

**REVENUE DEPARTMENT[701]**

**Notice of Intended Action**

**Proposing rule making related to food or food ingredients  
and providing an opportunity for public comment**

The Revenue Department hereby proposes to amend Chapter 215, “Exemptions Primarily Benefiting Manufacturers and Other Persons Engaged in Processing,” Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed 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 423.3 as amended by 2022 Iowa Acts, Senate File 2367.

*Purpose and Summary*

The Department previously adopted rule 701—215.2(423) to implement an exemption found in Iowa Code section 423.3(49) for manufacturers of “marketable food products for human consumption.” Senate File 2367, division VIII, amended that exemption, such that it now applies to manufacturers of “food or food ingredients.” The Department now proposes to amend the rule implementing that exemption so that it conforms to the statutory change. The Department also proposes to add several examples to the rule to illustrate situations where manufacturers may or may not be eligible to claim the exemption for eligible purchases based on the product being manufactured.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa beyond that of the legislation it seeks to implement. The Legislative Services Agency estimated division VIII of Senate File 2367 would result in a \$4.2 million reduction to the General Fund, \$0.8 million reduction to Securing an Advanced Vision for Education revenue, and \$0.8 million reduction to local option sales tax revenues in fiscal year 2023.

*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 rule 701—7.28(17A).

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on March 14, 2023. Comments should be directed to:

Tim Reilly  
Department of Revenue  
Hoover State Office Building  
P.O. Box 10457  
Des Moines, Iowa 50306  
Phone: 515.782.0535  
Email: [tim.reilly@iowa.gov](mailto:tim.reilly@iowa.gov)

### *Public Hearing*

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

March 14, 2023  
11 a.m. to 12 noon

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.

### *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).

The following rule-making action is proposed:

Amend rule 701—215.2(423) as follows:

**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 products for human consumption 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)** ~~“Marketable food products for human consumption” means products intended to be sold ultimately at retail as items which furnish energy, sustain growth, support vital processes in the human body, and are final products ready for and capable of consumption without the need for further processing after being sold to the purchaser. “Marketable food products for human consumption” includes food products traditionally accepted and sold as food products and products that have been enhanced or compounded with nutritional elements. “Marketable food products for human consumption” does not include medicines or dietary or food supplements. A product that may be consumed by a human but is sold for other purposes is not a marketable food product for human consumption. “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 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 for any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used to produce its ethanol fuel.

Manufacturer P's product is only sold for cosmetic purposes and is harmful to humans if consumed. Manufacturer P cannot claim exemption for any carbon dioxide in a liquid, solid, or gaseous form, electricity, steam, and taxable services used to produce its perfume.

*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, who 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 a product is a ~~marketable food product for human consumption~~ food or food ingredient for purposes of this exemption. The department's determination shall be 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 is ~~not a marketable food product for human consumption~~ and the orange juice is a ~~marketable food product for human consumption~~ 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 ~~products for human consumption~~ 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 a ~~marketable food product for human consumption~~ the food or food ingredient. "Special treatment" of the material to change its form, context, or condition is not necessary to lawfully claim the exemption. Examples of "treatment" which would not be "special" are the following: the washing, sorting and grading of fruits or vegetables; the washing, sorting, and grading of eggs; and the mixing or agitation of liquids. By way of contrast, sterilization would be "special treatment."

*b.* Maintenance of the quality or integrity of the food ~~product~~ 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 which holds the food ~~product~~ 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 product 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 products for human consumption or food ingredients does not cease when the food product 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 product 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 product 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 a the food product 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 which 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 products 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 marketable food products for human consumption 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 a marketable food product 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 product or food ingredient into shipping containers is exempt from tax. For example, electricity used by a food manufacturer to place food products 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 which will become a marketable food product food or food ingredient or used to move the marketable food product 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 product or food ingredient and taxable services used in door openers which open doors for forklifts or other devices moving the material or product the food or food ingredient. Any loading dock which is attached to a building of manufacture is a part of that building. Any electricity, steam, or taxable service used to move any food products or food ingredient to a loading dock is exempt from tax. If a the food product 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).