Paper products

Pet foods and supplies

Soaps and detergents

Tobacco products

Toiletry articles

Tonics

Lunch counter foods or foods prepared for consumption on the premises of the retailer
This rule is intended to implement Iowa Code section 423.3(57).

701—220.3(423) Candy.

220.3(1) Definitions.

a. Candy. For the purposes of this rule, “candy” is a preparation of sugar, honey, or other natural or artificial sweeteners in combination with chocolate, fruits, nuts or other ingredients or flavorings in the form of bars, drops, or pieces. “Candy” shall not include any preparation containing flour and shall require no refrigeration. Any preparation to which flour has been added only for the purpose of excluding the candy’s sales from tax and not for any legitimate purpose, culinary or otherwise, shall not be sold exempt from tax under this rule. This definition is intended to be used when a person is trying to determine if a product that is commonly thought of as “candy” is in fact “candy.” For example, the definition would be applied in a situation where a person is trying to determine if a product is “candy” as opposed to a cookie. The definition is not intended to be applied to every type of food product sold. Many products, such as meat products, breakfast cereals, potato chips, and canned fruits and vegetables are not commonly thought of as “candy.” The definition of “candy” is not applicable to products such as these since they are not commonly thought of as candy.

b. Preparation. Candy must be a “preparation” that contains certain ingredients, other than flour. A “preparation” is a product that is made by means of heating, coloring, molding, or otherwise processing any of the ingredients listed in the definition of “candy.” For example, reducing maple syrup into pieces and adding coloring to make maple candy is a form of preparation.

c. Bars, drops or pieces. Candy must be sold in the form of bars, drops, or pieces.

(1) A “bar” is a product that is sold in the form of a square, oblong, or similar form. For example, if Company A sells one-pound square blocks of chocolate, the blocks of chocolate are “bars.”

(2) A “drop” is a product that is sold in a round, oval, pear-shaped, or similar form. For example, if Company B sells chocolate chips in a bag, each individual chocolate chip contains all of the ingredients indicated on the label and the chocolate chips are “drops.”

(3) A “piece” is a portion that has the same makeup as the product as a whole. Individual ingredients and loose mixtures of items that make up the product as a whole are not pieces.

EXCEPTION: If a loose mixture of different items that make up the product as a whole are all individually considered candy and are sold as one product, that product is also candy.

EXAMPLE 1: Company C sells jellybeans in a bag. Each jellybean is made up of the ingredients indicated on the label. Each jellybean is a “piece” or “drop.”

EXAMPLE 2: Company D sells trail mix in a bag. The product being sold (trail mix) is made up of a mixture of carob chips, peanuts, raisins, and sunflower seeds. The individual items that make up the trail mix are not “pieces,” but instead are the ingredients, which, when combined, make up the trail mix. Therefore, the trail mix is not sold in the form of bars, drops, or pieces.

EXAMPLE 3: Company E sells a product called “candy lovers mix.” Candy lovers mix is a product that is made up of a loose mixture of jellybeans, toffee, and caramels. Individually, the jellybeans, toffee, and caramels are all candy. The sale of the mixture is the sale of candy since all of the individual items that make up the product are individually considered to be candy.

EXAMPLE 4: Company F sells cotton candy that is packaged and sold in grocery stores. Cotton candy contains sugar, corn syrup, water, coloring, and flavoring; it does not contain flour. Cotton candy is not “candy” because it is not sold in the form of a bar, drop, or piece. Cotton candy is, however, “prepared food” under Iowa Code section 423.3(57) “f.”

d. Flour. In order for a product to be treated as containing “flour,” the product label must specifically list the word “flour” as one of the ingredients. There is no requirement that the “flour” be grain-based, and it does not matter what the flour is made from. Many products that are commonly thought of as “candy” contain flour, as indicated on the ingredient label and therefore are specifically excluded from the definition of “candy.” Ingredient labels must be examined to determine which products contain flour and which products do not contain flour. Any preparation to which flour has been added only for the purpose of excluding its sales from tax and not for any legitimate purpose, culinary or

otherwise, shall not be sold exempt from tax under this rule. For example, a candy bar that contains flour, for a legitimate purpose, is excluded from the definition of “candy.”

EXAMPLE 1: The ingredient list for a breakfast bar lists “flour” as one of the ingredients. This breakfast bar is not “candy” since it contains flour.

EXAMPLE 2: The ingredient list for a breakfast bar lists “peanut flour” as one of the ingredients. This breakfast bar is not “candy” because it contains flour.

EXAMPLE 3: The ingredient list for a breakfast bar that otherwise meets the definition of “candy” lists “whole grain” as one of the ingredients, but does not specifically list “flour” as one of the ingredients. This breakfast bar is “candy” because the word “flour” is not included in the ingredient list.

EXAMPLE 4: Company E sells a box of chocolates that are not individually wrapped. The ingredient list on the label for the box of chocolates identifies flour as one of the ingredients. The box of chocolates is not “candy” since flour is identified as one of the ingredients on the label.

EXAMPLE 5: Company F sells a box of chocolates that are not individually wrapped. The ingredient list on the label for the box of chocolates, which otherwise meets the definition of “candy,” does not identify flour as one of the ingredients. The box of chocolates is “candy.”

EXAMPLE 6: Company G sells high-end licorice—licorice A and licorice B. Licorice A would otherwise be “candy,” but its wrapper lists “flour” as an ingredient. Licorice A is not “candy.” Licorice B is the same as licorice A, except it does not contain “flour.” Licorice B is “candy.”

e. Other ingredients or flavorings. “Other ingredients or flavorings” as used in this rule means other ingredients or flavorings that are similar to chocolate, fruits or nuts. This phrase includes candy coatings such as carob, vanilla and yogurt; flavorings or extracts such as vanilla, maple, mint, and almond; and seeds and other items similar to the classes of ingredients or flavorings. This phrase does not include meats, spices, seasonings such as barbeque or cheddar flavor, or herbs that are not similar to the classes of ingredients or flavorings associated with chocolate, fruits, or nuts, unless the product otherwise meets the definition of “candy.”

EXAMPLE 1: Retailer A sells barbeque-flavored peanuts. The ingredient label for the barbeque-flavored peanuts indicates that the product contains peanuts, sugar and various other ingredients, including barbeque flavoring. Since the barbeque-flavored peanuts contain a combination of sweeteners and nuts, and flour is not listed on the label and the nuts do not require refrigeration, barbeque-flavored peanuts are “candy.”

EXAMPLE 2: Retailer B sells barbeque potato chips. Potato chips are potatoes, a vegetable, and are not commonly thought of as candy. The barbeque potato chips are “food and food ingredients” and not “candy.” The fact that the ingredient label for the barbeque potato chips indicates that the product contains barbeque seasoning that contains a sweetener does not change the fact that the barbeque potato chips are not commonly thought of as candy.

f. Sweeteners. The term “natural or artificial sweeteners” as used in this rule means an ingredient of a food product that adds a sugary sweetness to the taste of the food product and includes, but is not limited to, corn syrup, dextrose, invert sugar, sucrose, fructose, sucralose, saccharin, aspartame, stevia, fruit juice concentrates, molasses, evaporated cane juice, rice syrup, barley malt, honey, maltitol, agave, and artificial sweeteners.

g. Refrigeration. A product that otherwise meets the definition of “candy” is not “candy” if it requires refrigeration. A product “requires refrigeration” if it must be refrigerated at the time of sale or after being opened. In order for a product to be treated as requiring refrigeration, the product label must indicate that refrigeration is required. If the label on a product that contains multiple servings indicates that it “requires refrigeration,” smaller size packages of the same product are also considered to “require refrigeration.” A product that otherwise meets the definition of “candy” is “candy” if the product is not required to be refrigerated, but is sold refrigerated for the convenience or preference of the customer, retailer, or manufacturer.

EXAMPLE 1: Company A sells sweetened fruit snacks in a bag that contains multiple servings. The label on the bag indicates that after opening, the sweetened fruit snacks must be refrigerated. The sweetened fruit snacks “require refrigeration.”

EXAMPLE 2: Company A sells sweetened fruit snacks in single-serving containers. Other than for packaging, the sweetened fruit snacks are identical to the sweetened fruit snacks in Example 1 above. However, since this container of sweetened fruit snacks only contains one serving, it is presumed that it will be used immediately, and the label does not indicate that after opening, the product must be refrigerated. Even though the label does not contain the statement that after opening the sweetened fruit snacks must be refrigerated, these sweetened fruit snacks are considered to “require refrigeration.”

EXAMPLE 3: Company A sells chocolate truffles. The label on the truffles indicates to keep the product cool and dry, but does not indicate that the product must be refrigerated. Since the chocolate truffles are not required to be refrigerated, even though the label indicates to keep them cool, the chocolate truffles do not “require refrigeration.”

220.3(2) Nonexclusive examples.

a. Taxable candy. Examples of items taxable as candy include, but are not limited to: preparations of fruits, nuts, or other ingredients in combination with sugar, honey, or other natural or artificial sweeteners in the form of bars, drops, or pieces; caramel-coated or other candy-coated apples or other fruit; candy-coated popcorn; hard or soft candies including jellybeans, taffy, licorice not containing flour, marshmallows, and mints; dried fruit leathers or other similar products prepared with natural or artificial sweeteners; candy breath mints; chewing gum; and mixes of candy pieces.

Sales of items that are normally sold for use as ingredients in recipes but that can be eaten as candy are taxable. Examples of these items include, but are not limited to, sweetened baking chocolate in bars or pieces; white and dark chocolate almond bark; toffee bits; M&M’s, including those sold for baking; candy primarily intended for decorating baked goods; and sweetened baking chips, including mint chips, peanut butter chips, butterscotch chips, and chocolate chips.

b. Nontaxable items. Sales of the following are generally not taxable as candy: jams, jellies, preserves, or syrups; frostings; dried fruits without added sweetener; breakfast cereals; prepared fruit in a sugar or similar base; ice cream or other frozen desserts covered with chocolate or similar coverings; cotton candy; cakes, cookies, and similar products covered with chocolate or other similar coating; and granola bars. However, these and similar items are taxable if sold as prepared food under rule 701—220.4(423).

220.3(3) Bundled transaction including candy.

a. Candy and food. Products that are a combination of items that are defined as “candy” under this rule and items that are defined as “food and food ingredients” under rule 701—220.2(423) are “bundled transactions” when the items are distinct and identifiable and are sold for one nonitemized price, unless the seller’s sales price or purchase price of the candy accounts for 50 percent or less of the seller’s sales price or purchase price of the bundled transaction as provided under Iowa Code section 423.2(8)“d”(4). For example, a bag of multiple types of individually wrapped bars that is sold for one price is two or more distinct and identifiable products sold for one nonitemized price. For purposes of determining whether such a bag of individually wrapped bars is a “bundled transaction,” the following criteria apply:

(1) Ingredients listed separately.

1. If a package contains individually wrapped bars, drops, or pieces and the product label on the package separately lists the ingredients for each type of bar, drop, or piece included in the package, those bars, drops, or pieces that have “flour” listed as an ingredient are “food and food ingredients” and those bars, drops, or pieces that do not have “flour” listed as an ingredient are “candy.” The determination of whether the package as a whole meets the definition of “bundled transaction” is based on the percentage of bars, drops, or pieces that meet the definition of “food and food ingredient” as compared to the percentage of bars, drops, or pieces that meet the definition of “candy.”

2. Determining the percentage. For purposes of determining the percentage of the sales price or purchase price of the bars, drops, or pieces that meet the definition of “candy” as compared to all of the bars, drops, or pieces contained in the package, the retailer may presume that each bar, drop, or piece contained in the package has the same value.

3. Presumption of product amount. A retailer may presume that there is an equal number of each type of product contained in the package, unless the package clearly indicates otherwise.

EXAMPLE: Retailer B sells bulk food and food ingredients by the pound. Each food and food ingredient is in a separate bin or container. Some of the food and food ingredients are “candy” and some of them are not because they contain flour. However, regardless of the items chosen, the retailer charges the customer \$3.49/lb. Customer C selects some items that are “candy” and some that are not and puts them in a bag. Since some of the items in the bag are “candy,” the retailer shall treat the entire package as a bundled transaction containing primarily “candy,” unless the retailer ascertains that the sales price or purchase price of the candy in the bag is less than 50 percent of the sales price or purchase price of the entire bag. See Iowa Code section 423.2(8).

(2) Ingredients listed together. If a package contains individually wrapped bars, drops, or pieces and all of the ingredients for each of the products included in the package are listed together, as opposed to being listed separately by each product included as explained in subparagraph (1) above, and even if the ingredient lists “flour” as an ingredient, the product will be treated as “candy,” unless the retailer is able to ascertain that the sales price or purchase price of the candy in the package is less than 50 percent of the sales price or purchase price of the entire bag. See Iowa Code section 423.2(8).

The retailer may presume that each bar, drop, or piece contained in the package has the same value. The retailer may presume that there is an equal number of each type of product contained in the package, unless the package clearly indicates otherwise.

b. Combination of ingredients. Products whose ingredients are a combination of various unwrapped food ingredients that alone are not “candy,” along with unwrapped food ingredients that alone are “candy,” such as breakfast cereal and trail mix with candy pieces, are considered “food and food ingredients” and are not “candy.” Sales of these products are not “bundled transactions” because there are not two or more distinct and identifiable products being sold. The combination of the ingredients results in a single product.

This rule is intended to implement Iowa Code sections 423.2(8) and 423.3(57).

701—220.4(423) Prepared food. Sales of “prepared food” are subject to tax.

220.4(1) Prepared food. “Prepared food” means any of the following:

- a.* Food sold in a heated state or heated by the seller, including food sold by a caterer.
- b.* Two or more food ingredients mixed or combined by the seller for sale as a single item.
- c.* Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport food.

The types of retailers who are generally considered to be offering prepared food for sale include restaurants, coffee shops, cafeterias, convenience stores, snack shops, and concession stands including those at recreation and entertainment facilities. Other retailers that often offer prepared food include vending machine retailers, mobile vendors, and concessionaires operating facilities for such activities as education, office work, or manufacturing.

If food is sold for consumption on the premises of a retailer, the food is rebuttably presumed to be prepared food. “Premises of a retailer” means the total space and facilities under control of the retailer or available to the retailer, including buildings, grounds, and parking lots that are made available or that are available for use by the retailer, for the purpose of sale of prepared food and drink or for the purpose of consumption of prepared food and drink sold by the retailer. Availability of self-service heating or other preparation facilities or eating facilities such as tables and chairs and knives, forks, and spoons, indicates that food, food products, and drinks are sold for consumption on the premises of the retailer and are subject to tax as sales of prepared food.

The following examples are intended to show some of the situations in which sales are taxable as sales of prepared food and drink.

EXAMPLE A: A movie theater owner operates a movie theater and a concession stand in the lobby of the theater. There is not a separate area set aside for eating facilities. Sales of prepared food and drink through the concession stand are taxable.

EXAMPLE B: As a convenience to employees, a manufacturer owns and operates several food and drink vending machines located on the premises of the plant. No separate seating or other facilities for eating are provided. Sales of prepared food and drink through the vending machines are taxable.

EXAMPLE C: Mobile vendor units located throughout an office are operated by the owner of the business and are stocked with snack food priced to cover the cost of the items to the employer. No separate eating facilities are provided. Sales of prepared food through the mobile vendors are taxable.

EXAMPLE D: An insurance company hires a caterer to run a cafeteria that provides food, at a low cost, to its employees. The insurance company also pays the caterer an amount, per month, which varies with the number of meals the caterer serves to provide this food service. The caterer does not lease the cafeteria premises; thus the premises remains under the control of the insurance company. In this case, the caterer sells the food in a space made “available to the retailer [caterer],” and the amount that the insurance company pays, on a monthly basis, to the caterer is presumed to be the taxable sales price from the sale of prepared food, as well as the amount paid by the employees to the caterer.

220.4(2) Examples. The following are additional examples of foods that either are or are not “prepared foods,” the sales price of which is taxable.

EXAMPLE A: A supermarket retailer cuts Bibb and romaine lettuce, mixes them together, and places them in a bag for sale. This is food that is only cut and repackaged. Its sale is not the sale of prepared food; thus its sale is exempt from tax.

EXAMPLE B: The same factual situation as Example A above applies, except that the lettuce is mixed with a salad dressing, placed in a container, and sold as a salad that is ready to eat. Sale of the salad is a taxable sale of “prepared food.”

EXAMPLE C: A supermarket retailer slices a roll of cotto salami and a roll of regular salami. The retailer places ten slices of each in the same container and sells the combination as an Italian luncheon meat variety pack. This is, again, the sale of food that is only cut and repackaged. The sale of the salami is exempt from tax.

EXAMPLE D: The same factual circumstances as in Example C apply, except that the retailer takes the sliced salami, places it between two slices of bread, adds some condiments, surrounds the meat, bread, and condiments with plastic, and sells the result as a ready-to-eat sandwich. This is prepared food, “two or more food ingredients . . . combined by the seller for sale as a single item,” and more is done to the ingredients than cutting and repackaging. Sales of the sandwiches are taxable.

This rule is intended to implement Iowa Code section 423.3(57).

701—220.5(423) Prescription drugs. The sales price from the sale of prescription drugs dispensed for human use or consumption in accordance with subrules 220.5(3) and 220.5(4) shall be exempt from tax. The sales price from the sale of oxygen or insulin purchased for human use or consumption (whether or not the oxygen or insulin is prescribed) is exempt from tax as a prescription drug.

220.5(1) Ultimate user. The term “ultimate user” means an individual who has lawfully obtained and possesses a prescription drug or medical device for the individual’s own use or for the use of a member of the individual’s household, or an individual to whom a prescription drug or medical device has been lawfully supplied, administered, dispensed or prescribed. The term is limited to natural persons, and does not include any legal persons such as corporations.

220.5(2) Tax exemption. The sale of a prescription drug is exempt from tax only if the drug is intended to be prescribed or dispensed to an ultimate user. A drug is intended to be prescribed or dispensed to an ultimate user only if the drug is obtained by or supplied or administered to an ultimate user for placement on or in the ultimate user’s body.

EXAMPLE A: A physician prescribes a tranquilizer for a patient who is chronically nervous. The patient uses the prescription to purchase the tranquilizer at a pharmacy. The purchase is exempt from tax.

For purposes of this subrule, any drug prescribed in writing by a licensed physician, surgeon, osteopath, osteopathic physician or surgeon, or other person authorized by law to an ultimate user for human use or consumption shall be deemed a drug exempt from tax if a prescription is required or permitted under Iowa state or federal law.

EXAMPLE B: A common painkiller is sold over the counter in doses of 200 milligrams per tablet. In doses of 600 milligrams per tablet, federal law requires a prescription before the drug can be dispensed. Sales of 600 milligram tablets by prescription are exempt from tax.

EXAMPLE C: A federal law permits but does not require the painkiller mentioned in Example B to be prescribed by a practitioner in dosages of 200 milligrams per tablet. A practitioner might prescribe the painkiller in the over-the-counter dosage, for example, to impress upon a patient the importance of taking the drug. Sales of 200 milligram tablets by prescription are exempt from tax.

220.5(3) *Persons authorized to dispense prescription drugs.* In order for a prescription drug or device to qualify for an exemption, it must be dispensed by anyone authorized under Iowa law to dispense prescription drugs or devices in this state or by anyone licensed in another state in a health field in which, under Iowa law, licensees in this state may legally prescribe drugs or devices.

220.5(4) *Disposition of prescription drugs.* Prescription drugs may be dispensed either directly from one of the persons licensed in subrule 220.5(3) who may also prescribe drugs or by a pharmacist upon receipt of a prescription from one of the persons licensed to prescribe. A prescription received by a licensed pharmacist from one of the persons licensed in subrule 220.5(3) who may also prescribe drugs shall be sufficient evidence that a drug is exempt from tax. When a person who prescribes a drug is also the dispenser, the drug will not require a prescription by such person, but the drug must be recorded as if a prescription would have been issued or required. If this condition is met, the sales price from the sale of the drug is exempt from tax.

220.5(5) *Others required to collect sales tax.* Any person other than those who are allowed to dispense drugs or devices under subrule 220.5(3) is required to collect sales tax on any prescription drugs.

220.5(6) *Prescription drugs purchased by hospitals for resale.* This subrule applies to for-profit hospitals only. Hospitals have purchased prescription drugs for resale to patients and not for use or consumption in providing hospital services only if the following circumstances exist: (1) the drug is actually transferred to the patient; (2) the drug is transferred in a form or quantity capable of a fixed or definite price value; (3) the hospital and the patient intend the transfer to be a sale; and (4) the sale is evidenced in the patient's bill by a separate charge for the identifiable drug.

A hospital's purchase of a prescription drug for purposes other than resale will still be exempt from tax if a drug is intended to be prescribed to an ultimate user and the hospital's use of the drug is otherwise exempt under subrule 220.5(1).

This rule is intended to implement Iowa Code section 423.3(60).

701—220.6(423) Other medical devices. The sales price from the sale of other medical devices is exempt from tax. The term "other medical devices" means medical equipment or supplies intended to be dispensed for human use with or without a prescription to an ultimate user. The term "other medical devices" does not include prosthetic devices, durable medical equipment, or mobility enhancing equipment. For purposes of this rule, the term "ultimate user" has the same meaning as in subrule 220.5(1).

220.6(1) Definitions.

"Anesthesia trays" includes, without limit, paracervical anesthesia trays, saddle block anesthesia trays, spinal anesthesia trays, and continuous epidural anesthesia trays.

"Biopsy" means the removal and examination of tissue from a living body, performed to establish a precise diagnosis.

"Biopsy needles" includes, without limit, needles used to perform liver, kidney, other soft tissue, bone, and bone marrow biopsies. Menghini technique aspirating needles, Rosenthal-type needles, and "J" Jamshidi needles are all examples of biopsy needles.

"Cannula" means a tube inserted into a body duct or cavity to drain fluid, insert medication including oxygen, or to open an air passage. Examples are lariat nasal cannulas and abelson cricothyrotomy cannulas.

"Catheter" means a tubular, flexible, surgical instrument used to withdraw fluids from or introduce fluids into a body cavity, or for making examinations. Examples are: Robinson/nelaton catheters, all

types of Foley catheters (e.g., pediatric and irrigating), three-way catheters, suction catheters, IV catheters, angiocath catheters and male and female catheters.

“Catheter trays.” Universal Foley catheter trays, economy Foley trays, urethral catheterization trays and catheter trays with domed covers are nonexclusive examples of these trays.

“Diabetic testing materials” means all materials used in testing for sugar or acetone in the urine, including, but not limited to, Clinitest, Tes-tape, and Clinistix; also, all materials used in monitoring the glucose level in the blood, including, but not limited to, bloodletting supplies and test strips.

“Drug infusion device” means a device designed for the slow introduction of a drug solution into the human body. The term includes devices that infuse by means of pumps or gravity flow (drip infusion).

“Fistula” means an abnormal passage usually between the internal organs or between an internal organ and the surface of the body.

“Hypodermic syringe” means an instrument for applying or administering liquid into any vessel or cavity beneath the skin. This includes the needle portion of the syringe if it accompanies the syringe at the time of purchase, and it also includes replacement needles.

“Insulin” means a preparation of the active principle of the pancreas, used therapeutically in diabetes and sometimes in other conditions.

“Kit” means a combination of medical equipment and supplies used to perform one particular medical procedure that is packaged and sold as a single item.

“Myelogram” means a radiographic picture of the spinal cord. A “radiographic picture” is one taken using radiation other than visible light.

“Nebulizer” means a mechanical device that converts a liquid to a spray or fog.

“Oxygen equipment” means all equipment used to deliver medicinal oxygen including, but not limited to, face masks, humidifiers, cannulas, tubing, mouthpieces, tracheotomy masks or collars, regulators, oxygen concentrators and oxygen accessory racks or stands.

“Set.” See “kit” above.

“Tray.” See “kit” above.

220.6(2) The sales price from the sale of the following other medical devices is exempt from tax:

- a. Sales of insulin, hypodermic syringes, and diabetic testing materials.
- b. Sales and rentals of oxygen equipment.
- c. Sales of hypodermic needles, anesthesia trays, biopsy trays and needles, cannula systems, catheter trays, invasive catheters, dialyzers, drug infusion devices, fistula sets, hemodialysis devices, insulin infusion devices, irrigation solutions, intravenous administering sets, solutions and stopcocks, myelogram trays, nebulizers, small vein infusion kits, spinal puncture trays, transfusion sets and venous blood sets, all of which are not taxable.

220.6(3) Component parts. The sales price from the sale of any component parts of the trays, systems, devices, sets, or kits listed above are taxable unless the sales price from the sale of the component part, standing alone, is otherwise exempt. For instance, the sales price from the sale of a biopsy needle or an invasive catheter will be exempt from tax whether or not it was purchased for use as a component part in a biopsy tray or catheter tray, so long as the needle or catheter will be dispensed for human use to an ultimate user. Conversely, the sales price from the sale of catheter introducers, disposable latex gloves, rayon balls, forceps, and specimen bottles is exempt from tax when those items are sold as part of a catheter tray, but are not exempt when those items are sold individually.

This rule is intended to implement Iowa Code section 423.3(60).

701—220.7(423) Prosthetic devices, durable medical equipment, and mobility enhancing equipment.

220.7(1) *Prosthetic devices.* The sales price from the sale of prosthetic devices is exempt from tax.

220.7(2) *Durable medical equipment and mobility enhancing equipment.* The sales price from the sale of durable medical equipment and mobility enhancing equipment prescribed for human use that meet the provisions of subrules 220.7(3) and 220.7(4) is exempt from tax. “Prescribed” refers to a prescription issued in any form of oral, written, electronic, or other means of transmission by any of the persons described in subrule 220.5(3).

220.7(3) Definitions.

a. “Durable medical equipment” means equipment, including repair and replacement parts, but does not include mobility enhancing equipment, to which all of the following apply:

- (1) Can withstand repeated use.
- (2) Is primarily and customarily used to serve a medical purpose.
- (3) Generally is not useful to a person in the absence of illness or injury.
- (4) Is not worn in or on the body.
- (5) Is for home use only.
- (6) Is prescribed by a practitioner.

b. “Mobility enhancing equipment” means equipment, including repair and replacement parts, but does not include durable medical equipment, to which all of the following apply:

- (1) Is primarily and customarily used to provide or increase the ability to move from one place to another and which is appropriate for use either in a home or a motor vehicle.
- (2) Is not generally used by persons with normal mobility.
- (3) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a motor vehicle manufacturer.
- (4) Is prescribed by a practitioner.

c. “Prosthetic device” means a replacement, corrective, or supportive device including repair and replacement parts for the same worn on or in the body to do any of the following:

- (1) Artificially replace a missing portion of the body.
- (2) Prevent or correct physical deformity or malfunction.
- (3) Support a weak or deformed portion of the body.

The term “prosthetic device” includes, but is not limited to, orthopedic or orthotic devices, ostomy equipment, urological equipment, tracheostomy equipment, and intraocular lenses.

The following is a nonexclusive list of prosthetic devices:

Artificial arteries	Drainage bags	Prescription eyeglasses
Artificial breasts	Hearing aids	Stoma bags
Artificial ears	Ileostomy devices	Tracheal suction catheters
Artificial eyes	Intraocular lenses	Tracheostomy care and cleaning starter kits
Artificial heart valves	Karaya paste	Tracheostomy cleaning brushes
Artificial implants	Karaya seals	Tracheostomy tubes
Artificial larynx	Organ implants	Urinary catheters
Artificial limbs	Ostomy belts	Urinary drainage bags
Artificial noses	Ostomy clamps	Urinary irrigation tubing
Artificial teeth	Ostomy cleaners and deodorizers	Urinary pouches
Cardiac pacemakers	Ostomy pouches	
Contact lenses	Ostomy stoma caps and paste	
Cosmetic gloves	Penile implants	
Dental bridges and implants		

d. “Orthotic device” means a piece of special equipment designed to straighten a deformed or distorted part of the human body, such as corrective shoes or braces. An orthotic device is an orthopedic device.

e. “Orthopedic device” means a piece of special equipment designed to correct deformities or to preserve and restore the function of the human skeletal system, its articulations and associated structures. A hot tub or spa is not an orthopedic device.

The following is a nonexclusive list of orthopedic devices:

Abdominal belts	Clavicle splints	Nerve stimulators
Alternating pressure mattresses	Corrective braces	Orthopedic implants
Alternating pressure pads	Corrective shoes	Orthopedic shoes
Anti-embolism stockings	Crutch cushions	Patient lifts
Arch supports	Crutch handgrips	Plaster (surgical)
Arm slings	Crutch tips	Rib belts

Artificial sheepskin	Crutches	Rupture belts
Bone cement	Decubitus prevention devices	Sacroiliac supports
Bone nails	Dorsolumbar belts	Sacrolumbar belts
Bone pins	Dorsolumbar supports	Sacrolumbar supports
Bone plates	Elastic bandages	Shoulder immobilizers
Bone screws	Elastic supports	Space shoes
Bone wax	Exercise devices	Splints
Braces	Head halters	Traction equipment
Canes	Hernia belts	Transcutaneous electrical nerve stimulators (tens units)
Casts	Iliac belts	Trapezes
Cast heels	Invalid rings	Trusses
Cervical braces	Knee immobilizers	Walkers
Cervical collars	Lumbosacral supports	Wheelchairs
Cervical pillows	Muscle stimulators	

f. *“Related devices.”* The sales price from the sale of devices that are used exclusively in conjunction with prosthetic, orthotic, or orthopedic devices is exempt from tax.

g. *“Medical equipment and supplies.”* The scope of the term “medical equipment and supplies” is broader than the terms “prescription drugs,” “prosthetic devices,” “durable medical equipment,” “mobility enhancing equipment,” and “other medical devices.” While all exempt prescription drugs are medical supplies and all exempt medical devices are medical equipment, not all medical equipment and supplies are exempt medical devices or prescription drugs. The following is a nonexclusive list of items that are medical equipment or supplies, but are not prescription drugs or medical devices exempt from tax under subrules 220.7(1) and 220.7(2) and rules 701—220.5(423) and 701—220.6(423). The sales price from the sale of the following items is generally taxable.

Adhesive bandages	Contact lens solution	Hot water bottles
Aneurysm clips	Convuluted pads	Ice bags
Arterial bloodsets	Corrective pessaries	Ident-a-bands
Aspirators	Cotton balls	Incontinent garments
Athletic supporters	Diagnostic kits	Incubators
Atomizers	Dialysis chairs	Infrared lamps
Autolit	Dialysis supplies	Inhalators
Back cushions	Dietetic scales	Iron lungs
Bathing aids		Irrigation apparatus
Bathing caps	Disposable gloves	IV connectors
Bedpans	Disposable underpads	Laminar flow equipment
Bedside rails	Donor chairs	Latex gloves
Bedside tables	Dressings	Leukopheresis pumps
Bedside trays	Dry aid kits for ears	Lymphedema pumps
Bedwetting prevention devices	EKG paper	Manometer trays
Belt vibrators	Ear molds	Massagers
Blood cell washing equipment	Electrodes (other than tens units)	Maternity belts
Blood pack holders	Emesis basins	Medigrade tubing
Blood pack trays	Enema units	Modulung oxygenators
Blood pack units	First-aid kits	Moist heat pads
Blood pressure meters	Foam slant pillows	Myringotomy tubes
Blood processing supplies	Gauze bandages	Nebulizers (hypodermic)
Blood tubing	Gauze packings	Overbed tables
Blood warmers	Gavage containers	Page turning devices
Breast pumps	Geriatric chairs	Pap smear kits
Breathing machines	Grooming aids	Paraffin baths
Cardiac electrodes	Hand sealers	Physicians’ instruments
Cardiopulmonary equipment	Hearing aid carriers	Pigskin
Chair lifts	Hearing aid repair kits	Plasma extractors

Clamps	Heart stimulators	Plasma pheresis units
Clip-on ashtrays	Heat lamps	Plastic heat sealers
Commode chairs	Heat pads	Prescribed device repair kits and batteries
Connectors	Hemolators	Respirators
Contact lens cases	Hospital beds	Resuscitators
Sauna baths	Steri-peel	Transfer boards
Security pouches	Stools	Tube sealers
Servipak dialysis supplies	Suction equipment	Underpads
Shelf trays	Sunlamps	Urinals
Shower chairs	Surgical bandages	Vacutainers
Side rails	Surgical equipment	Vacuum units
Sitz bath kit	Suspensories	Vaporizers
Specimen containers	Sutures	Vibrators
Sponges (surgical)	Thermometers	Whirlpools
Stairway elevators	Toilet aids	X-ray film
Staples	Tourniquets	

220.7(4) Power devices. The sales price from the sale of power devices especially designed to operate prosthetic, orthotic or orthopedic devices shall be exempt from tax. This exemption does not include batteries that can be used to operate a number of devices, but batteries designed solely for use in hearing aids are exempt.

This rule is intended to implement Iowa Code section 423.3(60).

701—220.8(423) Exempt sales of clothing and footwear during two-day period in August. Tax is not due on the sale or use of a qualifying article of clothing or footwear if the sales price of the article is less than \$100 and the sale takes place during a period beginning at 12:01 a.m. on the first Friday in August and ending at 12 midnight of the following Saturday. For example, in the year 2004, this period began at 12:01 a.m. on Friday, August 6, and ended at 12 midnight on Saturday, August 7. Eligible purchases of clothing and footwear are exempt from local option sales taxes as well as Iowa state sales tax.

220.8(1) Definitions. The following words and terms, when used in this rule, shall have the following meanings, unless the context clearly indicates otherwise.

“*Accessories*” includes, but is not limited to, jewelry, handbags, purses, briefcases, luggage, wallets, watches, cufflinks, tie tacks and similar items carried on or about the human body, without regard to whether worn on the body in a manner characteristic of clothing.

“*Clothing or footwear*” means an article of wearing apparel designed to be worn on or about the human body. For the purposes of this rule, the term does not include accessories or special clothing or footwear or articles of wearing apparel designed to be worn by animals.

“*Eligible property*” means an item of a type, such as clothing, that qualifies for Iowa’s sales tax holiday.

“*Special clothing or footwear*” is clothing or footwear primarily designed for athletic activity or protective use and which is not normally worn except when used for the athletic activity or protective use for which it is designed.

220.8(2) Exempt sales.

a. Required price. The exemption applies to each article of clothing or footwear selling for less than \$100, regardless of how many items are sold on the same invoice to a customer. For example, if a customer purchases two shirts for \$80 each, both items qualify for the exemption even though the customer’s total purchase price (\$160) exceeds \$99.99. The exemption does not apply to the first \$99.99 of an article of clothing or footwear selling for more than \$99.99. For example, if a customer purchases a pair of pants costing \$110, sales tax is due on the entire \$110.

b. Order date and back orders. For the purpose of the sales tax holiday, eligible property qualifies for exemption if: the item is both delivered to and paid for by the customer during the exemption period; or the customer orders and pays for the item and the seller accepts the order during the exemption period for immediate shipment, even if delivery is made after the exemption period. The seller accepts an order

when the seller has taken action to fill the order for immediate shipment. Actions to fill an order include placement of an “in date” stamp on a mail order or assignment of an “order number” to a telephone order. An order is for immediate shipment when the customer does not request delayed shipment. An order is for immediate shipment notwithstanding that the shipment may be delayed because of a backlog of orders or because stock is currently unavailable to, or on back order by, the seller.

220.8(3) Taxable sales. This exemption does not apply to sales of the following goods or services:

a. Any special clothing or footwear that is primarily designed for athletic activity or protective use and that is not normally worn except when used for the athletic activity or protective use for which it is designed. For example, golf cleats and football pads are primarily designed for athletic activity or protective use and are not normally worn except when used for those purposes; therefore, they do not qualify for the exemption. However, tennis shoes, jogging suits, and swimsuits are commonly worn for purposes other than athletic activity and qualify for the exemption.

b. Accessories, including jewelry, handbags, purses, briefcases, luggage, umbrellas, wallets, watches, and similar items carried on or about the human body, without regard to whether they are worn on the body in a manner characteristic of clothing.

c. The rental of any clothing or footwear. For example, this exemption does not apply to rentals of formal wear, costumes, diapers, and bridal gowns, but would apply to sales of the above items.

d. Taxable services performed on clothing or footwear, such as garment and shoe repair, dry cleaning or laundering, and alteration services. Sales tax is due on alterations to clothing, even though the alteration service may be performed, invoiced and paid for at the same time as the clothing is being purchased. If a customer purchases a pair of pants for \$90 and pays \$15 to have the pants cuffed, the \$90 charge for the pants is exempt, but tax is due on the \$15 alteration charge.

e. Purchases of items used to make, alter, or repair clothing or footwear, including fabric, thread, yarn, buttons, snaps, hooks, belt buckles, and zippers.

220.8(4) Special situations.

a. Articles normally sold as a unit. Articles that are normally sold as a unit must continue to be sold in that manner if the exemption is to apply; they cannot be priced separately and sold as individual items in order to obtain the exemption. For example, if a pair of shoes sells for \$150, the pair cannot be split in order to sell each shoe for \$75 to qualify for the exemption. If a suit is normally priced at \$225 and sold as a unit on a single price tag, the suit cannot be split into separate articles so that any of the components may be sold for less than \$100 in order to qualify for the exemption. However, components that are normally priced as separate articles (e.g., slacks and sport coats, and suit coats and suit pants sold separately prior to the two-day period) may continue to be sold as separate articles and qualify for the exemption if the price of an article is less than \$100.

b. Sales of exempt clothing combined with gifts of taxable merchandise. When exempt clothing is sold in a set that also contains taxable merchandise as a free gift and no additional charge is made for the gift, the exempt clothing may qualify for this exemption. For example, a boxed set may contain a tie and a free tie tack. If the price of the set is the same as the price of the tie sold separately, the item being sold is the tie, which is exempt from tax if sold for less than \$100 during the exemption period.

c. Layaway sales. A layaway sale is a transaction in which merchandise is set aside for future delivery to a customer who makes a deposit, agrees to pay the balance of the purchase price over a period of time and, at the end of the payment period, receives the merchandise. A sale of eligible property under a layaway sale qualifies for exemption if: final payment on a layaway order is made by, and the property is given to, the purchaser during the exemption period; or the purchaser selects the property and the retailer accepts the order for the item during the exemption period, for immediate delivery upon full payment, even if delivery is made after the exemption period.

d. Returns. For a 60-day period immediately after the sales tax holiday exemption period, when a customer returns an item that would qualify for the exemption, no credit for or refund of sales tax shall be given unless the customer provides a receipt or invoice that shows tax was paid, or the seller has sufficient documentation to show that tax was paid on the specific item. This 60-day period is set solely for the purpose of designating a time period during which the customer must provide documentation that

shows that sales tax was paid on returned merchandise. The 60-day period is not intended to change a seller's policy on the time period during which the seller will accept returns.

e. Different time zones. The time zone of the seller's location determines the authorized time period for a sales tax holiday when the purchaser is located in one time zone and the seller is located in another.

220.8(5) *Calculating taxable and exempt sales price—discounts, coupons, buying at a reduced price, and rebates.*

a. Discounts. A discount allowed by a retailer and taken on a taxable sale can be used to reduce the sales price of an item. If the discount reduces the sales price of an item to \$99.99 or less, the item may qualify for the exemption. For example, a customer buys a \$150 dress and a \$100 blouse from a retailer offering a 10 percent discount. After applying the 10 percent discount, the final sales price of the dress is \$135, and the blouse is \$90. The dress is taxable (it is over \$99.99), and the blouse is exempt (it is less than \$99.99).

b. Coupons. When a coupon is issued by a retailer and is actually used to reduce the sales price of any taxable item, the value of the coupon is excludable from the tax as a discount if the retailer is not reimbursed for the coupon amount by a third party. Therefore, a retailer's coupon can be used to reduce the sales price of an item to \$99.99 or less in order to qualify for the exemption. For example, if a customer purchases a pair of shoes priced at \$110 with a coupon worth \$20 off, the final sales price of the shoes is \$90, and the shoes qualify for the exemption. A manufacturer's coupon cannot be used to reduce the sales price of an item.

c. Buy one, get one free or for a reduced price or "two for the price of one" sales. The total price of items advertised as "buy one, get one free," or "buy one, get one for a reduced price," or "two for the price of one" cannot be averaged in order for both items to qualify for the exemption. The following examples illustrate how such sales should be handled.

EXAMPLE 1: A retailer advertises pants as "buy one, get one free." The first pair of pants is priced at \$120; the second pair of pants is free. Tax is due on \$120. Having advertised that the second pair is free, the store cannot ring up each pair of pants for \$60 in order for the items to qualify for the exemption. However, if the retailer advertises and sells the pants for 50 percent off, selling each pair of \$120 pants for \$60, each pair of pants qualifies for the exemption.

EXAMPLE 2: A retailer advertises shoes as "buy one pair at the regular price, get a second pair for half price." The first pair of shoes is sold for \$100; the second pair is sold for \$50 (half price). Tax is due on the \$100 shoes, but not on the \$50 shoes. Having advertised that the second pair is half price, the store cannot ring up each pair of shoes for \$75 in order for the items to qualify for the exemption. However, if the retailer advertises the shoes for 25 percent off, thereby selling each pair of \$100 shoes for \$75, each pair of shoes qualifies for the exemption.

EXAMPLE 3: A retailer advertises shirts as "buy two for the price of one" for \$140. Tax is due on \$140. Each shirt cannot be rung up as costing \$70. However, as described in Examples 1 and 2 above, the \$140 cost of each shirt can be discounted to bring the price of each shirt within the exemption's limitation.

d. Rebates. Rebates occur after the sale and do not affect the sales price of an item purchased. For example, a customer purchases a sweater for \$110 and receives a \$12 rebate from the manufacturer. The retailer must collect tax on the \$110 sales price of the sweater. Reference 701—subrule 203.3(2) for additional information regarding rebates.

e. Shipping and handling charges. Shipping charges separately stated and separately contracted for are not part of the amount used to determine whether the sales price of an item qualifies it for exemption. Handling charges, however, are part of the amount used to make this determination if it is necessary to pay those charges in order to purchase an item.

220.8(6) *Treatment of various transactions associated with sales.*

a. Rain checks. A rain check allows a customer to purchase an item at a certain price at a later time because the particular item was out of stock. Eligible items purchased during the exemption period using a rain check will qualify for the exemption regardless of when the rain check was issued. However,

issuance of a rain check during the exemption period will not qualify an eligible item for the exemption if the item is actually purchased after the exemption period.

b. Exchanges.

(1) If a customer purchases an item of eligible clothing or footwear during the exemption period and later exchanges the item for a similar eligible item (different size, different color, etc.), no additional tax will be due even if the exchange is made after the exemption period.

EXAMPLE: A customer purchases a \$35 shirt during the exemption period. After the exemption period ends, the customer exchanges the shirt for the same shirt in a different size. Tax is not due on the \$35 price of the shirt.

(2) If a customer purchases an item of eligible clothing or footwear during the exemption period and after the exemption period has ended returns the item and receives credit on the purchase of a different item, the appropriate sales tax will apply to the sale of the newly purchased item.

EXAMPLE: A customer purchases a \$35 shirt during the exemption period. After the exemption period ends, the customer exchanges the shirt for a \$35 jacket. Because the jacket was not purchased during the exemption period, tax is due on the \$35 price of the jacket.

(3) If a customer purchases an item of eligible clothing or footwear during the exemption period and later during the exemption period returns the item and purchases a similar but nonexempt item, the purchase of the second item is not exempt from tax.

EXAMPLE: During the exemption period, a customer purchases a \$90 dress that qualifies for the exemption. Later, during the exemption period, the customer exchanges the \$90 dress for a \$150 dress. Tax is due on the \$150 dress. The \$90 credit from the returned item cannot be used to reduce the sales price of the \$150 item to \$60 for exemption purposes.

(4) If a customer purchases an item of eligible clothing or footwear before the exemption period and during the exemption period returns the item and receives credit on the purchase of a different item of eligible clothing or footwear, no sales tax is due on the sale of the new item if it is purchased during the exemption period and otherwise meets the qualifications for exemption.

EXAMPLE: Before the exemption period, a customer purchases a \$60 dress. Later, during the exemption period, the customer exchanges the \$60 dress for a \$95 dress. Tax is not due on the \$95 dress because it was purchased during the exemption period and otherwise meets the qualifications for the exemption.

220.8(7) *Nonexclusive list of exempt items.* The following is a nonexclusive list of clothing or footwear, sales of which are exempt from tax during the two-day period in August:

Aerobic clothing	Formal clothing—sold not rented	Raincoats and hats
Antique clothing	Fur coats and stoles	Religious clothing
Aprons—household	Galoshes	Riding pants
Athletic socks	Garters and garter belts	Robes
Baby bibs	Girdles	Rubber thongs—“flip-flops”
Baby clothes—generally	Gloves—cloth, dress and leather	Running shoes without cleats
Baseball caps	Golf clothing—caps, dresses, shirts and skirts	Safety shoes (adaptable for street wear)
Bathing suits	Graduation caps and gowns—sold not rented	Sandals
Belts with buckles attached	Gym suits and uniforms	Shawls
Blouses	Hats	Shirts
Boots—general purpose	Hiking boots	Shoe inserts and laces
Bow ties	Hooded (sweat) shirts	Stockings
Bowling shirts	Hosiery, including support hosiery	Suits
Bras	Jackets	Support hose
Bridal apparel—sold not rented	Jeans	Suspenders
Camp clothing	Jerseys for other than athletic wear	Sweatshirts
Caps—sports and others	Jogging apparel	Sweatsuits
Chefs’ uniforms	Knitted caps or hats	Swim trunks
Children’s novelty costumes	Lab coats	Tennis dresses
Choir robes	Leather clothing	Tennis skirts
Clerical garments	Leg warmers	Ties
Coats	Leotards and tights	Tights
Corsets	Lingerie	Trousers
Costumes—Halloween, Santa Claus, etc., sold not rented		Tuxedos (except cufflinks)—sold not rented

Coveralls	Men's formal wear—sold not rented	Underclothes
Cowboy boots	Neckwear, e.g., scarves	Underpants
Dresses	Nightgowns and nightshirts	Undershirts
Dress gloves	Overshoes	Uniforms—generally
Dress shoes	Pajamas	Veils
Ear muffs	Pants	Vests—general, for wear with suits
Employee uniforms other than those primarily designed for athletic activity or protective use	Pantyhose	Walking shoes
	Prom dresses	Windbreakers
	Ponchos	Work clothes

220.8(8) *Nonexclusive list of taxable items.* The following is a nonexclusive list of items, sales of which are taxable during the two-day period in August:

Accessories—generally	Fabric sales	Safety clothing
Alterations of clothing	Fishing boots (waders)	Safety glasses
Athletic supporters	Football pads	Safety shoes—not adaptable for street wear
Backpacks	Football pants	Shoes with cleats or spikes
Ballet shoes	Football shoes	Shoulder pads for dresses and jackets
Barrettes	Goggles	Shower caps
Baseball cleats	Golf gloves	Skates—ice and roller
Baseball gloves	Ice skates	Ski boots, masks, suits and vests
Belt buckles sold without belts	In-line skates	Special protective clothing or footwear not adaptable for streetwear
Belts for weight lifting	Insoles	Sports helmets
Belts needing buckles but sold without them	Jewelry	Sunglasses—except prescription
Bicycle shoes with cleats	Key cases and chains	Sweatbands—arm, wrist and head
Billfolds	Knee pads	Swim fins, masks and goggles
Blankets	Laundry services	Tap dance shoes
Boutonnieres	Life jackets and vests	Thread
Bowling shoes—rented and sold	Luggage	Vests—bulletproof
Bracelets	Monogramming services	Weight lifting belts
Buttons	Pads—elbow, knee and shoulder, football and hockey	Wrist bands
Chest protectors	Patterns	Yard goods
Clothing repair	Protective gloves and masks	Yarn
Coin purses	Purses	Zippers
Corsages	Rental of clothing	
Dry cleaning services	Rental of shoes or skates	
Elbow pads	Repair of clothing	
Employee uniforms primarily designed for athletic activities or protective use	Roller blades	

This rule is intended to implement Iowa Code section 423.3(68).

701—220.9(423) Sales of diapers.

220.9(1) *In general.* The sales price of diapers, whether cloth or disposable, is exempt from sales tax. This includes children's diapers and adult diapers.

220.9(2) *Definitions.*

“*Adult diapers*” means diapers other than children's diapers.

“*Children's diapers*” means diapers marketed to be worn by children.

“*Diaper*” means an absorbent garment worn by humans who are incapable of, or have difficulty, controlling their bladder or bowel movements.

This rule is intended to implement Iowa Code section 423.3(109).

701—220.10(423) Sale of energy to residential customers.

220.10(1) *Generally.* The sales price from the sale, furnishing, or service of metered natural gas, electricity and fuels, including propane and heating oils, to residential customers for use as energy for residential dwellings and units of apartment, and condominium complexes for human occupancy, is exempt from sales and use tax.

220.10(2) *Definitions.* The following definitions are applicable to this rule:

“*Energy*” means a substance that generates power to operate fixtures or appliances within a residential dwelling or that creates heat or cooling within a residential dwelling.

“Fuel” means a liquid source of energy for a residential dwelling, individual apartment unit, or condominium. “Fuel” includes propane, heating fuel, and kerosene. However, “fuel” does not include blended kerosene used as motor fuel or special fuel.

“Metered gas” means natural gas that is billed based on metered usage to provide energy to a residential dwelling, individual apartment unit, or individual condominium.

“Residential dwelling” means a structure used exclusively for human occupancy. This does not include commercial or agricultural structures, nor does it include nonresidential buildings attached to or detached from a residential dwelling, such as an outbuilding. However, a garage attached to or detached from a dwelling that is used strictly for residential purposes qualifies for the exemption.

“Units of apartment and condominium complexes.” A building containing apartment units or individual condominiums is not considered to be qualifying property for purposes of this rule. However, if each unit has a separate meter, the unit qualifies for the exemption if it is classified as a qualifying property by the utility.

220.10(3) Other nonqualifying structures. Structures excluded from this exemption include but are not limited to nursing homes, adult living facilities, assisted living facilities, halfway houses, charitable residential facilities, YMCA residential facilities, YWCA residential facilities, and group homes.

This rule is intended to implement Iowa Code section 423.3(84).

[Filed 7/2/24, effective 8/28/24]

[Published 7/24/24]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/24.

ARC 8163C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rulemaking related to miscellaneous nontaxable transactions

The Revenue Department hereby rescinds Chapter 221, “Miscellaneous Nontaxable Transactions,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 455C and sections 423.1, 423.3 and 423.5.

Purpose and Summary

The purpose of this rulemaking is to rescind and adopt a new Chapter 221. The Department made revisions to the chapter to remove portions of the rules that the Department determined are obsolete, unnecessary, or duplicative of statutory language. The Department also moved rules from other chapters that fit with the topic of this chapter. The chapter describes the Department’s interpretation of the underlying statute to help the public understand the exemption of miscellaneous nontaxable transactions that do not fit under any other chapter.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 27, 2023, as **ARC 7203C**. A public hearing was held on the following date(s):

- January 16, 2024

Public comment was received. The Iowa Taxpayers' Association provided comments both orally at the public hearing and via written comment through Iowa Taxpayers' Association President and CEO Thomas R. Sands. Larry Nordeen with Iowa Taxes LLC also provided written comment.

Public comment addressed that rule 701—221.1(423) contains duplicative language. This was unintentional and has been corrected.

Adoption of Rulemaking

This rulemaking was adopted by the Department on June 24, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on August 28, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 221 and adopt the following **new** chapter in lieu thereof:

CHAPTER 221
MISCELLANEOUS NONTAXABLE TRANSACTIONS

701—221.1(423) Sales of prepaid merchandise cards. Sales of prepaid merchandise cards (other than prepaid telephone calling cards) are not sales of tangible personal property and are not sales for which the sales price is subject to Iowa tax. If a purchaser uses a prepaid merchandise card to purchase taxable tangible personal property or taxable services, sales tax is computed on the sales price at the time of the sale and deducted from the prepaid amount remaining on the merchandise card.

EXAMPLE: Customer A purchases a prepaid merchandise card from ABC Clothing Company in the amount of \$200. Customer A purchases a sweater for \$50 from ABC Clothing Company. ABC Clothing Company will debit A's card \$53.00 ($\50×1.06) for the state sales tax rate of 6 percent or \$53.50 ($\50×1.07) if a local option sales tax rate of 1 percent is applicable.

This rule is intended to implement Iowa Code section 423.1(47).

701—221.2(423) Demurrage charges. Charges for returning tangible personal property after the agreed-upon date that are true demurrage charges supported by a written agreement do not constitute taxable sales, and the charges are exempt from tax.

This rule is intended to implement Iowa Code sections 423.1(51) and 423.2.

701—221.3(423) Beverage container deposits. Tax does not apply to beverage container deposits. This rule is also applicable to all mandatory beverage container deposits required under the provisions of Iowa Code chapter 455C, including deposits on items sold through vending machines.

This rule is intended to implement Iowa Code chapter 455C.

701—221.4(423) Advertising agencies, commercial artists and designers as an agent or as a nonagent of a client.

221.4(1) *In general.*

a. A true agency relationship depends upon the facts with respect to each transaction. An agent is one who represents another, called the principal, in dealings with third persons. Advertising agencies, commercial artists, and designers (collectively referred to herein this subrule as “agencies” or “agency”) may act as agents on behalf of their clients in dealing with third persons, or they may act on their own behalf. To the extent agencies act as agents of their clients in acquiring tangible personal property, these agencies are neither purchasers of the property with respect to the supplier nor sellers of the property with respect to their principals.

b. When agencies act as agents of their clients in purchasing property for their clients, the tax applies to the sales price from the sale of such property to the agencies. Unless such agencies act as true agents, they will be regarded as the retailers of tangible personal property furnished to their clients and the tax will apply to the total sales price received for such property.

c. To establish that a particular acquisition is made in the capacity of an agent for a client, the agency shall act as follows:

(1) The agency must clearly disclose to the supplier the name of the client for whom the agency is acting as an agent.

(2) The agency must obtain, prior to the acquisition, and retain written evidence of agent status with the client.

(3) The price billed to the client, exclusive of any agency fee, must be the same as the amount paid to the supplier. The agency may make no use of the property for its own account, such as commingling the property of a client with another, and the reimbursement for the property should be separately invoiced or shown separately on the invoice to the client.

d. Some charges may represent reimbursement for tangible personal property acquired by the agency as agents for its clients and compensation for performing of agency services related thereto. When an agency establishes that it has acquired tangible personal property as an agent for its clients, tax does not apply to the charge made by the agency to its client for reimbursement charges by a supplier or to the charges made for the performance of the agency’s services directly related to the acquisition of personal property. Such agencies acting as agents shall not issue resale certificates to suppliers.

e. Agencies act as retailers of all items of tangible personal property produced or fabricated by their own employees when they sell to their clients. Agencies are not agents of their clients with respect to the acquisition of materials incorporated into items of tangible personal property prepared by their employees and sold at retail to their clients.

221.4(2) *Scope.* The scope of this rule is not confined simply to advertising agencies, commercial artists, and designers, but also applies to all other businesses whose activities would bring them within the scope of this rule (e.g., printers).

This rule is intended to implement Iowa Code sections 423.2 and 423.5.

701—221.5(422,423) Films and other media, exempt rental and sale.

221.5(1) *Exempt rental.*

a. The sales price from the rental of films, video and audio tapes or discs, records, photos, copy, scripts, or other media used for the purpose of transmitting that which can be seen, heard, or read shall not be taxable if the lessee either:

(1) Imposes a charge for the viewing or rental of the media and that charge will be subject to Iowa sales or use tax, or

(2) Broadcasts the contents of the media for public viewing or listening.

b. The sales price from lessees who are film exhibitors or who rent discs or other media would ordinarily be exempt from tax under this rule. The rental of media for reproduction of images into newspapers or periodicals will not be exempt from tax under this rule since neither of the criteria in paragraph 221.5(1) “*a*” or “*b*” will occur. The rental of films, video discs, and other media for home viewing is not exempt from tax.

221.5(2) Exempt sale. Sales price from the sale to persons regularly engaged in the business of leasing or renting media of motion picture films, video and audio tapes or discs, and records, or any other media that can be seen, heard, or read, are exempt from tax if the ultimate leasing or renting of the media is subject to Iowa sales or use tax.

This rule is intended to implement Iowa Code section 423.3(41).

[Filed 7/2/24, effective 8/28/24]

[Published 7/24/24]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/24.

ARC 8164C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rulemaking related to resale and processing exemptions primarily of benefit to retailers

The Revenue Department hereby rescinds Chapter 225, “Resale and Processing Exemptions Primarily of Benefit to Retailers,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.1(24), 423.1(39), 423.1(46), 423.1(54), 423.1(55), 423.2(1), 423.3(2), 423.3(50), 423.3(98), 423.3(104) and 423.15(2).

Purpose and Summary

The purpose of this rulemaking is to readopt Chapter 225. This chapter provides the Department’s interpretation of the underlying statutes and how those statutes apply to retailers who qualify for a resale or other sales or use tax exemptions on certain purchases in order to aid retailers’ understanding of the underlying statutes and to reduce uncertainty about the application of certain exemptions to retailers’ purchases. The Department added to the rules to add clarification and removed portions that the Department has determined are unnecessary, obsolete, or duplicative of statutory language. The Department also renumbered some rules due to those changes and for organizational reasons.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7149C**. A public hearing was held on the following date(s):

- January 3, 2024

Public comment was received. The Iowa Taxpayers' Association provided comments both orally at the public hearing and via written comment through Iowa Taxpayers' Association President and CEO Thomas R. Sands. These comments are summarized as follows:

1. Regarding subrule 225.3(1), some of the examples conflict with the Iowa Code on the treatment of tangible personal property used in the performance of the services of vehicle wash and wax and vehicle repair. The Department removed those examples.
2. Also regarding subrule 225.3(1), the suggestion was made to update some of the items used. The Department made that change.
3. In subrule 225.3(2), a conflict was identified with the Iowa Code on the treatment of tangible personal property purchased by body shops. The Department updated this subrule.
4. Several of the examples identified in subrule 225.5(2) may conflict with the law on bundled transactions. Because subrule 225.5(2) specifically says it is not to be construed as to be at variance with bundled transactions, the Department determined no change was needed.
5. Additionally, the Department lettered several unlettered paragraphs throughout the chapter.

Adoption of Rulemaking

This rulemaking was adopted by the Department on June 24, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on August 28, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 225 and adopt the following **new** chapter in lieu thereof:

CHAPTER 225 RESALE AND PROCESSING EXEMPTIONS PRIMARILY OF BENEFIT TO RETAILERS

701—225.1(423) Paper or plastic plates, cups, and dishes; paper napkins; wooden or plastic spoons and forks; and straws. When paper or plastic cups, plates, and dishes, paper napkins, and wooden or plastic spoons, forks, and other utensils are sold with food or other items to a buyer, and the buyer uses or consumes the utensils, sales of those utensils to retailers are considered sales for resale. The sales price from the sale of such items by retailers to consumers or users is subject to tax.

When these articles are transferred in connection with a service or sold for free distribution by retailers apart from a retail sale, the transaction is deemed to be a retail sale to the retailer and therefore is taxable.

Sales of reusable placemats to retailers that sell meals are also subject to tax.

EXAMPLE 1: A retailer purchases napkins and disposable forks and knives for the retailer's restaurant. The retailer provides these items free of charge, apart from the retail sale of food at the retailer's restaurant. Sale of these items to the retailer is a retail sale and is subject to tax.

EXAMPLE 2: A retailer purchases napkins and disposable forks and knives for the retailer's restaurant. The retailer sells these items with tangible personal property to the retailer's customers. The sale of these items to the retailer is considered a sale for resale and is not subject to Iowa sales tax at the time of purchase.

This rule is intended to implement Iowa Code section 423.3(2).

701—225.2(423) Services used in the repair or reconditioning of certain tangible personal property. Services are exempt from tax when used in the reconditioning or repairing of tangible personal property of the type that is normally sold in the regular course of the retailer's business and that is held for sale by the retailer.

EXAMPLE 1: A owns a retail appliance store and contracts with B to repair a refrigerator that A is going to resell. A can purchase the repair service from B tax-free because A is regularly engaged in selling refrigerators and will offer the refrigerator for sale when it is repaired.

EXAMPLE 2: B, a used car dealer, owns a used car lot and contracts with C to repair a used car that B is going to sell. B can purchase the repair service from C tax-free because B is regularly engaged in selling used cars and will sell the used car after it is repaired.

EXAMPLE 3: C operates a retail farm implement dealership. C accepts a motorboat as part consideration for a piece of farm equipment. C then contracts with D to repair the motor on the boat. C does not normally sell motorboats in the regular course of C's business. Therefore, the service performed by D for C is subject to tax.

EXAMPLE 4: XYZ owns a retail radio and television store in Iowa and contracts with W to repair a television that XYZ is going to sell. XYZ can purchase television repair service tax-free from W because XYZ is regularly engaged in selling televisions subject to sales tax. However, in this instance, XYZ sells the used television and delivers it into interstate commerce with the result that the Iowa sales tax is not collectible. Regardless of this fact, the exemption is applicable, and no Iowa tax is due for the television repair services performed.

This rule is intended to implement Iowa Code sections 423.1(55) and 423.3(50).

701—225.3(423) Tangible personal property purchased by a person engaged in the performance of a service.

225.3(1) *In general.*

a. Tangible personal property purchased by a person engaged in the performance of a service is purchased for resale and not subject to tax if (1) the provider and user of the service intend that a sale of the property will occur, and (2) the property is transferred to the user of the service in connection with the performance of the service in a form or quantity capable of a fixed or definite price value, and (3) the sale is evidenced by a separate charge for the identifiable piece or quantity of property.

b. Tangible personal property that is not sold in the manner set forth in paragraph 225.3(1) "a" above is not purchased for resale and thus is subject to tax at the time of purchase by a person engaged in the performance of a service. Such tangible personal property is considered to be consumed by the purchaser who is engaged in the performance of a service, and the person performing the service shall pay tax upon the sale at the time of purchase.

EXAMPLE 1: An investment counselor purchases envelopes. These envelopes are used to send out monthly reports to the investment counselor's clients regarding the clients' accounts. Tax is due at the time the investment counselor purchases the envelopes if the clients are not billed for these items. Each envelope is transferred to a client in a form or quantity that is capable of a fixed or definite price value.

However, there must also be an actual sale to the client (customer) of an item of personal property in order that there be a “resale” of the item.

EXAMPLE 2: A retailer purchases television power supplies tax-free and makes a separate charge for the power supply to the customer. Since the power supply is transferred to the customer in a form or quantity capable of a fixed or definite price value, the retailer may purchase the power supply exempt from tax for subsequent resale.

EXAMPLE 3: A beauty shop purchases shampoo and other items to be used in the performance of the shop’s service. Tax is due at the time the beauty shop purchases such items from the shop’s supplier because the customers of the beauty shop are not separately billed for the items and because the items are not transferred to the customer in a form or quantity capable of a fixed or definite price value. The items are consumed by the beauty shop.

EXAMPLE 4: An accounting firm purchases plastic binders that are used to cover the reports issued to the firm’s customers. These binders would be subject to tax at the time of purchase by the firm where the customer of the firm is not billed for the item, because there is no sale to the customer.

EXAMPLE 5: A meat locker purchases materials, such as wrapping paper and tape, that the meat locker uses to wrap meat for customers who provide the locker with the meat. These materials would be subject to tax at the time of purchase by the meat locker because the materials are not sold to the customer in a form or quantity capable of a fixed or definite price value.

EXAMPLE 6: A jeweler purchases materials, such as main springs and crystals, to be used in the performance of a service. These items are purchased by the jeweler for resale when the items are transferred to the customer in a form or quantity capable of a fixed or definite price value, and each item is actually sold to the customer as evidenced by a separate charge therefor.

EXAMPLE 7: A lawn care service applies fertilizer, herbicides, and pesticides to the lawn care service’s customers’ lawns. The following are examples of invoices to customers that are suitable to indicate a lawn care service’s purchase of the fertilizer, herbicides, and pesticides for resale to those customers: “Chemicals...31 Gal...\$60”; “Fertilizer...50 lbs...\$100”; and “Materials applied to lawn...4 bushel...\$40.” The following are examples of information placed upon an invoice that would not indicate a purchase for resale to the customers invoiced: “Fifty percent of the charge for this service is for materials placed on a lawn,” or “Lawn chemicals...\$30” or “Fifty pounds of fertilizer was applied to this lawn.”

225.3(2) *Purchases made by automobile body shops or garages with body shops.*

a. *Chemicals, solvents, sorbents, and reagents.* Body shops may make exempt purchases of qualifying chemicals, solvents, sorbents, reagents, and other tangible personal property used in a vehicle repair service. Iowa Code section 423.3(99) contains more information on the conditions that must be met to qualify for this exemption.

b. *Purchase for resale.* Tangible personal property purchased by body shops can be purchased for resale provided both of the following conditions are met:

(1) The property purchased for resale is actually transferred to the body shop’s customer by becoming an ingredient or component part of the repair work. More information is contained in Iowa Code section 423.3(2).

(2) The property purchased for resale is itemized as a separate item on the invoice to the body shop’s customer and is transferred to the customer in a form or quantity capable of a fixed or definite price value.

If either of the above two conditions is not met, there is no purchase for resale and the body shop is deemed the consumer of the item purchased.

c. *Exemption certificates.* When body shops purchase items that will be resold (detailed list below) in the course of the repair activity or otherwise exempt, the vendors selling to the body shops are encouraged to accept a valid exemption certificate at the time of purchase. Failure of the vendor to accept a valid exemption certificate may subject that vendor to sales tax liability since the burden of proof would be on the vendor that a sale was made for resale. If the vendor cannot meet that burden, the vendor will be liable for the sales tax. Such burden is not met merely by a showing that the purchaser had obtained from the department an Iowa retail sales tax permit or retail use tax permit.

d. Parts purchased for resale. The following are nonexclusive examples of parts which can be purchased for resale since they are generally transferred to the body shop's customer during the course of the repair in a form or quantity capable of a fixed or definite price value and are generally itemized separately as parts:

- Accessories
- Batteries
- Brackets
- Bulbs
- Bumpers
- Cab corners
- Chassis parts
- Door guards
- Door handles
- Doors
- Engine parts
- Fenders
- Floor mats
- Grilles
- Headlamps
- Hoods
- Hubcaps
- Radiators
- Rocker panels
- Shock absorbers
- Side molding
- Spark plugs
- Tires
- Trim
- Trunk lids
- Wheels
- Window glass
- Windshield ribbon
- Windshields

e. Taxable tools and supplies. The following are nonexclusive examples of tools and supplies that are generally not transferred to the body shop's customer during the course of the repair and, therefore, could not be purchased for resale. The body shop is deemed the consumer of these items since they are not transferred to a customer. Therefore, the body shop must pay tax to the vendor at the time of purchase:

- Air compressors and parts
- Body frame straightening equipment
- Brooms and mops
- Buffers
- Chisels
- Drill bits
- Drop cords
- Equipment parts
- Fire extinguisher fluids
- Floor jacks
- Hand soap
- Hand tools
- Office supplies
- Paint brushes

Paint sprayers

Sanders

Signs

Spreaders for putty

Washing equipment and parts

Welding equipment and parts

f. Separately itemized. A body shop must collect sales tax on the taxable service of repairing motor vehicles. More information is contained in rule 701—218.2(423). However, due to the nature of the insurance formulas, it is possible for the body shop to itemize that portion of the body shop's billing that would be for repair services and that portion relating to consumed "materials." It is also possible for the body shop to itemize that portion of the body shop's charges for parts that the body shop purchases for resale to the body shop's customers. A body shop does not and cannot resell the tools and supplies previously listed in this rule; the body shop's purchases of such items are taxable.

Therefore, as long as a body shop separately itemizes on the body shop's invoices to the body shop's customers the amounts for labor, parts, and "materials," the body shop should collect sales tax on the labor and the parts, but not on the materials as enumerated in this rule.

EXAMPLE 1: Company B, a body shop, repairs a motor vehicle by replacing a fender and painting the vehicle. In doing the repair work, the body shop uses rags, sealer and primer, paint, solder, thinner, bolts, nuts and washers, masking tape, sandpaper, waxes, buffing pads, chamois, and polishes. In Company B's invoice to the customer, the labor is separately listed at \$600, the part (fender) is separately listed at \$600, and the category of "materials" is separately listed for a lump sum of \$200, for a total billing of \$1,400. The Iowa sales tax computed by Company B should be on \$1,200, which is the amount attributable to the labor and the parts. The materials consumed by Company B were separately listed and would not be included in the tax base for the taxable "sales price," as defined in Iowa Code section 423.1(51), which is taxable under Iowa Code section 423.2.

EXAMPLE 2: Same facts as Example 1, except the "materials" were not separately listed on the invoice, but had been included in either or both of the labor or parts charges by marking up such charges. Company B must collect sales tax on the full charges for parts and labor.

This rule is intended to implement Iowa Code sections 423.1(39) and 423.3(2).

701—225.4(423) Maintenance or repair of fabric or clothing.

225.4(1) *Chemicals, solvents, sorbents, and reagents.* Sales of chemicals, solvents, sorbents, or reagents directly used and consumed in the maintenance or repair of fabric or clothing are exempt from tax. This rule's exemption is mainly applicable to dry-cleaning and laundry establishments; however, it is also applicable to soap or any chemical or solvent used to clean carpeting. The department presumes that a substance is "directly used" in the maintenance or repair of fabric or clothing if the substance comes in contact with the fabric or clothing during the maintenance or repair process. Substances that do not come into direct contact with fabric or clothing may, under appropriate circumstances, be directly used in the maintenance or repair of the fabric or clothing, but direct use will not be presumed.

225.4(2) Examples.

a. Perchloroethylene (also known as "perch") or petroleum solvents used in dry-cleaning machines and coming in direct contact with the clothing being dry-cleaned are typically exempt as being directly used and consumed in the maintenance or repair of fabric or clothing.

b. Substances used to clean or filter the "perch" or petroleum solvents would also be exempt from tax, even though these substances do not come in direct contact with the clothing being cleaned.

c. The sale of soap or detergents especially made for mixing with "perch" or petroleum solvents is exempt from tax.

d. The sale of stain removers to dry cleaners is exempt from tax.

e. A commercial laundry's purchase of detergents, bleaches, and fabric softeners is exempt from tax.

f. A commercial laundry's purchase of water, which is a solvent, is also exempt from tax if purchased for use in the cleaning of clothing.

- g. The purchase of starch by laundries and “sizing” by dry cleaners is not exempt from tax. This rule is intended to implement Iowa Code section 423.3(51).

701—225.5(423) The sales price from the leasing of all tangible personal property subject to tax.

225.5(1) Leases. The rental of tangible personal property is treated as the sale of that property for the purposes of Iowa sales and use tax law because “leases” and “rentals” of tangible personal property are taxable retail “sales” of that property. The rental of tangible personal property is not a taxable enumerated service. The resale exemption in favor of sales for resale of tangible personal property is applicable to sales and leases of tangible personal property for subsequent rental or lease.

EXAMPLE A: ABC buys blowers, hand tools, ladders, plumbers’ snakes, sanders, and tillers for subsequent short-term rental to various customers. ABC’s purchases of these items of equipment are purchases for resale and are exempt from tax.

EXAMPLE B: In addition to its purchases of equipment for subsequent rental, ABC leases from retailers, long-term, items of heavier equipment, such as backhoes, forklifts, manlifts, tractors, and trenchers, again for subsequent leasing to various customers. Since the leasing of tangible personal property is now a purchase of that property, ABC’s leasing for later sublease is a purchase of tangible personal property and is exempt from tax at the time of purchase as the purchase of tangible personal property for subsequent resale.

225.5(2) Distinguishing leases and rentals of tangible personal property from the furnishing of nontaxable services. In order to determine whether a particular fee is charged for the rental of tangible personal property or for the furnishing of a nontaxable service, the department looks at the substance, rather than the form, of the transaction. When the possession and use of tangible personal property by the recipient is merely incidental as compared to the nontaxable service performed, all of the sales price is derived from the furnishing of such nontaxable service and, unless a separate fee or charge is made for the possession and use of tangible personal property, no sales price is derived from the rental of tangible personal property. When the nontaxable service is merely incidental to the possession and use of the tangible personal property by the recipient, all of the sales price is derived from the furnishing of tangible personal property rental and, unless a separate fee or charge is made for the nontaxable service, no sales price is derived from the nontaxable service. When a tangible personal property rental agreement contains separate fee schedules for rent and for nontaxable service, only the sales price derived from the tangible personal property rental is subject to tax. This rule is not to be so construed as to be at variance with Iowa Code sections 423.2(6) “bf” and 423.2(8) concerning transportation services and bundled service contracts, respectively.

225.5(3) Rental of real property distinguished from rental of tangible personal property.

a. If a rental contract allows the renter exclusive possession or use of a defined area of real property and, incident to that contract, tangible personal property is provided that allows the renter to utilize the real property, if there is no separate charge for rental of tangible personal property, the sales price is for the rental of real property and is not subject to tax, unless taxable room rental is involved.

b. If a person rents tangible personal property and, incidental to the rental of the property, space is provided for the property’s use, the sales price from the rental shall be subject to tax. It may at times be difficult to determine whether a particular transaction involves the rental of real property with an incidental use of tangible personal property or the rental of tangible personal property with an incidental use of real property.

225.5(4) Rental of tangible personal property and rental of fixtures. The rental of tangible personal property that shall, prior to its use by the renter under the rental contract, become a fixture shall not be subject to tax. Such a rental is the rental of real property rather than tangible personal property. In general, any tangible personal property that is connected to real property in a way that it cannot be removed without damage to itself or to the real property is a fixture. The rental of a mobile home or manufactured housing, not sufficiently attached to realty to constitute a fixture, is room rental rather than tangible personal property rental and subject to tax on that basis.

225.5(5) Rental of tangible personal property embodying intangible personal property rights—transactions taxable and exempt. Under the law, the sales price from rental of tangible personal property

includes royalties and copyright and license fees. The rental of all property that is a tangible medium of expression for the intangible rights of royalties and copyright and license fees is subject to tax. Therefore, the sales price from the rental of films, videodiscs, videocassettes, and computer software that are the tangible means of expression of intangible property rights is subject to tax. The rental of such tangible personal property is subject to tax whether the property is held for rental to the general public or for rental to one or a few persons. More information is contained in rule 701—221.5(423) for an exemption from the requirements of this subrule for rental of films, videotapes and other media to lessees imposing a taxable charge for viewing or rental of the media or to lessees that broadcast the contents of these media for public viewing or listening.

225.5(6) *Deposits and additional fees.*

a. Taxability of a deposit required by an owner of rental property as a condition of the rental depends upon the type of deposit required. A deposit subject to forfeiture for the lessee's failure to comply with the rental agreement is not subject to tax. This type of deposit is separate from the rental payments and therefore is not taxable as part of the rental. Such deposits may include those for reservation, late return of the rental property or damage to the rental property. Deposits not subject to forfeiture which represent part of the rental receipts are considered part of the taxable rental and are subject to tax. Such deposits may include a deposit of the first rental payment that is applied to the rental receipts.

b. When tangible personal property is rented for a flat fee per month, per year, or for other designated periods, plus an additional fee based on quantity and capacity of production or use, the entire charge is taxable.

225.5(7) *Leasing of tangible personal property moving in interstate commerce.*

a. In the case of a lease or rental that requires recurring periodic payments, the first periodic payment is taxed to Iowa if the property was delivered to the lessee in Iowa. Periodic payments made subsequent to the first payment may be taxed only by the state in which the property is primarily located for the period covered by the payment. The primary property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location shall not be altered by intermittent use at different locations, such as use of business property that accompanies employees on business trips and service calls.

b. Where a nonresident lessor leases tangible personal property to a resident or nonresident lessee and the lessee uses the property in Iowa, the nonresident lessor has the responsibility of collecting Iowa use tax on the lease payments if Iowa is the primary location of the property, provided the lessor is a retailer maintaining a place of business in this state as defined in Iowa Code section 423.1(48). Whether the lease agreement is executed in Iowa or not is irrelevant.

c. Where a lessee rents equipment sourced to Iowa and no tax has been collected from such lessee by the lessor, the lessee should remit Iowa use tax to the department of revenue. In the event no tax is remitted, the department, in its discretion, may seek to collect the tax from the lessor or lessee. In the event that the lessee rents tangible personal property, and the lessor does not maintain a place of business in Iowa and does not collect use tax pursuant to Iowa Code section 423.14, such lessee shall remit tax on its rental payments to the department.

d. Where a resident lessor leases equipment to a nonresident lessee outside Iowa and the equipment is delivered to the lessee outside Iowa, the act of leasing is exempt from the Iowa sales tax on the rental payments. However, in the event the lessee brings the equipment into Iowa, uses it in Iowa, and Iowa becomes the primary location of the property, Iowa use tax applies to subsequent rental payments.

e. If sales or use tax has already been paid to another state on the sales price of tangible personal property prior to the use of that property in Iowa, a tax credit against the Iowa use tax on the purchase price will be given. After the equipment is brought into Iowa, if sales or use tax is properly payable and is paid to another state on the rental payments of equipment, for the same time the Iowa tax is imposed on such rentals, a tax credit against the Iowa use tax on such rental payments will be given.

This rule is intended to implement Iowa Code sections 423.1(24), 423.1(43), 423.1(46), 423.1(54), 423.2(1), and 423.15(2).

701—225.6(423) Certain inputs used in taxable vehicle wash and wax services. The sales price from the sale of water, electricity, chemicals, solvents, sorbents, or reagents to a retailer to be used in providing a service that includes a vehicle wash and wax that is subject to Iowa Code section 423.2(6) is exempt from tax.

225.6(1) Definitions. For the purposes of this rule, terms mean the same as defined in Iowa Code section 423.1 and 701—Chapter 200. Additionally, the following definitions apply:

“Secondary vehicle wash and wax facility” means a vehicle wash and wax facility whose primary purpose is to sell tangible personal property or services other than vehicle wash and wax services, but which also provides vehicle wash and wax services that are taxable under Iowa Code section 423.2(6). Examples of “secondary vehicle wash and wax facilities” include but are not limited to vehicle dealerships, convenience stores, service stations, and wholesale and retail fuel marketing locations that provide taxable vehicle wash and wax services in addition to their primary business purpose. A facility that provides vehicle wash and wax services that also sells tangible personal property or other services is presumed to be a “secondary vehicle wash and wax facility” unless it can prove otherwise.

“Stand-alone vehicle wash and wax facility” means a vehicle wash and wax facility whose primary purpose is to provide vehicle wash and wax services that are taxable under Iowa Code section 423.2(6). A vehicle wash and wax facility is considered a “stand-alone vehicle wash and wax facility” although it sells a de minimis amount of products and services related to vehicle wash and wax services. Nonexclusive examples of products and services related to vehicle wash and wax services include coin-operated vacuum stations and air fresheners and vehicle wipes that are sold out of vending machines.

“Vehicle” means the same as defined in Iowa Code section 321.1.

“Vehicle wash and wax facility” means any retailer that provides vehicle wash and wax services.

“Vehicle wash and wax services” or *“vehicle wash and wax”* means washing and waxing services performed inside or outside of the vehicle or both whether the services are performed by hand, machine, or coin-operated devices.

“Water” means water directly consumed or used in providing the taxable vehicle wash and wax service. “Water” does not include, for example, charges or fees for storm water, sanitary sewer, or solid waste services since these are not fees for water directly used or consumed in providing the taxable vehicle wash and wax service.

225.6(2) Purchases made by a stand-alone vehicle wash and wax facility. Purchases of water, electricity, chemicals, solvents, sorbents, or reagents by a stand-alone vehicle wash and wax facility are presumed to be 100 percent exempt from sales tax. The stand-alone vehicle wash and wax facility is not required to provide the retailers of such items with an exemption certificate.

225.6(3) Purchases made by a secondary vehicle wash and wax facility.

a. Sales price of electricity and water. The exemption for the sales price of electricity and water purchased by secondary vehicle wash and wax facilities applies only to the sales price from the sale of electricity and water directly consumed or used in providing vehicle wash and wax services, as distinguished from electricity and water used and consumed for other purposes not related to vehicle wash and wax services (e.g., electricity to operate office equipment or lighting, and water used for cleaning the inside of a gas station or for irrigation).

(1) Separately metered electricity and water. Ideally, a secondary vehicle wash and wax facility will have separate meters to measure its nonexempt electricity and water usage and its exempt electricity and water used for providing taxable vehicle wash and wax services. A secondary vehicle wash and wax facility that separately meters its exempt and nonexempt electricity and water usage and does not use the exempt electricity and water for any other purpose than providing a taxable vehicle wash and wax service does not have to file an exemption certificate with the retailers. The retailer should not charge tax on the charges associated with the meters that measure electricity and water used solely for providing the taxable vehicle wash and wax services.

However, if water or electricity that is measured by the meter that separately measures the vehicle wash and wax facility is used for both taxable vehicle wash and wax services and nonexempt purposes (e.g., consumed in performance of its business operations), the secondary vehicle wash and wax facility must allocate the use of the electricity or water according to exempt and nonexempt use if an exemption for nontaxable use is to be claimed. To obtain the exemption for electricity or water under this rule, a secondary vehicle wash and wax facility that has both exempt and nonexempt electricity or water usage measured by the same meter must request the exemption by providing an exemption certificate to the electricity or water retailer.

The exemption certificate shall indicate what percentage of the electricity or water is used for taxable vehicle wash and wax services and is therefore exempt. The exemption certificate shall be in writing and detail how the percentages of exempt and nonexempt usage were developed. The rationale provided for the percentage of exempt water and electricity must be reasonable after the nature of the secondary vehicle wash and wax service facility's primary purpose and all other facts and circumstances are considered. A secondary vehicle wash and wax facility that cannot, or does not want to, determine the percentage of exempt electricity or water usage may forego the exemption. The exemption certificate is valid for three years, but the secondary vehicle wash and wax facility must amend its exemption certificate to reflect any changes that would affect the exemption amount (e.g., summer month water usage compared to winter month water usage).

(2) Exempt and nonexempt usage measured by the same meter. When electricity and water are purchased for vehicle wash and wax services as well as for taxable uses, and the use of the electricity or water is recorded on a single meter, a secondary vehicle wash and wax facility must allocate the use of the electricity or water according to exempt and nonexempt use if an exemption for nontaxable use is to be claimed. To obtain the exemption for electricity or water under this subparagraph, a secondary vehicle wash and wax facility that has both exempt and nonexempt electricity or water usage measured by the same meter must request the exemption by providing an exemption certificate to the electricity or water retailer.

The exemption certificate must indicate what percentage of the electricity or water is used for taxable vehicle wash and wax services and is therefore exempt. The exemption certificate shall be in writing and detail how the percentages of exempt and nonexempt usage were developed. The rationale provided for the percentages of exempt water and electricity must be reasonable after the nature of the secondary vehicle wash and wax service provider's primary purpose and all other facts and circumstances are considered. A secondary vehicle wash and wax facility that cannot, or does not want to, determine the percentages of exempt electricity and water usage may either forego the exemption or install a separate meter. The exemption certificate is valid for three years, but the secondary vehicle wash and wax facility must amend its exemption certificate to reflect any changes that would affect the exemption amount (e.g., summer month water usage compared to winter month water usage).

Exemption statutes are strictly construed against the taxpayer in favor of taxation. The secondary vehicle wash and wax facility has the burden of proof regarding the exempt percentages and is liable for any mistakes or misrepresentations made regarding the computation or for failure to notify the electricity or water retailer in writing of the percentage of exempt usage, if required.

b. Sales price of chemicals, solvents, sorbents, or reagents. The sales price of chemicals, solvents, sorbents, or reagents sold to a secondary vehicle wash and wax facility to be used in providing a taxable vehicle wash and wax service is presumed to be 100 percent exempt from sales tax if the secondary vehicle wash and wax facility's primary business does not consume or sell the same chemicals, solvents, sorbents, or reagents that are used in providing taxable vehicle wash and wax services. If the secondary vehicle wash and wax facility's primary business does not use or sell the same products used in providing the taxable vehicle wash and wax service, the facility does not have to provide the retailer with an exemption certificate. However, if the secondary vehicle wash and wax facility may consume the chemicals, solvents, sorbents, or reagents for any purpose other than providing taxable vehicle wash and wax services, the secondary vehicle wash and wax facility shall either:

(1) Purchase such items without tax liability if the majority of the chemicals, solvents, sorbents, or reagents are used in performing the vehicle wash and wax service and remit the tax to the department at

the time such items are consumed in the operation of the primary business. The secondary vehicle wash and wax facility shall provide to the retailer an exemption certificate that indicates that not all items will be used in providing a taxable vehicle wash and wax service and the tax on such items will be remitted at a later date; or

(2) Pay tax to retailers at the time of purchase if the majority of the chemicals, solvents, sorbents, or reagents will be consumed in the operation of the primary business and deduct the original cost of any such items subsequently used in the vehicle wash and wax service when reporting tax on the facility's returns.

EXAMPLE 1: An automobile dealership offers a taxable drive-through vehicle wash and wax service in addition to its primary business purpose of selling vehicles. The automobile dealership is a "secondary vehicle wash and wax facility" because the taxable vehicle wash and wax service is offered secondarily to its primary purpose of selling and servicing vehicles. In addition to providing vehicle wash and wax services to the general public (a taxable vehicle wash and wax service), the automobile dealership uses its vehicle wash and wax facility to wash and wax its inventory. Using the vehicle wash and wax facility to wash or wax inventory is not a taxable vehicle wash and wax service because the vehicle wash and wax service is not sold to customers; the service is "consumed" in performance of the automobile dealership's business operations.

The automobile dealership has electricity and water meters that each separately measure the electricity and water used and consumed in using the vehicle wash and wax facility. Although the automobile dealership separately meters electricity and water, the separate meters do not measure only taxable vehicle wash and wax services. Therefore, to claim the exemption, the automobile dealership shall provide the electricity and water retailers with an exemption certificate that states the percentages of water and electricity used in providing taxable vehicle wash and wax services. The electricity and water retailers shall separately state and bill for the taxable and exempt amounts.

The automobile dealership also uses some of the chemicals, solvents, sorbents, or reagents while washing and waxing its inventory, so the automobile dealership may either (1) purchase such items without tax liability if the majority of the chemicals, solvents, sorbents, or reagents are used in performing the vehicle wash and wax service and remit the tax at the time such items are consumed in the operation of the primary business, or (2) pay tax to retailers at the time of purchase if the majority of the chemicals, solvents, sorbents, or reagents will be consumed in the operation of the primary business and deduct the original cost of any such items subsequently used in the vehicle wash and wax service when reporting tax on the dealership's returns.

The exemption is available for the quantity of items used in providing the taxable vehicle wash and wax services even though the automobile dealership does not separately itemize on its receipts the amounts of electricity, water, chemicals, solvents, sorbents, or reagents used in providing the taxable vehicle wash and wax services.

EXAMPLE 2: A gas station that also sells vehicle wash and wax services does not separately meter the electricity or water used and consumed in providing the taxable vehicle wash and wax services. With the exception of providing vehicle wash and wax services, the gas station does not provide any other additional services. The gas station wants to claim the exemption. To obtain the exemption for electricity or water under this rule, the gas station shall calculate, and has the burden of proving, the amount of exempt electricity or water it uses in providing taxable vehicle wash and wax services. The gas station shall furnish to the electricity or water retailer an exemption certificate that indicates what percentage of the electricity or water is exempt.

Additionally, because the gas station only sells gasoline and taxable vehicle wash and wax services, it is unlikely that the gas station will consume the chemicals, solvents, sorbents, or reagents for any purpose other than providing taxable vehicle wash and wax services. Therefore, the sales price of the chemicals, solvents, sorbents, or reagents that the gas station purchased for use in providing taxable vehicle wash and wax services is 100 percent exempt from sales tax. The gas station does not have to provide the retailers of the chemicals, solvents, sorbents, or reagents with an exemption certificate.

EXAMPLE 3: Same facts as Example 2, except the gas station does not believe it is feasible to accurately determine the amount of electricity or water usage that can be attributed to the vehicle wash

and wax facility. The gas station also does not believe it is economically beneficial to install separate meters to measure the usage of electricity or water for the sole purpose of claiming the exemption. Therefore, the gas station does not claim the exemption and pays sales tax on the full sales price of water or electricity.

This rule is intended to implement Iowa Code section 423.3(98).

701—225.7(423) Exemption for certain purchases by commercial enterprises.

225.7(1) Exemption. The sales price from the sale of specified digital products and of prewritten computer software sold, and of enumerated services described in Iowa Code section 423.2(1)“a”(5) or 423.2(6)“bq,”“br,”“bs,” and “bu” furnished to a commercial enterprise for use exclusively by a commercial enterprise is exempt from tax.

225.7(2) Commercial enterprise as purchaser. A purchaser seeking this exemption must be a commercial enterprise as defined in Iowa Code section 423.3(104)“b”(1). For purposes of Iowa Code section 423.3(104)“b”(1). For purposes of Iowa Code section 423.3(104)“b”(1), the following definitions apply:

a. Insurance company. “Insurance company” means the same as defined in Iowa Code section 423.3(47)“d.” Excluded from the definition of “insurance company” is the following nonexhaustive list of entities: benevolent associations governed by Iowa Code chapter 512A, fraternal benefit societies governed by Iowa Code chapter 512B, and health maintenance organizations governed by Iowa Code chapter 514B.

b. Occupation. “Occupation” means the principal business of an individual, such as the business of farming.

c. Profession. “Profession” means a vocation or employment requiring specialized knowledge and often long and intensive academic preparation.

225.7(3) Exclusive use by a commercial enterprise. A commercial enterprise must be the exclusive user of the product. Use in the ordinary course of a commercial enterprise’s business constitutes exclusive use by a commercial enterprise. Uses by all other users, including entities other than commercial enterprises, do not constitute uses by a commercial enterprise.

a. Examples of exclusive uses. The following are examples of exclusive uses by a commercial enterprise in the normal course of business:

- (1) Word processing software loaded onto employees’ work computers.
- (2) Software that displays a menu on a tablet used by customers at a restaurant.
- (3) Information services used by temporary employees of a commercial enterprise in the ordinary course of business.

b. Examples of disqualifying nonexclusive uses. The following are examples of uses that are not exclusive uses by a commercial enterprise or uses in the ordinary course of business:

- (1) Software shared by a commercial enterprise with an entity that is not a commercial enterprise.
- (2) Video games that customers may purchase on a tablet that is provided at a restaurant for customers to use while waiting for service.

225.7(4) Noncommercial purposes. “Noncommercial purposes” means purposes that are outside of carrying out the business purpose of a commercial enterprise or purposes outside of the ordinary course of business of a commercial enterprise. The following are examples of uses for noncommercial purposes:

- a.* Personal and recreational use.
- b.* Holding a product for future use for a noncommercial purpose.

225.7(5) De minimis. “De minimis” means an amount of use of a product for noncommercial purposes that, when considering the product’s value and the frequency with which the use for noncommercial purposes occurs during the product’s total use time, is so small as to make accounting for that use unreasonable or impractical. Whether a use is de minimis is a fact-based determination that shall be made on a case-by-case basis.

This rule is intended to implement Iowa Code section 423.3(104).

[Filed 7/2/24, effective 8/28/24]

[Published 7/24/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/24.

ARC 8165C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rulemaking related to the flood mitigation program

The Revenue Department hereby rescinds Chapter 272, "Flood Mitigation Program," Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 418.12 and 421.14.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 418 and sections 423.2A(2) and 423.2A(3).

Purpose and Summary

The purpose of this rulemaking is to rescind Chapter 272 and adopt a new Chapter 272, which consists of rules relating to the Department's role in the administration of the Flood Mitigation Program. These rules are required under Iowa Code chapter 418. These rules interpret the underlying statutes regarding the calculation and remittance of the sales tax increment funding to projects approved under Iowa Code chapter 418. The Department revised the rules to provide clarification and to remove portions of the rules that the Department determined are unnecessary, obsolete, and duplicative of statutory language. The Department also added a rule to provide clarification about the administrative fee authorized under Iowa Code section 423.2A(3) that the Department retains from the amount it would otherwise distribute for the Flood Mitigation Program.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7184C**. A public hearing was held on the following date(s):

- January 3, 2024

Public comment was received. The Iowa Taxpayers' Association President and CEO Thomas R. Sands provided written comments asking for an explanation of the "period for processing returns." Under the Iowa Code, distributions for the Flood Mitigation Program are calculated quarterly. The period for processing returns is that quarter when the distributions are calculated. The Department did not make any changes based on this comment.

No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Department on June 24, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on August 28, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 272 and adopt the following **new** chapter in lieu thereof:

CHAPTER 272
FLOOD MITIGATION PROGRAM

701—272.1(418) Flood mitigation program. Iowa Code chapter 418 authorizes and governs the flood mitigation program to assist governmental entities in undertaking approved projects. This chapter sets forth rules for the department of revenue's administration of the calculation and remittance of the sales tax increment funding. The Iowa department of homeland security and emergency management's administrative rules for other aspects of this program are found at 605—Chapter 14.

This rule is intended to implement Iowa Code chapter 418 and sections 423.2(11), 423.2A(2) and 423.2A(3).

701—272.2(418) Definitions. For purposes of this chapter, terms mean the same as defined in Iowa Code chapter 418. Additionally, the following definitions apply:

“*Corresponding quarter*” means the quarter in the base year and the quarter in the year in which the increment is measured that end in the same month. For example, if the base year is fiscal year 2013 and the year in which the increment is first measured is 2014, then the quarter ending in September 2012 of the base year would correspond to the quarter ending in September 2014 of the calendar year.

“*Department*” means the Iowa department of revenue.

This rule is intended to implement Iowa Code section 418.1.

701—272.3(418) Sales tax increment calculation.

272.3(1) Sales tax increment calculation formula. The department will calculate quarterly the amount of the sales tax increment as described in Iowa Code section 418.11(2). To do so, the department will determine the base year for the flood mitigation project when the period for processing returns for the final quarter in the base year is complete.

272.3(2) Sales considered within the calculation formula. Only sales that are made by retail establishments in the area are taken into consideration when the sales subject to tax are determined. Sales otherwise sourced to the area are not considered in the calculation.

272.3(3) Identification of retailers. Each governmental entity that has established a project under Iowa Code chapter 418 must notify the department of retail establishments in the governmental entity's

applicable area that are collecting sales tax as soon as possible. This process shall be ongoing until the governmental entity ceases to utilize sales tax revenue under Iowa Code chapter 418.

This rule is intended to implement Iowa Code sections 418.11 and 423.2A(2).

701—272.4(418) Sales tax increment fund.

272.4(1) Deposits. For each governmental entity that establishes a flood mitigation project under Iowa Code chapter 418, the department will deposit collected funds into each applicable area's sales tax increment fund as described in Iowa Code section 418.12(3). Additionally, moneys will not be deposited in the fund before the period for processing returns is complete.

272.4(2) Requests for remittances; limitations.

a. Each quarter, the department will transfer into the sales tax increment fund the full amount of the increased sales tax subject to the limitations described in Iowa Code section 418.12(4) "a." The director of the department may adjust the amount transferred during the year if it becomes apparent that the total amount transferred will exceed the limitations stated in this rule. If, when the total of all of the transfers made to a governmental entity during the year is calculated at the end of the fiscal year, it is determined that the governmental entity received more than the maximum amount permissible under this rule, the department may withhold funds in the subsequent fiscal year to recoup the excess payments.

b. If the governmental entity has unused funds from a prior quarter in its account within the sales tax increment fund, subject to the limitations in Iowa Code section 418.12(4) "a," those funds will be available in subsequent quarters so long as the amount is necessary for the purposes of this chapter.

272.4(3) Authorized expenditures. Funds from requests for remittances made to the department by a governmental entity shall only be used for the governmental entities' costs or obligation to the project as described in Iowa Code section 418.13(1).

272.4(4) Remittance of funds to the general fund. The board shall assist the department in determining whether the fund or accounts within the fund have met the limitations found in Iowa Code section 418.12(5).

This rule is intended to implement Iowa Code sections 418.12, 418.13 and 423.2A(2).

701—272.5(418) Administrative fee.

272.5(1) Administrative fee. Pursuant to Iowa Code section 423.2A(3), the department will retain an administrative fee from the amount it would otherwise distribute to the flood mitigation program.

272.5(2) Amount retained. The amount retained each quarter will be the total of the prorated shares amongst all projects in both the flood mitigation program and the reinvestment districts program authorized under Iowa Code chapter 15J.

272.5(3) Prorated share. Each entity's prorated share of the administrative fee for each quarter will be calculated as follows:

<u>Flood mitigation entity's distribution for the quarter</u>		Either \$25,000 or the department's
Total distributions of both the flood mitigation	x	actual expenses, whichever is less
and reinvestment districts for the quarter		

This rule is intended to implement Iowa Code section 423.2A(3).

[Filed 7/2/24, effective 8/28/24]

[Published 7/24/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/24.

ARC 8166C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rulemaking related to the reinvestment districts program

The Revenue Department hereby rescinds Chapter 273, “Reinvestment Districts Program,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 15J.6 and 421.14.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code chapter 15J and sections 423.2A(2) and 423.2A(3).

Purpose and Summary

The purpose of this rulemaking is to rescind Chapter 273 and adopt a new Chapter 273, which consists of rules relating to the Department’s role in the administration of the Reinvestment Districts Program. These rules are required under Iowa Code chapter 15J. These rules interpret the underlying statutes about the calculation and remittance of the sales tax revenues to reinvestment district and reinvestment project funds pursuant to Iowa Code chapter 15J. The Department revised the rules to provide clarification and to remove portions of the rules that the Department has determined are unnecessary, obsolete, and duplicative of statutory language. The Department also renumbered some rules due to other edits and for organizational reasons. The Department further added a rule to provide clarification about the administrative fee authorized under Iowa Code section 423.2A(3) that the Department retains from the amount it would otherwise distribute to the Reinvestment Districts Program.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7185C**. A public hearing was held on the following date(s):

- January 3, 2024

Public comment was received. The Iowa Taxpayers’ Association President and CEO Thomas R. Sands provided written comments asking if deposits and distributions are made on a quarterly basis. Under the Iowa Code, distributions must be made on a quarterly basis and calculated from returns processed for that quarter. The Department did not make any changes based on this comment.

No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Department on June 24, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The

Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on August 28, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 273 and adopt the following **new** chapter in lieu thereof:

CHAPTER 273
REINVESTMENT DISTRICTS PROGRAM

701—273.1(15J) Purpose and definitions. The Iowa reinvestment Act provides for the reinvestment of as much as \$100 million in state hotel and motel and state sales tax revenues from revenue-generating projects within certain districts. The economic development authority board is authorized to oversee the implementation and administration of certain provisions of this program, including evaluating projects and making funding decisions. This chapter sets forth rules for the department of revenue's administration of the calculation, collection, and remittance of funds for this program. The economic development authority board's administrative rules about this program are found in 261—Chapter 200. Terms mean the same as defined in Iowa Code chapter 15J.

This rule is intended to implement Iowa Code chapter 15J.

701—273.2(15J) New state tax revenue calculations.

273.2(1) *State sales tax.* For districts established before July 1, 2020, the department will calculate the state sales tax revenues as described in Iowa Code section 15J.5(1) "b"(1). For those established on or after July 1, 2020, the calculations are as described in Iowa Code section 15J.5(1) "b"(2).

273.2(2) *State hotel and motel tax.* For districts established before July 1, 2020, the department will calculate the state hotel and motel tax revenues as described in Iowa Code section 15J.5(2) "b"(1). For those established on or after July 1, 2020, the calculations are as described in Iowa Code section 15J.5(2) "b"(2).

273.2(3) *Identification of new retail establishments and lessors.* Each municipality that has established a district under Iowa Code chapter 15J must notify the department of new retail establishments and lessors in the district that are created as soon as possible. This process shall be ongoing until the municipality ceases to utilize state sales tax revenue or state hotel and motel tax revenue under this chapter or the district is dissolved.

This rule is intended to implement Iowa Code sections 15J.5, 423.2(11) and 423A.6.

701—273.3(15J) State reinvestment district fund.

273.3(1) *Deposits.* The department shall deposit moneys into the appropriate district fund as described in Iowa Code section 15J.6; however, moneys shall not be deposited in the fund before the period for processing returns is complete.

273.3(2) *Late-filed returns.* Moneys described in Iowa Code section 15J.6 that are collected from late-filed returns shall be deposited in the fund. Such moneys shall be deposited following the period for processing returns for the quarter in which the late return is received, subject to the limitations of Iowa Code chapter 15J.

273.3(3) *Refund claims.* If the moneys described in Iowa Code section 15J.6 are the subject of a refund claim and that claim is granted by the department, the department may offset any refund at a later date against funds remitted to the district in which the new retail establishment or new lessor that had remitted the refunded tax amount is located.

This rule is intended to implement Iowa Code section 15J.6.

701—273.4(15J) Reinvestment project fund. State sales tax revenue and state hotel and motel tax revenue will be remitted by the department and deposited into reinvestment project funds as described in Iowa Code section 15J.7. Moneys deposited in the fund shall only be used to fund projects as described in Iowa Code section 15J.7(1) and not those projects described in Iowa Code section 15J.7(4).

This rule is intended to implement Iowa Code section 15J.7.

701—273.5(15J) End of deposits—district dissolution.

273.5(1) Cessation of deposits.

a. The department shall cease to deposit state sales tax revenues and state hotel and motel revenues once the limitations described in either Iowa Code section 15J.8(1) or 15J.8(2) are met.

b. The department shall cease to deposit new tax revenues into a district’s account within the fund once the maximum benefit amount approved by the board for the district has been reached. If a district reaches the maximum benefit amount, the department shall notify the municipality and the board within a reasonable amount of time.

273.5(2) District dissolution.

a. If a municipality dissolves a district pursuant to Iowa Code section 15J.8(2), the municipality must notify the department as required by Iowa Code section 15J.8(2).

b. When a municipality is notified that its maximum benefit amount has been reached, the municipality shall dissolve the district by ordinance as soon as practicable after notification.

This rule is intended to implement Iowa Code section 15J.8.

701—273.6(15J) Administrative fee.

273.6(1) Administrative fee. Pursuant to Iowa Code section 423.2A(3), the department will retain an administrative fee from the amount it would otherwise distribute to the reinvestment district program.

273.6(2) Amount retained. The amount retained each quarter will be the total of the prorated shares amongst all projects in both the reinvestment districts programs and the flood mitigation program authorized under Iowa Code chapter 418.

273.6(3) Prorated share. Each entity’s prorated share of the administrative fee for each quarter will be calculated as follows:

<u>Reinvestment district entity’s distribution for the quarter</u>		Either \$25,000 or the department’s
Total distributions of both the flood mitigation	x	actual expenses, whichever is less
and reinvestment districts for the quarter		

This rule is intended to implement Iowa Code section 423.2A(3).

[Filed 7/2/24, effective 8/28/24]

[Published 7/24/24]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/24.

ARC 8167C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rulemaking related to local option sales tax urban renewal projects

The Revenue Department hereby rescinds Chapter 274, “Local Option Sales Tax Urban Renewal Projects,” Iowa Administrative Code, and adopts a new chapter with the same title.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14 and 423B.7.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423.2A, 423B.1, 423B.7 and 423B.10.

Purpose and Summary

The purpose of this rulemaking is to readopt Chapter 274. The chapter provides the Department's rules for administering the Local Option Sales Tax (LOST) Urban Renewal Projects. The rules provide explanations to local governments and the public about the process for the calculation, collection, and distribution of funds used for the projects as well as the information required of local governments to assist the Department in this process. The Department revised the rules to remove portions that the Department has determined are unnecessary, obsolete, or duplicative of statutory language. The Department also renumbered some rules due to the other edits and for organizational reasons.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7152C**. A public hearing was held on the following date(s):

- January 3, 2024

Public comment was received. The Iowa Taxpayers' Association President and CEO Thomas R. Sands provided written comments asking why the Department eliminated examples from this chapter. The Department determined the prior examples did not reflect current practice. Anyone with questions relating to urban renewal projects should contact the Department to receive individualized assistance. The Department did not make any changes based on this comment.

No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Department on June 24, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on August 28, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind 701—Chapter 274 and adopt the following **new** chapter in lieu thereof:

CHAPTER 274
LOCAL OPTION SALES TAX URBAN RENEWAL PROJECTS

701—274.1(423B) Purpose and definitions. This chapter sets forth the department of revenue's rules on administration of the calculation, collection, and distribution of funds to be deposited for use to fund urban renewal projects as described in Iowa Code chapter 423B. For purposes of this chapter, "local sales and service tax" means the local tax imposed by a jurisdiction pursuant to an election authorized by Iowa Code section 423B.1 and described in Iowa Code section 423B.5. All other terms have the same meaning as defined in Iowa Code sections 423B.1 and 423B.10.

701—274.2(423B) Establishing sales and revenue growth. For purposes of establishing the sales amount in the base year and the revenue growth in subsequent fiscal years, the department will calculate sales as described in Iowa Code section 423B.10(3).

701—274.3(423B) Requirements for cities adopting an ordinance.

274.3(1) Within at least 90 days following the adoption of an ordinance, an eligible city must notify the director of the department of revenue of its intent to pursue funding for an urban renewal project based upon the increase in local sales and services tax revenue. The notification must include the following information:

a. A copy of the resolution of the board of supervisors from each county in the urban renewal area from which local sales and services tax revenues are to be collected approving the collection and use of local sales and services tax;

b. A copy of the urban renewal plan and the resolution adopting the city's urban renewal plan;

c. A copy of the adopted ordinance, including:

(1) The current and original, if applicable, purpose or purposes for which the local option sales and services tax was enacted; and

(2) The amount and proportion of revenue that will be redistributed from each current revenue purpose to fund urban renewal within the urban renewal area;

d. The legal description of the urban renewal area covered by the ordinance;

e. A map showing the geographic boundaries of the urban renewal area; and

f. A geographic information system boundary file, if available, showing the geographic boundaries of the urban renewal area.

274.3(2) Each urban renewal area must have its own separate ordinance, and the department shall be notified separately for each urban renewal area. Notification shall be mailed or otherwise submitted to: Director, Iowa Department of Revenue, Hoover State Office Building, 1305 E. Walnut Street, Des Moines, Iowa 50319.

274.3(3) Each urban renewal area must have its own separate resolution of the board of supervisors from each county from which local option sales and services tax revenues will be collected and used for urban renewal projects located within the urban renewal area.

701—274.4(423B) Identification of retail establishments. The eligible city shall assist the department of revenue in identifying retail establishments in the urban renewal area that are collecting the local sales and services tax. The department of revenue will identify sales tax permit holders within the urban renewal area using the geographic information system boundary file, if available, provided to the department. If no boundary file is provided, the department will rely upon the map submitted by the eligible city. If any of the urban renewal area boundaries submitted are street centerlines, the information provided to the department shall indicate whether only retail establishments within the bounded area should be considered part of the urban renewal area, or if in addition to the retail establishments within the bounded area, retail establishments immediately adjacent to the bounded area should also be included.

701—274.5(423B) Calculation of base year taxable sales amount. The calculation of the base year taxable sales amount is as follows:

274.5(1) The base year taxable sales and services amount will be the total taxable sales and services subject to the local sales and services tax that are made by retail establishments within the urban renewal area during the base year.

274.5(2) Taxable sales of tangible personal property and services that are subject to the local sales and services tax that are made by retail establishments or service providers located within the urban renewal area include only those sales that are sourced to the county in which the urban renewal area is located.

274.5(3) Those sales made by retail establishments or service providers located within the urban renewal area that are sourced outside of the county are not subject to the local sales and services tax. For sourcing rules, more information can be found in Iowa Code section 423.15 and 701—Chapter 205.

701—274.6(423B) Determination of tax growth increment amount. The local sales and services tax growth increment amount for the urban renewal area will be computed for each fiscal year following the base year. The annual local option sales and services tax growth increment amount is equal to the current year taxable sales and services subject to the local sales and services tax that are made by retail establishments located in the urban renewal area minus the corresponding base year taxable sales and services amount for the urban renewal area multiplied by the current local sales and services tax rate applicable to the jurisdiction.

701—274.7(423B) Distribution of tax base and growth increment amounts. The revenues from the local sales and services tax growth amount for urban renewal areas in jurisdictions that have enacted ordinances pursuant to Iowa Code section 423B.10 shall be determined annually and shall be distributed to the city within 120 days following the end of the fiscal year in which they are collected.

These rules are intended to implement Iowa Code sections 423.2A, 423B.1, 423B.7, and 423B.10.

[Filed 7/2/24, effective 8/28/24]

[Published 7/24/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/24.

ARC 8168C

REVENUE DEPARTMENT[701]

Adopted and Filed

Rulemaking related to underground storage tank rules

The Revenue Department hereby rescinds Chapter 289, “Underground Storage Tank Rules Incorporated By Reference,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is adopted under the authority provided in Iowa Code sections 421.14, 422.68 and 423.42.

State or Federal Law Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 423E.3 through 423E.6.

Purpose and Summary

Pursuant to Part IV of Executive Order 10, the Department was directed to rescind Chapter 289 because the underlying statute had been repealed.

Public Comment and Changes to Rulemaking

Notice of Intended Action for this rulemaking was published in the Iowa Administrative Bulletin on December 13, 2023, as **ARC 7156C**. A public hearing was held on the following date(s):

- January 3, 2024

Public comment was received. The Iowa Taxpayers' Association President and CEO Thomas R. Sands provided written comments asking why the Notice of Intended Action required direction from the Administrative Rules Coordinator to be proposed. The Department asked for a directive to rescind this chapter instead of undergoing the review process because the underlying statute has been repealed.

No changes from the Notice have been made.

Adoption of Rulemaking

This rulemaking was adopted by the Department on June 24, 2024.

Fiscal Impact

This rulemaking has no fiscal impact to the State of Iowa.

Jobs Impact

After analysis and review of this rulemaking, no impact on jobs has been found.

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rulemaking by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rulemaking at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rulemaking will become effective on August 28, 2024.

The following rulemaking action is adopted:

ITEM 1. Rescind and reserve **701—Chapter 289**.

[Filed 7/2/24, effective 8/28/24]

[Published 7/24/24]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/24/24.

TRANSITION OF DOCUMENT PROCESSING SOFTWARE FOR RULE PUBLICATIONS

The Administrative Code Editor provides this informational notice that beginning with the July 10, 2024, issue of the Iowa Administrative Bulletin and the Iowa Administrative Code Supplement, the Legislative Services Agency is transitioning to new document processing software for these publications. Nonsubstantive changes to the style and format of these publications, as well as the Iowa Administrative Code, can be expected as a result of this transition. While the software has been tested extensively, errors resulting from this transition may still occur. To report any errors that may result from this transition, please contact the Publications Editing Office at AdminCode@legis.iowa.gov or 515.281.3355.