

REVENUE DEPARTMENT[701]

Adopted and Filed

Rule making related to silviculture

The Revenue Department hereby amends Chapter 211, “Definitions,” and Chapter 226, “Agricultural Rules,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 421.14.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 423.1 as amended by 2013 Iowa Acts, Senate File 452, section 125.

Purpose and Summary

During the 2013 Legislative Session, the General Assembly amended the definition of “agricultural production” to include “production from silvicultural activities” and the definition of “agricultural products” to include “silviculture.” The Legislature did not define silviculture at that time.

This rule making amends the Department’s rules to reflect the addition of silviculture to Iowa Code section 423.1(5). Additionally, this rule making adopts a definition of “silviculture” and moves an existing definition of “aquaculture” out of a substantive rule and into a rule that consists of definitions. This rule making also creates a single definition of “plants” and clarifies when that definition applies in various rules.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 7, 2020, as **ARC 5218C**. A public hearing was held on October 27, 2020, at 10 a.m. via Google Meet.

The hearing was attended by representatives of the Iowa-Nebraska Equipment Dealers Association (INEDA) and the Coalition for Iowa’s Woodlands and Trees (the Coalition). Each representative made two comments on the rule and submitted comments in writing as well. INEDA requested the Department include the production of mulch in the description of “silvicultural activities” and add beekeeping to its “agricultural production” definition. The Department declined to make these changes as they are beyond the intended scope of this rule making. The Coalition suggested adding additional terms to clarify the extent of the activities included in “silviculture” and removing references to “fir” trees raised as Christmas trees, since other tree varieties may be raised as Christmas trees. The Department made changes to the rule to reflect these suggestions. The Department made no changes to Items 3 through 7. Identical written comments were received, reflected in the description above.

Adoption of Rule Making

This rule making was adopted by the Department on November 12, 2020.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa. The addition of “silviculture” to the definition of “agricultural production” was estimated by the Legislative Services Agency to have no fiscal impact for 2013 Iowa Acts, Senate File 452.

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 701—7.28(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making 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 rule making will become effective on January 6, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend rule **701—211.1(423)**, definitions of “Agricultural production” and “Plants,” as follows:

“*Agricultural production*” is limited to what would ordinarily be considered a farming operation undertaken for profit. The term “agricultural production” refers to the raising of crops or livestock for market on an acreage. ~~See *Bezdek's Inc. v. Iowa Department of Revenue* (Linn County District Court, May 14, 1984).~~ Included within the meaning of the phrase “agricultural production” is any feedlot operation whether or not the land upon which a feedlot operation is located is used to grow crops to feed the livestock in the feedlot and regardless of whether or not the livestock fed are owned by persons conducting the feedlot operation, and operations growing and raising hybrid seed corn or other seed for sale to nurseries, ranches, orchards, and dairies. “Agricultural production” includes the raising of flowering, ornamental, or vegetable plants in commercial greenhouses or elsewhere for sale in the ordinary course of business. “Agricultural production” also includes any kind of aquaculture; silviculture; commercial greenhouses; and raising catfish. ~~Logging, production of Christmas trees, beekeeping, Beekeeping~~ and the raising of mink, other nondomesticated furbearing animals, and nondomesticated fowl (other than ostriches, rheas, and emus) continue to be excluded from the term “agricultural production.” The above list of exclusions and inclusions within the term “agricultural production” is not exhaustive. “Agricultural products” includes flowering, ornamental, or vegetable plants and those products of aquaculture and silviculture.

“*Plants*” means fungi such as mushrooms, and crops commonly grown in this state such as corn, soybeans, oats, hay, alfalfa hay, wheat, sorghum, and rye. Also included within the meaning of the term “plants” are flowers, ~~small~~ shrubs, and fruit trees. Excluded from the meaning of the term “plants” are ~~for~~ products of silviculture, such as trees raised for Christmas trees and any trees raised to be harvested for wood.

ITEM 2. Adopt the following new definitions of “Aquaculture” and “Silviculture” in rule **701—211.1(423)**:

“*Aquaculture*” means the cultivation of aquatic animals and plants, including fish, shellfish, and seaweed, in natural or controlled marine or freshwater environments.

“*Silviculture*” means the establishment, growth, care, and cultivation of trees. “Silvicultural activities” includes logging. “Silvicultural products” includes trees raised and offered for sale for Christmas trees and any trees raised to be harvested for wood.

ITEM 3. Amend subrule 226.12(1) as follows:

226.12(1) Definitions. For purposes of this rule, the following definitions apply:

~~“Aquaculture” means the cultivation of aquatic animals and plants, including fish, shellfish, and seaweed, in natural or controlled marine or freshwater environments same as defined in rule 701—211.1(423).~~

~~“Fuel” includes electricity.~~

~~“Implement of husbandry” means the same as defined in rule 701—211.1(423).~~

~~“Livestock” means the same as defined in rule 701—211.1(423) and includes domesticated fowl.~~

~~“Plants” means flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business. The term does not include trees, shrubs, other woody perennials, or fungi.~~

ITEM 4. Amend paragraph **226.12(2)“b”** as follows:

b. Fuel used for flowering, ornamental, or vegetable plant production buildings.

(1) Sales 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 are exempt from tax. See subparagraph (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;₂ loading docks;₂ storage of property other than flowering, ornamental, or vegetable plants;₂ housing of heating and cooling equipment;₂ 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. See 701—subrule 15.3(3) regarding fuel exemption certificates and subrule 226.18(12) regarding 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 <u>flowering, ornamental, or vegetable plants</u>	=	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.

ITEM 5. Amend subrule 226.18(1) as follows:

226.18(1) The sales or rentals of machinery, equipment, and replacement parts used in the production of flowering, ornamental, and vegetable plants are 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 ~~trees, shrubs, other woody perennials, silvicultural products~~ or fungi.

ITEM 6. Rescind and reserve paragraph **226.18(2)“c.”**

ITEM 7. Amend subrules 226.18(6) and 226.18(7) as follows:

226.18(6) Sales of self-propelled implements. Sales of self-propelled implements or implements customarily drawn or attached to self-propelled implements and replacement parts for the same are 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.

226.18(7) Sales of machinery and equipment used in flowering, ornamental, or vegetable plant production which are not self-propelled or attached to self-propelled machinery and equipment are exempt from tax. Rule 701—226.19(423) includes nonexclusive examples of machinery and equipment which are not self-propelled or attached to self-propelled machinery and equipment and which are directly and primarily used in flowering, ornamental, or vegetable plant production.

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/2/20.