

REVENUE DEPARTMENT[701]

Amended Notice of Intended Action

Providing for a public hearing on rule making related to marketable food products for human consumption

The Notice of Intended Action published in the Iowa Administrative Bulletin on May 5, 2021, as **ARC 5614C** proposes to amend Chapter 230, “Exemptions Primarily Benefiting Manufacturers and Other Persons Engaged in Processing,” Iowa Administrative Code. In order to receive oral comments concerning **ARC 5614C**, the Revenue Department hereby gives notice that a public hearing will be held as follows:

July 8, 2021
1:30 to 2:30 p.m.

Room 430, Fourth Floor
Hoover 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 rule making.

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.

Legal Authority for Rule Making

This rule making is proposed under the authority provided in Iowa Code section 421.17.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code section 423.3.

Purpose and Summary

Iowa Code section 423.3(49) provides a limited exemption for manufacturers producing “marketable food products for human consumption.” Specifically, the Iowa Code section exempts from sales tax:

“The sales price from the sale of carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and other taxable services and the lease or rental of tangible personal property when used by a manufacturer of food products to produce *marketable food products for human consumption*, including but not limited to treatment of material to change its form, context, or condition, in order to produce the food product, maintenance of quality or integrity of the food product, changing or maintenance of temperature levels necessary to avoid spoilage or to hold the food product in marketable condition, maintenance of environmental conditions necessary for the safe or efficient use of machinery and material used to produce the food product, sanitation and quality control activities, formation of packaging, placement into shipping containers, and movement of the material or food product until shipment from the building of manufacture.” [Emphasis added.]

This exemption was first codified in 1985 and has only been amended once, in 2005, to add leases or rentals of otherwise-qualifying tangible personal property to the exemption. The phrase “marketable food products for human consumption” has never been defined in the Iowa Code or the Department’s administrative rules. The Department’s long-standing interpretation of the term, articulated through audits and protests, has been that only final food products, not food ingredients, are “marketable food products for human consumption.” This interpretation is consistent with the statutory construction principle that exemption provisions be narrowly construed.

To provide clarity to taxpayers seeking to claim this exemption as manufacturers of marketable food products for human consumption, the Department proposes to adopt this definition of the term. The Department notes that if a taxpayer does not produce marketable food products for human consumption,

the taxpayer may still be eligible for other processing-related exemptions, such as those in Iowa Code section 423.3(47).

The Department received a request to hold a public hearing at a later date. The Department is happy to provide interested parties more time to provide public comment on this rule making. No changes have been made from the original Notice.

Fiscal Impact, Jobs Impact, Waivers

Statements related to the fiscal impact, jobs impact, and waiver of this rule making may be found in the preamble of **ARC 5614C**.

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).