

# REVENUE DEPARTMENT[701]

## Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 701—Chapters 202, 204, 209, and 288  
“Exemption Certificates”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 421.14, 422.68, and 423.42

State or federal law(s) implemented by the rulemaking: Iowa Code sections 423.2, 423.3, 423.31, 423.45, and 423.51

## Public Hearing

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

November 21, 2023  
9 to 11 a.m.

Via video/conference call:  
[meet.google.com/pmv-smfj-zwf](https://meet.google.com/pmv-smfj-zwf)  
Or dial: 1.413.369.1186  
PIN: 243 048 107#

## Public Comment

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

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Department of Revenue  
Hoover State Office Building  
P.O. Box 10457  
Des Moines, Iowa 50306-3457  
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## Purpose and Summary

The purpose of this proposed rulemaking is to adopt new rules 701—202.17(423) and 701—204.8(423), adopt new 701—Chapter 209, and rescind and reserve 701—Chapter 288. 701—Chapter 288 contained a number of rules that the Department has determined are either unnecessary, obsolete, or duplicative of statutory language and that should be rescinded.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. Regulatory analyses for 701—Chapters 202 (IAB 10/18/23) and 204 (IAB 10/4/23) have already been published, so the rules that will be adopted and added to those chapters are included in this proposed rulemaking. The Regulatory Analysis for 701—Chapter 213 is published herein (IAB 11/1/23), so the rule that is being moved there is provided for in that Regulatory Analysis.

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 proposes readopting and moving it into 701—Chapter 209, which was previously reserved, in order to provide easier accessibility to the public. The Department proposes revisions to that rule in order to provide for better organization and clarification and to remove unnecessary, obsolete, and duplicative statutory language.

## 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 of the proposed rulemaking beyond those that are imposed by the underlying statutes.

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

The public will benefit from the proposed rulemaking since revising and reorganizing rules on the topic of exemption certificates into a separate chapter will provide easier accessibility to those rules and reduce confusion about the applicability and use of exemption certificates on purchases. Further, the public will benefit from the placement of rules on returned

merchandise, freight and other transportation charges, and premiums and gifts into chapters that better align with those subject matters.

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 is no economic impact associated with the proposed rulemaking beyond what is contained in the underlying statutes. There may be some quantitative impact on purchasers and sellers in using and accepting exemption certificates; however, there are multiple methods of exemption certification, including not using a specific form but just collecting the needed information, which is provided for in the rules on exemption certificates. The forms, in addition to the other methods, used in conjunction with the proposed rulemaking may have a positive quantitative impact for purchasers and sellers by clearly explaining the applicability, information required, and use of exemption certificates, reducing the likelihood of confusion and overcollection of tax on what is an exempt purchase.

- Qualitative description of impact:

The proposed rulemaking will reduce uncertainty about the use of exemption certificates since the rules on that topic will be in a chapter with that singular topic and other rules will be moved into chapters that better align with the subject matter of those rules, enabling the public to find guidance on those subjects in a more efficient manner. Further, the proposed revisions to the rules will add clarity, and obsolete and unnecessary language and rules will be eliminated, reducing confusion.

3. Costs to the State:

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

There are no costs to the Department to implement the proposed rulemaking beyond what would otherwise be required to administer the underlying statutes.

- Anticipated effect on state revenues:

There is no anticipated effect on state revenues, although the revision of repromulgated rules and the elimination of rules that are no longer necessary or are obsolete will provide clarity to the public, making it less likely that tax will be collected on what is an exempt sale or overcollected on what is a taxable sale.

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

There is no benefit to retaining 701—Chapter 288 since the rules that it contained were better suited to other chapters with more aligned subject matters or were no longer needed since they were obsolete or duplicated statutory language. The cost of inaction of updating the rules in the proposed rulemaking and placing them in better-suited chapters would lead to confusion and frustration. The benefits to the proposed rulemaking are to eliminate unnecessary and obsolete language and rules and to make it easier for the public to find guidance on topics by placing rules in chapters with similar topics.

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

The proposed rulemaking is not costly or intrusive. The purpose is to provide guidance about the use and applicability of exemption certificates along with the taxability of certain purchases. The Department considered what information to provide in the rules and what information is provided on forms used for exemption certificates and concluded that this proposed rulemaking in conjunction with the available forms will help guide purchasers and sellers to provide and obtain the needed information when utilizing and accepting exemption certificates on purchases.

The Department considered the option of not implementing rules and determined the amendment and retention of some rules while eliminating others in addition to placing the retained rules in chapters more aligned to their subject matters would provide useful assistance to the public and reduce confusion.

6. Alternative methods considered by the agency:

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

The Department considered the option of not implementing rules; however, it determined that the proposed rulemaking, in conjunction with the use of the applicable forms, was necessary to provide guidance and clarification to the public beyond what is provided in the underlying statutes.

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

The Department determined that retention of rules in the proposed rulemaking with the proposed revisions will reduce confusion about the subjects of those rules. Proceeding without rules could negatively impact the public by limiting their knowledge about the applicability and procedures related to the use of exemption certificates.

### 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?

The proposed rulemaking does not have a substantial impact on small business since it does not make any distinctions based on the size of a business and does not impose any requirements on businesses, other than what is imposed by the underlying statutes.

### Text of Proposed Rulemaking

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 which (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 is 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 which 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 which 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 which 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 which 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 which is transported to its plant in processing the tangible personal property manufactured there. The receipts which 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 new 701—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 complete 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, (examples include 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.

*c.* Department-furnished exemption certificates are valid for up to three years.

**209.1(2) Liability:** The sales tax liability is on both the seller and purchaser; however, a seller is relieved of the liability if they obtain a fully completed exemption certificate or capture 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 they obtain a fully completed exemption certificate taken in good faith or provide 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 which 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 was 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](http://mtc.gov), or a Streamlined Sales Tax Agreement Certificate of Exemption, available on the department's website or at [streamlinedsalestax.org](http://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.

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 which 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 which 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. This immediately previous 12-month period is used because it is a span of time which 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 which 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 which 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 which 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:

$$\begin{array}{ccccccc} & & & & & & \text{Weeks operated in 12-month} \\ & & & & & & \text{period equals number of} \\ & & & & & & \text{exempt kilowatt hours} \\ & & & & & & \\ \text{Kilowatts} & & \times & & \text{Hours operated} & & \times \\ \text{per hour} & & & & \text{per week} & & \\ & & & & & & \end{array}$$

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:

$$\begin{array}{ccccccc} & & & & & & \text{Number of months of exempt} \\ & & & & & & \text{use equals total number of} \\ & & & & & & \text{exempt kilowatt hours} \\ & & & & & & \\ \text{Kilowatts} & & \times & & \text{Hours operated} & & \times \\ \text{per hour} & & & & \text{per month} & & \\ & & & & & & \end{array}$$

In this example,  $30 \times 200 \times 3 = 18,000$  exempt kilowatt hours.

(3) EXAMPLE: 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
<b>All Exempt Usage</b>				
Production Machine #1	10	1000	10000	
Production Machine #2	10	1000	10000	
Other	10	1000	10000	
<b>Total Exempt Usage</b>				<b>30000(A)</b>
<b>All Taxable Usage</b>				
Air Conditioners	10	3000	30000	
General Lighting	10	3000	30000	
Office Equipment	10	3000	30000	
Space Heaters	10	3000	30000	
Other	10	3000	30000	
<b>Total Taxable Usage</b>				<b>150000(B)</b>
<b>Total—All Usages</b>				<b>180000(C)</b>

$$\frac{30000}{180000} \text{ or } \frac{A}{C} = \text{Percentage of Electricity Purchase Qualifying for Exemption} = 16.60\%$$

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 which 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 to 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 sections 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 which 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. The words "beer," "permit," "retailer," "wholesaler," and "wine" have the same definitions for the purposes of this rule as the definitions given them 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.**