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The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code section 17A.6. The Supplement contains replacement chapters to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with each Supplement. The replacement chapters incorporate rule changes which have been adopted by the agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17 and 17A.4 to 17A.6. To determine the specific changes in the rules, refer to the Iowa Administrative Bulletin bearing the same publication date.

In addition to the changes adopted by agencies, the replacement chapters may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(6); an effective date delay imposed by the ARRC pursuant to section 17A.4(7) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(8); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

The Supplement may also contain replacement pages for the IAC Index or the Uniform Rules on Agency Procedure.

INSTRUCTIONS FOR UPDATING THE IOWA ADMINISTRATIVE CODE

Agency names and numbers in bold below correspond to the divider tabs in the IAC binders. New and replacement chapters included in this Supplement are listed below. Carefully remove and insert chapters accordingly.

Editor's telephone (515)281-3355 or (515)242-6873

Insurance Division[191]

Replace Analysis
Replace Chapter 59

Economic Development Authority[261]

Replace Analysis
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Iowa Finance Authority[265]

Replace Analysis
Replace Chapter 9

Educational Examiners Board[282]

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Replace Chapter 14

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Replace Analysis
Remove Reserved Chapters 2 and 3 and Chapter 4
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Replace Analysis
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[Prior to 10/22/86, see Insurance Department[510], renamed Insurance Division[191] under the "umbrella" of Department of Commerce by the 1986 Iowa Acts, Senate File 2175]

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CHAPTER 59
PHARMACY BENEFITS MANAGERS

191—59.1(510B) Purpose. The purpose of this chapter is to administer the provisions of Iowa Code chapter 510B relating to the regulation of pharmacy benefits managers.
[ARC 1466C, IAB 5/28/14, effective 7/2/14]

191—59.2(510B) Definitions. The terms defined in Iowa Code sections 510.11 and 510B.1 shall have the same meaning for the purposes of this chapter. The definitions contained in 191—Chapter 58, “Third-Party Administrators,” and 191—Chapter 78, “Uniform Prescription Drug Information Card,” of the Iowa Administrative Code are incorporated by reference. As used in this chapter:

“*Complaint*” means a written communication from a pharmacy to a pharmacy benefits manager that makes an inquiry or expresses a grievance and includes, but is not limited to, the following:

1. A comment on, contest or appeal by a pharmacy, as permitted by Iowa Code section 510B.8(3) and rule 191—59.5(510B), of a pharmacy benefits manager’s maximum reimbursement amount rate or maximum reimbursement amount list.

2. Any pharmacy’s appeal or request for an independent third-party review of an audit report pursuant to subrules 59.4(4) and 59.4(5).

3. Any request by a pharmacy for an independent third-party review of a termination or suspension decision pursuant to paragraph 59.6(3) “d.”

4. Any inquiries from the commissioner pursuant to subrule 59.8(3).

“*Day*” means a calendar day, unless otherwise defined or limited.

“*Maximum reimbursement amount*,” as defined in Iowa Code section 510B.1(6), includes but is not limited to any prices used by a pharmacy benefits manager for therapeutically, pharmaceutically equivalent multiple-source prescription drugs such as maximum allowable cost, federal upper limit pricing, generic effective rate pricing, or any other pricing strategies used by the pharmacy benefits manager.

“*Paid*” means the later of either the day on which the payment is mailed by the pharmacy benefits manager or the day on which the electronic payment is processed by the pharmacy benefits manager’s bank.

“*Pharmacy*,” except as used in paragraph 59.4(1) “b,” means “pharmacy” as defined in Iowa Code section 155A.3 and includes “pharmacist,” as defined in Iowa Code section 155A.3, and a pharmacy services administrative organization while acting in its role as a representative of a pharmacist or pharmacy. For purposes of this definition, “pharmacy services administrative organization” means an entity that provides contracting services on behalf of pharmacies with payers and with pharmacy benefits managers, consolidated reimbursement services for pharmacies, and other business support for pharmacies.

[ARC 1466C, IAB 5/28/14, effective 7/2/14; ARC 2518C, IAB 4/27/16, effective 6/1/16]

191—59.3(510B) Timely payment of pharmacy claims.

59.3(1) All benefits payable under a pharmacy benefits management plan shall be paid as soon as feasible but within 20 days after receipt of a clean claim when the claim is submitted electronically and shall be paid within 30 days after receipt of a clean claim when the claim is submitted in paper format.

59.3(2) Payments to the pharmacy for clean claims are considered to be overdue and not timely if not paid within 20 or 30 days, whichever is applicable. If any clean claim is not timely paid, the pharmacy benefits manager must pay the pharmacy interest at the rate of 10 percent per annum commencing the day after any claim payment or portion thereof was due until the claim is finally settled or adjudicated in full.

59.3(3) Pharmacy benefits managers may demonstrate the date a claim is paid by a mail record or a bank statement.

59.3(4) For purposes of this rule, “clean claim” means a claim which is received by any pharmacy benefits manager for adjudication and which requires no further information, adjustment or alteration by the pharmacy or the covered individual in order to be processed and paid by the pharmacy benefits

manager. A claim is a clean claim if it has no defect or impropriety, including any lack of substantiating documentation, or no particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this chapter. A clean claim includes a resubmitted claim with previously identified deficiencies corrected.

[ARC 1466C, IAB 5/28/14, effective 7/2/14; ARC 2518C, IAB 4/27/16, effective 6/1/16]

191—59.4(510B) Audits of pharmacies by pharmacy benefits managers.

59.4(1) An audit of pharmacy records by a pharmacy benefits manager shall be conducted in accordance with the following:

- a. The pharmacy benefits manager conducting the initial on-site audit must provide the pharmacy written notice at least one week prior to conducting any audit;
- b. Any audit which involves clinical or professional judgment must be conducted by or in consultation with a pharmacist as defined in Iowa Code section 155A.3;
- c. When a pharmacy benefits manager alleges an error in reimbursement has been made to a pharmacy, the pharmacy benefits manager shall provide the pharmacy sufficient documentation to determine the specific claims included in the alleged error;
- d. A pharmacy may use the records of a hospital, physician or other authorized practitioner of the healing arts for prescription drugs or medicinal supplies, written or transmitted by any means of communication, for purposes of validating the pharmacy record with respect to orders or refills of a drug dispensed pursuant to a prescription;
- e. Each pharmacy shall be audited under the same standards and parameters as other similarly situated pharmacies audited by the pharmacy benefits manager;
- f. The period covered by an audit may not exceed two years from the date on which the claim was submitted to or adjudicated by a managed care company, insurance company, third-party payor, or any pharmacy benefits manager that represents such entities;
- g. Unless otherwise consented to by the pharmacy, an audit may not be initiated or scheduled during the first seven calendar days of any month due to the high volume of prescriptions filled during that time;
- h. The preliminary audit report must be delivered to the pharmacy within 120 days after conclusion of the audit. A final written audit report shall be received by the pharmacy within six months of the preliminary audit report or final appeal, whichever is later;
- i. A pharmacy shall be allowed at least 30 days following receipt of the preliminary audit report in which to produce documentation to address any discrepancy found during an audit; and
- j. If it is determined by the pharmacy benefits manager that an error in reimbursement to a pharmacy occurred, the following criteria apply:
 - (1) For each contract between the pharmacy benefits manager and the pharmacy existing on or after January 1, 2015, a pharmacy's usual and customary price for compounded medications is considered the reimbursable cost, unless the contract between the pharmacy benefits manager and the pharmacy specifically provides details for a pricing methodology for compounded medications.
 - (2) A finding of error in reimbursement must be based on the actual error in reimbursement and not be based on a projection of the number of patients served having a similar diagnosis or on a projection of the number of similar orders or refills for similar prescription drugs.
 - (3) Calculations of errors in reimbursement must not include dispensing fees unless: prescriptions were not actually dispensed, the prescriber denied authorizations, the prescriptions dispensed were medication errors by the pharmacy, or the amounts of the dispensing fees were incorrect.
 - (4) Any clerical or record-keeping error of the pharmacy, including but not limited to a typographical error, scrivener's error, or computer error, regarding a required document or record shall not be considered fraud by the pharmacy under paragraph 59.6(3) "a" or under a pharmacy's contract with the pharmacy benefits manager.
 - (5) In the case of an error that has no actual financial harm to the patient or covered entity, the pharmacy benefits manager shall not assess a charge against the pharmacy.

(6) If a pharmacy has entered into a corrective action plan with a pharmacy benefits manager, and if the pharmacy fails to comply with the corrective action plan in a manner that results in overpayments being made by the pharmacy benefits manager to the pharmacy, the pharmacy benefits manager may recover the overpaid amounts. For purposes of this paragraph, "corrective action plan" means an agreement entered into by a pharmacy benefits manager and a pharmacy which is intended to promote accurate submission and payment of pharmacy claims.

(7) During the audit period, interest on any outstanding balance shall not accrue for the pharmacy benefits manager or the pharmacy. For purposes of this rule, the audit period begins with the notice of the audit and ends with a final determination of the audit report.

59.4(2) Notwithstanding any other provision in this rule, the entity conducting the audit shall not use the accounting practice of extrapolation in calculating the recoupment or contractual penalties for audits unless required by state or federal laws or regulations. The entity may not use the accounting practice of extrapolation in a manner more stringent than that required by state or federal laws or regulations.

59.4(3) Recoupment of any disputed funds shall occur only after final disposition of the audit, including the appeals process as set forth in subrules 59.4(4) and 59.4(5).

59.4(4) Each pharmacy benefits manager conducting an audit shall establish an appeals process under which a pharmacy may appeal an unfavorable preliminary audit report to the pharmacy benefits manager. The pharmacy benefits manager shall conduct a review of the unfavorable preliminary audit report. The cost of the audit review shall be paid by the pharmacy benefits manager. If, following the review, the pharmacy benefits manager finds that an unfavorable audit report or any portion thereof is unsubstantiated, the pharmacy benefits manager shall dismiss the unsubstantiated audit report or unsubstantiated portion of the audit report without the necessity of any further proceedings.

59.4(5) A pharmacy benefits manager shall establish a process for an independent third-party review of final audit findings. If, following the appeal of an audit report and upon conducting an audit review, the pharmacy benefits manager finds that an unfavorable audit report or any portion thereof is found to be substantiated, the pharmacy benefits manager shall notify the pharmacy in writing of its right to request an independent third-party review of the final audit findings and the process used to request such a review. If a pharmacy requests an independent third-party review of the final audit findings and the audit report is found to be substantiated, the cost of the third-party review shall be paid by the pharmacy. If a pharmacy requests an independent third-party review of the final audit findings and the audit report is found to be unsubstantiated, the cost of the third-party review shall be paid by the pharmacy benefits manager. If the reviewer finds partially in favor of both parties, the reviewer shall apportion the costs accordingly and each party will bear a portion of the costs of the review.

59.4(6) Rescinded IAB 4/27/16, effective 6/1/16.

59.4(7) Each pharmacy benefits manager conducting an audit shall, after completion of any review process, provide a copy of the final audit report to the covered entity.

59.4(8) This rule shall not apply to any investigative audit which involves fraud, willful misrepresentation, abuse, or any other statutory provision which authorizes investigations relating to but not limited to insurance fraud.

[ARC 1466C, IAB 5/28/14, effective 7/2/14; ARC 2518C, IAB 4/27/16, effective 6/1/16]

191—59.5(510B) Disclosure of national compendia used.

59.5(1) Pursuant to Iowa Code section 510B.8(3), in each contract between a pharmacy benefits manager and a pharmacy beginning or renewed on or after July 1, 2016, a pharmacy benefits manager shall identify how and where pharmacies may find the names of the national compendia or other services the pharmacy benefits manager has used to obtain the pricing data incorporated in the calculation of the maximum reimbursement amounts for therapeutically, pharmaceutically equivalent multiple-source prescription drugs included in the list made available to pharmacies pursuant to rule 191—59.7(510B).

59.5(2) Pursuant to Iowa Code section 510B.8(3), a pharmacy benefits manager shall provide a process, reasonable in procedures and timing to both the pharmacy and the pharmacy benefits manager, to

allow a pharmacy to comment on, contest or appeal a maximum reimbursement amount rate or maximum reimbursement amount list.

[ARC 2518C, IAB 4/27/16, effective 6/1/16]

191—59.6(510B) Termination or suspension of contracts with pharmacies by pharmacy benefits managers.

59.6(1) A contract between a pharmacy benefits manager and a pharmacy shall include a provision describing notification procedures for contract termination. The contract shall require no less than 60 days' prior written notice by either party that wishes to terminate the contract.

59.6(2) Termination of a contract between a pharmacy benefits manager and a pharmacy or termination of a pharmacy from the network of the pharmacy benefits manager shall not release the pharmacy benefits manager from the obligation to make payments due to the pharmacy for contract-covered services rendered before the contract of the pharmacy was terminated.

59.6(3) The following apply to terminations or suspensions of contracts with pharmacies by pharmacy benefits managers:

a. If the pharmacy benefits manager has evidence that the pharmacy has engaged in fraudulent conduct or poses a significant risk to patient care or safety, the pharmacy benefits manager may immediately suspend the pharmacy from further performance under the contract only if written notice of the suspension and reasoning therefor is provided to the pharmacy, the covered entity and the commissioner.

b. A pharmacy benefits manager shall neither take action, nor imply or state that it may or will take action, to decrease reimbursement or to terminate, suspend, cancel or limit a pharmacy's participation in a pharmacy benefits manager's provider network solely or mainly because the pharmacy files a complaint, as defined in rule 191—59.2(510B), with any entity.

c. A pharmacy shall not be terminated from the network or suspended by a pharmacy benefits manager due to any disagreement with a decision of the pharmacy benefits manager to deny or limit benefits to covered individuals or due to any assistance provided to covered individuals by the pharmacy in obtaining reconsideration of a decision of the pharmacy benefits manager.

d. The pharmacy may request an independent third-party review of the final decision to terminate or suspend the contract between the pharmacy benefits manager and the pharmacy by filing with the pharmacy benefits manager a written request for an independent third-party review of the decision. This written request must be filed with the pharmacy benefits manager within 30 days of receipt of the final termination or suspension decision.

e. If a pharmacy requests an independent third-party review of a termination or suspension decision and the termination is found to be substantiated, the cost of the third-party review shall be paid by the pharmacy. If a pharmacy requests an independent third-party review of a termination or suspension decision and the termination is found to be unsubstantiated, the cost of the third-party review shall be paid by the pharmacy benefits manager.

[ARC 1466C, IAB 5/28/14, effective 7/2/14; ARC 2518C, IAB 4/27/16, effective 6/1/16]

191—59.7(510B) Price change. For purposes of Iowa Code section 510B.7(3), a "price increase notification by a manufacturer or supplier" includes price changes made by national compendia or other services used by a pharmacy benefits manager which take into account, in whole or in part, price changes made by manufacturers or suppliers to help facilitate the development of a drug's maximum reimbursement amount to a pharmacy. A pharmacy benefits manager may comply with the requirements of Iowa Code section 510B.7(3) by keeping a list of current therapeutically, pharmaceutically equivalent multiple-source prescription drugs and current maximum reimbursement amounts for those therapeutically, pharmaceutically equivalent multiple-source prescription drugs and by updating that list at least every three business days with any maximum reimbursement amount changes. This list shall be made available to pharmacies through a readily accessible and easily usable online format, or in some other readily accessible and easily usable format.

[ARC 1466C, IAB 5/28/14, effective 7/2/14; ARC 2518C, IAB 4/27/16, effective 6/1/16]

191—59.8(510B) Complaints.

59.8(1) System to record complaints. Each pharmacy benefits manager shall develop an internal system to record and report complaints. This system shall include but not be limited to the following information regarding each complaint:

- a. The reason for the complaint and any factual documentation submitted by the complainant to support the complaint;
- b. Contact name, address and telephone number of the pharmacy;
- c. Prescription number;
- d. Prescription reimbursement amount for any disputed claim;
- e. Any disputed prescription claim payment date;
- f. Covered entity benefits certificate;
- g. The final determination and outcome of the complaint;
- h. The name of any pharmacy services administrative organization, if known by the pharmacy benefits manager, with which the pharmacy or the pharmacy benefits manager has a contract and that is involved in the matter of the complaint; and
 - i. For complaints related to a maximum reimbursement amount, documentation demonstrating compliance with subrule 59.5(1) and rule 191—59.7(510B).

59.8(2) Quarterly complaint summary. A summary of all complaints received by the pharmacy benefits manager each calendar quarter shall be submitted to the commissioner within 30 days after the calendar quarter has ended. The summary shall include the following:

- a. Name, address, telephone number and e-mail address for a contact person for the pharmacy benefits manager;
- b. Information related to any pharmacy's appeal or request for an independent third-party review of an audit report pursuant to subrules 59.4(4) and 59.4(5);
- c. Information related to any pharmacy's comment on or contest or appeal of a maximum reimbursement rate or maximum reimbursement amount list pursuant to subrule 59.5(2);
- d. Information related to any request by a pharmacy for and the outcome of an independent third-party review of a termination or suspension decision pursuant to paragraph 59.6(3) "d";
- e. A summary of the information listed in paragraph 59.8(1) "a," excluding documentation; and
- f. The information listed in paragraphs 59.8(1) "b," "d," "e," and "g."

59.8(3) Confidentiality. The quarterly complaint summary shall be confidential pursuant to subrule 59.10(5).

59.8(4) Inquiries and complaints from the commissioner.

a. Pharmacy benefits managers shall comply with Iowa Code section 507B.4A(1) in responding promptly to inquiries from the commissioner, including complaints.

b. When responding to inquiries and complaints from the commissioner, pharmacy benefits managers shall include the Food and Drug Administration National Drug Code number, the names of the manufacturers of the prescription drugs that are related to the inquiry, and the names of any pharmaceutical wholesalers, if:

- (1) The pharmacy benefits managers can determine that information from their records and other knowledge of the subject matter of the inquiry or complaint; or
- (2) The commissioner has provided enough information in the inquiry or complaint for the pharmacy benefits manager to identify such facts.

[ARC 1466C, IAB 5/28/14, effective 7/2/14; ARC 2518C, IAB 4/27/16, effective 6/1/16]

191—59.9(510,510B) Duty to notify commissioner of fraud. A covered entity that contracts with a pharmacy benefits manager to perform the covered entity's services shall require the pharmacy benefits manager to follow Iowa Code section 507E.6 in notifying the commissioner of any detection of fraud, including but not limited to prescription drug diversion activity. "Prescription drug diversion activity," for purposes of this rule, means the diversion of prescription drugs from legal and medically necessary uses to uses that are illegal and not medically authorized or necessary. A pharmacy benefits manager

shall follow the fraud detection protocol developed by the covered entity or shall allow the covered entity to review and agree to the pharmacy benefits manager's protocol.

[ARC 1466C, IAB 5/28/14, effective 7/2/14; ARC 2518C, IAB 4/27/16, effective 6/1/16]

191—59.10(507,510,510B) Commissioner examinations of pharmacy benefits managers.

59.10(1) Cooperation of pharmacy benefits managers with the commissioner. Pharmacy benefits managers shall cooperate with the commissioner and comply with the commissioner's requests to aid with the commissioner's administration of Iowa Code chapters 507, 507B, 510, and 510B and this chapter, including cooperation and compliance with the commissioner in conducting examinations of pharmacy benefits managers pursuant to Iowa Code chapter 507, and cooperation with the commissioner in conducting investigations pursuant to Iowa Code chapter 507B.

59.10(2) Maintenance of records. Pharmacy benefits managers shall maintain for five years the records necessary to demonstrate to the commissioner compliance with this chapter. Pharmacy benefits managers shall provide the commissioner easy accessibility to records for examination, audit and inspection to verify compliance with this chapter.

59.10(3) Disclosure of payments received by the pharmacy benefits manager.

a. The commissioner may request, and a pharmacy benefits manager shall disclose to the commissioner, the amount of all payments received by the pharmacy benefits manager, and the nature, type, and amounts of all other revenues that the pharmacy benefits manager receives.

b. For purposes of this subrule, "payments received by the pharmacy benefits manager" means the aggregate amount of the following types of payments:

(1) A remuneration collected by the pharmacy benefits manager which is allocated to a covered entity;

(2) An administrative fee collected from the manufacturer in consideration of an administrative service provided by the pharmacy benefits manager to the manufacturer;

(3) A pharmacy network fee; and

(4) Any other fee or amount collected by the pharmacy benefits manager from a manufacturer or labeler for a drug switch program, a formulary management program, a mail service pharmacy, educational support, data sales related to a covered individual, or any other administrative function.

59.10(4) Disclosure of pricing methodology for maximum reimbursement amount.

a. The commissioner may require, and a pharmacy benefits manager shall submit to the commissioner, pursuant to Iowa Code section 510B.8, information related to the pharmacy benefits manager's pricing methodology for maximum reimbursement amounts.

b. "Disclosure," as used in Iowa Code section 510B.8(2), means the disclosure to the commissioner of the information the commissioner requires the pharmacy benefits manager to submit pursuant to Iowa Code section 510B.8(1).

c. Iowa Code section 510B.8(2)"a" permits pharmacy benefits managers to establish maximum reimbursement amounts, as defined in Iowa Code section 510B.1(6), for all multiple-source prescription drugs prescribed after the expiration of any generic exclusivity period. Any pricing methodology used by a pharmacy benefits manager for determining the maximum reimbursement amounts for multiple-source prescription drugs including but not limited to those prescribed after the expiration of any generic exclusivity period shall be disclosed to the commissioner, if the commissioner requires pursuant to Iowa Code sections 510B.8(1) and 510B.8(2).

d. Iowa Code section 510B.8(2)"b" permits pharmacy benefits managers to establish maximum reimbursement amounts, as defined in Iowa Code section 510B.1(6), for prescription drugs including, but not limited to, those with at least two or more A-rated therapeutically equivalent, multiple-source prescription drugs with a significant cost difference. Any pricing methodology used by a pharmacy benefits manager for determining the maximum reimbursement amounts for prescription drugs, including but not limited to those with at least two or more A-rated therapeutically equivalent, multiple-source prescription drugs with a significant cost difference, shall be disclosed to the commissioner, if the commissioner requires pursuant to Iowa Code sections 510B.8(1) and 510B.8(2).

e. A pharmacy benefits manager using data sources for determining maximum reimbursement amounts must comply with this paragraph "e."

(1) The pricing methodology for maximum reimbursement amounts that pharmacy benefits managers shall disclose to the commissioner, if the commissioner requires pursuant to Iowa Code sections 510B.8(1) and 510B.8(2), shall, pursuant to Iowa Code section 510B.8(2)"a" and "b," determine maximum reimbursement amounts by using comparable prescription drug prices that are:

1. Obtained from multiple nationally recognized comprehensive data sources including, for example, the U.S. Center for Medicare and Medicaid Services' national average drug acquisition cost, pharmaceutical wholesalers, prescription drug vendors, and pharmaceutical manufacturers for prescription drugs;

2. Nationally available; and

3. Available for purchase by multiple pharmacies in the state of Iowa.

(2) The sources listed in this paragraph and in Iowa Code section 510B.8(2)"c" as sources included among nationally recognized comprehensive data sources are examples of data sources that may be used by pharmacy benefits managers but are not the exclusive data sources that may be used and, if used, that must be disclosed when required by the commissioner.

59.10(5) Confidentiality. Information provided by a pharmacy benefits manager to the commissioner under this rule or under rule 191—59.8(510B) shall be deemed confidential under Iowa Code sections 22.7(2), 22.7(3), 22.7(6), 505.8(8), 505.8(9), 507.14, and 510B.3, as applicable.

[ARC 1466C, IAB 5/28/14, effective 7/2/14; ARC 2518C, IAB 4/27/16, effective 6/1/16]

191—59.11(505,507,507B,510,510B,514L) Failure to comply. Failure to comply with the provisions of this chapter or with Iowa Code chapters 510 and 510B, or failure to comply with 191—Chapters 58 and 78 or Iowa Code chapters 507 and 514L as they are relevant to the administration of this chapter or of Iowa Code chapters 510 and 510B, shall subject the pharmacy benefits manager to the penalties of Iowa Code chapter 507B.

[ARC 1466C, IAB 5/28/14, effective 7/2/14; ARC 2518C, IAB 4/27/16, effective 6/1/16]

These rules are intended to implement Iowa Code chapters 17A, 505, 507, 507B, 510, 510B and 514L.

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*The September 17, 2008, effective date of subrules 59.6(3), 59.6(5) and 59.7(6) was delayed for 70 days by the Administrative Rules Review Committee at its meeting held September 9, 2008. At its meeting held October 14, 2008, the Committee voted to lift the delay, effective October 15, 2008.

ECONOMIC DEVELOPMENT AUTHORITY[261]

[Created by 1986 Iowa Acts, chapter 1245]
[Prior to 1/14/87, see Iowa Development Commission[520] and Planning and Programming[630]]
[Prior to 9/7/11, see Economic Development, Iowa Department of[261];
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261—102.1(15E) Authority. The authority for adopting rules establishing the entrepreneur investment awards program under this chapter is provided in Iowa Code sections 15.106A and 15E.362.
[ARC 0611C, IAB 2/20/13, effective 3/27/13; ARC 2501C, IAB 4/27/16, effective 6/1/16]

261—102.2(15E) Purpose. The purpose of the entrepreneur investment awards program is to provide financial assistance to service providers that provide technical and financial assistance to entrepreneurs and start-up companies seeking to create, locate, or expand a business in the state.
[ARC 0611C, IAB 2/20/13, effective 3/27/13; ARC 2501C, IAB 4/27/16, effective 6/1/16]

261—102.3(15E) Definitions. As used in this chapter, unless the context otherwise requires:

“*Applicant*” means a person applying to the authority for financial assistance under the program.

“*Authority*” means the economic development authority created in Iowa Code section 15.105.

“*Board*” means the members of the economic development authority appointed by the governor and in whom the powers of the authority are vested pursuant to Iowa Code section 15.105.

“*Business development services*” includes but is not limited to corporate development services, business model development services, business planning services, marketing services, financial strategies and management services, mentoring and management coaching, and networking services.

“*Committee*” means the technology commercialization committee established by the board pursuant to 261—Chapter 1.

“*Corporation*” means the Iowa innovation corporation created pursuant to Iowa Code section 15.107.

“*Deliverables*” means the performance of duties or other obligations required of an applicant under a contract entered into with the authority in consideration for the receipt of financial assistance under the program. At a minimum, “deliverables” includes the continued maintenance of all initial eligibility requirements for the duration of a contract entered into under the program and may include such other terms and conditions as the authority deems necessary to effectuate the legislative intent of the program or to protect the interest of taxpayers.

“*Eligible entrepreneurial assistance provider*” or “*service provider*” means a person meeting the requirements of rule 261—102.6(15E).

“*Financial assistance*” means the same as defined in Iowa Code section 15.327.

“*Fund*” means the entrepreneur investment awards program fund created pursuant to Iowa Code section 15E.363.

“*Iowa-based business*” means a service provider whose principal place of operations is in Iowa and that is actively providing business development services in the state.

“*Operating costs*” means the expenses associated with administering a service provider’s activities on a day-to-day basis. “Operating costs” includes both fixed costs and variable costs. “Operating costs” does not include expenses associated with non-operating activities such as interest expenses, repayment of principal, or moneys invested by the service provider in clients’ businesses or in other ventures.

“*Program*” means the entrepreneur investment awards program established pursuant to Iowa Code section 15E.362.

[ARC 0611C, IAB 2/20/13, effective 3/27/13; ARC 2501C, IAB 4/27/16, effective 6/1/16]

261—102.4(15E) Program description, application procedures, and delegation of functions.

102.4(1) Program description. The program is designed to provide financial assistance to service providers meeting the eligibility requirements described in rule 261—102.6(15E). All awards of financial assistance must ultimately be approved by the board, and a contract must be entered into before funds will be disbursed. All contracts will specify the deliverables required in consideration for the provision of financial assistance.

102.4(2) Application and award procedures. Eligible service providers may submit applications to the authority. The applications will receive an initial review to confirm program eligibility before being

sent to the committee for a recommendation on funding. The committee will provide its recommendation to the board for a final determination on funding. The board may approve, deny, or defer each application for financial assistance under the program. The board will consider applications for financial assistance during the annual filing window described in subrule 102.4(5). The amount of financial assistance awarded to a service provider is within the discretion of the authority as determined by the board. If the board approves an award of financial assistance for a service provider, the authority will prepare a required contract specifying the terms and conditions under which financial assistance is provided to the service provider.

102.4(3) Delegation of certain administrative functions to the corporation. The authority will delegate certain administrative functions of the program to the corporation. The functions that will be delegated are:

a. The initial application review process, including an analysis of whether the service provider meets all requirements of eligibility under the program. In analyzing an applicant's eligibility, the corporation shall verify that all objective criteria for eligibility are met as described in subrule 102.6(1) and shall provide an opinion as to whether and to what extent the applicant meets the subjective criteria described in subrule 102.6(2). The analysis of eligibility shall be compiled in report form and submitted to the committee for its use in making a recommendation and to the board for its use in making a final determination.

b. The formulation of deliverables to be required under the contract. The corporation shall recommend to the authority the terms and conditions to be included in the contract in consideration for receipt of the grant funds.

c. The tracking and monitoring of the service provider's performance under a program contract, including an analysis of whether the service provider's deliverables meet all requirements of the contract and including an evaluation of the value added by the service provider to the businesses of entrepreneurs. The evaluation shall be provided by the corporation in furtherance of the program review and report required of the authority pursuant to Iowa Code section 15E.362.

102.4(4) Administrative functions not delegated. The authority will retain, and not delegate, the authority to perform all of the following functions: (1) the final determination as to whether to approve, deny, or defer the award of program funds to a service provider; (2) the disbursal of program funds to a service provider; (3) the final determination as to whether a service provider is in default of a contract entered into under the program, including all decisions regarding appropriate remedies for such a default; and (4) any other function not clearly delegated to the corporation pursuant to subrule 102.4(3).

102.4(5) Annual filing window. In order to facilitate the competitive application and scoring process described in rule 261—102.6(15E), the authority and the corporation will accept applications for financial assistance only during the annual filing window. This filing window shall be from May 15 to June 1 of each calendar year. During the month of June, the authority and the corporation will process the applications and prepare them for consideration by the committee and the board at the first monthly meeting of the committee and the board following June 30 of each year. The authority may adjust the annual filing window dates under extenuating circumstances and will notify affected parties of such circumstances.

102.4(6) Miscellaneous. The authority may contract with outside service providers for assistance with the program. The authority may also make client referrals to eligible service providers regardless of the amount of financial assistance provided.

[ARC 0611C, IAB 2/20/13, effective 3/27/13; ARC 2501C, IAB 4/27/16, effective 6/1/16]

261—102.5(15E) Program funding.

102.5(1) Aggregate fiscal year limitation. The authority will not award more than \$1 million in financial assistance under the program in any one fiscal year.

102.5(2) Individual applicant limitation. The authority will negotiate the amount of financial assistance to be provided to a service provider. However, the authority will not award more than \$200,000 to any one service provider in any one fiscal year.

102.5(3) Program funding source and allocation. Moneys for financial assistance under the program will be awarded from the moneys in the entrepreneur investment awards program fund created pursuant to Iowa Code section 15E.363. Moneys are deposited in this fund by the authority pursuant to Iowa Code section 15.335B. The amount deposited each year depends on the amount allocated for such purposes under Iowa Code section 15.335B.

102.5(4) Use of funds. An applicant receiving financial assistance under the program shall only use the funds for the purpose of defraying operating costs actually incurred by the service provider in providing business development services to emerging and early-stage innovation companies in this state. Financial assistance provided under the program shall not be distributed to owners or investors of the company to which business development services are provided and shall not be distributed to other persons assisting in the provision of business development services.
[ARC 0611C, IAB 2/20/13, effective 3/27/13; ARC 2501C, IAB 4/27/16, effective 6/1/16]

261—102.6(15E) Eligibility requirements and competitive scoring process.

102.6(1) Eligibility. In order to be eligible for financial assistance under the program, an applicant must meet the requirements of this rule. A service provider applying to the program must meet all of the following criteria for eligibility:

- a. The service provider must have its principal place of operations located in this state.
 - b. The service provider must offer a comprehensive set of business development services to emerging and early-stage innovation companies to assist in the creation, location, growth, and long-term success of the company in this state.
 - c. The business development services may be performed at the physical location of the service provider or the company.
 - d. The business development services may be provided in consideration of equity participation in the company, a fee for services, a membership agreement with the company, or any combination thereof.
- 102.6(2) Competitive scoring criteria.** The authority will award financial assistance on a competitive basis. In making awards of financial assistance, the authority will consider the following criteria:
- a. The business experience of the professional staff employed or retained by the service provider. 25 points.
 - b. The business plan review capacity of the professional staff of the service provider. 15 points.
 - c. The expertise in all aspects of business disciplines of the professional staff of the service provider. 15 points.
 - d. The access of the service provider to external service providers, including legal, accounting, marketing, and financial services. 15 points.
 - e. The service model and likelihood of success of the service provider and its similarity to other successful service providers in the country. 15 points.
 - f. The financial need of the service provider. 15 points.

[ARC 0611C, IAB 2/20/13, effective 3/27/13; ARC 2501C, IAB 4/27/16, effective 6/1/16]

261—102.7(15E) Contract and report information required.

102.7(1) Contract required. An applicant awarded financial assistance under the program shall enter into a contract with the authority for the receipt of such funds. The authority will include certain deliverables in the contract as recommended by the corporation and will delegate to the corporation the tracking and monitoring of all contract provisions. The corporation shall provide regular reports to the authority on the progress of the applicant and on the results of the tracking and monitoring. The authority will make the final determination as to compliance with the terms of the contract and will make the final determination as to whether and when to disburse funds to the applicant.

102.7(2) Reporting information required. Under Iowa Code section 15E.362, the authority is required to report on the success of the program to the legislature. An applicant may be required to submit all information necessary for the authority to produce such a report. The authority may include terms in the required contract effectuating this requirement.

[ARC 0611C, IAB 2/20/13, effective 3/27/13; ARC 2501C, IAB 4/27/16, effective 6/1/16]

These rules are intended to implement Iowa Code sections 15E.362 and 15E.363.

[Filed ARC 0611C (Notice ARC 0408C, IAB 10/17/12), IAB 2/20/13, effective 3/27/13]
[Filed ARC 2501C (Notice ARC 2374C, IAB 1/20/16), IAB 4/27/16, effective 6/1/16]

IOWA FINANCE AUTHORITY[265]

[Prior to 7/26/85, Housing Finance Authority[495]]
[Prior to 4/3/91, Iowa Finance Authority[524]]

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CHAPTER 9 TITLE GUARANTY DIVISION

265—9.1(16) Definitions. The following words and phrases, when used in this chapter, shall have the meanings set forth below unless a meaning is inconsistent with the manifest intent or the context of a particular rule:

“*Abstract*” means a written or electronic summary of all matters of record affecting title to a specific parcel of real estate prepared in accordance with abstract minimum standards adopted by the division, provided however, that for nonpurchase transactions, “abstract” may also mean a written or electronic short-form summary setting forth the titleholders, liens, and encumbrances in accordance with guidelines adopted by the division.

“*Abstractor*” means a person who is engaged in the practice of searching public records for the purpose of creating abstracts.

“*Authority*” means the Iowa finance authority established by Iowa Code chapter 16.

“*Certificate*” means the form used to guarantee title, including any part or schedule thereof and any endorsements thereto.

“*Claim*” means loss or damage or potential loss or damage arising by reason of a matter actually, possibly, or allegedly within the coverage of a commitment, certificate, closing protection letter, mortgage release certificate, or by reason of any other matter for which the division is actually, possibly, or allegedly liable.

“*Claim loss*” means amounts paid by the division in the investigation and resolution of a claim including, but not limited to, payments to the guaranteed, payments to adverse claimants, attorneys’ fees, and all other expenses and costs related to or arising from the claim.

“*Closing protection letter*” means the division’s written agreement to indemnify a lender or borrower or both for loss caused by a participating closer’s theft of settlement funds or failure to comply with written closing instructions relating to title certificate coverage when agreed to by the participating closer.

“*Commitment*” means the division’s written offer to issue a certificate.

“*Division*” means Iowa title guaranty, a division of the Iowa finance authority.

“*Division board*” means the board of the division created pursuant to Iowa Code section 16.2A(1).

“*Field issuer*” means a participant authorized by the division to issue commitments and certificates.

“*Mortgage release certificate*” means a certificate of release or a certificate of partial release issued by the division, pursuant to Iowa Code section 16.92.

“*Participant*” means a participating attorney, a participating abstractor, or a participating closer.

“*Participating abstractor*” means an abstractor who is authorized by the division to prepare abstracts for division purposes.

“*Participating attorney*” means an attorney licensed to practice law in the state of Iowa who is authorized by the division to prepare title opinions for division purposes.

“*Participating closer*” means any of the following authorized by the division to issue a closing protection letter: an Iowa licensed attorney disbursing funds through an interest on lawyer trust account, a closing agent licensed by the Iowa division of banking, or a real estate broker licensed by the Iowa real estate commission disbursing funds through a real estate trust account.

“*Party*” means a participant, or any other person, that has a contractual relationship with the division to provide services for which a claim may be brought against the division.

“*Person*” means an individual or legal entity, including corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.
[ARC 2506C, IAB 4/27/16, effective 6/1/16]

265—9.2(16) Purpose. This chapter describes the mission, organization, programs and operations of the division, including the office where and the means by which a person may obtain information and make submissions or requests.

[ARC 2506C, IAB 4/27/16, effective 6/1/16]

265—9.3(16) Mission. The mission of the division is to operate a program that offers guaranties of real property titles in order to provide, as an adjunct to the abstract-attorney's title opinion system, a low-cost mechanism to facilitate mortgage lenders' participation in the secondary market and add to the integrity of the land-title transfer system in the state of Iowa and to perform other duties as assigned by Iowa law. Surplus funds generated by the division shall be transferred to the authority's housing assistance fund after providing for adequate reserves and for the operating expenses of the division.

[ARC 2506C, IAB 4/27/16, effective 6/1/16]

265—9.4(16) Organization.

9.4(1) Location. The office of the division is located at 2015 Grand Avenue, Des Moines, Iowa 50312. Office hours are 8 a.m. to 4:30 p.m. Monday through Friday, excluding legal holidays. The division's Web-site address is www.iowatitleguaranty.gov, and the division's telephone and facsimile numbers are as follows: (515)725-4900 (general telephone number); 1-800-432-7230 (toll-free telephone number); and (515)725-4901 (facsimile). The division's e-mail address is titleguaranty@iowa.gov. Inquiries, submissions, applications and other requests for information may be directed to the division at the address set forth herein. Requests may be made personally or by telephone, fax, mail or e-mail.

9.4(2) Division board. A chair and vice chair shall be elected annually by the members of the division board at the first quarterly meeting following July 1 of each year, which is the beginning of the division's fiscal year.

9.4(3) Meetings. Meetings of the division board shall generally be held quarterly on the date and time determined by the division board. Meetings of the division board may also be held at the call of the chair or on written request of two division board members. The division will give advance public notice of the specific date, time and place of each division board meeting. At least 24 hours before commencement of a division board meeting, the division will post the tentative agenda at the office of the division and on the division's Web site. Division board meetings may be conducted by conference call. Any person may attend and observe division board meetings except for any portion of a division board meeting that may be closed pursuant to Iowa Code section 21.5. The minutes of the division board meetings are available at the office of the division and on the division's Web site. Three members of the division board constitute a quorum. An affirmative vote of a majority of the division board members is necessary for any substantive action taken by the division board. The majority shall not include any division board member who has a conflict of interest, and a statement of a conflict of interest shall be conclusive for this purpose.

[ARC 2506C, IAB 4/27/16, effective 6/1/16]

265—9.5(16) Operation. The division offers guaranties of real property titles in the state through the issuance of commitments and certificates.

9.5(1) Commitments, certificates, forms and manuals. The terms, conditions, and form of commitments and certificates shall be approved by the division board. The division may adopt and use manuals and other forms as the division deems necessary for implementation and administration of the title guaranty program.

a. The division will provide forms to a participant for use in issuing commitments and certificates on behalf of the division. A participant may not alter any form supplied by the division or use a form supplied by another person to bind the division. In addition, the participant shall not transfer or attempt to transfer unissued commitments or certificates to another participant or other person unless authorized in writing by the division.

b. If a participant fails to comply with the requirements of this rule, in addition to the division's other rights and remedies, the division may refuse to allow the participant access to any forms until the participant complies with the requirements of this chapter to the satisfaction of the division.

c. A participant shall be liable to the division for loss or damage sustained by the division by reason of the loss of, misuse of, or inability of the participant to account for any form supplied by the division, or the failure of the participant to comply with the requirements of this rule.

9.5(2) Application for commitments and certificates. The division shall make an application for commitments and certificates available at the office of the division and on the division's Web site.

9.5(3) Rates. The division shall set the rates for certificates and closing protection letters in an amount sufficient to permit the title guaranty program to operate on a self-sustaining basis, including payment of administrative costs and the maintenance of an adequate reserve against claims. In transactions involving extraordinary risk or unusual or unique endorsements, the division may charge additional fees.

[ARC 2506C, IAB 4/27/16, effective 6/1/16]

265—9.6(16) Participants.

9.6(1) General provisions. An applicant shall submit a participant application and the first year's annual fee and shall sign a participation agreement in order to be authorized to provide one or more services on behalf of the division.

9.6(2) Participant application. Applications for participation and renewal are available on the division's Web site. An applicant shall submit an application to provide one or more services on behalf of the division. If the applicant is approved as a participant, the participant is required to submit a renewal application annually.

9.6(3) Eligibility considerations. In determining whether to approve or deny a participant application, the division may consider the following, including but not limited to:

- a. The needs of the public and the needs of existing or potential customers of the applicant.
- b. A history of the operation and management of the applicant's business.
- c. The character, fitness, financial responsibility and experience of the applicant and the applicant's employees.
- d. A credit report or criminal background check of the applicant or the applicant's employees.
- e. A record of default in the payment of moneys collected for others by the applicant or the applicant's employees.
- f. A history of discharge of debts by the applicant or the applicant's employees through bankruptcy proceedings.
- g. Compliance with the title and settlement best practices adopted by the division.
- h. Other factors as determined by the division.

9.6(4) Participation agreement. The participation agreement sets forth the contractual relationship between the participant and the division. A new participation agreement is executed annually and when otherwise required by the division.

9.6(5) Annual fee. A participant may be required to pay an annual fee to be eligible to participate in the title guaranty program. The fee, if any, shall be set by the division.

9.6(6) Professional liability insurance. A participant shall maintain professional liability insurance, also known as errors and omissions insurance, at all times while acting as an agent of the division, with such coverage and in such amounts as the division may determine.

9.6(7) Agent relationship. A participant is only authorized to act as an agent of the division for the purposes and in the manner set forth in the participant's participation agreement, the Code of Iowa, these rules, manuals and any other written instructions given by the division. The authority of a participant to act as an agent of the division is not exclusive and is subject to the rights of the authority, the division, and other participants, agents, or representatives of the division.

9.6(8) Conflict of interest. A participant shall not, without prior authorization of the division, prepare an abstract or issue a title opinion, commitment, certificate, or closing protection letter for a transaction in which the participant has a personal or financial interest in the real estate that is the subject of that transaction.

9.6(9) Clearance of title objections. All title objections must be cleared in accordance with applicable division manuals and any other written instructions given by the division prior to the issuance of a certificate. Any underwriting determination about which there may be a bona fide difference of opinion among attorneys, which is not specifically addressed by division manuals or instructions, shall be approved by the division in writing.

9.6(10) Commitment and certificate coverage limitations. A field issuer shall obtain written authorization from the division prior to issuing a commitment or certificate that exceeds the allowable maximum amount of coverage, as determined by the division. If authorization required under this subrule is not obtained through the act or omission of the field issuer, the field issuer shall be strictly liable to the division for any loss or damage resulting from issuance of the commitment or certificate.

9.6(11) Document retention. A participant shall maintain transaction files in such a manner that information pertaining to activities of the participant is readily available to the division while protecting confidential client information. A participant shall retain files for a period of ten years after the effective date of the certificate or the effective date of the commitment if a certificate is not issued. A participating abstractor shall retain a written or electronic copy of each abstract prepared for division purposes and shall provide a copy to the division upon request.

9.6(12) Training. The division may require a participant and the participant's staff, as a condition of participation, to participate in training sessions or continuing education seminars as deemed necessary by the division in order to ensure compliance with division requirements and procedures.

9.6(13) Compliance. Participants shall comply with the Code of Iowa, these rules, the participation agreement, manuals, and any other written instructions given by the division. The division may audit the participant, with or without notice, for verification of compliance. An audit may include, but not be limited to, a review of the participant's commitment and certificate issuance procedures, a test of title plants and tract indices, and a review of closing policies and procedures and escrow account details. An inspection of a title plant may be performed by the division or its designee to determine if the title plant meets the criteria set forth in paragraph 9.7(1) "a."

9.6(14) Revocation. The division has discretion to revoke a participant's authorization to provide services on behalf of the division for reasons including, but not limited to, the following:

- a. Failure to comply with the terms and conditions of the participation agreement.
- b. Failure to submit an annual renewal application.
- c. Knowingly withholding or misrepresenting material facts relied upon by the division.
- d. Fraud, theft, dishonesty, or misappropriation of funds or documents.
- e. Deterioration of the participant's financial condition adversely affecting the participant's ability to provide services on behalf of the division.
- f. A finding by the division director of material noncompliance with the Code of Iowa, these rules, manuals, and any other written instructions given by the division.
- g. Other factors as determined by the division.

[ARC 2506C, IAB 4/27/16, effective 6/1/16]

265—9.7(16) Services offered.

9.7(1) Abstracting. Abstracts utilized for division purposes must be prepared by a participating abstractor.

a. *Title plant.* A participating abstractor shall own and maintain, or lease and use, a title plant including tract indices for each county in which that participating abstractor prepares abstracts for division purposes, unless exempt under paragraph 9.7(1) "c" or authorized under paragraph 9.7(1) "d." Each of the tract indices shall be designated to encompass a geographical area of not more than one block in the case of platted real estate, nor more than one section in the case of unplatted real estate. The tract indices shall include a reference to all of the instruments affecting real estate recorded in the office of the county recorder, and the tract indices shall commence not less than 40 years prior to the effective date of the abstractor's participation in the title guaranty program. A government-maintained and -controlled database is not considered a title plant for division purposes.

b. *Intent to build title plant.* The division may authorize an abstractor that is building or that intends to build a title plant to prepare abstracts for use by the division, upon review of the following:

- (1) The abstractor's business plan;
- (2) Evidence that a title plant will be built for a specific county or counties within three years;
- (3) A time line for completion of the title plant; and
- (4) A description of the applicant's abstracting experience.

c. *Grandfathered attorney.* A participating attorney who has provided abstracts continuously from November 12, 1986, to the date of application to provide abstracts for division purposes, either personally or through persons under the participating attorney's supervision and control, shall be exempt from the requirements to own or lease a title plant. This exemption is unique to the participating attorney, is nontransferable, and terminates at such time as the participating attorney ceases providing abstracts for division purposes or upon the death or incapacity of the participating attorney.

d. *Title plant waivers.* The division recognizes the 40-year title plant as the preferred method of providing title evidence for the purpose of issuing commitments and certificates. The division must weigh the benefits of the traditional title plant with other alternatives to ensure buyers and lenders high quality of certificates throughout the state, rapid service, and a competitive price. Iowa Code section 16.91(5) "b" allows the division board to waive the up-to-date title plant requirements under certain conditions.

(1) General provisions. The division board shall consider an application for a title plant waiver upon submission by an attorney or an abstractor.

(2) Submission of application. The division shall provide an application form at the office of the division and on the division's Web site. An applicant must submit an application in writing to the attention of the division director at the office of the division.

(3) Content of application. The applicant must provide, at a minimum, the following information:

1. The name, business address, e-mail address, and telephone number of the applicant;
2. The applicant's business plan;
3. The county or counties in which the applicant intends to abstract;
4. A description of the applicant's abstracting experience;
5. Samples of abstracts prepared by the applicant;
6. A history of any professional disciplinary action against the applicant;
7. Professional references in support of the applicant;
8. The relevant facts that the applicant believes would justify a waiver under 9.7(1) "d"(5) and 9.7(1) "d"(6)"4"; and
9. A signed statement from the applicant attesting to the accuracy of the facts provided in the application.

(4) Notification and response.

1. The division shall notify the applicant upon receipt of a complete application.
2. The division shall publish notice of an application on the division's Web site within 7 calendar days of receipt of a complete application. A copy of the application and supporting documents will be provided to any interested person upon request.

3. The Iowa State Bar Association and Iowa Land Title Association shall be provided notice of an application. Provision of the notice to the identified associations is not a requirement for the division board to consider the application, and failure to inform an interested person of an application shall not void or otherwise nullify any action or decision of the division board.

4. If a complete application is received at least 90 days prior to the next scheduled division board meeting, the application shall be placed on the agenda for that division board meeting. The division shall receive public comments up to 45 calendar days prior to that division board meeting.

(5) Criteria for title plant waiver. Pursuant to Iowa Code section 16.91(5) "b," the division board may issue a ruling waiving the title plant requirement set forth in Iowa Code section 16.91(5) "a"(2) if the board finds the following:

1. The title plant requirement imposes a hardship to the applicant; and
2. The waiver is:
 - Clearly in the public interest; or
 - Absolutely necessary to ensure availability of certificates throughout the state.
3. For purposes of paragraph 9.7(1) "d," "hardship" means deprivation, suffering, adversity, or long-term adverse financial impact in complying with the title plant requirement that is more than minimal when considering all the circumstances.

4. For purposes of paragraph 9.7(1) "d," "public interest" means that which is beneficial to the public as a whole, including but not limited to increasing competition among abstractors, encouraging the use of certificates throughout the state, making certificates more competitive than out-of-state title insurance, increasing the division's market share, improving the quality of land titles, and protecting consumers.

(6) Board meeting and ruling.

1. The review of a waiver application is not a contested case proceeding.
2. The division director or designee shall review an application and its supporting documentation.

The division director shall present to the division board a proposed written ruling. The division board shall adopt, amend or reject the proposed written ruling. If the proposed written ruling is rejected, the division board shall instruct the division director to prepare an alternative written ruling to be considered at a subsequent division board meeting.

3. The written ruling shall summarize the relevant facts and the basis for granting or denying the waiver. The written ruling may specify the scope and duration of the waiver and any restrictions, conditions, or requirements.

4. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the division board upon consideration of all relevant factors. Relevant factors to be considered include, but are not limited to, the division director's proposed written ruling, the facts and circumstances set out in the application, any history of professional disciplinary action against the applicant, adverse claims made against the applicant, prior waiver withdrawal actions against the participating attorney or participating abstractor, public comments, the professional knowledge and expertise of the board members and division staff, and any other resources available to the entire division board. The division board shall give considerable weight to an applicant's experience abstracting under the supervision of a participating abstractor or participating attorney with whom the applicant has had a close working relationship or with whom the applicant is a partner or associate. The division board shall also give considerable weight to a recommendation from a participating abstractor or participating attorney who supervised the applicant's abstracting for a period of two years or more and who attests in writing or in person before the division board regarding the applicant's ability to abstract. Consideration should be afforded to rulings on prior waiver requests, but the division board shall not be bound by such rulings. The division board may limit a waiver as to county, or transaction type, or both.

5. The written ruling shall be mailed to the applicant within 7 days of its issuance.

6. The decision of the division board shall be final agency action, and all appeals shall be filed with the Iowa District Court for Polk County.

(7) Conditions. A waiver is unique to the recipient and is nontransferable. A waiver recipient shall be accountable to the division for abstracts prepared for division purposes. The division may require a waiver recipient to provide a guarantee, performance bond, or other form of indemnification, as assurance for abstracts prepared by the waiver recipient on behalf of the division. The division may review the waiver recipient annually and may require a renewal, modification or addition to any required assurances. Retention of a waiver is dependent on the applicant's meeting the requirements for a participant in rule 265—9.6(16). If the waiver recipient fails to meet the terms of the recipient's participation agreement, the waiver may be withdrawn by the division board.

(8) Withdrawal of a waiver. A waiver issued by the division board may be withdrawn or modified if, after public notice and division board meeting, the division board issues a written ruling finding any of the following:

1. That the waiver recipient knowingly withheld or misrepresented material facts relied upon by the division board in granting the waiver; or
2. That the waiver recipient failed to comply with all conditions contained in the written ruling; or
3. That the abstracts prepared by the waiver recipient fail to meet the abstract minimum standards adopted by the division; or
4. That the division has revoked the waiver recipient's authorization to provide services on behalf of the division pursuant to subrule 9.6(14).

The decision of the division board shall be final agency action, and all appeals shall be filed with the Iowa District Court for Polk County.

(9) Public availability. Applications for waivers and written rulings are public records under Iowa Code chapter 22. Some applications or written rulings may contain information that the division is authorized or required to keep confidential. The division may redact confidential information from applications or written rulings prior to public inspection or dissemination.

9.7(2) *Issuing title opinions.*

a. All title opinions shall be prepared by participating attorneys and issued in compliance with division procedures as specified in manuals and any other written instructions given by the division.

b. A participating attorney who is a field issuer may issue a commitment as the preliminary title opinion and the certificate as the final title opinion.

c. A participating attorney shall be licensed to practice law in the state of Iowa and shall be in good standing with the Iowa supreme court at all times while acting as an agent of the division.

9.7(3) *Issuing commitments and certificates.* Pursuant to a participation agreement with the division, a participant may be authorized to issue a commitment or certificate on behalf of the division. A participant's right to issue commitments and certificates is a privilege for the convenience of the division and may be terminated pursuant to terms of the participation agreement.

9.7(4) *Issuing closing protection letters.*

a. Pursuant to a participation agreement with the division, a participant may be authorized to issue a closing protection letter on behalf of the division.

b. The division may require the participating closer to provide an irrevocable letter of direction to the institution at which each escrow account is established, authorizing the division to review and audit the institution's records of such account at any time that the division, in its discretion, deems necessary.
[ARC 2506C, IAB 4/27/16, effective 6/1/16]

265—9.8(16) Claims.

9.8(1) *Claim procedures.* In the event of a claim, the rights of the division and a party are as follows:

a. Upon receipt of notice by a party of a claim, the party must notify the division in writing within three business days of receipt of information about a claim by the party and shall mail notification to the division by first-class mail at the division's address as set forth in subrule 9.4(1). In addition, if the nature of the claim is such that the guaranteed claimant or the division, or both, may suffer loss or damage that might be reduced or avoided by notice given more promptly than required by the preceding sentence, the party shall notify the division by telephone, facsimile transmission, e-mail, overnight mail or other overnight delivery service, or any combination of these methods.

b. When a party receives a request from the division for information with respect to a claim, the party shall supply to the division any documents, correspondence, surveys, abstracts of title, title searches, other writings, or other information known by or available to the party and relevant to the claim, even if not specifically requested by the division.

c. A party shall cooperate fully in the investigation and resolution of a claim and shall supply any additional, new information that may come to the party's attention with such promptness as the circumstances permit.

d. The division may, with or without prior notice to the party or parties involved, investigate and resolve any claim in any manner that, in the division's sole discretion, the division may deem advisable.

9.8(2) *Claim loss recovery.*

a. Any claim losses paid are recoverable from a party by the division.

b. In the absence of knowledge by the party about the title defect or other matter causing the claim loss, the division shall not seek recovery from the party when a claim loss arises from one or more of the following:

(1) Hidden defects, including, but not limited to, forged deeds and mortgages, false affidavits, and false statements of marital status;

(2) Errors by public officials in maintaining and indexing the public records, including, but not limited to, errors by county assessors, recorders, clerks, and treasurers;

(3) Errors in these rules, manuals, and any other written instructions given by the division that the party relies upon in issuing an abstract, title opinion, commitment or certificate;

(4) Errors in surveys provided by registered Iowa land surveyors that the party relies upon in issuing a certificate that provides survey coverage; or

(5) Underwriting determinations or title risks approved by the division prior to issuance of the abstract, title opinion, commitment, or certificate.

c. The party shall reimburse the division for a claim loss when the division determines, in accordance with paragraph 9.8(2) "d," that the party is liable and when the claim loss arises from one or more of the following:

(1) Errors by the party in the preparation of an abstract or any other report of information in the public record;

(2) Reliance by the party upon sources of title searches and other title information that had not been approved by the division at the time of the reliance;

(3) Errors made by the party in examining the title information provided in an abstract, survey, affidavit, or other source of title information;

(4) Errors made by the party in the preparation or review of an abstract, title opinion, commitment or certificate;

(5) Issuance of an abstract, title opinion, commitment or certificate by the party with knowledge that title is defective; or

(6) Failure of the party to follow the Code of Iowa, these rules, manuals, or any other written instructions given by the division.

d. Unless another rule, the Code of Iowa, manuals, or any other written instruction given by the division provides for a different standard of liability or other rule for determining whether the party shall be liable for a claim loss, the division shall apply the following standards:

(1) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.8(2) "c"(1), the division may demand reimbursement from the party if the party was grossly negligent in preparing the abstract. Gross negligence includes the failure to make a search or the use of inadequate search procedures. Gross negligence under the preceding sentence includes but is not limited to failure to search certain indices, failure to search all names of parties with an interest in the real estate, or failure to search in all public offices required by the division search procedures or procedures used by prudent title searchers if the division has not established specific search procedures. In making its determination whether to seek recovery, the division may consider the complexity of the public record, the reliance of the party upon division-approved search procedures, the training and experience of the person who made the error, and the existence or nonexistence of previous search errors by the party.

(2) In the event that a claim loss occurs for which the division may seek recovery from a party under subparagraph 9.8(2) "c"(2), the division may demand reimbursement from that party if the party relied upon sources of abstracts or other title information that had not been approved by the division at the time of the reliance.

(3) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.8(2) "c"(3), the division may demand reimbursement from the party if the party negligently examined the title information used in making a title determination, failed to raise an appropriate exception, waived an exception, or endorsed a commitment or certificate.

1. The division may make full review of local county abstracting standards and bar title rules as a guide to determine whether the party has failed to meet the standard of skill and competence of an abstractor who prepares an abstract or an attorney who examines titles in the community where the claim arose.

2. The division may also consider whether the party followed the Code of Iowa, these rules, manuals, or any other written instructions given by the division in examining the title.

3. In addition, the division may seek input from other parties in the community in which the claim arose as to the standard of care of an abstractor who prepares an abstract or of an attorney who examines titles in that community.

(4) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.8(2) "c"(4), the division may demand reimbursement from the party if the party negligently prepared or reviewed an abstract, title opinion, commitment or certificate.

(5) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.8(2) "c"(5), the division may demand reimbursement from the party if the issuance of the abstract, title opinion, commitment or certificate constituted fraud, concealment or dishonesty, or if the issuance of the abstract, title opinion, commitment or certificate was based upon an underwriting decision on an unusual risk that was made without contacting the division for approval.

(6) In the event that a claim loss occurs for which the division may seek recovery from the party under subparagraph 9.8(2) "c"(6), the division may demand reimbursement from the party if the party failed to follow the Code of Iowa, these rules, manuals, or any other written instructions given by the division with respect to the matter causing the claim loss.

(7) In the event the division seeks reimbursement from a party, the division shall state the basis of the reimbursement.

e. The division board may establish levels of authority, including dollar amounts, for the division for the settlement of claims made against the division.

[ARC 2506C, IAB 4/27/16, effective 6/1/16]

265—9.9(16) Mortgage release certificate. Pursuant to Iowa Code section 16.92, the division is charged with the administration of a program to release, after proper notification, paid-off mortgages from real estate titles in Iowa by executing and filing with the county recorder a mortgage release certificate.

9.9(1) Application. The division shall provide a mortgage release application at the office of the division and on the division's Web site. The following may submit an application for a mortgage release certificate:

- a. A person authorized to regularly lend moneys to be secured by a mortgage on real property in Iowa.
- b. A licensed real estate broker.
- c. A licensed attorney.
- d. A participating abstractor.
- e. A licensed closing agent.

9.9(2) Application fee. An applicant may be required to pay a fee to apply for a mortgage release certificate. The fee shall be set by the division.

9.9(3) Maximum principal amount of mortgage. The division board may set a maximum principal amount for mortgages that may be released by a mortgage release certificate.

9.9(4) Authority to sign certificate. A mortgage release certificate shall be executed by the division director or designee of the division director.

[ARC 2506C, IAB 4/27/16, effective 6/1/16]

265—9.10(16) Rules of construction. In this chapter, the following rules of construction shall be observed:

1. The word "shall" means mandatory and not permissive and the word "may" means permissive and not mandatory.

2. Nothing contained in this chapter shall be construed to require a participating attorney to disclose privileged information of a client to the division or to any other person.

3. Any rule that provides a specific remedy or sanction for violation of the rule shall not be construed as limiting the ability of the division to pursue and enforce other remedies or sanctions under this chapter, or otherwise against a participant or other person responsible or liable, either separately, concurrently, cumulatively, or in any combination, at the sole discretion of the division.

4. The failure of the division to enforce a right or remedy under this chapter, a statute, or common law shall not be construed as a waiver of such right or remedy either in the specific instance or in any other instance.

[ARC 2506C, IAB 4/27/16, effective 6/1/16]

265—9.11(16) Seal. The division shall have a corporate seal that may be altered by the division from time to time.

[ARC 2506C, IAB 4/27/16, effective 6/1/16]

These rules are intended to implement Iowa Code sections 16.2A, 16.4C, 16.5, 16.90 to 16.94, 17A.3, 17A.9, 17A.10 and 535.8(10).

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[◊] Two or more ARCs

¹ Effective date of 9.7(2), definition of “Title plant” delayed 70 days by the Administrative Rules Review Committee at its meeting held December 9, 2008.

CHAPTER 12

FEES

282—12.1(272) Issuance of licenses, certificates, authorizations, and statements of professional recognition. All application and licensure fees are nonrefundable. The fee for the issuance of a license, certificate, statement of professional recognition, or authorization shall be \$85 unless otherwise specified below:

1. Class E emergency license shall be \$150.
2. Paraeducator certificate shall be \$40.
3. Behind-the-wheel authorization shall be \$40.

[ARC 9743B, IAB 9/7/11, effective 10/12/11; ARC 2017C, IAB 6/10/15, effective 7/15/15; ARC 2229C, IAB 11/11/15, effective 12/16/15; see Delay note at end of chapter and Nullification note at end of chapter]

282—12.2(272) Fees for the renewal or extension of licenses, certificates, statements of professional recognition, and authorizations. The fee for the renewal or extension of a license, certificate, statement of professional recognition, or authorization shall be \$85 unless otherwise specified below:

1. The renewal of the paraeducator certificate shall be \$40.
2. The renewal of the behind-the-wheel authorization shall be \$40.
3. A one-year extension for renewal of a coaching authorization shall be \$40.
4. A one-year extension of the initial license shall be \$25. This extension may be issued if the applicant needs one additional year to meet the experience requirement for the standard license, but has met Iowa teaching standards, pursuant to rule 282—20.4(272).
5. A \$25 fee for an extension of the initial administrator license, which may be issued instead of renewing the initial administrator license if the applicant verifies one of the criteria listed in 282—subrule 20.8(2).

[ARC 9743B, IAB 9/7/11, effective 10/12/11; ARC 2017C, IAB 6/10/15, effective 7/15/15; ARC 2229C, IAB 11/11/15, effective 12/16/15; see Delay note at end of chapter and Nullification note at end of chapter]

282—12.3(272) Evaluation fee. Each application from an out-of-state institution for initial licensure shall include, in addition to the basic fee for the issuance of a license, a one-time nonrefundable \$60 evaluation fee. Each application or request for a statement of professional recognition shall include a one-time nonrefundable \$60 evaluation fee.

[ARC 2229C, IAB 11/11/15, effective 12/16/15; see Delay note at end of chapter and Nullification note at end of chapter]

282—12.4(272) Adding endorsements.

12.4(1) Fee for each added endorsement. The fee for each additional endorsement to a license following the issuance of the initial license and endorsement(s) shall be \$50. The fee for each additional endorsement added to a paraeducator certificate shall be \$25.

12.4(2) Fee for transcript review. Applicants may ask the board of educational examiners to analyze transcripts if the applicant believes all requirements have been met. Applicants who request board of educational examiners transcript analysis shall be assessed a \$60 transcript evaluation fee for each new endorsement requested. This fee shall be in addition to the fee for adding the endorsement.

[ARC 2017C, IAB 6/10/15, effective 7/15/15; ARC 2229C, IAB 11/11/15, effective 12/16/15; see Delay note at end of chapter and Nullification note at end of chapter]

282—12.5(272) Duplicate licenses, authorizations, and statements of professional recognition. The fee for the issuance of a duplicate practitioner's license, certificate, statement of professional recognition, or authorization shall be \$15.

[ARC 2017C, IAB 6/10/15, effective 7/15/15; ARC 2229C, IAB 11/11/15, effective 12/16/15; see Delay note at end of chapter and Nullification note at end of chapter]

282—12.6(272) Late fees.

12.6(1) An additional fee of \$25 per calendar month, not to exceed \$150, shall be imposed if an application for renewal or conversion of a Class A, B, or E license or a statement of professional recognition (SPR) is submitted after the date of expiration of a practitioner's license. Waiver of the late

fee will be granted only upon a showing of extraordinary circumstances rendering imposition of the fee unreasonable.

12.6(2) Failure to hold an endorsement. An additional fee of \$25 per calendar month, not to exceed \$150, shall be imposed if the practitioner holds a valid Iowa license but does not hold an endorsement for the type of service for which the practitioner is employed.

12.6(3) Failure to hold valid Iowa license or authorization. An additional fee of \$100 per calendar month, not to exceed \$500, shall be imposed if the practitioner does not hold a valid Iowa license or authorization. The fee will begin to be assessed on the first day of the school year for which the practitioner is employed until the practitioner submits a completed application packet for the appropriate license. The penalty will enforce Iowa Code section 272.7. Waiver of the fee will be granted only upon a showing of extraordinary circumstances rendering imposition of the fee unreasonable.

[ARC 2017C, IAB 6/10/15, effective 7/15/15; ARC 2229C, IAB 11/11/15, effective 12/16/15; see Delay note at end of chapter and Nullification note at end of chapter]

282—12.7(272) Fees nonrefundable. All fees as set out in this chapter are nonrefundable.

282—12.8(272) Portfolio review and evaluation fees. The fee for review and evaluation of an applicant portfolio is set as follows:

12.8(1) For the professional education core, the portfolio review and evaluation fee shall be \$500.

12.8(2) For content endorsement, the portfolio review and evaluation fee shall be \$250.

[ARC 8606B, IAB 3/10/10, effective 4/14/10; ARC 2229C, IAB 11/11/15, effective 12/16/15; see Delay note at end of chapter and Nullification note at end of chapter]

282—12.9(272) Retention of incomplete applications.

12.9(1) *Timeline for complete application materials to be submitted.* Upon receipt of an incomplete application, the executive director will send a letter of deficiencies to the applicant stipulating that complete application materials must be submitted to the board office within 45 days of the date the letter is received. If the materials are not received within that timeline, the application process will be closed. If the applicant submits information after the 45-day deadline, the application process requires submission of a complete set of application materials and fees, including late fees if applicable, for practicing with an expired license, without the proper endorsement, or without an Iowa board-issued license.

12.9(2) *Background check.* The background check fee will be valid for one year. If a license is not issued within one year of a completed background check, the background check shall be considered void.

12.9(3) *Timeline for audited online renewals.* Upon receipt of notification that the online renewal application has been audited, the applicant shall have 30 days to submit the official transcripts and mandatory reporter verification to the board office. If the materials are not received within that timeline, the applicant will be notified that the application process is closed. If the applicant submits information after the 30-day deadline, the application process requires submission of a complete set of application materials and fees. If the license expires during the 30-day deadline and the applicant is teaching, the school district will be notified that the applicant's license is expired and the individual shall not continue teaching until the complete application materials are submitted to the board office.

12.9(4) *Request for additional time.* If the applicant is not able to submit the application materials by the deadline, the applicant may contact the executive director with a request for additional time. The applicant must submit verification as to the need for the additional time. The executive director will review the request and provide a written decision either approving or denying the request.

[ARC 9386B, IAB 2/23/11, effective 3/30/11; ARC 2017C, IAB 6/10/15, effective 7/15/15]

These rules are intended to implement Iowa Code chapter 272.

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¹ December 16, 2015, effective date of ARC 2229C [12.1 to 12.6, 12.8] delayed until the adjournment of the 2016 General Assembly by the Administrative Rules Review Committee at its meeting held December 8, 2015.

² See SJR 2007 of the 2016 Session of the Eighty-sixth General Assembly regarding nullification of the amendments to 12.1 to 12.6 and 12.8 (ARC 2229C, IAB 11/11/15). Prior language restored IAC Supplement 4/27/16.

CHAPTER 14
SPECIAL EDUCATION ENDORSEMENTS
[Prior to 1/14/09, see Educational Examiners Board[282] Ch 15]

282—14.1(272) Special education teaching endorsements.

14.1(1) Program requirements.

- a. The applicant must meet the requirement in rules 282—13.1(272) and 282—13.5(272).
 - b. The applicant must complete pre-student teaching field-based experiences in special education.
 - c. Student teaching. Each applicant for an Iowa license with a special education instructional endorsement must file evidence of completing an approved student teaching program in special education. This experience must be full-time in an approved special education classroom. An approved special education classroom is one which is recognized by the state in terms of the respective state rules for special education. This special education student teaching experience shall qualify for each special education instructional endorsement sought on an original application for Iowa licensure if at the same grade level.
 - d. The applicant must meet the requirements to add an endorsement in rule 282—13.29(272).
- 14.1(2) Adding special education instructional endorsements to Iowa licenses.**
- a. After the issuance of a practitioner license, an individual may add other special education instructional endorsements to that license upon proper application provided current requirements for the specific endorsement(s) have been met.
 - b. If an applicant is seeking to add a special education instructional endorsement at the same level, elementary or secondary, as other endorsements held, the student teaching component set out in the rules for added endorsement areas is not required.
 - c. If the applicant holds the K-8 special education endorsement for the 5-12 endorsement area being added, the applicant may satisfy the requirements for the secondary methods class and the student teaching experience by completing all the required coursework and presenting verification of competence of teaching a minimum of two years while properly licensed. This verification of competence shall be signed by a licensed evaluator who has observed and formally evaluated the performance of the applicant at the secondary level.
 - d. An updated license with expiration date unchanged from the original or renewed license will be prepared. Licensure procedures and requirements are set out in 282—Chapter 13.

282—14.2(272) Specific requirements. For each of the following teaching endorsements in special education, the applicant must have completed 24 semester hours in special education.

14.2(1) Early childhood—special education.

- a. This endorsement authorizes instruction at the PK-K level only for instructional special education programs without regard to the instructional model.
 - b. The applicant must present evidence of having completed the following program requirements.
 - (1) Foundations of special education. The philosophical, historical and legal bases for special education, including the definitions and etiologies of individuals with disabilities, exceptional child, and including individuals from culturally and linguistically diverse backgrounds.
 - (2) Characteristics of learners. Preparation which includes an overview of current trends in educational programming and theories of child development, both typical and atypical; the identification of pre-, peri-, and postnatal development and factors that affect children's development and learning. Identification of specific disabilities, including the etiology, characteristics, and classification of common disabilities in young children. Application of the knowledge of cultural and linguistic diversity and the significant sociocultural context for the development of and learning in young children.
 - (3) Assessment, diagnosis and evaluation. Legal provisions, regulations and guidelines regarding unbiased assessment and use of psychometric instruments and instructional assessment measures with individuals with disabilities. Application of assessment results to individualized program development and management, and the relationship between assessment and placement decisions. Knowledge of any specialized strategies such as functional behavioral assessment and any specialized terminology

used in the assessment of various disabling conditions. Assess children's cognitive, social-emotional, communication, motor, adaptive, and aesthetic development; and select, adapt, and administer assessment instruments and procedures for specific sensory and motor disabilities.

(4) Methods and strategies. Methods and strategies which include numerous models to plan and implement appropriate curricular and instructional practices based on knowledge of individual children, the family, the community, and curricular goals and content. Select intervention curricula and methods for children with specific disabilities including motor, sensory, health, communication, social-emotional and cognitive disabilities. Implement developmentally and functionally appropriate individual and group activities using a variety of formats; develop and implement an integrated curriculum that focuses on special education children from birth to age six, and incorporate information and strategies from multiple disciplines in the design of intervention strategies. Curricula for the development of cognitive, academic, social, language and functional life skills for individuals with exceptional learning needs, and related instructional and remedial methods and techniques, including appropriate assistive technology. This preparation must include alternatives for teaching skills and strategies to individuals with disabilities who differ in degree and nature of disability, and the integration of appropriate age- and ability-level academic instruction.

(5) Managing student behavior and social interaction skills. Preparation in individual behavioral management, behavioral change strategies, and classroom management theories, methods, and techniques for individuals with exceptional learning needs. Theories of behavior problems in individuals with disabilities and the use of nonaversive techniques for the purpose of controlling targeted behavior and maintaining attention of individuals with disabilities. Design, implement, and evaluate instructional programs that enhance an individual's social participation in family, school, and community activities.

(6) Communication and collaborative partnerships. Awareness of the sources of unique services, networks, and organizations for individuals with disabilities including transitional support. Knowledge of family systems, family dynamics, parent rights, advocacy, multicultural issues, and communication to invite and appreciate many different forms of parent involvement. Strategies for working with regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program. Knowledge of the collaborative and consultative roles of special education teachers in the integration of individuals with disabilities into the general curriculum and classroom.

(7) Student teaching. Student teaching in a PK-K special education program.

14.2(2) Instructional strategist I: mild and moderate.

a. *Option 1—K-8 mild and moderate.* This endorsement authorizes instruction in all K-8 mild and moderate instructional special education programs without regard to the instructional model. An applicant for this option must complete the following requirement and must hold a regular education endorsement. See rule 282—13.26(272). The applicant must present evidence of having completed the following program requirements.

(1) Foundations of special education. The philosophical, historical and legal bases for special education, including the definitions and etiologies of individuals with disabilities, exceptional child, and including individuals from culturally and linguistically diverse backgrounds.

(2) Characteristics of learners. Preparation which includes various etiologies of mild and moderate disabilities, an overview of current trends in educational programming for mild and moderate disabilities, educational alternatives and related services, and the importance of the multidisciplinary team in providing more appropriate educational programming, and includes the general developmental, academic, social, career and functional characteristics of individuals with mild and moderate disabilities as the characteristics relate to levels of instructional support required, and the psychological and social-emotional characteristics of individuals with mild and moderate disabilities.

(3) Assessment, diagnosis and evaluation. Legal provisions, regulations and guidelines regarding unbiased assessment and use of psychometric instruments and instructional assessment measures with individuals with disabilities. Application of assessment results to individualized program development and management, and the relationship between assessment and placement decisions. Knowledge of any specialized strategies such as functional behavioral assessment and any specialized terminology used in the assessment of various disabling conditions.

(4) Methods and strategies. Methods and strategies which include numerous models for providing curricular and instructional methodologies utilized in the education of the mildly and moderately disabled, and sources of curriculum materials for individuals with disabilities. Curricula for the development of cognitive, academic, social, language and functional life skills for individuals with exceptional learning needs, and related instructional and remedial methods and techniques, including appropriate assistive technology. The focus of these experiences is for students at the K-8 level. This preparation must include alternatives for teaching skills and strategies to individuals with disabilities who differ in degree and nature of disability, and the integration of appropriate age- and ability-level academic instruction.

(5) Managing student behavior and social interaction skills. Preparation in individual behavioral management, behavioral change strategies, and classroom management theories, methods, and techniques for individuals with exceptional learning needs. Theories of behavior problems in individuals with disabilities and the use of nonaversive techniques for the purpose of controlling targeted behavior and maintaining attention of individuals with disabilities. Design, implement, and evaluate instructional programs that enhance an individual's social participation in family, school, and community activities.

(6) Communication and collaborative partnerships. Awareness of the sources of unique services, networks, and organizations for individuals with disabilities including transitional support. Knowledge of family systems, family dynamics, parent rights, advocacy, multicultural issues, and communication to invite and appreciate many different forms of parent involvement. Strategies for working with regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program. Knowledge of the collaborative and consultative roles of special education teachers in the integration of individuals with disabilities into the general curriculum and classroom.

(7) Student teaching. Student teaching in a K-8 mild and moderate special education program.

b. *Option 2—K-8 mild and moderate.* To obtain this endorsement, the applicant must hold a valid Iowa license with either a K-8 or 5-12 special education instructional endorsement and must meet the following basic requirements in addition to those set out in paragraph 14.2(2) "a."

(1) Child growth and development with emphasis on the emotional, physical, and mental characteristics of elementary age children, unless completed as part of the professional education core.

(2) Methods and materials for teaching elementary language arts.

(3) Remedial reading.

(4) Elementary curriculum methods and material, unless completed as part of another elementary level endorsement program (e.g., rule 282—13.26(272) or a similar elementary endorsement program).

(5) Methods and materials for teaching elementary mathematics.

c. *Option 1—5-12 mild and moderate.* This endorsement authorizes instruction in all 5-12 mild and moderate instructional special education programs without regard to the instructional model. An applicant for this option must complete the following requirements and must hold a regular education endorsement. See rule 282—13.28(272). The applicant must present evidence of having completed the following program requirements.

(1) Foundations of special education. The philosophical, historical and legal bases for special education, including the definitions and etiologies of individuals with disabilities, exceptional child, and including individuals from culturally and linguistically diverse backgrounds.

(2) Characteristics of learners. Preparation which includes various etiologies of mild and moderate disabilities, an overview of current trends in educational programming for mild and moderate disabilities, educational alternatives and related services, and the importance of the multidisciplinary team in providing more appropriate educational programming, and includes the general developmental, academic, social, career and functional characteristics of individuals with mild and moderate disabilities as the characteristics relate to levels of instructional support required, and the psychological and social-emotional characteristics of individuals with mild and moderate disabilities.

(3) Assessment, diagnosis and evaluation. Legal provisions, regulations and guidelines regarding unbiased assessment and use of psychometric instruments and instructional assessment measures with individuals with disabilities. Application of assessment results to individualized program development and management, and the relationship between assessment and placement decisions. Knowledge of any

specialized strategies such as functional behavioral assessment and any specialized terminology used in the assessment of various disabling conditions.

(4) Methods and strategies. Methods and strategies which include numerous models for providing curricular and instructional methodologies utilized in the education of the mildly and moderately disabled, and sources of curriculum materials for individuals with disabilities. Curricula for the development of cognitive, academic, social, language and functional life skills for individuals with exceptional learning needs, and related instructional and remedial methods and techniques, including appropriate assistive technology. The focus of these experiences is for students at the 5-12 level. This preparation must include alternatives for teaching skills and strategies to individuals with disabilities who differ in degree and nature of disability, and the integration of appropriate age- and ability-level academic instruction.

(5) Managing student behavior and social interaction skills. Preparation in individual behavioral management, behavioral change strategies, and classroom management theories, methods, and techniques for individuals with exceptional learning needs. Theories of behavior problems in individuals with disabilities and the use of nonaversive techniques for the purpose of controlling targeted behavior and maintaining attention of individuals with disabilities. Design, implement, and evaluate instructional programs that enhance an individual's social participation in family, school, and community activities.

(6) Communication and collaborative partnerships. Awareness of the sources of unique services, networks, and organizations for individuals with disabilities including transitional support. Knowledge of family systems, family dynamics, parent rights, advocacy, multicultural issues, and communication to invite and appreciate many different forms of parent involvement. Strategies for working with regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program. Knowledge of the collaborative and consultative roles of special education teachers in the integration of individuals with disabilities into the general curriculum and classroom.

(7) Transitional collaboration. Sources of services, organizations, and networks for individuals with mild and moderate disabilities, including career, vocational and transitional support to postschool settings with maximum opportunities for decision making and full participation in the community.

(8) Student teaching. Student teaching in a 5-12 mild and moderate special education program.

d. *Option 2—5-12 mild and moderate.* To obtain this endorsement, the applicant must hold a valid Iowa license with either a K-8 or 5-12 special education instructional endorsement and must meet the following basic requirements in addition to those set out in paragraph 14.2(2) "c."

(1) Adolescent growth and development with emphasis on the emotional, physical, and mental characteristics of adolescent age children, unless completed as part of the professional education core.

(2) Adolescent reading or secondary content area reading.

(3) Secondary or adolescent reading diagnosis and remediation.

(4) Methods and materials for teaching adolescents with mathematics difficulties or mathematics for the secondary level special education teacher.

(5) Secondary methods unless completed as part of the professional education core.

14.2(3) Instructional strategist II: behavior disorders/learning disabilities. This endorsement authorizes instruction in programs serving students with behavior disorders and learning disabilities from age 5 to age 21 (and to a maximum allowable age in accordance with Iowa Code section 256B.8). The applicant must present evidence of having completed the following program requirements.

a. *Foundations of special education.* The philosophical, historical and legal bases for special education, including the definitions and etiologies of individuals with disabilities, exceptional child, and including individuals from culturally and linguistically diverse backgrounds.

b. *Characteristics of learners.* Preparation which includes various etiologies of behavior disorders and learning disabilities, an overview of current trends in educational programming for students with behavior disorders and learning disabilities, educational alternatives and related services, and the importance of the multidisciplinary team in providing more appropriate educational programming from age 5 to age 21. Preparation in the social, emotional and behavioral characteristics of individuals with behavior disorders and learning disabilities including the impact of such characteristics on classroom learning as well as associated domains such as social functioning and at-risk behaviors

which may lead to involvement with the juvenile justice or mental health system. Preparation in the psychological and social-emotional characteristics of individuals with behavior disorders and learning disabilities must include the major social characteristics of individuals with behavior disorders and the effects of dysfunctional behavior on learning, and the social and emotional aspects of individuals with learning disabilities including social imperceptiveness and juvenile delinquency. Physical development, physical disability and health impairments as they relate to the development and behavior of students with behavior disorders and the medical factors influencing individuals with learning disabilities, including intelligence, perception, memory and language development.

c. Assessment, diagnosis and evaluation. Legal provisions, regulations and guidelines regarding unbiased assessment and use of psychometric instruments and instructional assessment measures with individuals with disabilities. Application of assessment results to individualized program development and management, and the relationship between assessment and placement decisions. Knowledge of any specialized strategies such as functional behavioral assessment and any specialized terminology used in the assessment of various disabling conditions.

d. Methods and strategies. Methods and strategies which include numerous models for providing curricular and instructional methodologies utilized in the education of behavior and learning disabled students, and sources of curriculum materials for individuals with disabilities. Curricula for the development of cognitive, academic, social, language and functional life skills for individuals with exceptional learning needs, and related instructional and remedial methods and techniques, including appropriate assistive technology. The focus of these experiences is for students at all levels from age 5 to age 21. This preparation must include alternatives for teaching skills and strategies to individuals with disabilities who differ in degree and nature of disability, and the integration of appropriate age-and ability-level academic instruction.

e. Managing student behavior and social interaction skills. Preparation in individual behavioral management, behavioral change strategies, and classroom management theories, methods, and techniques for individuals with exceptional learning needs. Theories of behavior problems in individuals with disabilities and the use of nonaversive techniques for the purpose of controlling targeted behavior and maintaining attention of individuals with disabilities. Design, implement, and evaluate instructional programs that enhance an individual's social participation in family, school, and community activities.

f. Communication and collaborative partnerships. Awareness of the sources of unique services, networks, and organizations for individuals with disabilities including transitional support. Knowledge of family systems, family dynamics, parent rights, advocacy, multicultural issues, and communication to invite and appreciate many different forms of parent involvement. Strategies for working with regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program. Knowledge of the collaborative and consultative roles of special education teachers in the integration of individuals with disabilities into the general curriculum and classroom.

g. Transitional collaboration. Sources of services, organizations, and networks for individuals with behavior and learning disabilities, including career, vocational and transitional support to postschool settings with maximum opportunities for decision making and full participation in the community.

h. Student teaching. Student teaching in programs across the age levels of this endorsement. If the student teaching program has a unique age-level emphasis (e.g., K-8 or 5-12), there must be planned activities which incorporate interactive experiences at the other age level.

14.2(4) Instructional strategist II: intellectual disabilities. This endorsement authorizes instruction in programs serving students with intellectual disabilities from age 5 to age 21 (and to a maximum allowable age in accordance with Iowa Code section 256B.8). The applicant must present evidence of having completed the following program requirements.

a. Foundations of special education. The philosophical, historical and legal bases for special education, including the definitions and etiologies of individuals with disabilities, exceptional child, and including individuals from culturally and linguistically diverse backgrounds.

b. Characteristics of learners. Preparation which includes various etiologies of intellectual disabilities, an overview of current trends in educational programming for students with intellectual disabilities, educational alternatives and related services, and the importance of the multidisciplinary

team in providing more appropriate educational programming from age 5 to age 21. Preparation must also provide for an overview of the general developmental, academic, social, career and functional characteristics of individuals with intellectual disabilities as the characteristics relate to levels of instructional support required. This preparation must include the causes and theories of intellectual disabilities and implications and preventions; the psychological characteristics of students with intellectual and developmental disabilities, including cognition, perception, memory, and language development; medical complications and implications for student support needs, including seizure management, tube feeding, catheterization and CPR; and the medical aspects of intellectual disabilities and their implications for learning. The social-emotional aspects of intellectual disabilities, including adaptive behavior, social competence, social isolation and learned helplessness.

c. Assessment, diagnosis and evaluation. Legal provisions, regulations and guidelines regarding unbiased assessment and use of psychometric instruments and instructional assessment measures with individuals with disabilities. Application of assessment results to individualized program development and management, and the relationship between assessment and placement decisions. Knowledge of any specialized strategies such as functional behavioral assessment and any specialized terminology used in the assessment of various disabling conditions.

d. Methods and strategies. Methods and strategies which include numerous models for providing curricular and instructional methodologies utilized in the education of intellectually disabled students, and sources of curriculum materials for individuals with disabilities. Curricula for the development of cognitive, academic, social, language and functional life skills for individuals with exceptional learning needs, and related instructional and remedial methods and techniques. The focus of these experiences is for students at all levels from age 5 to age 21. This preparation must include alternatives for teaching skills and strategies to individuals with disabilities who differ in degree and nature of disability, and the integration of appropriate age- and ability-level academic instruction. Proficiency in adapting age-appropriate curriculum to facilitate instruction within the general education setting, to include partial participation of students in tasks, skills facilitation, collaboration, and support from peers with and without disabilities; the ability to select and use augmentative and alternative communications methods and systems. An understanding of the impact of speech-language development on behavior and social interactions. Approaches to create positive learning environments for individuals with special needs and approaches to utilize assistive devices for individuals with special needs. The design and implementation of age-appropriate instruction based on the adaptive skills of students with intellectual disabilities; integrate selected related services into the instructional day of students with intellectual disabilities. Knowledge of culturally responsive functional life skills relevant to independence in the community, personal living, and employment. Use of appropriate physical management techniques including positioning, handling, lifting, relaxation, and range of motion and the use and maintenance of orthotic, prosthetic, and adaptive equipment effectively.

e. Managing student behavior and social interaction skills. Preparation in individual behavioral management, behavioral change strategies, and classroom management theories, methods, and techniques for individuals with exceptional learning needs. Theories of behavior problems in individuals with intellectual disabilities and the use of nonaversive techniques for the purpose of controlling targeted behavior and maintaining attention of individuals with disabilities. Design, implement, and evaluate instructional programs that enhance an individual's social participation in family, school, and community activities.

f. Communication and collaborative partnerships. Awareness of the sources of unique services, networks, and organizations for individuals with disabilities including transitional support. Knowledge of family systems, family dynamics, parent rights, advocacy, multicultural issues, and communication to invite and appreciate many different forms of parent involvement. Strategies for working with regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program. Knowledge of the collaborative and consultative roles of special education teachers in the integration of individuals with disabilities into the general curriculum and classroom.

g. *Transitional collaboration.* Sources of services, organizations, and networks for individuals with intellectual disabilities, including career, vocational and transitional support to postschool settings with maximum opportunities for decision making and full participation in the community.

h. *Student teaching.* Student teaching in programs across the age levels of this endorsement. If the student teaching program has a unique age-level emphasis (e.g., K-8 or 5-12), there must be planned activities which incorporate interactive experiences at the other age level.

14.2(5) Instructional strategist II: physical disabilities. This endorsement authorizes instruction in programs serving students with physical disabilities from age 5 to age 21 (and to a maximum allowable age in accordance with Iowa Code section 256B.8). The applicant must present evidence of having completed the following program requirements.

a. *Foundations of special education.* The philosophical, historical and legal bases for special education, including the definitions and etiologies of individuals with disabilities, exceptional child, and including individuals from culturally and linguistically diverse backgrounds.

b. *Characteristics of learners.* Preparation which includes various etiologies and characteristics of physical disabilities across the life span, secondary health care issues that accompany specific physical disabilities, an overview of current trends in educational programming for students with physical disabilities, educational alternatives and related services, and the importance of the multidisciplinary team in providing more appropriate educational programming from age 5 to age 21. Preparation must also provide for an overview of the general developmental, academic, social, career and functional characteristics of individuals with physical disabilities as the characteristics relate to levels of instructional support required.

c. *Assessment, diagnosis and evaluation.* Legal provisions, regulations and guidelines regarding unbiased assessment and use of psychometric instruments and instructional assessment measures with individuals with disabilities. Application of assessment results to individualized program development and management, and the relationship between assessment and placement decisions. Knowledge of any specialized strategies such as functional behavioral assessment and any specialized terminology used in the assessment of various disabling conditions.

d. *Methods and strategies.*

(1) Methods and strategies which include numerous models for providing curricular and instructional methodologies utilized in the education of physically disabled students, and sources of curriculum materials for individuals with disabilities. Curricula for the development of cognitive, academic, social, language and functional life skills for individuals with exceptional learning needs, and related instructional and remedial methods and techniques. The focus of these experiences is for students at all levels from age 5 to age 21. This preparation must include alternatives for teaching skills and strategies to individuals with disabilities who differ in degree and nature of disability, and the integration of appropriate age- and ability-level academic instruction.

(2) Research-supported instructional practices, strategies, and adaptations necessary to accommodate the physical and communication characteristics of students with physical disabilities, including appropriate assistive technology and alternative positioning to permit students with physical disabilities full participation and access to the general curriculum as well as social environments. Design and implement an instructional program that addresses instruction in independent living skills, vocational skills, and career education for students with physical disabilities and instructional strategies for medical self-management procedures by students.

e. *Managing student behavior and social interaction skills.* Preparation in individual behavioral management, behavioral change strategies, and classroom management theories, methods, and techniques for individuals with exceptional learning needs. Theories of behavior problems in individuals with physical disabilities and the use of nonaversive techniques for the purpose of controlling targeted behavior and maintaining attention of individuals with disabilities. Design, implement, and evaluate instructional programs that enhance an individual's social participation in family, school, and community activities.

f. *Communication and collaborative partnerships.* Awareness of the sources of unique services, networks, and organizations for individuals with disabilities including transitional support. Knowledge

of family systems, family dynamics, parent rights, advocacy, multicultural issues, and communication to invite and appreciate many different forms of parent involvement. Strategies for working with regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program. Knowledge of the collaborative and consultative roles of special education teachers in the integration of individuals with disabilities into the general curriculum and classroom.

g. Transitional collaboration. Sources of services, organizations, and networks for individuals with physical disabilities, including career, vocational and transitional support to postschool settings with maximum opportunities for decision making and full participation in the community.

h. Student teaching. Student teaching in programs across the age levels of this endorsement. If the student teaching program has a unique age-level emphasis (e.g., K-8 or 5-12), there must be planned activities which incorporate interactive experiences at the other age level.

14.2(6) K-8 mildly disabled endorsement. This endorsement authorizes instruction to mildly disabled children who require special education program adaptations while assigned to a regular classroom for basic instructional purposes, or mildly disabled students placed in a special education class who receive part of their instruction in a regular classroom, or mildly disabled students requiring specially designed instruction while assigned to a regular classroom for basic instructional purposes. To fulfill the requirements for this endorsement, the applicant must:

a. Hold a regular education instruction endorsement at the elementary level. For the elementary level, this is the general elementary classroom endorsement.

b. Hold one of the following endorsements at the elementary level: learning disabilities, mild to moderate intellectual disabilities, behavioral disorders, multcategorical resource room or multcategorical-special class with integration.

14.2(7) 5-12 mildly disabled endorsement. This endorsement authorizes instruction to mildly disabled children who require special education program adaptations while assigned to a regular classroom for basic instructional purposes, or mildly disabled students placed in a special education class who receive part of their instruction in a regular classroom, or mildly disabled students requiring specially designed instruction while assigned to a regular classroom for basic instructional purposes. To fulfill the requirements for this endorsement, the applicant must:

a. Hold a regular education instruction endorsement at the secondary level (grades 5-12).

b. Hold one of the following endorsements at the secondary level: learning disabilities, mild to moderate intellectual disabilities, behavioral disorders, multcategorical resource room or multcategorical-special class with integration.

NOTE: These endorsements are designed for programs serving primarily mildly disabled students; the sensory impaired are not included as "mildly disabled."

14.2(8) Deaf or hard of hearing endorsement.

a. Option 1. This endorsement authorizes instruction in programs serving students with hearing loss from birth to age 21 (and to a maximum allowable age in accordance with Iowa Code section 256B.8). An applicant for this option must complete the following requirements and must have completed an approved program in teaching the deaf or hard of hearing from a recognized Iowa or non-Iowa institution and must hold a regular education endorsement. See 282—Chapter 13.

(1) Foundations of special education. The philosophical, historical and legal bases for special education, including the definitions and etiologies of individuals with disabilities, and including individuals from culturally and linguistically diverse backgrounds.

(2) Characteristics of learners. Preparation which includes various etiologies of hearing loss, an overview of current trends in educational programming for students with hearing loss and educational alternatives and related services, and the importance of the multidisciplinary team in providing more appropriate educational programming from birth to age 21. Preparation in the social, emotional and behavioral characteristics of individuals with hearing loss, including the impact of such characteristics on classroom learning. Knowledge of the anatomy and physiology of the hearing mechanism and knowledge of the development of secondary senses when hearing is impaired, effect of hearing loss on learning experiences, psychological aspects of hearing loss, and effects of medications on the hearing system. Preparation in the psychological and social-emotional characteristics of individuals with

hearing loss to include the major social characteristics of individuals with hearing loss and the effects of this disability on learning, and the social and emotional aspects of individuals with hearing loss. Physical development and potential health impairments as they relate to the development and behavior of students with hearing loss. Components of linguistic and nonlinguistic communication used by individuals who are deaf or hard-of-hearing and communication modes used by and with individuals who are deaf or hard-of-hearing, including current theories of language development in individuals who are deaf or hard-of-hearing.

(3) Assessment, diagnosis and evaluation. Legal provisions, regulations and guidelines regarding unbiased assessment and use of psychometric instruments and instructional assessment measures with individuals with disabilities, including necessary alternative assessment techniques arising out of the nature of the disability and medical reports and other related diagnostic information. Application of assessment results to individualized program development and management, and the relationship between assessment and placement decisions. Knowledge of any specialized strategies such as functional behavioral assessment and any specialized terminology used in the assessment of various disabling conditions.

(4) Methods and strategies. Methods and strategies which include numerous models for providing curricular and instructional methodologies utilized in the education of students who are deaf or hard-of-hearing and sources of specialized materials for individuals who are deaf or hard-of-hearing. These strategies must include knowledge of teaching academic subjects and language and speech to students who are deaf or hard-of-hearing and have knowledge of American Sign Language. Curricula for the development of cognitive, academic, social, language and functional life skills for individuals who are deaf or hard-of-hearing, and related instructional and remedial methods and techniques, including appropriate assistive technology. The focus of these experiences is for students at all levels from birth to age 21. This preparation must include alternatives for teaching skills and strategies to individuals who are deaf or hard-of-hearing who differ in degree and nature of disability, and the integration of appropriate age- and ability-level academic instruction. Strategies for teaching technology skills and other instructional aids for students who are deaf or hard-of-hearing.

(5) Managing student behavior and social interaction skills. Preparation in individual behavioral management, behavioral change strategies, and classroom management theories, methods, and techniques for individuals with exceptional learning needs. Theories of behavior problems in individuals with disabilities and the use of nonaversive techniques for the purpose of controlling targeted behavior and maintaining attention of individuals with disabilities. Design, implement, and evaluate instructional programs that enhance an individual's social participation in family, school, and community activities.

(6) Communication and collaborative partnerships. Awareness of the sources of unique services, networks, and organizations for individuals with disabilities, including transitional support. Knowledge of family systems, family dynamics, parent rights, advocacy, multicultural issues, and communication to invite and appreciate many different forms of parent involvement. Strategies for working with regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program. Knowledge of the collaborative and consultative roles of special education teachers in the integration of individuals with disabilities into the general curriculum and classroom.

(7) Transitional collaboration. Sources of services, organizations, and networks for individuals who are deaf or hard-of-hearing, including career, vocational and transitional support to postschool settings with maximum opportunities for decision making and full participation in the community.

(8) Student teaching. Student teaching in programs across the age levels of this endorsement. If the student teaching program has a unique age-level emphasis (e.g., K-8 or 5-12), there must be planned activities which incorporate interactive experiences at the other age level.

b. *Option 2.* An applicant who holds an endorsement in deaf or hard of hearing issued in another state or who is eligible for such an endorsement but who does not also hold or is not eligible for a regular education endorsement in Iowa (see 282—Chapter 13) must meet the following basic requirements in addition to those set out in paragraph 14.2(8) "a."

(1) Child growth and development with emphasis on the emotional, physical, and mental characteristics of elementary age children unless completed as part of the professional education core.

- (2) Methods and materials of teaching elementary language arts.
- (3) Methods and materials of teaching elementary reading.
- (4) Elementary curriculum methods and materials unless completed as part of another elementary level endorsement program (e.g., rule 282—13.26(272) or a similar elementary endorsement program).
- (5) Methods and materials of teaching elementary mathematics.
- (6) Adolescent growth and development with emphasis on the emotional, physical, and mental characteristics of adolescent age children unless completed as part of the professional education core.
- (7) Adolescent literacy or secondary content area reading.
- (8) Secondary methods unless completed as part of the professional education core.

14.2(9) Visually disabled endorsement.

a. *Option 1.* This endorsement authorizes instruction in programs serving students with visual disabilities from birth to age 21 (and to a maximum allowable age in accordance with Iowa Code section 256B.8). An applicant for this option must complete the following requirements and must have completed an approved program in visual disabilities from a recognized Iowa or non-Iowa institution and must hold a regular education endorsement. See 282—Chapter 13.

(1) Foundations of special education. The philosophical, historical and legal bases for special education, including the definitions and etiologies of individuals with disabilities, and including individuals from culturally and linguistically diverse backgrounds.

(2) Characteristics of learners. Preparation which includes various etiologies of visual impairment, an overview of current trends in educational programming for students with visual disabilities and educational alternatives and related services, and the importance of the multidisciplinary team in providing more appropriate educational programming from birth to age 21. Preparation in the social, emotional and behavioral characteristics of individuals with visual disabilities, including the impact of such characteristics on classroom learning. Development of the human visual system, development of secondary senses when vision is impaired, effect of visual disability on development, impact of visual disability on learning and experiences, psychological aspects of visual disability, and effects of medications on the visual system. Preparation in the psychological and social-emotional characteristics of individuals with visual disabilities to include the major social characteristics of individuals with visual disabilities and the effects of this disability on learning, and the social and emotional aspects of individuals with visual disabilities. Physical development and potential health impairments as they relate to the development and behavior of students with visual disabilities.

(3) Assessment, diagnosis and evaluation. Legal provisions, regulations and guidelines regarding unbiased assessment and use of psychometric instruments and instructional assessment measures with individuals with disabilities, including necessary alternative assessment techniques arising out of the nature of the disability and medical reports and other related diagnostic information. Application of assessment results to individualized program development and management, and the relationship between assessment and placement decisions. Knowledge of any specialized strategies such as functional behavioral assessment and any specialized terminology used in the assessment of various disabling conditions.

(4) Methods and strategies. Methods and strategies which include numerous models for providing curricular and instructional methodologies utilized in the education of visually disabled students and sources of curriculum materials for individuals with disabilities. These strategies must include knowledge of teaching Braille reading and writing, the skill in teaching handwriting and signature writing to individuals with low vision or who are blind, listening and compensatory auditory skills and typing and keyboarding skills. Curricula for the development of cognitive, academic, social, language and functional life skills for individuals with visual disabilities, and related instructional and remedial methods and techniques, including appropriate assistive technology. The focus of these experiences is for students at all levels from birth to age 21. This preparation must include alternatives for teaching skills and strategies to individuals with visual disabilities who differ in degree and nature of disability, and the integration of appropriate age- and ability-level academic instruction. Strategies for teaching technology skills, other instructional aids for visually disabled students, strategies for teaching organization and study skills, tactal and perceptual skills, adapted physical and recreational skills and

strategies for promoting self-advocacy in individuals with visual disabilities and for structured pre-cane orientation and mobility assessment and instruction.

(5) Managing student behavior and social interaction skills. Preparation in individual behavioral management, behavioral change strategies, and classroom management theories, methods, and techniques for individuals with exceptional learning needs. Theories of behavior problems in individuals with disabilities and the use of nonaversive techniques for the purpose of controlling targeted behavior and maintaining attention of individuals with disabilities. Design, implement, and evaluate instructional programs that enhance an individual's social participation in family, school, and community activities.

(6) Communication and collaborative partnerships. Awareness of the sources of unique services, networks, and organizations for individuals with disabilities, including transitional support. Knowledge of family systems, family dynamics, parent rights, advocacy, multicultural issues, and communication to invite and appreciate many different forms of parent involvement. Strategies for working with regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program. Knowledge of the collaborative and consultative roles of special education teachers in the integration of individuals with disabilities into the general curriculum and classroom.

(7) Transitional collaboration. Sources of services, organizations, and networks for individuals with visual disabilities, including career, vocational and transitional support to postschool settings with maximum opportunities for decision making and full participation in the community.

(8) Student teaching. Student teaching in programs across the age levels of this endorsement. If the student teaching program has a unique age-level emphasis (e.g., K-8 or 5-12), there must be planned activities which incorporate interactive experiences at the other age level.

b. *Option 2.* An applicant who holds an endorsement for visually disabled issued in another state or who is eligible for such an endorsement but who does not also hold or is not eligible for a regular education endorsement in Iowa (see 282—Chapter 13) must meet the following basic requirements in addition to those set out in paragraph 14.2(9) "a."

(1) Child growth and development with emphasis on the emotional, physical, and mental characteristics of elementary age children unless completed as part of the professional education core.

(2) Methods and materials of teaching elementary language arts.

(3) Methods and materials of teaching elementary reading.

(4) Elementary curriculum methods and materials unless completed as part of another elementary level endorsement program (e.g., rule 282—13.26(272) or a similar elementary endorsement program).

(5) Methods and materials of teaching elementary mathematics.

(6) Adolescent growth and development with emphasis on the emotional, physical, and mental characteristics of adolescent age children unless completed as part of the professional education core.

(7) Adolescent literacy or secondary content area reading.

(8) Secondary methods unless completed as part of the professional education core.

[ARC 0450C, IAB 11/14/12, effective 12/19/12; ARC 1884C, IAB 2/18/15, effective 3/25/15; see Delay note at end of chapter and Nullification note at end of chapter; ARC 2016C, IAB 6/10/15, effective 7/15/15]

These rules are intended to implement Iowa Code chapter 272.

[Filed 12/24/08, Notice 10/22/08—published 1/14/09, effective 2/18/09]

[Filed Emergency ARC 8248B, IAB 11/4/09, effective 10/12/09]

[Filed ARC 0450C (Notice ARC 0229C, IAB 7/25/12), IAB 11/14/12, effective 12/19/12]

[Filed ARC 1884C (Notice ARC 1602C, IAB 9/3/14), IAB 2/18/15, effective 3/25/15]^{1,2}

[Filed ARC 2016C (Notice ARC 1918C, IAB 3/18/15), IAB 6/10/15, effective 7/15/15]

¹ March 25, 2015, effective date of ARC 1884C [14.2(10), 14.2(11)] delayed until the adjournment of the 2016 General Assembly by the Administrative Rules Review Committee at its meeting held March 6, 2015.

² See SJR 2006 of the 2016 Session of the Eighty-sixth General Assembly regarding nullification of 14.2(10) and 14.2(11) (ARC 1884C, IAB 2/18/15). Nullified language removed IAC Supplement 4/27/16.

CHAPTER 25 DISABILITY SERVICES MANAGEMENT

PREAMBLE

This chapter provides for definitions of regional core services, access and practice standards, reporting of regional expenditures, development and submission of regional management plans, data collection, applications for funding as they relate to regional service systems for individuals with mental illness, intellectual disabilities, developmental disabilities, or brain injury, and submission of data for Medicaid offset calculations.

[**ARC 0576C**, IAB 2/6/13, effective 1/8/13; **ARC 0735C**, IAB 5/15/13, effective 8/1/13; **ARC 1096C**, IAB 10/16/13, effective 11/20/13; **ARC 1173C**, IAB 11/13/13, effective 1/1/14; **ARC 1671C**, IAB 10/15/14, effective 9/25/14]

DIVISION I REGIONAL CORE SERVICES

441—25.1(331) Definitions.

“*Assertive community treatment*” means a program of comprehensive outpatient services provided in the community directed toward the amelioration of symptoms and the rehabilitation of behavioral, functional, and social deficits of individuals with severe and persistent mental disorders and individuals with complex symptomatology who require multiple mental health and supportive services to live in the community consistent with evidence-based practice standards published by the Substance Abuse and Mental Health Services Administration.

“*Assessment and evaluation*” means the clinical review by a mental health professional of the current functioning of the individual using the service in regard to the individual’s situation, needs, strengths, abilities, desires and goals to determine the appropriate level of care.

“*Case management*” means service provided by a case manager who assists individuals in gaining access to needed medical, social, educational, and other services through assessment, development of a care plan, referral, monitoring and follow-up using a strengths-based service approach that helps individuals achieve specific desired outcomes leading to a healthy self-reliance and interdependence with their community.

“*Case manager*” means a person who has completed specified and required training to provide case management through the medical assistance program or the Iowa Behavioral Health Care Plan.

“*Community-based crisis intervention service*” means a program designed to stabilize an acute crisis episode and to restore an individual and family to their pre-crisis level of functioning. Crisis services are available 24 hours a day, 365 days a year, including telephone and walk-in crisis service and crisis care coordination.

“*Crisis care coordination*” means a service provided during an acute crisis episode that facilitates working together to organize a plan and service transition programming, including working agreements with inpatient behavioral health units and other community programs. The service shall include referrals to mental health services and other supports necessary to maintain community-based living capacity, including case management as defined herein.

“*Crisis evaluation*” means the process used with an individual to collect information related to the individual’s history and needs, strengths, and abilities in order to determine appropriate services or referral during an acute crisis episode.

“*Day habilitation*” means services that assist or support the individual in developing or maintaining life skills and community integration. Services shall enable or enhance the individual’s functioning, physical and emotional health and development, language and communication development, cognitive functioning, socialization and community integration, functional skill development, behavior management, responsibility and self-direction, daily living activities, self-advocacy skills, or mobility.

“*Emergency care*” means the same as defined in rule 441—88.21(249A).

“*Evidence-based services*” means using interventions that have been rigorously tested, have yielded consistent, replicable results, and have proven safe, beneficial and effective and have established standards for fidelity of the practice.

“Family psychoeducation” means services including the provision of emotional support, education, resources during periods of crisis, and problem-solving skills consistent with evidence-based practice standards published by the Substance Abuse and Mental Health Services Administration.

“Family support” means services provided by a family support peer specialist that assist the family of an individual to live successfully in the family or community including, but not limited to, education and information, individual advocacy, family support groups, and crisis response.

“Family support peer specialist” means a parent, primary caregiver, foster parent or family member of an individual who has successfully completed standardized training to provide family support through the medical assistance program or the Iowa Behavioral Health Care Plan.

“Group supported employment” means the job and training activities in business and industry settings for groups of no more than eight workers with disabilities. Group settings include enclaves, mobile crews, and other business-based workgroups employing small groups of workers with disabilities in integrated, sustained, paid employment.

“Health homes” means a service model that facilitates access to an interdisciplinary array of medical care, behavioral health care, and community-based social services and supports for both children and adults with chronic conditions. Services may include comprehensive care management; care coordination and health promotion; comprehensive transitional care from inpatient to other settings, including appropriate follow-up; individual and family support, which includes authorized representatives; referral to community and social support services, if relevant; and the use of health information technology to link services, as feasible and appropriate.

“Home and vehicle modification” means a service that provides physical modifications to the home or vehicle that directly address the medical health or remedial needs of the individual that are necessary to provide for the health, welfare, and safety of the member and to increase or maintain independence.

“Home health aide services” means unskilled medical services which provide direct personal care. This service may include assistance with activities of daily living, such as helping the recipient to bathe, get in and out of bed, care for hair and teeth, exercise, and take medications specifically ordered by the physician.

“Illness management and recovery” means a broad set of strategies designed to help individuals with serious mental illness collaborate with professionals, reduce the individuals’ susceptibility to the illness, and cope effectively with the individuals’ symptoms consistent with evidence-based practice standards published by the Substance Abuse and Mental Health Services Administration.

“Individual” means any person seeking or receiving services in a regional service system.

“Individual supported employment” means services including ongoing supports needed by an individual to acquire and maintain a job in the integrated workforce at or above the state’s minimum wage. The outcome of this service is sustained paid employment that meets personal and career goals.

“Integrated treatment for co-occurring substance abuse and mental health disorders” means effective dual diagnosis programs that combine mental health and substance abuse interventions tailored for the complex needs of individuals with co-morbid disorders. Critical components of effective programs include a comprehensive, long-term, staged approach to recovery; assertive outreach; motivational interviews; provision of help to individuals in acquiring skills and supports to manage both illnesses and pursue functional goals with cultural sensitivity and competence consistent with evidence-based practice standards published by the Substance Abuse and Mental Health Services Administration.

“Job development” means services that assist individuals in preparing for, securing and maintaining gainful, competitive employment. Employment shall be integrated into normalized work settings, shall provide pay of at least minimum wage, and shall be based on the individual’s skills, preferences, abilities, and talents. Services assist individuals seeking employment to develop or re-establish skills, attitudes, personal characteristics, interpersonal skills, work behaviors, and functional capacities to achieve positive employment outcomes.

“Medication management” means services provided directly to or on behalf of the individual by a licensed professional as authorized by Iowa law including, but not limited to, monitoring effectiveness of and compliance with a medication regimen; coordination with care providers; investigating potentially

negative or unintended psychopharmacologic or medical interactions; reviewing laboratory reports; and activities pursuant to licensed prescriber orders.

“Medication prescribing” means services with the individual present provided by an appropriately licensed professional as authorized by Iowa law including, but not limited to, determining how the medication is affecting the individual; determining any drug interactions or adverse drug effects on the individual; determining the proper dosage level; and prescribing medication for the individual for the period of time before the individual is seen again.

“Mental health outpatient therapy” means the same as defined in Iowa Code section 230A.106(2) “a.”

“Mental health professional” means the same as defined in Iowa Code section 228.1(6).

“Peer support services” means a program provided by a peer support specialist including but not limited to education and information, individual advocacy, family support groups, crisis response, and respite to assist individuals in achieving stability in the community.

“Peer support specialist” means an individual who has experienced a severe and persistent mental illness and who has successfully completed standardized training to provide peer support services through the medical assistance program or the Iowa Behavioral Health Care Plan.

“Permanent supportive housing” means voluntary, flexible supports to help individuals with psychiatric disabilities choose, get, and keep housing that is decent, safe, affordable, and integrated into the community. Tenants have access to an array of services that help them keep their housing, such as case management, assistance with daily activities, conflict resolution, and crisis response consistent with evidence-based practice standards published by the Substance Abuse and Mental Health Services Administration.

“Personal emergency response system” means an electronic device connected to a 24-hour staffed system which allows the individual to access assistance in the event of an emergency.

“Prevocational services” means services that focus on developing generalized skills that prepare an individual for employment. Prevocational training topics include but are not limited to attendance, safety skills, following directions, and staying on task.

“Reasonably close proximity” means a distance of 100 miles or less or a driving distance of two hours or less from the county seat or county seats of the region.

“Respite services” means a temporary period of relief and support for individuals and their families provided in a variety of settings. The intent is to provide a safe environment with staff assistance for individuals who lack an adequate support system to address current issues related to a disability. Respite may be provided for a defined period of time; respite is either planned or provided in response to a crisis.

“Routine care” means the same as defined in rule 441—88.21(249A).

“Rural” means any area that is not defined as urban.

“Strengths-based case management” means a service that focuses on possibilities rather than problems and strives to identify and develop strengths to assist individuals reach their goals leading to a healthy self-reliance and interdependence with their community. Identifiable strengths and resources include family, cultural, spiritual, and other types of social and community-based assets and networks.

“Supported community living services” means services as defined in Iowa Code section 225C.21(1).

“Supported employment” means an approach to helping individuals participate as much as possible in competitive work in integrated work settings that are consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals. Services are targeted for individuals with significant disabilities for whom competitive employment has not traditionally occurred; or for whom competitive employment has been interrupted or intermittent as a result of a significant disability including either individual or group supported employment, or both, consistent with evidence-based practice standards published by the Substance Abuse and Mental Health Services Administration.

“Telephone crisis service” means a program that operates a crisis hotline either directly or through a contract. The service shall be available 24 hours a day and seven days a week including, but not limited to, relief of distress in pre-crisis and crisis situations, reduction of the risk of escalation, arrangements for emergency on-site responses when necessary, and referral of callers to appropriate services.

“Trauma-focused services” means services provided by caregivers and professionals that recognize when an individual who has been exposed to violence is in need of help to recover from adverse impacts; recognize and understand the impact that exposure to violence has on victims’ physical, psychological, and psychosocial development and well-being; and respond by helping in ways that reflect awareness of adverse impacts and consistently support the individual’s recovery.

“Trauma-informed care” means services that are based on an understanding of the vulnerabilities or triggers of those who have experienced violence, that recognize the role violence has played in the lives of those individuals, that are supportive of recovery, and that avoid retraumatization including trauma-focused services and trauma-specific treatment.

“Trauma-specific treatment” means services provided by a mental health professional using therapies that are free from the use of coercion, restraints, seclusion and isolation; and designed specifically to promote recovery from the adverse impacts of violence exposure on physical, psychological, psychosocial development, health and well-being.

“Urban” means a county that has a total population of 50,000 or more residents or includes a city with a population of 20,000 or more.

“Urgent nonemergency need” means the same as defined in rule 441—88.21(249A).

“Walk-in crisis service” means a program that provides unscheduled face-to-face support and intervention at an identified location or locations. The service may be provided directly by the program or through a contract with another mental health provider.

[ARC 1096C, IAB 10/16/13, effective 11/20/13]

441—25.2(331) Core service domains.

25.2(1) The region shall ensure that core service domains are available in regions as determined in Iowa Code section 331.397.

25.2(2) The region shall include and respect the recommendation of the individual and the individual’s care team in the process of transition to new services.

25.2(3) The region shall ensure that the following services are available in the region:

- a. Assessment and evaluation.
- b. Case management.
- c. Crisis evaluation.
- d. Day habilitation.
- e. Family support.
- f. Health homes.
- g. Home and vehicle modification.
- h. Home health aide.
- i. Job development.
- j. Medication prescribing and management.
- k. Mental health inpatient treatment.
- l. Mental health outpatient treatment.
- m. Peer support.
- n. Personal emergency response system.
- o. Prevocational services.
- p. Respite.
- q. Supported employment.
- r. Supportive community living.
- s. Twenty-four-hour access to crisis response.

Regions may fund or provide other services in addition to the required core services consistent with requirements set forth in subrules 25.2(4) and 25.2(5).

25.2(4) A regional service system shall consider the scope of services included in addition to the required core services. Each service included shall be described and projection of need and the funding necessary to meet the need shall be included.

25.2(5) A regional service system may provide funding for other appropriate services or other support. In considering whether to provide such funding, a region may consider the following criteria:

a. Applying a person-centered planning process to identify the need for the services or other support.

b. The efficacy of the services or other support is recognized as an evidence-based practice, is deemed to be an emerging and promising practice, or providing the services is part of a demonstration and will supply evidence as to the effectiveness of the services.

c. A determination that the services or other support provides an effective alternative to existing services that have been shown by the evidence base to be ineffective, to not yield the desired outcome, or to not support the principles outlined in *Olmstead v. L.C.*, 527 U.S. 581.
[ARC 1096C, IAB 10/16/13, effective 11/20/13]

441—25.3(331) Access standards. The region shall include:

25.3(1) A sufficient provider network which shall include:

a. A community mental health center or federally qualified health center that provides psychiatric and outpatient mental health services in the region.

b. A hospital with an inpatient psychiatric unit or state mental health institute located in or within reasonably close proximity that has the capacity to provide inpatient services to the applicant.

25.3(2) Crisis services shall be available 24 hours per day, seven days per week, 365 days per year for mental health and disability-related emergencies.

25.3(3) The region shall provide the following treatment services:

a. Outpatient.

(1) Emergency: During an emergency, outpatient services shall be initiated to an individual within 15 minutes of telephone contact.

(2) Urgent: Outpatient services shall be provided to an individual within one hour of presentation or 24 hours of telephone contact.

(3) Routine: Outpatient services shall be provided to an individual within four weeks of request for appointment.

(4) Distance: Outpatient services shall be offered within 30 miles for an individual residing in an urban community and 45 miles for an individual residing in a rural community.

b. Inpatient.

(1) An individual in need of emergency inpatient services shall receive treatment within 24 hours.

(2) Inpatient services shall be available within reasonably close proximity to the region.

c. Assessment and evaluation. An individual who has received inpatient services shall be assessed and evaluated within four weeks.

25.3(4) A region shall provide the following basic crisis response:

a. Twenty-four-hour access to crisis response, 24 hours per day, seven days per week, 365 days per year.

b. Crisis evaluation within 24 hours.

25.3(5) Support for community living. The first appointment shall occur within four weeks of the individual's request of support for community living.

25.3(6) Support for employment. The initial referral shall take place within 60 days of the individual's request of support for employment.

25.3(7) Recovery services. An individual receiving recovery services shall not have to travel more than 30 miles if residing in an urban area or 45 miles if residing in a rural area to receive services.

25.3(8) Service coordination:

a. An individual receiving service coordination shall not have to travel more than 30 miles if residing in an urban area or 45 miles if residing in a rural area to receive services.

b. An individual shall receive service coordination within 10 days of the initial request for such service or being discharged from an inpatient facility.

25.3(9) The following limitations apply to home and vehicle modification for an individual receiving mental health and disability services:

a. A lifetime limit equal to that established for the home- and community-based services waiver for individuals with intellectual disabilities in the medical assistance program.

b. A provider reimbursement payment will be no lower than that provided through the home- and community-based services waiver for individuals with intellectual disabilities in the medical assistance program.

[ARC 1096C, IAB 10/16/13, effective 11/20/13]

441—25.4(331) Practices. A region shall ensure that access is available to providers of core services that demonstrate the following competencies:

25.4(1) Regions shall have service providers that are trained to provide effective services to individuals with two or more of the following co-occurring conditions:

- a. Mental illness.
- b. Intellectual disability.
- c. Developmental disability.
- d. Brain injury.
- e. Substance use disorder.

Training for serving individuals with co-occurring conditions provided by the region shall be training identified by the Substance Abuse and Mental Health Services Administration, the Dartmouth Psychiatric Research Center or other generally recognized professional organization specified in the regional service system management plan.

25.4(2) Regions shall have service providers that are trained to provide effective trauma-informed care. Trauma-informed care training provided by the region shall be recognized by the National Center for Trauma-Informed Care or other generally recognized professional organization specified in the regional service system management plan.

25.4(3) Regions must have evidence-based practices that the region has independently verified as meeting established fidelity to evidence-based service models including, but not limited to, assertive community treatment or strengths-based case management; integrated treatment of co-occurring substance abuse and mental health disorders; supported employment; family psychoeducation; illness management and recovery; and permanent supportive housing.

[ARC 1096C, IAB 10/16/13, effective 11/20/13]

These rules are intended to implement Iowa Code chapter 331 and 2012 Iowa Acts, chapter 1120, section 15.

441—25.5 to 25.10 Reserved.

DIVISION II
REGIONAL SERVICE SYSTEM

PREAMBLE

These rules define the standards for a regional service system. The mental health and disability services provided by counties operating as a region shall be delivered in accordance with a regional service system management plan approved by the region's governing board and implemented by the regional administrator (Iowa Code section 331.393). Iowa counties are encouraged to enter into a regional system when the regional approach is likely to increase the availability of services to residents of the state who need the services. It is the intent of the Iowa general assembly that the adult residents of this state should have access to needed mental health and disability services regardless of the location of their residence.

[ARC 1173C, IAB 11/13/13, effective 1/1/14]

441—25.11(331) Definitions.

“*Access point*” means a provider, public or private institution, advocacy organization, legal representative, or educational institution with staff trained to complete applications and guide individuals with a disability to needed services.

“Applicant” means an individual who applies to receive services and supports from the service system.

“Assessment and evaluation” means the same as defined in rule 441—25.1(331).

“Assistive technology account” means funds in contracts, savings, trust or other financial accounts, financial instruments, or other arrangements with a definite cash value that are set aside and designated for the purchase, lease, or acquisition of assistive technology, assistive technology services, or assistive technology devices. Assistive technology accounts must be held separately from other accounts. Funds must be used to purchase, lease, or otherwise acquire assistive technology services or devices for a working individual with a disability. Any withdrawal from an assistive technology account other than for the designated purpose becomes a countable resource.

“Authorized representative” means a person designated by the individual or by Iowa law to act on the individual’s behalf in specified affairs to the extent prescribed by law.

“Chief executive officer” means the person chosen and supervised by the governing board who serves as the single point of accountability for the mental health and disability services region and whose responsibilities include, but are not limited to, planning, budgeting, monitoring county and regional expenditures, and ensuring the delivery of quality services that achieve expected outcomes for the individuals served.

“Choice” means the individual or authorized representative chooses the services, supports, and goods needed to best meet the individual’s goals and accepts the responsibility and consequences of those choices.

“Clear lines of accountability” means the structure of the governing board’s organization makes it evident that the ultimate responsibility for the administration of the non-Medicaid-funded mental health and disability services lies with the governing board and that the governing board directly and solely supervises the organization’s chief executive officer.

“Community” means an integrated setting of an individual’s choice.

“Conflict-free case management” means there is no real or seeming incompatibility between the case manager’s other interests and the case manager’s duties to the individual served and includes case management separate from direct service provision; eligibility determination for services; establishment of funding levels for the individual’s services; and requirements that prohibit the case manager from performing evaluations, assessments, and plans of care if the case manager is related by blood or marriage to the individual or any of the individual’s paid caregivers or persons financially responsible for the individual or empowered to make financial or health-related decisions on behalf of the individual.

“Coordinator of disability services” means the same as defined in Iowa Code section 331.390(3) “b.”

“Countable resource” means real or personal property that has a cash value that is available to the owner upon disposition and is capable of being liquidated.

“Countable value” means the equity value of a resource, which is the current fair market value minus any legal debt on the item.

“County of residence” means the same as defined in Iowa Code section 331.394.

“Department” means the department of human services.

“Director” means the director of human services.

“Disability services” means the same as defined in Iowa Code section 225C.2.

“Emergency service” means the same as defined in rule 441—88.21(249A).

“Empowerment” means that the service system ensures the rights, dignity, and ability of individuals and their families to exercise choices, take risks, provide input, and accept responsibility.

“Exempt resource” means a resource that is disregarded in the determination of eligibility for public funding assistance and in the calculation of client participation amounts.

“Homeless person” means the same as defined in Iowa Code section 48A.2.

“Household” means, for an individual who is 18 years of age or over, the individual, the individual’s spouse or domestic partner, and any children, stepchildren, or wards under the age of 18 who reside with the individual. For an individual under the age of 18, “household” means the individual, the individual’s parents (or parent and domestic partner), stepparents or guardians, and any children, stepchildren, or

wards under the age of 18 of the individual's parents (or parent and domestic partner), stepparents, or guardians who reside with the individual.

"Income" means all gross income received by the individual's household, including but not limited to wages, income from self-employment, retirement benefits, disability benefits, dividends, annuities, public assistance, unemployment compensation, alimony, child support, investment income, rental income, and income from trust funds.

"Individual" means any person seeking or receiving services in a regional service system.

"Individualized services" means services and supports that are tailored to meet the personalized needs of the individual.

"Liquid assets" means assets that can be converted to cash in 20 days. Liquid assets include but are not limited to cash on hand, checking accounts, savings accounts, stocks, bonds, cash value of life insurance, individual retirement accounts, certificates of deposit, and other investments.

"Managed care" means a system that provides the coordinated delivery of services and supports that are necessary and appropriate, delivered in the least restrictive settings and in the least intrusive manner. Managed care seeks to balance three factors: achieving high-quality outcomes for participants, coordinating access, and containing costs.

"Managed system" means a system that integrates planning, administration, financing, and service delivery. The system consists of the financing or governing organization, the entity responsible for care management, and the network of service providers.

"Management organization" means an organization contracted to manage part or all of the service system for a region.

"Medical savings account" means an account that is exempt from federal income taxation pursuant to Section 220 of the U.S. Internal Revenue Code (26 U.S.C. §220) as supported by documentation provided by the bank or other financial institution. Any withdrawal from a medical savings account other than for the designated purpose becomes a countable resource.

"Mental health professional" means the same as defined in Iowa Code section 228.1(6).

"Non-liquid assets" means assets that cannot be converted to cash in 20 days. Non-liquid assets include, but are not limited to, real estate, motor vehicles, motor vessels, livestock, tools, machinery, and personal property.

"Population" means the same as defined in Iowa Code section 331.388.

"Provider" means an individual, firm, corporation, association, or institution which is providing or has been approved to provide medical assistance, is accredited under 441—Chapter 24, holds a professional license to provide the service, is accredited by a national insurance panel, or holds other national accreditation or certification.

"Regional administrator" or *"regional administrative entity"* means the administrative office or organization formed by agreement of the counties participating in a mental health and disability services region to function on behalf of those counties.

"Regional services fund" means the mental health and disability regional services fund created in Iowa Code section 225C.7A.

"Regional service system management plan" means the regional service system plan developed pursuant to Iowa Code section 331.393 for the funding and administration of non-Medicaid-funded mental health and disability services and includes an annual service and budget plan, a policies and procedures manual, and an annual report and how the region will coordinate with the department in the provision of mental health and disability services funded under the medical assistance program.

"Resources" means all liquid and non-liquid assets that are owned in part or in whole by the individual household, that could be converted to cash to use for support and maintenance, and that the individual household is not legally restricted from using for support and maintenance.

"Retirement account" means any retirement or pension fund or account listed in Iowa Code section 627.6(8)"f."

"Retirement account in the accumulation stage" means a retirement account into which a deposit was made in the previous tax year. Any withdrawal from a retirement account becomes a countable resource.

“Service system” refers to the mental health and disability services and supports administered by the regional administrative entity and paid from the regional services fund.

“State case status” means the standing of an individual who has no county of residence.

“State commission” means the same as defined in Iowa Code section 225C.5.

“System of care” means the coordination of a system of services and supports to individuals and their families that ensures they optimally live, work, and recreate in integrated communities of their choice.

“System principles” means practices that include individual choice, community and empowerment.
[ARC 1173C, IAB 11/13/13, effective 1/1/14]

441—25.12(331) Regional governance structure. The counties comprising a mental health and disability services region shall enter into an agreement to form a regional administrator under the control of a governing board to function on behalf of those counties as defined in Iowa Code chapter 28E and sections 331.388, 331.390 and 331.392 and 2013 Iowa Acts, House File 648, section 14.

25.12(1) Governing board. The governing board shall comply with the following requirements:

a. The governing board shall comply with the membership requirements as outlined in Iowa Code section 331.390 and follow the requirements in Iowa Code chapter 69 and other applicable laws relating to boards and commissions.

b. A regional advisory committee shall be created and shall designate members to the governing board as defined in Iowa Code section 331.390(2).

c. The governing board shall appoint and evaluate the performance of the chief executive officer of the regional administrative entity who will serve as the single point of accountability for the region.

25.12(2) Regional administrator. The formation of the regional administrator shall be as defined in Iowa Code sections 331.388 and 331.390.

a. The regional administrative entity is under the control of the governing board.

b. The regional administrative entity shall enter into and manage performance-based contracts in accordance with Iowa Code section 225C.4(1) “u.”

c. The regional administrative entity structure shall have clear lines of accountability.

d. The regional administrative entity functions as a lead agency utilizing shared county or regional staff or other means of limiting administrative costs.

e. The regional administrative entity staff shall include one or more coordinators of disability services.

25.12(3) Regional service system management. The region may either directly implement a system of service management and contract with service providers, or contract with a private entity to manage the regional service system, provided all requirements of Iowa Code section 331.393 are met by the private entity.

[ARC 1173C, IAB 11/13/13, effective 1/1/14]

441—25.13(331) Regional finances.

25.13(1) Funding. Non-Medicaid mental health and disability services funding is under the control of the governing board and shall:

a. Be maintained to limit administrative burden and provide public transparency regarding financial processes.

b. Be maintained in one of three ways:

(1) In a combined account.

(2) In separate county accounts that are under the control of the governing board.

(3) In other arrangements authorized by law.

25.13(2) Accounting system and financial reporting. The accounting system and financial reporting to the department shall conform to Iowa Code section 331.391 and include all non-Medicaid mental health and disability expenditures. Information shall be separated and identified in a uniform chart of accounts, including but not limited to the following: expenses for administration; purchase of services; and enterprise costs for which the region is a service provider or is directly billing and collecting payments.

[ARC 1173C, IAB 11/13/13, effective 1/1/14]

441—25.14(331) Regional governance agreement. The expectations for regional governance agreements entered into by the counties comprising a mental health and disability services region are defined in Iowa Code sections 28E.1, 331.388, 331.390 and 331.392.

25.14(1) Organizational provisions. The organizational provisions of the regional governance agreement shall include the following:

- a. A statement of purpose, goals, and objective of entering into the agreement.
- b. Identification of the governing board membership and the terms, methods of appointment, and voting procedures, including whether or not voting will be weighted.
- c. The identification of the process for selecting the executive staff, including but not limited to the chief executive officer of the regional administrative entity.
- d. Identification of the counties participating in the agreement.
- e. The time period of the agreement and terms for termination or renewal of the agreement.
- f. Provisions for joining a region. Additional counties may join the region. The agreement shall not prohibit a county from being assigned by the department to a region according to Iowa Code section 331.389(4) "c."
- g. Methods for dispute resolution and mediation.
- h. Methods for termination of a county's participation in the region.
- i. Provision for formation and assigned responsibilities for one or more advisory committees consisting of:
 - (1) Individuals who utilize services or the actively involved relatives of such individuals.
 - (2) Service providers.
 - (3) Governing board members.
 - (4) Other interests identified in the agreement.

25.14(2) Administrative provisions. The administrative provisions of the regional governance agreement shall include all of the following:

- a. Identification of whether the region will either directly implement a system of service management or contract with a private entity to manage the regional service system as defined in Iowa Code section 331.393(7).
- b. Responsibility of the governing board in appointing and evaluating the performance of the chief executive officer of the regional administrative entity.
- c. A general list of the functions and responsibilities of the regional administrative entity's chief executive officer and other staff including but not limited to coordinators of disability services.
- d. Specification of the functions to be carried out by each party to the agreement and by any subcontractor of a party to the agreement.

25.14(3) Financial provisions. The financial provisions of the regional governance agreement shall include all of the following:

- a. Methods for pooling, managing and expending funds under control of the regional administrative entity. If the agreement does not provide for pooling of the participating county moneys in a single fund, the agreement shall specify how the participating county moneys will be subject to the control of the regional administrative entity.
- b. Methods for allocating administrative funding and resources.
- c. Methods for contributing initial funds to the region.
- d. Methods for acquiring or disposing of real property.
- e. The process for how to use savings achieved for reinvestment.
- f. A process for performance of an annual independent audit of the regional administrator.

[ARC 1173C, IAB 11/13/13, effective 1/1/14]

441—25.15(331) Eligibility, diagnosis, and functional assessment criteria.

25.15(1) Eligibility for mental health services. An individual must comply with all of the following requirements to be eligible for mental health services under the regional service system:

- a. The individual complies with the financial eligibility requirements in rule 441—25.16(331).
- b. The individual is at least 18 years of age.

c. The individual is a resident of this state.

d. The individual has had at any time during the preceding 12-month period a mental health, behavioral, or emotional disorder or, in the opinion of a mental health professional, may now have such a diagnosable disorder. The diagnosis shall be made in accordance with the criteria provided in the most recent Diagnostic and Statistical Manual of Mental Disorders published by the American Psychiatric Association and shall not include the manual's "V" codes identifying conditions other than a disease or injury. The diagnosis shall also not include substance-related disorders, dementia, antisocial personality, or developmental disabilities, unless co-occurring with another diagnosable mental illness.

e. The results of a standardized functional assessment support the need for mental health services of the type and frequency identified in the individual's case plan. The standardized functional assessment methodology shall be designated for mental health services by the director of human services in consultation with the state commission. A functional assessment must be completed within 90 days of application for services.

25.15(2) Other conditions of eligibility for mental health services.

a. An individual who is 17 years of age, is a resident of this state, and is receiving publicly funded children's services may be considered eligible for services through the regional service system during the three-month period preceding the individual's eighteenth birthday in order to provide a smooth transition from children's to adult services.

b. An individual less than 18 years of age and a resident of the state may be considered eligible for those mental health services made available to all or a portion of the residents of the region of the same age and eligibility class under the county management plan of one or more counties of the region applicable prior to formation of the region. Eligibility for services under this paragraph is limited to availability of regional service system funds without limiting or reducing core services, and if part of the approved regional service system management plan.

25.15(3) Eligibility for intellectual disability services. An individual must comply with all of the following requirements to be eligible for intellectual disability services under the regional service system:

- a. The individual complies with the financial eligibility requirements in rule 441—25.16(331).
- b. The individual is at least 18 years of age.
- c. The individual is a resident of this state.
- d. The individual has a diagnosis of intellectual disability as defined by Iowa Code section 4.1(9A).
- e. The results of a standardized functional assessment support the need for intellectual disability services of the type and frequency identified in the individual's case plan. The standardized functional assessment methodology shall be designated for intellectual services by the director of human services in consultation with the state commission. A functional assessment must be completed within 90 days of application for services.

25.15(4) Other conditions of eligibility for intellectual disability services.

a. An individual who is 17 years of age, is a resident of this state, and is receiving publicly funded children's services may be considered eligible for services through the regional service system during the three-month period preceding the individual's eighteenth birthday in order to provide a smooth transition from children's to adult services.

b. An individual less than 18 years of age and a resident of the state may be considered eligible for those intellectual disability services made available to all or a portion of the residents of the region of the same age and eligibility class under the county management plan of one or more counties of the region applicable prior to formation of the region. Eligibility for services under this paragraph is limited to availability of regional service system funds without limiting or reducing core services, and if part of the approved regional service system management plan.

25.15(5) Eligibility for brain injury services. An individual must comply with all of the following requirements to be eligible for brain injury services under the regional service system, if such services were provided to the same class of individuals by a county in the region prior to regional formation and if funds are available to continue such services without limiting or reducing core services.

- a. The individual complies with the financial eligibility requirements in rule 441—25.16(331).
- b. The individual is at least 18 years of age.

- c. The individual is a resident of this state.
- d. The individual has a diagnosis of brain injury as defined in rule 441—83.81(249A).
- e. The results of a standardized functional assessment support the need for brain injury services of the type and frequency identified in the individual's case plan. The standardized functional assessment methodology used is the methodology approved for brain injury services by the director of human services in consultation with the state commission. A functional assessment must be completed within 90 days of application for services.

25.15(6) Other conditions of eligibility for brain injury services. An individual who is 17 years of age, is a resident of this state, and is receiving publicly funded children's services may be considered eligible for services through the regional service system during the three-month period preceding the individual's eighteenth birthday in order to provide a smooth transition from children's to adult services.

25.15(7) Eligibility for developmental disability services.

a. Until funding is designated for other service populations, eligibility for the core service domains shall be as identified in Iowa Code section 331.397(1) "b."

b. If a county in a region was providing services to an eligibility class of individuals with a developmental disability other than intellectual disability prior to formation of the region, the class of individuals shall remain eligible for the services provided when the region is formed, providing that funds are available to continue such services without limiting or reducing core services. The individual must also meet the requirements in paragraphs 25.15(7) "c," "d," "e" and "f."

c. The individual complies with the financial eligibility requirements in rule 441—25.16(331).

d. The individual is at least 18 years of age.

e. The individual is a resident of this state.

f. The individual has a diagnosis of a developmental disability other than an intellectual disability as defined in rule 441—24.1(225C).

[ARC 1173C, IAB 11/13/13, effective 1/1/14]

441—25.16(331) Financial eligibility requirements. The regional service system management plan shall identify basic financial eligibility standards for disability services as defined in Iowa Code section 331.395.

25.16(1) Income requirements. Income requirements shall be as defined in Iowa Code section 331.395(1).

25.16(2) Resource requirements. An individual must have resources that are equal to or less than \$2,000 in countable value for a single-person household or \$3,000 in countable value for a multiperson household or follow the most recent federal supplemental security income guidelines.

a. The countable value of all countable resources, both liquid and non-liquid, shall be included in the eligibility determination except as exempted in this subrule.

b. A transfer of property or other assets within five years of the time of application with the result of, or intent to, qualify for assistance may result in denial or discontinuation of funding.

c. The following resources shall be exempt:

(1) The homestead, including equity in a family home or farm that is used as the individual household's principal place of residence. The homestead shall include all land that is contiguous to the home and the buildings located on the land.

(2) One automobile used for transportation.

(3) Tools of an actively pursued trade.

(4) General household furnishings and personal items.

(5) Burial account or trust limited in value as to that allowed in the medical assistance program.

(6) Cash surrender value of life insurance with a face value of less than \$1,500 on any one person.

(7) Any resource determined excludable by the Social Security Administration as a result of an approved Social Security Administration work incentive.

d. If an individual does not qualify for federally funded or state-funded services or other support but meets all income, resource, and functional eligibility requirements of this chapter, the following types of resources shall additionally be considered exempt from consideration in eligibility determination:

- (1) A retirement account that is in the accumulation stage.
- (2) A medical savings account.
- (3) An assistive technology account.
- (4) A burial account or trust limited in value as to that allowed in the medical assistance program.
 - e. An individual who is eligible for federally funded services and other support must apply for and accept such funding and support.

25.16(3) Copayment standards. A regional administrative entity must comply with copayment standards as defined in Iowa Code section 331.395.

a. Copayments are allowed for individuals with income above 150 percent of the federal poverty level.

b. Copayments in this rule are related to core services as defined in Iowa Code section 331.397.

25.16(4) Copayment standards required by any federal, state, regional, or municipal program. Any copayments or other client participation required by any federal, state, regional or municipal program in which the individual participates shall be required by the regional administrative entity. Such copayments include, but are not limited to:

a. Client participation for maintenance in a residential care facility through the state supplementary assistance program.

b. The financial liability for institutional services paid by counties as provided in Iowa Code section 230.15.

c. The financial liability for attorney fees related to commitment as provided by Iowa Code section 229.8.

[ARC 1173C, IAB 11/13/13, effective 1/1/14]

441—25.17(331) Exempted counties. If a county has been exempted pursuant to Iowa Code section 331.389 from the requirement to enter into a regional service system, the county and the county's board of supervisors shall fulfill all the requirements of this chapter for a regional service system management plan.

[ARC 1173C, IAB 11/13/13, effective 1/1/14]

441—25.18(331) Annual service and budget plan. The annual service and budget plan shall describe the services to be provided and the cost of those services for the ensuing year.

25.18(1) The annual service and budget plan is due on April 1 prior to the July 1 implementation of the annual plan and shall be approved by the region's governing board prior to submittal to the department. The initial plan is due on April 1, 2014.

25.18(2) The annual service and budget plan shall include but not be limited to:

a. The locations of the local access points for services. This shall include the name of the access points including the physical locations and contact information.

b. Targeted case management. The targeted case management agencies for the region, including the physical location and contact information for those agencies, shall be included.

c. Crisis planning. The plan for ensuring effective crisis prevention, response and resolution, including contact information for the agencies responsible, shall be included.

d. Scope of services. A description of the scope of services to be provided, a projection of need for the service, and the funding necessary to meet the need shall be included.

(1) The scope shall include the regional core services as defined in rule 441—25.1(331).

(2) The scope shall also include services in addition to the required core services.

e. Budget and financing provisions for the next year. The provisions shall address how county, regional, state and other funding sources will be used to meet the service needs within the region.

f. Financial forecasting measures. The plan shall describe the financial forecasting measures used in the identification of service need and funding necessary for services.

g. The provider reimbursement provisions. The plan shall describe the types of reimbursement methods that will be used, including fee for service, compensating providers for a "system of care" approach, and use of nontraditional providers. A region also shall provide funding approaches that

identify and incorporate all services and sources of funding used by the individuals receiving services, including the medical assistance program.

[ARC 1173C, IAB 11/13/13, effective 1/1/14]

441—25.19(331) Annual service and budget plan approval. The annual service and budget plan shall be submitted by April 1, 2014, as a part of the region's management plan for the fiscal year beginning July 1, 2014. The director shall review all regional annual service and budget plans submitted by the dates specified. If the director finds the regional annual service and budget plan in compliance with these rules and state and federal laws, the director may approve the plan. A plan approved by the director for the fiscal year beginning July 1, 2014, shall remain in effect until June 30, 2015, subject to amendment.

25.19(1) Criteria for acceptance. The director shall determine a plan is acceptable when it contains all the required information, meets the criteria described in this division, and is in compliance with all applicable state and federal laws. The director may request additional information to determine whether or not the plan contains all the required information and meets criteria described in this division.

25.19(2) Notification. Except as specified in subrule 25.19(3), the director shall notify the region in writing of the decision on the plan by June 1, 2014. The decision shall specify that either:

a. The annual service and budget plan is approved as it was submitted, either with or without supplemental information already requested and received.

b. The annual service and budget plan will not be approved until revisions are made. The letter will specify the nature of the revisions requested and the time frames for their submission.

25.19(3) Review of late submittals. The director may review plans not submitted by April 1, 2014, after all plans submitted by that date have been reviewed. The director will proceed with the late submittals in a timely manner.

25.19(4) Amendments. An amendment to the annual service and budget plan shall be approved by the regional governance board and submitted to the department at least 45 days before the date of implementation. Before implementation of any amendment to the plan, the director must approve the amendment.

a. **Criteria for acceptance.** The director shall determine an amendment is acceptable when it contains all the required information and meets the criteria described in this division for the applicable part of the annual service and budget plan and is in compliance with all applicable state and federal laws. The director may request additional information to determine whether or not the amendment contains all the required information and meets criteria described in this division.

b. **Notification.** The director shall notify the region, in writing, of the decision on the amendment within 45 days of receipt of the amendment. The decision shall specify either that:

(1) The amendment is approved as it was submitted, either with or without supplemental information already requested and received.

(2) The amendment is not approved. The notification will include why the amendment is not approved.

25.19(5) Reconsideration. Regions dissatisfied with the director's decision on a plan or an amendment may file a letter with the director requesting reconsideration. The letter requesting reconsideration must be received within 30 working days of the date of the notice of decision and shall include a request for the director to review the decision and the reasons for dissatisfaction. Within 30 working days of the receipt of the letter requesting reconsideration, the director will review both the reconsideration request and evidence provided. The director shall issue a final decision in writing.

[ARC 1173C, IAB 11/13/13, effective 1/1/14]

441—25.20(331) Annual report. The annual report shall describe the services provided, the cost of those services, the number of individuals served, and the outcomes achieved for the previous fiscal year. The annual report is due on December 1 following a completed fiscal year of implementing the annual service and budget plan. The initial report is due on December 1, 2015. The annual report shall include but not be limited to:

1. Services actually provided.
2. Actual numbers of individuals served.

3. Moneys expended.

4. Outcomes achieved.

[ARC 1173C, IAB 11/13/13, effective 1/1/14]

441—25.21(331) Policies and procedures manual for the regional service system. The policies and procedures manual shall describe the policies and process developed to direct the management and administration of the regional service system. The initial manual is due on April 1, 2014, and will remain in effect subject to amendment.

25.21(1) Content. The manual shall include but not be limited to:

a. Financing and delivery of services and supports. A description of the region's process used to develop and ensure the ongoing financial accountability and delivery of services outlined in the region's annual service and budget plan shall be included.

b. Enrollment. The application and enrollment process that is readily accessible to applicants and their families or authorized representatives shall be included. This procedure shall identify regional access points and where applicants can apply for services and how and when the applications will reach the regional administrative entity's designated staff for processing.

c. Eligibility. The process utilized to determine eligibility shall be included in the manual and shall include but not be limited to:

(1) The criteria used to authorize or deny funding for services and supports. This shall include guidelines for who is eligible to receive services and supports by eligibility group, and type of service or support.

(2) Financial eligibility and copayment criteria, which shall meet the requirements of rule 441—25.16(331).

(3) The time frames for conducting eligibility determination that provide for timely access to services, including necessary and immediate services not to exceed ten days.

(4) The process for development of a written notice of decision. The time frame for sending a written notice of decision to the individual and guardian (if applicable) and the service providers identified in the notice shall be included. The notice of decision shall:

1. Explain the action taken on the application and the reasons for that action.

2. State what services are approved and name the service providers.

3. Outline the applicant's right to appeal.

4. Describe the appeal process.

d. Utilization of and access to services. The process for managing utilization of and access to services and other assistance shall be included. The process shall describe how coordination between the services included in the annual service and budget plan and the disability services administered by the state and others will be managed.

e. Quality management and improvement process. The quality management and improvement process shall at a minimum meet the requirements of the department's outcome and performance measures process as outlined in Iowa Code sections 225C.4(1)"j" and 225C.6A.

f. Risk management and fiscal viability. If the region contracts with a private entity, the manual must include risk management provisions and fiscal viability of the annual services and budget plan.

g. Targeted case management.

(1) Designation of targeted case management providers. The process used to identify and designate targeted case management providers for the region shall be described. This process shall include the requirement for the implementation of evidence-based practice models of case management within the region. Requirements of this practice include:

1. Providing the individual receiving the case management with a choice of providers.

2. Allowing a service provider to be the case manager but prohibiting the provider from referring that individual only to services administered by the provider.

3. Provisions to ensure compliance with, but not exceed, federal requirements for conflict-free case management.

(2) Qualifications of targeted case managers. A region's manual shall require that any targeted case managers or other persons providing service coordination while working for the designated provider meet the qualifications of qualified case managers and supervisors as defined in rule 441—24.1(225C).

(3) Targeted case management and service coordination services. Targeted case management and service coordination services utilized in a regional service system shall include but are not limited to the following as defined in Iowa Code section 331.393(4) "g":

1. Performance and outcome measures relating to the health, safety, work performance, and community residency of the individuals receiving the services.

2. Standards for delivery of the services, including but not limited to the social history, assessment, service planning, incident reporting, crisis planning, coordination, and monitoring for individuals receiving the services.

3. Methodologies for complying with the requirements of paragraph 25.21(1) "g." Methodologies may include the use of electronic record keeping and remote or Internet-based training.

h. System of care approach plan.

i. Decentralized service provision. Measures to provide services in a dispersed manner that meet the minimum access standards of core services and that utilize the strengths and assets of the service providers within and available to the region shall be included.

j. Provider network formation and management. The manual shall require that providers that are subject to license, accreditation or approval meet established standards. The manual shall detail the approval process, including criteria, developed to select providers that are not currently subject to license, accreditation or approval standards. The manual shall identify the process the regional administrative entity will use to contract with providers and manage the provider network to ensure it meets the needs of the individuals in the region. The provider network will include but is not limited to the following:

(1) A contract with a community mental health center that provides services in the individual's region or with a federally qualified health center that provides psychiatric and outpatient mental health services in the individual's region.

(2) Contracts with licensed and accredited providers to provide each service in the required core service domains.

(3) Adequate numbers of licensed and accredited providers to ensure availability of core services so that there is no waiting list for services due to lack of available providers.

(4) A contract with an inpatient psychiatric hospital unit or state mental health institute within reasonably close proximity.

k. Service provider payment provisions. A policy for payment of service providers which describes the method and process of paying for services and supports delivered to the region shall be included.

l. Grievance processes. The manual shall develop and implement processes for appealing the decisions of the regional administrative entity in the following circumstances:

(1) Nonexpedited appeal process. The appeal process shall be based on objective criteria, specify time frames, provide for notification in accessible formats of the decisions to all parties, and provide some assistance to individuals with disabilities using the process. Responsibility for the final step in the appeal process shall be a state administrative law judge in nonexpedited appeals.

(2) Expedited appeal process. This appeal process is to be used when the decision of the regional administrative entity concerning an individual varies from the type and amount of service identified to be necessary for the individual in a clinical determination made by a mental health professional and the mental health professional believes that the failure to provide the type and amount of service identified could cause an immediate danger to an individual's health or safety. This appeal process shall be performed by a mental health professional who is either the administrator of the division of mental health and disability services of the department of human services or the administrator's designee.

1. The appeal shall be filed within five days of receipt of the notice of decision by the regional administrative entity.

2. The expedited review by the division administrator or designee shall take place within two days of receipt of the request, unless more information is needed. There is an extension of two days from the time the new information is received.

3. The administrator shall issue an order, including a brief statement of findings of fact, conclusions of law, and policy reasons for the order, to justify the decision made concerning the expedited review. If the decision concurs with the contention that there is an immediate danger to the individual's health or safety, the order shall identify the type and amount of service which shall be provided for the individual. The administrator or designee shall give such notice as is practicable to individuals who are required to comply with the order. The order is effective when issued.

4. The decision of the administrator or designee shall be considered a final agency action and is subject to judicial review in accordance with Iowa Code section 17A.19.

m. Implementation of interagency and multisystem collaboration and care coordination. The policies and procedures manual shall describe how the region will collaborate with other funders, other regional service systems, service providers, case management, individuals and their families or authorized representatives, and advocates to ensure that authorized services and supports are responsive to individuals' needs, consistent with system principles, and cost-efficient. The manual shall describe the process for collaboration with the court to ensure alternatives to commitment and to coordinate funding for services to individuals who are under court-ordered commitment services pursuant to Iowa Code chapter 229.

n. Addressing multioccurring needs. The policies and procedures manual shall include criteria and measures to be used to address the needs of individuals who have two or more co-occurring mental health, intellectual or other developmental disability, brain injury, or substance-related disorders. The manual shall also include criteria and measures to be used to address the needs of individuals with specialized needs.

o. Service management and functional assessment. The policies and procedures manual shall describe how functional assessments and service management will be incorporated in accordance with applicable requirements.

p. Service system management. The policies and procedures manual shall identify whether the region will be directly implementing a system of service management or will contract with a private entity to manage the regional service system. If the region contracts with a private entity, the region will ensure that all requirements of Iowa Code section 331.393 and these administrative rules are fulfilled.

q. Assistance to other than core service populations. The policies and procedures manual shall specify the services populations, other than core service populations, to whom the region will provide assistance if funding is available.

r. Waiting list criteria. The policies and procedures manual shall specify whether the region will use waiting lists. If the policy and procedures manual specifies the use of waiting lists for funding services and supports, it shall specify criteria for the use and review of each waiting list, including the criteria to be used to determine how and when an individual will be placed on a waiting list. The criteria will include how core services and additional core services will be impacted the least by budgetary limitations. The manual shall specify how waiting list data will be used in future planning.

25.21(2) Approval. The manual shall be submitted by April 1, 2014, as a part of the region's management plan for the fiscal year beginning July 1, 2014. The manual shall be approved by the region's governing board and is subject to approval by the director of human services. The director shall review all regional annual service and budget plans submitted by the dates specified. If the director finds the manual in compliance with these rules and state and federal laws, the director may approve the plan. A plan approved by the director for the fiscal year beginning July 1, 2014, shall remain in effect subject to amendment.

a. *Criteria for acceptance.* The director shall determine a plan is acceptable when it contains all the required information, meets the criteria described in this division, and is in compliance with all applicable state and federal laws. The director may request additional information to determine whether or not the plan contains all the required information and meets criteria described in this division.

b. *Notification.*

(1) Except as specified in subparagraph 25.21(2) "b" (2), the director shall notify the region in writing of the decision on the plan by June 1, 2014. The decision shall specify that either:

1. The policies and procedures manual is approved as it was submitted, either with or without supplemental information already requested and received.

2. The policies and procedures manual will not be approved until revisions are made. The letter will specify the nature of the revisions requested and the time frames for their submission.

(2) Review of late submittals. The director may review manuals not submitted by April 1, 2014, after all manuals submitted by that date have been reviewed. The director will proceed with the late submittals in a timely manner.

25.21(3) Amendments. An amendment to the policy and procedures manual shall be approved by the regional governance board and submitted to the department at least 45 days before the date of implementation. Before implementation of any amendment to the manual, the director must approve the amendment.

a. *Criteria for acceptance.* The director, in consultation with the state commission, shall determine an amendment is acceptable when it contains all the required information and meets the criteria described in this division for the applicable part of the policy and procedures manual and is in compliance with all applicable state and federal laws. The director may request additional information to determine whether or not the amendment contains all the required information and meets criteria described in this division.

b. *Notification.* The director shall notify the region, in writing, of the decision on the amendment within 45 days of receipt of the amendment. The decision shall specify either that:

(1) The amendment is approved as it was submitted, either with or without supplemental information already requested and received.

(2) The amendment is not approved. The notification will explain why the amendment is not approved.

25.21(4) Reconsideration. Regions dissatisfied with the director's decision on a manual or an amendment may file a letter with the director requesting reconsideration. The letter of reconsideration must be received within 30 working days of the date of the notice of decision and shall include a request for the director to review the decision and the reasons for dissatisfaction. Within 30 working days of the receipt of the letter requesting reconsideration, the director will review both the reconsideration request and evidence provided. The director shall issue a final decision in writing.

These rules are intended to implement Iowa Code sections 331.388 to 331.398.
[ARC 1173C, IAB 11/13/13, effective 1/1/14]

441—25.22 to 25.40 Reserved.

DIVISION III MINIMUM DATA SET

441—25.41(331) Minimum data set. Each county shall maintain data on all clients served through the MH/DD services fund.

25.41(1) Submission of data. Each county shall submit to DHS a copy of the data regarding each individual that the county serves through the central point of coordination process.

a. DHS state payment program, state supplementary assistance program, mental health institutes, state resource centers, Medicaid program, and Medicaid managed care contractors shall provide the equivalent data in a compatible format on the same schedule as the required submission from the counties.

b. DHS shall maintain the data in the data analysis unit for research and analysis purposes only. Only summary data shall be reported to policymakers or the public.

25.41(2) Data required. The data to be submitted are as follows:

a. Basic client information including a unique identifier, name, address, county of residence and county of legal settlement.

b. The state I.D. number for state payment cases.

c. Demographic information including date of birth, sex, ethnicity, marital status, education, residential living arrangement, current employment status, monthly income, income sources, type of insurance, insurance carrier, veterans' status, guardianship status, legal status in the system, source of referral, diagnosis in the current version of the DSM, diagnosis in the current version of the ICD, disability group (i.e., intellectual disability, developmental disability, chronic mental illness, mental illness), central point of coordination (county number preceded by A 1), and central point of coordination (CPC) name.

d. Service information including the decision on services, date of decision, date client terminated from CPC services and reason for termination, residence, approved service, service beginning dates, service ending dates, reason for terminating each service, approved units of services, unit rate for service, expenditure data, and provider data.

e. Counties shall not be penalized in any fashion for failing to collect data elements in situations of crisis or in outreach efforts to identify or engage people in needed mental health services. For the purposes of this rule:

(1) Situations of crisis include but are not limited to voluntary and involuntary hospitalizations, legal and transportation services associated with involuntary hospitalizations, emergency outpatient services, mobile crisis team services, jail diversion services, mental health services provided in a county jail, and other services for which the county is required to pay but does not have access to the client to collect the required information.

(2) Outreach efforts to identify or engage people in needed mental health services include but are not limited to mental health advocate services; services for homeless persons, refugees, or other legal immigrants; services for state cases who do not have documentation with them and are unable to help the county locate appropriate records; consultation; education to raise public awareness; 12-step or other support groups for persons with dual disorders; and drop-in centers.

f. Although all of the data in the minimum data set are important to provide support for program analysis, a county shall be penalized for noncompliance with this rule if the county does not provide 100 percent reporting of the data elements listed in this paragraph. Beginning with the data reported for state fiscal year 2008, less than 100 percent reporting for the following items shall be viewed as noncompliance unless the data are exempted by paragraph "e":

(1) Client identifiers:

1. Lname3 (the first three letters of the client's last name).
2. Last4SSN (the last four digits of the client's social security number).
3. SEX (the client's sex).
4. BDATE (the client's birth date).

(2) CPC (central point of coordination).

(3) Payment information:

1. PYMTDATE (CoMIS payment date).
2. FUND CODE (CoMIS fund code).
3. DG (CoMIS diagnosis).
4. COACODE (CoMIS chart of accounts code).
5. BEGDATE (CoMIS service beginning date).
6. ENDDATE (CoMIS service ending date).
7. UNITS (CoMIS units of service).
8. COPD (CoMIS county paid).

(4) ValidSSN (valid social security number indicator).

(5) IsPerson (IsPerson indicator).

g. Although all of the data in the minimum data set are important to provide support for program analysis, a county shall be penalized for noncompliance with this rule if the county does not provide 90 percent reporting of the data elements listed in this paragraph beginning with the data reported for fiscal year 2008. Less than 90 percent reporting for the following items shall be viewed as noncompliance unless the data are exempted by paragraph "e":

(1) Application Date (application date).

- (2) RESCO (residence county).
 - (3) LEGCO (legal county).
 - (4) Provider ID (vendor number).
- h. The department shall analyze the data received on or before December 1 each year by December 15 or by the next business day if December 15 falls on a weekend or holiday.
- (1) When a county's data submission does not meet the specifications in paragraph "f" or "g," the department will notify the county by E-mail.
 - (2) The county shall have 30 days from the date of the E-mail notice to submit the missing data or to provide an explanation of why the data cannot be reported.
 - (3) If the county does not report the data or provide an adequate explanation within 30 days, the department shall find the county in noncompliance.
- i. The department shall post the aggregate reports received by December 1 on the department's Web site within 90 days.
- 25.41(3) Method of data collection.** A county may choose to collect this information using the county management information system (CoMIS) that was designed by the department or may collect the information through some other means. If a county chooses to use another system, the county must be capable of supplying the information in the same format as CoMIS.
- a. Except as provided in subparagraph (3), each county shall submit the following files in Microsoft Excel format (version 97 to 2000) or comma-delimited text file (CSV) format using data from the associated CoMIS table or from the county's chosen management information system:

Files to submit	Associated CoMIS Table
WarehouseClient.xls or WarehouseClient.csv	Client Data
WarehouseIncome.xls or WarehouseIncome.csv	Income Review
WarehousePayment.xls or WarehousePayment.csv	Payment
WarehouseProvider.xls or WarehouseProvider.csv	Provider
WarehouseProviderServices.xls or WarehouseProviderServices.csv	tblProviderServices
WarehouseService.xls or WarehouseService.csv	Service Authorizations

- (1) Paragraphs "b" through "g" list the data required in each file and specify the structure or description for each data item to be reported.
- (2) The field names used in the report files must be exactly the same as indicated in the corresponding paragraph, including spaces, and must be entered in the first row for each sheet.
- (3) The file labeled WarehouseService.xls or WarehouseService.csv or service authorization (described in paragraph "g" of this subrule) shall be removed from this requirement on June 30, 2011, if data from this file have not been used by that date.

b. File name: WarehouseClient.xls or WarehouseClient.csv.

Sheet name: Warehouse_Client_Transfer_Query.

Field Name	Data Type	Field Size	Format	Description
CPC	Number	3	0 decimal places	Central point of coordination number: county number preceded by a 1
RESKO	Number	3	0 decimal places	Residence county of client: 1-99 = County number 100 = State of Iowa 900 = Undetermined or in dispute
LEGCO	Number	3	0 decimal places	Legal county of client: 1-99 = County number 100 = State of Iowa 900 = Undetermined or in dispute

Field Name	Data Type	Field Size	Format	Description
Lname3	Text	3		The first 3 characters of the last name
Last4SSN	Text	4		The last 4 digits of the client's social security number. If that number is unknown, then use the last 4 digits of the CLIENT ID# field and mark column "ValidSSN" with the value "No."
BDATE	Date	10	mm/dd/yyyy	Date of client's birth
SEX	Text	1		Sex of client: M = Male F = Female
Last Update	Date	10	mm/dd/yyyy	Date of last update to client record
SID	Text	8	9999999a	State identification number of client, if applicable (format of a valid number is 7 digits plus 1 alphabetical character).
ADD1	Text	50		First address line
ADD2	Text	50		Second address line (if applicable)
CITY	Text	50		City address line
STATE	Text	2		State code
ZIP	Number	5	0 decimal places	5-digit ZIP code
ETHN	Number	1	0 decimal places	Ethnicity of client: 0 = Unknown 1 = White, not Hispanic 2 = African-American, not Hispanic 3 = American Indian or Alaskan native 4 = Asian or Pacific Islander 5 = Hispanic 6 = Other (biracial; Sudanese; etc.)
MARITAL	Number	1	0 decimal places	Marital status of client: 1 = Single, never married 2 = Married (includes common-law marriage) 3 = Divorced 4 = Separated 5 = Widowed
EDUC	Number	2	0 decimal places	Education level of the client
RARG	Number	2	0 decimal places	Residential arrangement of client: 1 = Private residence/household 2 = State MHI 3 = State resource center 4 = Community supervised living 5 = Foster care or family life home 6 = Residential care facility 7 = RCF/MR 8 = RCF/PMI 9 = Intermediate care facility 10 = ICF/MR 11 = ICF/PMI 12 = Correctional facility 13 = Homeless shelter or street 14 = Other
LARG	Number	1	0 decimal places	Living arrangement of client: 1 = Lives alone 2 = Lives with relatives 3 = Lives with persons unrelated to client
INS	Number	1	0 decimal places	Health insurance owned by client: 1 = Client pays 3 = Medicaid 4 = Medicare 5 = Private third party 6 = Not insured 7 = Medically Needy

Field Name	Data Type	Field Size	Format	Description
INSCAR	Text	50		First insurance company name, if applicable
INSCAR1	Text	50		Second insurance company name, if applicable
INSCAR2	Text	50		Third insurance company name, if applicable
VET	Text	1		Veteran status of client: Y = Yes N = No
CONSERVATOR	Number	1	0 decimal places	Conservator status of client: 1 = Self 2 = Other
GUARDIAN	Number	1	0 decimal places	Guardian status of client: 1 = Self 2 = Other
LEGSTAT	Number	1	0 decimal places	Legal status of client: 1 = Voluntary 2 = Involuntary, civil commitment 3 = Involuntary, criminal commitment
REFSO	Number	1	0 decimal places	Referral source of client: 1 = Self 2 = Family or friend 3 = Targeted case management 4 = Other case management 5 = Community corrections 6 = Social service agency other than case management 7 = Other
DSM (current version)	Text	50		DSM (current version) diagnosis code of client
ICD (current version)	Text	50		ICD (current version) diagnosis code (optional for county use; not tied to CoMIS entry)
DG	Number	2	0 decimal places	Disability group of client: 40 = Mental illness 41 = Chronic mental illness 42 = Mental retardation 43 = Other developmental disability 44 = Other categories
Application Date	Date	10	mm/dd/yyyy	Date of client's initial application
Outcome decision	Number	1	0 decimal places	Decision on client's application: 1 = Application accepted 2 = Application denied 3 = Decision pending
Decision date	Date	10	mm/dd/yyyy	Date decision was made on client's application
Denial reason	Text	2		Denial reason code: 00 = Not applicable 01 = Over income guidelines 1A = Over resource guidelines 02 = Does not meet county plan criteria 2A = Legal settlement in another county 2B = State case 3A = Brain injury 3B = Alzheimer's 3C = Substance abuse 3D = Other 04 = Does not meet service plan criteria 05 = Client desires to discontinue process 5A = Client fails to return requested information

Field Name	Data Type	Field Size	Format	Description
Client exit date from CPC	Date	10	mm/dd/yyyy	Date client was terminated from CPC services
Exit reason	Number	1	0 decimal places	Reason client left the CPC system: 0 = Unknown 1 = Client voluntarily withdrew 2 = Client deceased 3 = Unable to locate consumer 4 = Ineligible due to reasons other than income 5 = Ineligible, over income guidelines 6 = Client moved out of state 7 = Client no longer needs service 8 = Client has legal settlement in another county
Review Date	Date	10	mm/dd/yyyy	Date of last application review
PhoneNumber	Text	50		Phone number of client
ValidSSN	Text	3	Generated for ComIS users in the data extract only	Populate this field with YES if the client has a valid social security number. If the client does not have a valid social security number, populate this field with NO.
IsPerson	Text	3	Generated for ComIS users in the data extract only	Populate this field with YES if the client is a person. If the client entry represents a nonperson such as administrative costs, populate this field with NO.

c. File name: WarehouseIncome.xls or WarehouseIncome.csv.

Sheet name: Warehouse_Income_Transfer_Query.

Field Name	Data Type	Field Size	Format	Description
CPC	Number	3	0 decimal places	Central point of coordination number: county number preceded by a 1
RESCO	Number	3	0 decimal places	Residence county of client: 1-99 = County number 100 = State of Iowa 900 = Undetermined or in dispute
LEGCO	Number	3	0 decimal places	Legal county of client: 1-99 = County number 100 = State of Iowa 900 = Undetermined or in dispute
Lname3	Text	3		The first 3 characters of the last name
Last4SSN	Text	4		The last 4 digits of the client's social security number. If that number is unknown, then use the last 4 digits of the CLIENT ID# field and mark column "ValidSSN" with the value "No."
BDATE	Date	10	mm/dd/yyyy	Date of client's birth
SEX	Text	1		Sex of client: M = Male F = Female

Field Name	Data Type	Field Size	Format	Description
EMPL	Number	2	0 decimal places	Employment situation of client: 1 = Unemployed, available for work 2 = Unemployed, unavailable for work 3 = Employed full-time 4 = Employed part-time 5 = Retired 6 = Student 7 = Work activity employment 8 = Sheltered work employment 9 = Supported employment 10 = Vocational rehabilitation 11 = Seasonally employed 12 = In the armed forces 13 = Homemaker 14 = Other or not applicable 15 = Volunteer
House Hold Size	Number	2	0 decimal places	Number of people in client's household
INCSOUR	Number	2	0 decimal places	Primary income source of client: 1 = Family and friends 2 = Private relief agency 3 = Social security disability benefits 4 = Supplemental Security Income 5 = Social security benefits 6 = Pension 7 = Food assistance 8 = Veterans benefits 9 = Workers compensation 10 = General assistance 11 = Family investment program (FIP) 12 = Wages
Public Assistance Payments	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
Social Security	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
Social Security Disability	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
SSI	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
VA Benefits	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
R/R Pension	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
Child Support	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
Employment Wages	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
Dividend Interest	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
Other Income	Currency	14	2 decimal places	Monthly dollar amount for this income source (where applicable)
Description 1	Text	50		Description of "Other Income"
Cash on hand	Currency	14	2 decimal places	Dollar amount for this resource type (where applicable)
Checking	Currency	14	2 decimal places	Dollar amount for this resource type (where applicable)
Savings	Currency	14	2 decimal places	Dollar amount for this resource type (where applicable)
Stocks/Bonds	Currency	14	2 decimal places	Dollar amount for this resource type (where applicable)
Time Certificates	Currency	14	2 decimal places	Dollar amount for this resource type (where applicable)

Field Name	Data Type	Field Size	Format	Description
Trust Funds	Currency	14	2 decimal places	Dollar amount for this resource type (where applicable)
Other Resources	Currency	14	2 decimal places	Dollar amount for this resource type (where applicable)
Description 2	Text	50		Description of "Other Resources" (where applicable)
Other Resources 2	Currency	14	2 decimal places	Dollar amount for this resource type (where applicable)
Description 3	Text	50		Description of "Other Resources 2"
Date reviewed	Date	10	mm/dd/yyyy	Date income was last reviewed (where applicable)

d. File name: WarehousePayment.xls or WarehousePayment.csv. Sheet name: Warehouse_Payment_Transfer_Quer.

Field Name	Data Type	Field Size	Format	Description
CPC	Number	3	0 decimal places	Central point of coordination number: county number preceded by a 1
RESCO	Number	3	0 decimal places	Residence county of client: 1-99 = County number 100 = State of Iowa 900 = Undetermined or in dispute
LEGCO	Number	3	0 decimal places	Legal county of client: 1-99 = County number 100 = State of Iowa 900 = Undetermined or in dispute
Lname3	Text	3		The first 3 characters of the last name
Last4SSN	Text	4		The last 4 digits of the client's social security number. If that number is unknown, use the last 4 digits of the CLIENT ID# field and mark column "ValidSSN" with the value "No."
BDATE	Date	10	mm/dd/yyyy	Date of client's birth
SEX	Text	1		Sex of client: M = Male F = Female
PYMTDATE	Date	10	mm/dd/yyyy	Date county approves or makes payment
VENNAME	Text	50		Vendor or provider paid
COCODE	Number	3	0 decimal places	County where service was provided
FUND CODE	Text	10		Fund code for payment
DG	Number	2	0 decimal places	Disability group code for payment: 40 = Mental illness 41 = Chronic mental illness 42 = Mental retardation 43 = Other developmental disability 44 = Other categories
COACODE	Number	5	0 decimal places	Chart of accounts code for payment
BEGDATE	Date	10	mm/dd/yyyy	Beginning date of payment period
ENDDATE	Date	10	mm/dd/yyyy	Ending date of payment period
UNITS	Number	4	0 decimal places	Number of service units for payment
COPD	Currency	14	2 decimal places	Amount paid by the county
RECEIVED	Currency	14	2 decimal places	Amount received for reimbursement (if applicable)

e. File name: WarehouseProvider.xls or WarehouseProvider.csv. Sheet name: Warehouse_Provider_Transfer_Que. (If the provider has more than one office location, enter information for the headquarters office.)

Field Name	Data Type	Field Size	Format	Description
Provider ID	Text	50		Provider identifier (tax ID code)
Provider Name	Text	50		Provider name
Provider Address1	Text	50		Provider address line 1
Provider Address2	Text	50		Provider address line 2 (if applicable)
City	Text	50		Provider city
State	Text	2		Provider state code
Zip	Text	10		Provider ZIP code
COCODE	Number	3	0 decimal places	Provider county code
PhoneNumber	Text	50		Provider phone number
Date of Last Update	Date	10	mm/dd/yyyy	Provider last updated date

f. File name: WarehouseProviderServices.xls or WarehouseProviderServices.csv. Sheet name: Warehouse_Provider_Services_Tra.

Field Name	Data Type	Field Size	Format	Description
Provider ID	Text	50		Provider identifier (tax ID code)
Provider Name	Text	50		Provider name
FUND CODE	Text	10		Fund code for payment
DG	Number	2	0 decimal places	Disability group code for payment: 40 = Mental illness 41 = Chronic mental illness 42 = Mental retardation 43 = Other developmental disability 44 = Other categories
COACODE	Number	5	0 decimal places	Chart of accounts code for service
RATE	Currency	14	2 decimal places	Payment rate

g. File name: WarehouseService.xls or WarehouseService.csv. Sheet name: Warehouse_Service_Transfer_Quer.

Field Name	Data Type	Field Size	Format	Description
CPC	Number	3	0 decimal places	Central point of coordination number: county number preceded by a 1
RESCO	Number	3	0 decimal places	Residence county of client: 1-99 = County number 100 = State of Iowa 900 = Undetermined or in dispute
LEGCO	Number	3	0 decimal places	Legal county of client: 1-99 = County number 100 = State of Iowa 200 = Iowa nonresident 900 = Undetermined or in dispute
Lname3	Text	3		The first 3 characters of the last name
Last4SSN	Text	4		The last 4 digits of the client's social security number. If that number is unknown, then use the last 4 digits of the CLIENT ID# field and mark column "ValidSSN" with the value "No."
BDATE	Date	10	mm/dd/yyyy	Date of client's birth
SEX	Text	1		Sex of client: M = Male F = Female

Field Name	Data Type	Field Size	Format	Description
FUND CODE	Text	10		Fund code for service
DG	Number	2	0 decimal places	Disability group code for payment: 40 = Mental illness 41 = Chronic mental illness 42 = Mental retardation 43 = Other developmental disability 44 = Other category
COACODE	Number	5	0 decimal places	Chart of accounts code for service
Begin Date	Date	10	mm/dd/yyyy	Beginning date of service period
End Date	Date	10	mm/dd/yyyy	Ending date of service period
Ending Reason	Number	1	0 decimal places	Reason for terminating approval of service: 0 = NA 1 = Voluntary withdrawal 2 = Client no longer needs service 3 = Ineligible, over income guidelines 4 = Ineligible due to other than income 5 = Client moved out of state 6 = Client deceased 7 = Reauthorization
Units	Number	4	0 decimal places	Average number of service units approved monthly
Rate	Currency	14	2 decimal places	Dollar amount per service unit
Review Date	Date	10	mm/dd/yyyy	Date for next service review

This rule is intended to implement Iowa Code sections 331.438 and 331.439.
 [ARC 2164C, IAB 9/30/15, effective 10/1/15]

441—25.42 to 25.50 Reserved.

DIVISION IV INCENTIVE AND EFFICIENCY POOL FUNDING

PREAMBLE

These rules establish requirements for counties to receive funding from the incentive and efficiency pool. To be eligible for these funds, a county must select five performance indicators, submit a proposal, collect data, report data, and show improvement over time on the selected performance indicators.

441—25.51(77GA,HF2545) Desired results areas. In order to receive funds from the incentive and efficiency pool established in 1998 Iowa Acts, House File 2545, section 8, subsection 2, each county shall collect and report performance measure data in the following areas:

25.51(1) Equity of access. Each county shall measure the extent to which services are available and used. Each county shall:

a. Report annually the total number of consumers served, as well as an unduplicated total of the number of consumers served by disability category.

b. Calculate and report annually the percentage of service provision by dividing the number of consumers served in a year by the county's population as defined in 1998 Iowa Acts, House File 2545, section 7.

c. Calculate and report annually the percentage of denial of access by dividing the number of new, completed applications denied by the total number of new applications for service that year. A new, completed application shall be defined as an initial application of a consumer or any former consumer who is reapplying for service eligibility after more than 30 days of not being enrolled in the system, for which the consumer has supplied the information required on the application form.

d. Report annually the county's eligibility guidelines, which may include, but are not limited to, the income level below which an individual or family must be in order to be eligible for county-funded

services, the maximum amount of resources which an individual or family may have in order to be eligible for county-funded services, covered populations, and service access criteria.

25.51(2) *Community-based supports.* Each county shall measure the extent to which community-based supports are available and used. Each county shall calculate and report annually:

a. The service setting percentage by dividing the unduplicated number of persons served in each of the following service settings in a fiscal year by the total unduplicated number of consumers served, both in total and by population group: mental health institutes, state hospital schools, intermediate care facilities for the mentally retarded, other living arrangements over five beds as captured by the county chart of accounts, and employment settings which include sheltered workshops, enclaves and supported employment.

b. The home-based percentage by subtracting the number of consumers currently being served in residential placements from the total unduplicated number of consumers served, and dividing the difference by the total number of consumers served. The calculation shall be made both in total and by population group.

c. The inpatient spending percentage by dividing the amount the county spent for inpatient services by the amount the county spent for outpatient services. Each county shall also divide the unduplicated number of consumers who received inpatient services during the fiscal year by the total unduplicated number of consumers who received services during that same fiscal year. Inpatient services shall be defined as any acute care for which the county is wholly or partially financially responsible.

25.51(3) *Consumer participation.* Each county shall measure the extent to which consumers participate in all aspects of the service system.

a. Each county shall report annually on the number of opportunities during the year for consumers to participate in planning activities, which may include, but are not limited to, open forums, focus groups, consumer advisory committee meetings, and planning council meetings by calculating the total number of consumers participating in these activities and dividing by the unduplicated number of consumers served and also by the total population of the county. In addition, the county shall report duplicated and unduplicated total attendance at all of these meetings. These calculations shall be made for consumers and family members separately.

b. Each county which has a planning group shall calculate and report annually the planning group percentage by dividing the number of consumers who actively serve on the planning group by the total number of people on the planning group. This calculation shall be made for consumers and family members separately. For the purposes of this subrule, a planning group is any group of individuals designated by the board of supervisors, or if no designation has been made, any group acknowledged by the central point of coordination administrator as assisting in the development of the county management plan.

c. Each county shall conduct a consumer satisfaction survey following adoption of more detailed rules for the survey.

25.51(4) *Administration.* Each county shall measure the extent to which the county services system is administered efficiently and effectively. Each county shall:

a. Calculate and report annually the administrative cost percentage by dividing the amount spent administering the county services system by the total amount spent from the services fund for the fiscal year.

b. Calculate and report annually the service responsiveness average by measuring the number of days between the date a new, completed application was submitted and the date a notice of decision of eligibility was sent to the consumer, adding all of these numbers of days, and dividing by the total number of new, completed applications for the fiscal year. A new, completed application shall be defined as an initial application of a consumer or an application of any former consumer who is reapplying for service eligibility after more than 30 days of not being enrolled in the system, for which the consumer has supplied the information required on the application form.

c. Report annually the number of appeals filed as a percent of the unduplicated total number of consumers served per year.

441—25.52(77GA,HF2545) Methodology for applying for incentive funding. Beginning with the county management plan for the fiscal year which begins July 1, 1999, each county applying for funding under 1998 Iowa Acts, House File 2545, section 8, subsection 2, shall include with its county management plan a performance improvement proposal for improving the county's performance on at least five performance measures. Three of the measures must be selected from at least two of the desired results areas stated in rule 441—25.51(77GA,HF2545). For the remaining two measures, the county either may propose measures not identified in these rules or may use measures described in these rules. A performance improvement proposal is not a mandatory element of a county management plan.

25.52(1) Performance improvement proposal. Each county shall identify the performance measures which the county has targeted for improvement and shall propose a percentage change for each indicator. The proposal shall include the county's rationale for selecting the indicators and may include any supporting information the county deems necessary. The proposal shall describe the process the county will use to involve consumers in the evaluation.

25.52(2) Committee responsibility. The state county management committee shall review all county proposals, and may either accept the proposal, request modifications, or reject the proposal. In order to interpret and provide context for each county's performance improvement proposal, the state county management committee shall, by January 1, 1999, establish the background data to be collected and aggregated for all counties.

25.52(3) County ineligibility. A county which does not have an accepted proposal prior to July 1 will be ineligible to receive incentive funds for that fiscal year. A county may apply for an extension by petitioning the state county management committee prior to July 1. The petition shall describe the circumstances which will cause the proposal to be delayed and identify the date by which the proposal will be submitted. In addition, the state county management committee may grant an extension for the purposes of negotiation.

441—25.53(77GA,HF2545) Methodology for awarding incentive funding. Each county shall report on all performance measures listed in this division, plus any additional performance measures the county has selected, by December 1 of each year.

25.53(1) Reporting. Each county shall report performance measure information on forms, or by electronic means, developed for the purpose by the department in consultation with the state county management committee.

25.53(2) Scoring. The department shall analyze each county's report to determine the extent to which the county achieved the levels contained in the proposal accepted by the state county management committee. Prior to distribution of incentive funding to counties, results of the analysis shall be shared with the state county management committee.

25.53(3) County ineligibility. A county which does not report performance measure data by December 1 will be ineligible to receive incentive funds for that fiscal year. A county may apply for an extension by petitioning the state county management committee prior to December 1. The petition shall describe the circumstances which will cause the report to be delayed and identify the date by which the report will be submitted.

441—25.54(77GA,HF2545) Subsequent year performance factors. For any fiscal year which begins after July 1, 1999, the state county management committee shall not apply any additional performance measures until the county management information system (CoMIS) developed and maintained by the division of mental health and developmental disabilities has been modified, if necessary, to collect and calculate required data elements and performance measures and each county has been given the opportunity to establish baseline measures for those measures.

441—25.55(77GA,HF2545) Phase-in provisions.

25.55(1) State fiscal year 1999. For the fiscal year which begins July 1, 1998, each county shall collect data as required above in order to establish a baseline level on all performance measures. A county

which collects and reports all required data by December 1, 1999, shall be deemed to have received a 100 percent score on the county's performance indicators.

25.55(2) State fiscal year 2000. A county which submits a proposal with its management plan for the fiscal year which begins July 1, 1999, and reports the levels achieved on the selected performance measures by December 1, 2000, shall be deemed to have received a 100 percent score on the county's performance indicators, regardless of the actual levels achieved.

These rules are intended to implement 1998 Iowa Acts, House File 2545, section 8, subsection 2.

441—25.56 to 25.60 Reserved.

DIVISION V
RISK POOL FUNDING

PREAMBLE

These rules establish a risk pool board to administer the risk pool fund established by the legislature and set forth the requirements for counties for receiving and repaying funding from the fund.

441—25.61(426B) Definitions.

“*Available pool*” means those funds remaining in the risk pool less any actuarial and other direct administrative costs.

“*Central point of coordination (CPC)*” means the administrative entity designated by a county board of supervisors, or the boards of a consortium of counties, to act as the single entry point to the service system as required in Iowa Code section 331.440.

“*Commission*” means the mental health, mental retardation, developmental disabilities, and brain injury commission.

“*Division*” means the mental health and disability services division of the department of human services.

“*Mandated services*” means those services for which a county is required to pay. Mandated services include, but may not be limited to, the following:

1. The costs for commitments for persons with mental illness, chronic mental illness, mental retardation, or developmental disabilities.

2. Inpatient services at the state mental health institutes for persons with mental illness or chronic mental illness.

3. Inpatient services at the state resource centers for persons with mental retardation or developmental disabilities.

4. Medicaid-funded care in an intermediate care facility for persons with mental retardation.

5. Medicaid-funded partial hospitalization and day treatment services for persons with chronic mental illness.

6. Medicaid-funded case management services for persons with mental retardation or developmental disabilities and for anyone not covered under the Iowa Plan.

7. Services provided under the Medicaid home- and community-based services mental retardation waiver.

8. Services provided under the Medicaid home- and community-based services brain injury waiver for which the county is responsible according to rule 441—83.90(249A).

9. Medicaid habilitation services for persons with chronic mental illness.

“*Services fund*” means a county's mental health, mental retardation, and developmental disabilities services fund created in Iowa Code section 331.424A.

441—25.62(426B) Risk pool board. This ten-member board consists of two county supervisors, two county auditors, a member of the commission who is not a member of a county board of supervisors, a member of the county finance committee created in Iowa Code chapter 333A who is not an elected official, a representative of a provider of mental health or developmental disabilities services selected

from nominees submitted by the Iowa Association of Community Providers, and two central point of coordination administrators, all appointed by the governor, subject to confirmation by two-thirds of the members of the senate, and one member appointed by the director of the department of human services.

25.62(1) Organization.

a. The members of the board shall annually elect from the board's voting membership a chairperson and vice-chairperson of the board.

b. Members appointed by the governor shall serve three-year terms.

25.62(2) Duties and powers of the board. The board's powers and duties are to make policy and to provide direction for the administration of the risk pool established by Iowa Code section 426B.5, subsection 2. In carrying out these duties, the board shall do all of the following:

a. Recommend to the commission for adoption rules governing the risk pool fund.

b. Determine application requirements to ensure prudent use of risk pool assistance.

c. Accept or reject applications for assistance in whole or in part.

d. Review the fiscal year-end financial records for all counties that are granted risk pool assistance and determine if repayment is required.

e. Approve actuarial and other direct administrative costs to be paid from the pool.

f. Compile a list of requests for risk pool assistance that are beyond the amount available in the risk pool fund for a fiscal year and the supporting information for those requests and submit the list and supporting information to the commission, the department of human services, and the general assembly.

g. Perform any other duties as mandated by law.

25.62(3) Board action.

a. A quorum shall consist of two-thirds of the membership appointed and qualified to vote.

b. When a quorum is present, an action is carried by a majority of the qualified members of the board.

25.62(4) Board minutes.

a. Copies of administrative rules and other materials considered are made part of the minutes by reference.

b. Copies of the minutes are kept on file in the office of the administrator of the division.

25.62(5) Board meetings.

a. The board shall meet in August of each year and may hold special meetings at the call of the chairperson or at the request of a majority of the voting members.

b. Any county making application for risk pool funds must be represented at the board meeting for awarding funds when that request is considered.

(1) The division shall notify the county of the date, time and location of the meeting.

(2) Any other persons with questions about the date, time or location of the meeting may contact the Administrator, Division of Mental Health and Disability Services, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, telephone (515)281-7277.

c. The board shall comply with applicable provisions of Iowa's open meetings law, Iowa Code chapter 21.

25.62(6) Records. Any records maintained by the board or on behalf of the board shall be made available to the public for examination in compliance with Iowa's open records law, Iowa Code chapter 22. To the extent possible, before submitting applications, records and documents, applicants shall delete any confidential information. These records shall be maintained in the office of the division.

25.62(7) Conflict of interest. A board member cannot be a part of any presentation to the board of that board member's county's application for risk pool funds nor can the board member be a part of any action pertaining to that application.

25.62(8) Robert's Rules of Order. In cases not covered by these rules, Robert's Rules of Order shall govern.

25.62(9) Report. On or before March 1 and September 1 of each fiscal year, the department of human services shall provide the risk pool board with a report of the financial condition of each funding source administered by the board. The report shall include, but is not limited to, an itemization of the

funding source's balances, types and amount of revenues credited and payees and payment amounts for the expenditures made from the funding source during the reporting period.

[ARC 7879B, IAB 6/17/09, effective 6/1/09]

441—25.63(426B) Application process.

25.63(1) Applicants. A county may be eligible for risk pool assistance when the county demonstrates that it meets the conditions in this subrule.

a. Basic eligibility.

- (1) The county complies with the requirements of Iowa Code section 331.439.
- (2) The county levied the maximum amount allowed for the county's services fund under Iowa Code section 331.424A for the fiscal year of application.
- (3) In the fiscal year that commenced two years before the fiscal year of distribution, the county's services fund ending balance under generally accepted accounting principles was equal to or less than 20 percent of the county's actual gross expenditures for that fiscal year.

b. Circumstances indicating need for assistance. Risk pool assistance is needed for one or more of the following purposes:

- (1) To continue support for mandated services.
- (2) To avoid the need for reduction or elimination of:
 1. Critical services, creating risk to a consumer's health or safety;
 2. Critical emergency or mobile crisis services, creating risk to the public's health or safety;
 3. Services or other support provided to an entire disability category; or
 4. Services or other support provided to maintain consumers in a community setting, creating risk of placement in a more restrictive, higher-cost setting.

25.63(2) Application procedures.

a. Format for submission. The county shall submit the application package electronically or send an original plus 15 copies to the division. Facsimiles are not acceptable.

b. Deadline. The division must receive the application no later than 4:30 p.m. on July 1 of each year; or, if July 1 is a holiday, Saturday or Sunday, the division must receive the application no later than 4:30 p.m. on the first working day thereafter.

c. Signature. The application shall be signed and dated by both the chairperson of the county board of supervisors and the central point of coordination administrator.

d. Notice of receipt. Staff of the division shall notify each county of receipt of the county's application.

e. Content. In addition to Form 470-3723, Risk Pool Application, the application package shall include the following forms for the fiscal year that commenced two years before the fiscal year of distribution:

- (1) Form 634C, Service Area 4 Supporting Detail (pages 1 to 8).
- (2) Form 638R, Statement of Revenues, Expenditures, and Changes in Fund Balance—Actual and Budget (pages 1 and 2).
- (3) If the budget has been amended, Form 653A-R, Record of Hearing and Determination on the Amendment to County Budget (sheet 2), as last amended.

25.63(3) Request for additional information. Staff shall review all applications for completeness. If an application is not complete, staff of the division shall contact the county within four working days after July 1 to request the information needed to complete the application. If July 1 is a holiday, Saturday or Sunday, the division shall make this contact within five working days after July 1. The county shall submit the required information within five working days from the date of the division's request for the additional information.

[ARC 7879B, IAB 6/17/09, effective 6/1/09]

441—25.64(426B) Methodology for awarding risk pool funding. The risk pool board shall make an eligibility decision on each application within 45 days after receiving the application and shall make a funding decision no later than August 15.

25.64(1) Notice of decision. The risk pool board shall send a notice of decision of the board's action to the chairperson of the applying county's board of supervisors. Copies of the notice of decision shall be sent to the county auditor and the central point of coordination administrator.

25.64(2) Distribution of funds. The total amount of the risk pool shall be limited to the available pool for a fiscal year.

a. If the total dollar amount of the approved applications exceeds the available pool, the board shall prorate the amount paid for an approved application. The funds will be prorated to each county based upon the proportion of each approved county's request to the total amount of all approved requests.

b. The division shall authorize the issuance of warrants payable to the county treasurers for the amounts due. The warrants shall be issued on or before September 15.

[ARC 7879B, IAB 6/17/09, effective 6/1/09]

441—25.65(426B) Repayment provisions.

25.65(1) Required repayment. Counties shall be required to repay risk pool funds if the county's actual need for risk pool assistance was less than the amount of risk pool assistance granted to the county. The county shall refund the lesser of:

- a. The amount of assistance awarded; or
- b. An amount such that the fund balance after refund will not exceed 5 percent of the expenditures for the year as determined on a modified accrual basis.

25.65(2) Year-end report. Each county granted risk pool funds shall complete a year-end financial report as required by Iowa Code section 225C.6A(2)(c)(3). The division shall review the accrual information and notify the mental health risk pool board if any county that was granted assistance in the prior year received more than the county's actual need based on the submitted financial report.

25.65(3) Notification to county. The chairperson of the mental health risk pool board shall notify each county by January 1 of each fiscal year of the amount to be reimbursed. The county shall reimburse the risk pool within 30 days of receipt of notification by the chairperson of the mental health risk pool board. If a county fails to reimburse the mental health risk pool, the board may request a revenue offset through the department of revenue. Copies of the overpayment and request for reimbursement shall be sent to the county auditor and the central point of coordination administrator of the county.

[ARC 7879B, IAB 6/17/09, effective 6/1/09]

441—25.66(426B) Appeals. The risk pool board may accept or reject an application for assistance from the risk pool fund in whole or in part. The decision of the board is final and is not appealable.

These rules are intended to implement Iowa Code section 426B.5, subsection 2.

441—25.67 to 25.70 Reserved.

DIVISION VI TOBACCO SETTLEMENT FUND RISK POOL FUNDING

PREAMBLE

These rules provide for use of an appropriation from the tobacco settlement fund to establish a risk pool fund which may be used by counties with limited county mental health, mental retardation and developmental disabilities services funds to pay for increased compensation of the service staff of eligible purchase of service (POS) providers and establish the requirements for counties for receiving and repaying the funding. Implementation of the rate increases contemplated by the tobacco settlement fund in a timely manner will require cooperation among all eligible counties and providers.

441—25.71(78GA,ch1221) Definitions.

“*Adjusted actual cost*” means a POS provider's cost as computed using the financial and statistical report for the provider's fiscal year which ended during the state fiscal year beginning July 1, 1998 (state fiscal year 1999), as adjusted by multiplying those actual costs by 103.4 percent or the percentage

adopted by the risk pool board in accordance with 2000 Iowa Acts, chapter 1221, section 3, subsection 3, paragraph "c."

"*Department*" means the Iowa department of human services.

"*Division*" means the mental health and developmental disabilities division of the department of human services.

"*Financial and statistical report*" means a report prepared by a provider and submitted to host counties that is prepared in accordance with department rules for cost determination set forth in 441—Chapter 150.

"*Host county*" means the county in which the primary offices of a POS provider are located. However, if a POS provider operates separate programs in more than one county, "*host county*" means each county in which a separate program is operated.

"*Purchase of service provider*" or "*POS provider*" means a provider of sheltered work, work activity, supported employment, job placement, enclave services, adult day care, transportation, supported community living services, or adult residential services paid by a county from the county's services fund created in Iowa Code section 331.424A under a state purchase of service or county contract.

"*Risk pool board*" means that board established by Iowa Code section 426B.5, subsection 3.

"*Separate program*" means a POS service operated in a county other than the county in which the provider's home office is located and for which the provider allocates costs separately from similar programs located in the county where the provider's home office is located.

"*Services fund*" means the fund defined in Iowa Code section 331.424A.

"*Tobacco settlement fund loan*" or "*TSF loan*" means the tobacco settlement fund risk pool funds a county received in a fiscal year in which the county did not levy the maximum amount allowed for the county's mental health, mental retardation, and developmental disabilities services fund under Iowa Code section 331.424A. The repayment amount shall be limited to the amount by which the actual amount levied was less than the maximum amount allowed.

441—25.72(78GA,ch1221) Risk pool board. The risk pool board is organized and shall take action and keep minutes and records as set out in rule 441—25.62(426B).

A risk pool board member cannot be a part of any presentation to the board of that board member's county's application for tobacco settlement fund risk pool funds nor can the board member be a part of any action pertaining to that application. If a risk pool board member is employed by or is a board member of a POS provider whose increases in compensation caused the host county to apply to the fund, the board member cannot be a part of any presentation to the board nor can the board member be a part of any action pertaining to that application.

441—25.73(78GA,ch1221) Rate-setting process. For services provided on or after July 1, 2000, each county shall increase its reimbursement rates for each program to the lesser of the adjusted actual cost or 105 percent of the rate paid for services provided on June 30, 2000.

25.73(1) Financial and statistical report. Each provider of POS services shall submit a financial and statistical report to each host county for each program that the provider operates within that county. These reports shall include actual costs for each separate program for the provider's fiscal year that ended during state fiscal year 1999 and state fiscal year 2000. These reports shall be submitted to the central point of coordination (CPC) administrator of the host county or counties no later than August 15, 2000.

25.73(2) Rate determination. The CPC administrator in each host county shall receive and review provider financial and statistical reports for each separate program for which that county is the host county. If the host county determines that all or part of the provider's increase in costs is attributable to increases in service staff compensation and that the adjusted actual cost is more than the rate paid by the county on June 30, 2000, the CPC administrator shall notify the provider in writing of the new rate for each program no later than September 1, 2000.

If a rate paid for services provided on June 30, 2000, exceeds the adjusted actual cost, the county shall not be required to adjust the rate for services provided on or after July 1, 2000.

The provider shall, no later than September 11, 2000, send to the CPC administrator of any other counties with consumers in those programs a copy of the rate determination signed by the CPC administrator of the host county. A county may delay payment of the reimbursement rate established pursuant to this subrule until the risk pool board has completed action as to adopting or not adopting a different percentage for the definition of adjusted actual cost, provided however that any increased rates required by 2000 Iowa Acts, chapter 1221, section 3, subsection 2, paragraph "c," shall be paid retroactively for all services provided on or after July 1, 2000.

25.73(3) Exemptions.

a. A POS provider that has negotiated a reimbursement rate increase with a host county as of July 1, 2000, has the option of exemption from the provisions of these rules. However, a county shall not be eligible to receive tobacco settlement funds for any rates established outside of the process established in these rules.

b. Nothing in these rules precludes a county from increasing reimbursement rates of POS providers by an amount that is greater than that specified in these rules. However, a county shall not be eligible for tobacco settlement funds for the amount of any rate increase in excess of the amount established pursuant to these rules.

441—25.74(78GA,ch1221) Application process.

25.74(1) Who may apply. If a county determines that payment of POS provider rates in accordance with these rules will cause the county to expend more funds in FY2001 than budgeted for POS services, the county may apply for assistance from the tobacco settlement fund. However, any fiscal year 2000 projected accrual basis fund balances in excess of 25 percent of fiscal year 2000 services fund gross expenditures will reduce the amount for which a county is eligible. In considering the cost of implementing these provisions, a county shall not include the cost of rate increases granted to any providers who fail to complete financial and statistical reports as provided in these rules.

25.74(2) How to apply. The county shall send the original and 15 copies of Form 470-3768, Tobacco Settlement Fund Risk Pool Application, to the division. The division must receive the application no later than 4:30 p.m. on September 25, 2000. Facsimiles and electronic mail are not acceptable. The application shall be signed and dated by the chairperson of the county board of supervisors, the county auditor, and the CPC administrator. Staff of the division shall notify each county of receipt of the county's application.

25.74(3) Request for additional information. Staff shall review all applications for completeness. If an application is not complete, staff of the division shall contact the county by October 5, 2000, and request the information needed to complete the application. The county shall submit the required information by October 16, 2000.

441—25.75(78GA,ch1221) Methodology for awarding tobacco settlement fund risk pool funding.

25.75(1) Review of applications. The risk pool board shall review all of the applications from counties for assistance from the tobacco settlement fund. If the total amount requested from the tobacco settlement fund does not exceed \$2 million, eligible counties shall be awarded funding pursuant to this division. The risk pool board shall determine for each county whether any or all of the assistance granted to that county is a TSF loan.

25.75(2) Notice of decision. The risk pool board shall notify the chair of the applying county's board of supervisors of the board's action no later than November 3, 2000. Copies shall be sent to the county auditor and the CPC administrator.

25.75(3) Distribution of funds. The total amount of the risk pool shall be limited to \$2 million. If the total dollar amount of the eligible applications exceeds the available pool, the risk pool board shall revise the percentage adjustment to actual cost to arrive at adjusted actual cost as defined in this division and prorate funding to the eligible counties. If it becomes necessary to revise the percentage adjustment used to determine adjusted actual cost, the risk pool board shall determine if applicant counties remain eligible under this program.

25.75(4) Notification of adjustment. If the risk pool board rolls back the percentage adjustment used to determine adjusted actual cost, the risk pool board shall notify the chair of the board of supervisors of all counties, and copies shall be sent to the county auditor and the CPC administrator of each county. Each host county shall recalculate the reimbursement rate under this division using the revised adjusted actual cost percentage and notify each provider in writing of the revised rate within 30 days of receiving notice of the percentage adjustment. The provider shall, within 30 days of receipt of notice, send to the CPC administrator of any other counties with consumers in those programs a copy of the revised rate determination signed by the CPC administrator of the host county.

441—25.76(78GA,ch1221) Repayment provisions.

25.76(1) Required repayment. Counties shall be required to repay TSF loans by January 1, 2002. Repayments shall be credited to the tobacco settlement fund.

25.76(2) Notification to county. In the notice of decision provided pursuant to these rules, the chairperson of the risk pool board shall notify each county of the portion, if any, of the assistance that is considered a TSF loan. If a county fails to reimburse the tobacco settlement fund by January 1, 2002, the board may request a revenue offset through the department of revenue. Copies of the overpayment and request for reimbursement shall be sent to the county auditor and the CPC administrator of the county.

441—25.77(78GA,ch1221) Appeals. The risk pool board may accept or reject an application for assistance from the tobacco settlement fund risk pool fund in whole or in part. The decision of the board is final and is not appealable.

These rules are intended to implement 2000 Iowa Acts, chapter 1221, section 3, as amended by chapter 1232, section 4.

441—25.78 to 25.80 Reserved.

DIVISION VII
COMMUNITY MENTAL HEALTH CENTER WAIVER REQUEST

PREAMBLE

This division establishes a process for the mental health and developmental disabilities commission to grant a waiver to any county not affiliated with a community mental health center.

441—25.81(225C) Waiver request. Counties that have not established or that are not affiliated with a community mental health center under Iowa Code chapter 230A are required to expend a portion of the money received from the MI/MR/DD/BI community services fund to contract with a community mental health center for services. When a county determines that a contractual arrangement is undesirable or unworkable, it may request a waiver from this requirement for a fiscal year. The waiver request and justification may be submitted to the mental health and developmental disabilities commission with the application for MI/MR/DD/BI community services funds on Form 470-0887, Waiver Request, or it may be submitted separately. The commission may grant a waiver if the request successfully demonstrates that all of the following conditions are met:

25.81(1) Accreditation of provider. The provider or network of providers that the county has contracted with to deliver the identified mental health services is accredited as another mental health provider pursuant to 441—Chapter 24.

25.81(2) Contracted services. The county has contracted to provide services that are equal to or greater than the smallest set of services provided by an accredited community mental health center in the department's service area for that county.

25.81(3) Eligible populations. The county contract includes the following eligible populations:

- a. Children.
- b. Adults.
- c. Elderly.
- d. Chronically mentally ill.

e. Mentally ill.

This rule is intended to implement Iowa Code section 225C.7.

441—25.82 to 25.90 Reserved

DIVISION VIII
CRITERIA FOR EXEMPTING COUNTIES FROM JOINING INTO REGIONS TO ADMINISTER
MENTAL HEALTH AND DISABILITY SERVICES

441—25.91(331) Exemption from joining into mental health and disability services region.

25.91(1) Definitions.

“*Applicant*” means a single county or two counties that submit an application for an exemption from the requirement to join a region of three or more contiguous counties.

“*Clear lines of accountability*” means the governing board’s organizational structure makes it evident that the ultimate responsibility for the administration of non-Medicaid-funded mental health and disability services lies with the governing board and that the governing board directly and solely supervises the organization’s chief executive officer.

“*Coordinator of disability services*” means a person who meets the qualifications of a coordinator of disability services as defined in Iowa Code section 331.390(3) “*b*” and is responsible for ensuring that individuals receive effective service coordination consistent with the county’s or counties’ management plan.

“*Core services*” means core services mandated to be provided by the regional service system as defined in Iowa Code section 331.397.

“*Department*” means the Iowa department of human services.

“*Director*” means the director of the department.

“*Evidence-based practice*” means interventions that have been rigorously tested, have yielded consistent, replicable results, and have proven safe, beneficial, and effective.

“*Penetration rate*,” for the purposes of this rule, means the per capita number of adults in the adult population of a county who are receiving mental health and disability services.

“*Reasonably close proximity*” means a distance of 100 miles or less or a driving distance of two hours or less from the county seat or county seats of the applicant.

“*Trauma-informed care*” means services that are based on an understanding of the vulnerabilities or triggers of individuals who have experienced trauma, recognize the role trauma has played in the lives of those individuals, are supportive of trauma recovery, and avoid retraumatization.

25.91(2) Application for exemption from the requirement to form a region of three or more contiguous counties. The following requirements apply to an application for exemption from the requirement to form a region of three or more contiguous counties:

a. The applicant shall submit a written statement that the applicant intends to apply for an exemption from the requirement to form a region of three or more contiguous counties. The statement must be signed by the chairperson of the county board of supervisors of the applicant’s county. The signed written statement of intent must be received by the department on or before May 1, 2013, at 4:30 p.m.

b. The applicant shall submit a written application on forms specified by the department with required supporting documentation. The department shall only accept applications that are complete, signed by the applicant’s chairperson of the county board of supervisors, dated, and received by the department on or before June 30, 2013, at 4:30 p.m.

c. The director of the department shall issue a decision on the application within 45 days of receiving the application. The director shall deny an application if the application does not meet the criteria described in Iowa Code or rule.

25.91(3) Applicant criteria. The application shall include written documentation and evidence that the applicant has:

a. The capacity to provide required core services and perform required functions described in Iowa Code section 331.397.

b. A contract with a community mental health center or a federally qualified health center that provides psychiatric and outpatient mental health services in the applicant's county or counties or written intent from the community mental health center or federally qualified health center to enter into such a contract.

c. A contract with a hospital with an inpatient psychiatric unit or a state mental health institute located in or within reasonably close proximity that has the capacity to provide inpatient services to the applicant or written intent from the state mental health institute or inpatient psychiatric unit to enter into such a contract.

d. An administrative structure with clear lines of accountability. A description of the applicant's administrative functions shall be included with the application.

e. Taken steps to determine and demonstrate that forming a region of three or more contiguous counties is not workable.

25.91(4) Core services and required functions standards. The department shall review the application to determine if the applicant has provided written documentation and evidence for the availability of:

a. A 24-hour, 7-day-a-week, 365-days-per-year telephone response system for mental health and disability-related emergencies in the applicant's county or counties.

b. Service providers in the applicant's county or counties that demonstrate the capability of providing evidence-based practices that the applicant has independently verified meet established fidelity to evidence-based service models including, but not limited to:

- (1) Assertive community treatment or strengths-based case management.
- (2) Integrated treatment of co-occurring substance abuse and mental health disorders.
- (3) Supported employment.
- (4) Family psychoeducation.
- (5) Illness management and recovery.
- (6) Permanent supportive housing.

c. Service providers in the applicant's county or counties that are trained to provide effective services to persons with two or more of the following co-occurring conditions: mental illness, intellectual disability, developmental disability, brain injury, or substance use disorder. Training for serving persons with co-occurring conditions shall be training identified by the Substance Abuse and Mental Health Services Administration, the Dartmouth Psychiatric Research Center or other generally recognized professional organization specified in the application.

d. Service providers in the applicant's county or counties that are trained to provide effective trauma-informed care. Trauma-informed care training shall be training identified by the National Center for Trauma-Informed Care or other generally recognized professional organization specified in the application.

25.91(5) Service capacity. The department shall review the material provided in the application and by the applicant and other counties in their required county reports to determine if the applicant demonstrates that it has:

a. Sufficient financial resources to fund required core services.

b. A penetration rate that is at least equal to or exceeds the statewide per capita average for individuals with a mental illness or individuals with an intellectual disability.

c. A per capita use of inpatient psychiatric hospital services that is less than or equal to the statewide per capita average.

d. A per capita use of intermediate care facilities for individuals with intellectual disabilities that is less than or equal to the statewide per capita average.

e. A per capita use of outpatient mental health services that is greater than or equal to the statewide per capita average.

f. A per capita use of supported community living services that is greater than or equal to the statewide per capita average.

g. An average cost of service per individual served that is equal to or less than the statewide average.

h. Administrative costs, as a percentage of non-Medicaid service expenditures, that are less than or equal to the statewide average.

25.91(6) Provider network sufficiency. The department shall review the application to determine if the applicant provided written documentation and evidence of:

a. A contract with a community mental health center that provides services in the applicant's county or counties or a federally qualified health center that provides psychiatric and outpatient mental health services in the applicant's county or counties or written intent by a community mental health center or federally qualified health center to enter into such a contract.

b. Contracts with licensed and accredited providers to provide each service in the required core service domains or written intent by providers to enter into such contracts.

c. Adequate numbers of licensed and accredited providers to ensure availability of core services so that there is no waiting list for services due to lack of available providers.

d. A contract with an inpatient psychiatric hospital unit or state mental health institute within reasonably close proximity or written intent by an inpatient psychiatric hospital unit or state mental health institute to enter into such a contract.

25.91(7) to 25.91(9) Reserved.

25.91(10) Staffing. The department shall review the application to determine if the applicant provided written documentation and evidence of:

a. Clear lines of accountability.

b. The inclusion of one or more coordinators of disability services on the county administrator staff.

25.91(11) Reserved.

25.91(12) Determination that formation of a region is unworkable. The department shall review the application to determine if the applicant has provided documentation and convincing evidence that the applicant has evaluated the feasibility of forming into a region of three or more contiguous counties and that forming into such a region is unworkable.

25.91(13) Compliance with requirements of a mental health and disability services region. The applicant shall continuously fulfill all of the requirements of a region under Iowa Code chapters 331 and 225C for a regional service system, regional service system management plan, regional governing board, and regional administrator and any other requirements applicable to a region of counties providing local mental health and disability services. If the applicant does not fulfill these requirements, the department may address the deficiencies in the following order:

a. Require compliance with a corrective action plan that may include, but is not limited to, participation in technical assistance provided or arranged by the department, revision of the regional management plan, or other corrective actions required by the department.

b. Reduce the amount of the annual state funding provided through the mental health and disabilities regional services fund for the regional service system, not to exceed 15 percent of the amount of the annual state funding.

c. Withdraw approval for the county exemption.

This rule is intended to implement Iowa Code section 331.389.

[ARC 0576C, IAB 2/6/13, effective 1/8/13; ARC 0735C, IAB 5/15/13, effective 8/1/13]

441—25.92 to 25.94 Reserved.

DIVISION IX
DATA SUBMISSION TO DETERMINE MEDICAID OFFSET FOR COUNTIES

PREAMBLE

These rules define the department's standards for the submission of county mental health and disability services expenditure data so that the department can calculate the Medicaid offset for each county consistent with 2014 Iowa Acts, House File 2473, section 82.

[ARC 1671C, IAB 10/15/14, effective 9/25/14]

441—25.95(426B) Definitions.

“*Department*” means the Iowa department of human services.

“*Medicaid offset amount*” means the amount resulting from the calculations described in Iowa Code section 426B.3 as amended by 2014 Iowa Acts, House File 2463, section 82(5) “d.”

“*Uniform chart of accounts for Iowa county governments*” means the set of codes used by counties to organize and delineate revenues and expenditures. The codes related to mental health and disability services expenditures identify diagnosis and types of services.
[ARC 1671C, IAB 10/15/14, effective 9/25/14]

441—25.96(426B) Data to determine Medicaid offset. Each county must submit to the department a report that provides the county mental health and disability services data needed to calculate the Medicaid offset for the county.

25.96(1) Data required. Each county is required to submit expenditure data as specified by the department based on the agreement by the department and representatives of the mental health and disability services regions consistent with the requirements of Iowa Code section 426B.3 as amended by 2014 Iowa Acts, House File 2463, section 82(5) “b.”

25.96(2) Submission of mental health and disability services data.

a. Counties must submit the required data to the department by 4:30 p.m. on September 19, 2014, consistent with data submissions as required in subrule 25.41(3).

b. If a county fails to submit data within the required time frame or a county submits data that is demonstrably inaccurate, the department will use a pro-rata methodology to determine the county’s Medicaid offset using data submitted by other counties.

[ARC 1671C, IAB 10/15/14, effective 9/25/14]

These rules are intended to implement Iowa Code section 225C.6 and 2014 Iowa Acts, House File 2463, section 82.

441—25.97 to 25.100 Reserved.

DIVISION X
MENTAL HEALTH ADVOCATES

PREAMBLE

This division establishes definitions, appointment and qualifications, assignment, responsibilities of the advocate and the county, data collection requirements, and quality assurance for mental health advocate services under Iowa Code chapter 229.

[ARC 2438C, IAB 3/16/16, effective 5/1/16]

441—25.101(229) Definitions.

“*Advocate*” means mental health advocate as defined in Iowa Code section 229.1.

“*Conflict of interest*” means any activity that interferes or gives the appearance of interference with the exercise of professional discretion and impartial judgment.

“*County of residence*” means the same as defined in Iowa Code section 331.394.

“*County of venue*” means the county in which the Iowa Code chapter 229 commitment was filed pursuant to Iowa Code section 229.44.

“*County where the individual is located*” means the individual’s county of residence as defined in Iowa Code section 331.394, or if the individual has been ordered to receive treatment services under an Iowa Code chapter 229 commitment and is placed in a residential or other treatment facility.

“*Individual*” means the respondent who is receiving mental health advocate services under Iowa Code chapter 229.

“*Judicial district*” means the same as defined in Iowa Code section 602.6107.

“*Mental health and disability services region*” means the same as defined in Iowa Code section 331.389.

[ARC 2438C, IAB 3/16/16, effective 5/1/16]

441—25.102(229) Advocate appointment and qualifications. The board of supervisors of each county shall appoint a person to act as an advocate representing the interests of individuals involuntarily hospitalized by the court under Iowa Code chapter 229. The advocate is hired by the board of supervisors and employed by the county.

25.102(1) A person may be appointed and employed or contracted with as the advocate by one county or by multiple counties. Advocates may be appointed for counties in more than one judicial district or more than one mental health and disability services region.

25.102(2) Qualifications.

a. The advocate shall meet the following qualifications:

(1) Possess a bachelor's degree with 30 semester hours or equivalent quarter hours in a human services field (including, but not limited to, psychology, social work, mental health counseling, marriage and family therapy, nursing, education, occupational therapy, and recreational therapy) and at least one year of experience in the delivery of services to persons with mental illness; or

(2) Hold an Iowa license to practice as a registered nurse and have at least three years of experience in delivery of services to persons with mental illness.

b. A person employed as an advocate on or before July 1, 2015, who does not meet the requirements of subparagraph 25.102(2) "a"(1) or (2) shall be considered to meet those requirements so long as the person is continuously appointed as an advocate in the employing county.

c. A person employed as an advocate must pass criminal background, sex offender registry, and child and dependent adult abuse registry checks before hire.

[ARC 2438C, IAB 3/16/16, effective 5/1/16]

441—25.103(229) Advocate assignment. The committing court shall assign the advocate from the county where the individual is located.

25.103(1) If the advocate assigned cannot serve the individual in an effective and efficient manner, the advocate may request another advocate to perform advocate duties on the individual's behalf. In the event that another advocate can better represent the individual on a longer term basis, the advocate shall request that the court transfer the individual to another advocate.

25.103(2) When a conflict of interest is identified between an advocate and an individual, the court and the advocate's county of employment shall be notified and an alternative advocate shall be assigned. The advocate's direct supervisor is responsible to monitor and ensure that the advocate does not have a conflict of interest. In instances when dual or multiple relationships are unavoidable, advocates should take steps to protect individuals and are responsible for setting clear, appropriate, and culturally sensitive boundaries. Advocates who anticipate a conflict of interest among the individuals receiving services should clarify the advocate's role with the parties involved and take appropriate action to minimize any conflict of interest.

25.103(3) When the advocate assigned is not the advocate from the individual's county of residence, the advocate's county of employment may seek reimbursement from the region in which the individual's county of residence is located as outlined in Iowa Code section 229.19(1)"b."

25.103(4) An advocate shall only be assigned to a child 17 years of age or under when the child is not represented by an attorney due to an existing child in need of assistance (CINA) or other juvenile court action pursuant to the Iowa Code.

[ARC 2438C, IAB 3/16/16, effective 5/1/16]

441—25.104(229) Advocate responsibilities. The minimum duties of the advocate are outlined in Iowa Code section 229.19. The role of the advocate is to ensure that the rights of the individual are upheld.

25.104(1) The advocate shall be readily accessible to communication from the individual and shall initiate contact within 5 days of the individual's commitment. The advocate shall inform the individual regarding the role of the advocate.

25.104(2) The advocate shall meet the individual in person within 15 days of the individual's commitment. The advocate shall present the county grievance procedure process, in writing, to the individual. The presentation shall include the county grievance procedure and contact information and

the contact information for the citizens' aide/ombudsman. The advocate shall inform the individual about the mental health crisis services that are available.

25.104(3) The advocate shall review each report submitted to the court and communicate with the individual's medical and treatment team. Advocates shall abide by all federal, state, and local confidentiality laws.

25.104(4) The advocate shall file with the court Iowa Ct. R. 12.36—Form 30, quarterly reports for each individual assigned to the advocate. The report shall state the actions taken with the individual and amount of time spent on behalf of the individual.

25.104(5) The advocate shall maintain an organized confidential and secure file for each individual served. The file shall contain but not be limited to:

- a. Copies of quarterly reports submitted to the court.
- b. Copies of correspondence sent to and received from the individual, family members, providers and others.
- c. Releases of information.
- d. Case notes describing the date, time and type of contact with the individuals or others and a brief narrative summary of the content or outcome of the contact.
- e. Documents filed with the court electronically shall be considered as part of the individual's file.

25.104(6) The advocate shall register as provided in Iowa Ct. R. 16.305(1) to participate in the court's electronic document management system and shall submit all documents to be filed with the court electronically. The documents will be stored as electronic records that are retrievable and readable through the electronic document management system.

25.104(7) The advocate, as an employee of the county, shall comply with all county policies and procedures, including but not limited to hiring, supervision, grievance procedures, and training.

25.104(8) All advocate records are the property of the county, which is responsible for the provision of confidential storage, transfer, and destruction of client files, including those maintained on electronic and digital devices, with access limited according to the county's policy on confidentiality as described in subrule 25.105(6).

25.104(9) The advocate may attend the hospitalization hearing of an individual represented by an attorney; however, payment for the advocate's attendance is at the discretion of the county of employment.

[ARC 2438C, IAB 3/16/16, effective 5/1/16]

441—25.105(229) County responsibilities. As the employer of the advocate, the county shall provide qualified staff to support and facilitate the provision of quality advocate services. The county shall:

25.105(1) Assign a single supervisor, a single contract manager, or the county board of supervisors as the supervising entity to carry out responsibilities in this chapter.

25.105(2) Have a job description in the personnel file of the advocate that clearly defines the advocate's responsibilities and qualifications as defined in Iowa Code section 229.19 and in rule 441—25.104(229).

25.105(3) Have a process to verify, within 90 days of the advocate's hire, qualification of the advocate, including degrees and certifications obtained from a primary source.

25.105(4) Provide to the advocate training and education relevant to the position, including but not limited to overview of mental health diagnosis and treatment, the mental health and disability services delivery system, confidentiality, individual rights, professional conduct, the role of advocacy and service coordination within an interdisciplinary team, Iowa Code and administrative rules, and court procedures.

25.105(5) Provide approved training on child and dependent adult abuse reporter requirements.

25.105(6) Provide to any employee with access to individuals' files training on state and federal laws regarding nondisclosure and confidentiality of client protected health information during and after employment and maintain in the personnel files a signed document indicating the employee's awareness of the county's policy on confidentiality.

25.105(7) Complete criminal background, sex offender registry and child and dependent adult abuse registry checks before employment of the advocate. Any person who does not pass these checks is prohibited from being hired, or continuing to serve, as an advocate.

25.105(8) Provide advocate staff to cover the county's caseload at all times, according to, but not limited to, each county's unique number of individuals assigned to the advocate, travel required, types of settings where the individuals reside, services available and extended staff absences.
[ARC 2438C, IAB 3/16/16, effective 5/1/16]

441—25.106(229) Data collection requirements.

25.106(1) Beginning in 2016 and by December 1 each year, each county shall submit to the department of human services data regarding each individual who received advocate services during the previous state fiscal year.

25.106(2) As defined in rule 441—25.41(331), the data to be submitted are as follows:

- a. Basic information about the individual, including a unique identifier and county of residence.
- b. Demographic information, including the individual's date of birth, sex, ethnicity, education, and diagnosis made in accordance with the criteria provided in the current version of the Diagnostic and Statistical Manual of Mental Disorders (DSM) published by the American Psychiatric Association (APA).
- c. Commitment information, including the date of the individual's initial commitment, type of commitment order, whether a juvenile or adult case, date of commitment and name of treatment facility the individual is committed to, any subsequent changes in treatment facility, and date commitment is terminated.

[ARC 2438C, IAB 3/16/16, effective 5/1/16; see Delay note at end of chapter]

441—25.107(229) Quality assurance system. The county shall implement a quality assurance system which:

1. Annually measures and assesses advocates' activities and services.
2. Gathers feedback from stakeholders including individuals using advocate services, family members, court staff, service provider staff, and regional staff regarding advocate services.
3. Implements an internal review of individual records.
4. Identifies areas in need of improvement.
5. Develops a plan to address the areas in need of improvement.
6. Implements the plan and documents the results.

[ARC 2438C, IAB 3/16/16, effective 5/1/16]

These rules are intended to implement Iowa Code chapter 229.

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[◊] Two or more ARCs

¹ May 1, 2016, effective date of 25.106 (ARC 2438C) delayed 70 days by the Administrative Rules Review Committee at its meeting held April 8, 2016.

MANAGEMENT DEPARTMENT[541]

[Created by 1986 Iowa Acts, chapter 1245, section 103]

Divisions under this "umbrella" include: Appeal Board, State[543], City Finance Committee[545], and County Finance Committee[547].

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CHAPTER 7
ADVANCED REGISTERED NURSE PRACTITIONERS
[Prior to 8/26/87, Nursing Board[590] Ch 7]

655—7.1(152) Definitions.

“Advanced registered nurse practitioner (ARNP)” means a nurse with current licensure as a registered nurse in Iowa or who is licensed in another state and recognized for licensure in this state pursuant to the nurse licensure compact contained in 2000 Iowa Acts, House File 2105, section 8, and is also registered in Iowa to practice in an advanced role. The ARNP is prepared for an advanced role by virtue of additional knowledge and skills gained through a formal advanced practice education program of nursing in a specialty area approved by the board. In the advanced role, the nurse practices nursing assessment, intervention, and management within the boundaries of the nurse-client relationship. Advanced nursing practice occurs in a variety of settings, within an interdisciplinary health care team, which provide for consultation, collaborative management, or referral. The ARNP may perform selected medically delegated functions when a collaborative practice agreement exists.

“Basic nursing education” as used in this chapter is a nursing program that prepares a person for initial licensure to practice nursing as a registered nurse.

“Board” as used in this chapter means Iowa board of nursing.

“Certified clinical nurse specialist” is an ARNP prepared at the master’s level who possesses evidence of current advanced level certification as a clinical specialist in an area of nursing practice by a national professional nursing certifying body as approved by the board.

“Certified nurse-midwife” is an ARNP educated in the disciplines of nursing and midwifery who possesses evidence of current advanced level certification by a national professional nursing certifying body approved by the board. The certified nurse-midwife is authorized to manage the care of normal newborns and women, antepartally, intrapartally, postpartally or gynecologically.

“Certified nurse practitioner” is an ARNP educated in the disciplines of nursing who has advanced knowledge of nursing, physical and psychosocial assessment, appropriate interventions, and management of health care, and who possesses evidence of current certification by a national professional nursing certifying body approved by the board.

“Certified registered nurse anesthetist” is an ARNP educated in the disciplines of nursing and anesthesia who possesses evidence of current advanced level certification or recertification, as applicable, by a national professional nursing certifying body approved by the board.

“Collaboration” is the process whereby an ARNP and physician jointly manage the care of a client.

“Collaborative practice agreement” means an ARNP and physician practicing together within the framework of their respective professional scopes of practice. This collaborative agreement reflects both independent and cooperative decision making and is based on the preparation and ability of each practitioner.

“Consultation” is the process whereby an ARNP seeks the advice or opinion of a physician, pharmacist, or another member of the health care team. ARNPs practicing in a noninstitutional setting as sole practitioners, or in small clinical practice groups, shall regularly consult with a licensed physician or pharmacist regarding the distribution, storage, and appropriate use of controlled substances.

“Controlled substance” is a drug, substance, or immediate precursor in Schedules I through V of division II, Iowa Code chapter 124.

“Epinephrine auto-injector” means a device for immediate self-administration or administration by another trained person of a measured dose of epinephrine to a person at risk of anaphylaxis.

“National professional nursing certifying body” is a professional nursing certifying body approved by the board. Agencies approved by the board include the American Nurses Credentialing Center, the American Academy of Nurse Practitioners, the American College of Nurse-Midwives Certification Council, the Council on Certification of Nurse Anesthetists, the Council on Recertification of Nurse Anesthetists, the National Certification Board of Pediatric Nurse Practitioners and Nurses, the National Certification Corporation for the Obstetric, Gynecologic, and Neonatal Nursing Specialties, the

Oncology Nursing Certification Organization, and the American Association of Critical Care Nurses Certification Corporation.

“Physician” means a medical doctor licensed under Iowa Code chapter 148 or osteopathic physician and surgeon licensed under Iowa Code chapter 150A.

“Prescriptive authority” is the authority granted to an ARNP registered in Iowa in a recognized nursing specialty to prescribe, deliver, distribute, or dispense prescription drugs, devices, and medical gases when the nurse is engaged in the practice of that nursing specialty. Registration as a practitioner with the Federal Drug Enforcement Administration and the Iowa board of pharmacy examiners extends this authority to controlled substances. ARNPs shall access the Iowa board of pharmacy examiners Web site for Iowa pharmacy law and administrative rules and the Iowa Board of Pharmacy Examiners Newsletter.

“Referral” is the process whereby the ARNP directs the client to a physician or another health care professional for management of a particular problem or aspect of the client’s care.
[ARC 2502C, IAB 4/27/16, effective 6/1/16]

655—7.2(152) General requirements for the advanced registered nurse practitioner.

7.2(1) *Specialty areas of nursing practice for the advanced registered nurse practitioner.* The board derives its authority to define the educational and clinical experience that is necessary to practice at an advanced registered nurse practitioner level under the provisions of Iowa Code section 152.1(6) “d.” The specialty areas of nursing practice for the advanced registered nurse practitioner which shall be considered as legally authorized by the board are as follows:

- a. Certified clinical nurse specialist.
- b. Certified nurse-midwife.
- c. Certified nurse practitioner.
- d. Certified registered nurse anesthetist.

7.2(2) *Supervision of fluoroscopy.* An advanced registered nurse practitioner (ARNP) shall be permitted to provide direct supervision in the use of fluoroscopic X-ray equipment, pursuant to 641—subrule 42.1(2), definition of “supervision.”

- a. The ARNP shall provide direct supervision of fluoroscopy pursuant to the following provisions:
 - (1) Completion of an educational course including content in radiation physics, radiobiology, radiological safety and radiation management applicable to the use of fluoroscopy, and maintenance of documentation verifying successful completion.
 - (2) Collaboration, as needed, as defined in rule 655—7.1(152).
 - (3) Compliance with facility policies and procedures.
- b. The ARNP shall complete an annual radiological safety course whose content includes, but is not limited to, time, dose, distance, shielding and the effects of radiation.
- c. The ARNP shall maintain documentation of the initial educational course and all annual radiological safety updates.
- d. The initial and annual education requirements are subject to audit by the board pursuant to 655—subrule 5.2(5).

7.2(3) *Titles and abbreviations.* A registered nurse who has completed all requirements to practice as an advanced registered nurse practitioner and who is registered with the board to practice shall use the title advanced registered nurse practitioner (ARNP). Utilization of the title which denotes the specialty area is at the discretion of the advanced registered nurse practitioner.

- a. No person shall practice or advertise as or use the title of advanced registered nurse practitioner for any of the defined specialty areas unless the name, title and specialty area appear on the official record of the board and on the current license.
- b. No person shall use the abbreviation ARNP for any of the defined specialty areas or any other words, letters, signs or figures to indicate that the person is an advanced registered nurse practitioner unless the name, title and specialty area appears on the official record of the board and on the current license.

c. Any person found to be practicing under the title of advanced registered nurse practitioner or using the abbreviation ARNP without being registered as defined in this subrule shall be subject to disciplinary action.

7.2(4) General education and clinical requirements.

a. The general educational and clinical requirements necessary for recognition by the board as a specialty area of nursing practice are as follows:

(1) Graduation from a program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills as approved by the board; or

(2) Satisfactory completion of a formal advanced practice educational program of study in a nursing specialty area approved by the board and appropriate clinical experience as approved by the board.

b. Additional requirements. Nothing in this rule shall be construed to mean that additional general educational or clinical requirements cannot be defined in a specialty area.

7.2(5) Application process. A registered nurse who wishes to practice as an advanced registered nurse practitioner shall submit the following to the office of the board:

a. An advanced registered nurse practitioner application form which may be obtained from the office of the board.

b. A registration fee as established by the board.

c. A copy of the time-dated, advanced level certification by appropriate national certifying body evidencing that the applicant holds current certification in good standing; copy of official transcript directly from the formal advanced practice educational program maintaining the records necessary to document that all requirements have been met in one of the specialty areas of nursing practice as listed in subrule 7.2(1). The transcript shall verify the date of completion of the program/graduation and the degree conferred. A registered nurse may make application to practice in more than one specialty area of nursing practice.

7.2(6) Initial registration. The executive director or a designee shall have the authority to determine if all requirements have been met for registration as an advanced registered nurse practitioner. If it has been determined that all requirements have been met:

a. Official licensure records of the registered nurse shall denote registration as an advanced registered nurse practitioner as well as the specialty area(s) of nursing practice.

b. The registered nurse shall be issued a registration card and a certificate to practice as an ARNP which clearly denotes the name, title, specialty area(s) of nursing practice, and expiration date of registration. The expiration date shall be based on the same period of licensure to practice as a registered nurse.

7.2(7) Registration completion. The registered nurse shall complete the registration process within 12 months of receipt of the application materials. The board reserves the right to destroy the documents after 12 months.

7.2(8) Denial of registration. If it has been determined that all requirements have not been met, the registered nurse shall be notified in writing of the reason(s) for the decision. The applicant shall have the right of appeal to the Iowa board of nursing within 30 days of denial by the executive director or designee.

7.2(9) Application process for renewal of registration. Renewal of registration for the advanced registered nurse practitioner shall be for the same period of licensure to practice as a registered nurse. The executive director or a designee shall have the authority to determine if all requirements have been met for renewal as an advanced registered nurse practitioner. A registered nurse who wishes to continue practice as an advanced registered nurse practitioner shall submit the following at least 30 days prior to the license expiration to the office of the Iowa board of nursing:

a. Completed renewal application form.

b. Renewal fee as outlined in rule 655—3.1(17A,147,152,272C), definition of "fees."

c. Documentation of current time-dated, advanced level certification by appropriate national certifying body.

7.2(10) Continuing education requirements. Continuing education shall be met as required for certification by the relevant national certifying body, as outlined in 655—subrule 5.2(3), paragraph "e."

7.2(11) Denial of renewal registration. If it has been determined that all requirements have not been met, the applicant shall be notified in writing of the reason(s) for the decision. Failure to obtain the renewal will result in termination of registration and of the right to practice in the advanced registered nurse practitioner specialty area(s). The applicant shall have the right of appeal to the Iowa board of nursing within 30 days of denial of the executive director or designee.

7.2(12) Registration to practice as an advanced registered nurse practitioner restricted, revoked, or suspended. Rescinded IAB 12/29/99, effective 2/2/00.
[ARC 7888B, IAB 7/1/09, effective 8/5/09]

655—7.3(152) Prescribing epinephrine auto-injectors in the name of a facility.

7.3(1) An ARNP may issue a prescription for one or more epinephrine auto-injectors in the name of a facility as defined in 2015 Iowa Acts, Senate File 462, section 1 [Iowa Code subsection 135.185(1)], a school district, or an accredited nonpublic school.

7.3(2) An ARNP who prescribes epinephrine auto-injectors in the name of an authorized facility, as defined in Iowa Code subsection 135.185(1), a school district, or an accredited nonpublic school, to be maintained for use pursuant to Iowa Code sections 135.185, 260.16 and 260.16A, provided the ARNP has acted reasonably and in good faith, shall not be liable for any injury arising from the provision, administration, or assistance in the administration of an epinephrine auto-injector.
[ARC 2502C, IAB 4/27/16, effective 6/1/16]

These rules are intended to implement Iowa Code sections 17A.3, 147.10, 147.53, 147.76, 147.107(6), 152.1, 152E.1 and 152E.2.

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REVENUE DEPARTMENT[701]

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701—15.1(422) Conditional sales to be included in gross sales. When a conditional sale agreement exists the seller shall bill the purchaser for the full amount of tax due. The purchaser is obligated to pay sales tax upon delivery of the property which is the subject of the conditional sale agreement. *Harold D. Sturtz v. Iowa Department of Revenue*, 373 N.W.2d 131 (Iowa 1985). The gross receipts shall be computed on the entire contract price except interest and finance charges when separately stated and reasonable in amount, and the seller shall remit the tax to the department at the close of the period during which delivery under the contract for the sale was made.

This rule is intended to implement Iowa Code sections 422.42(2) and 422.42(3).

701—15.2(422,423) Repossessed goods. When tangible personal property which has been repossessed either by the original seller or by a finance company is resold to final users or consumers, the gross receipts from those sales are subject to tax.

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 who has paid tax to the department upon gross receipts which ultimately constitute bad debts. See rule 15.4(422,423) for a description of the circumstances under which bad debts are and are not allowed as a credit on tax paid.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 423.1, and 423.2.

701—15.3(422,423) Exemption certificates, direct pay permits, fuel used in processing, and beer and wine wholesalers.

15.3(1) General provision. The gross receipts from the sale of tangible personal property to a purchaser for any exempt purpose are not subject to tax as provided by the Iowa sales and use tax statutes. In addition, a seller of tangible personal property need not collect Iowa sales or use tax from a purchaser that possesses a valid direct pay permit issued by the department of revenue. However, the following are requirements for the exemption and noncollection of tax by a seller when a direct pay permit is involved:

a. Prior to July 1, 2004, the sales tax liability for all sales of tangible personal property was upon the seller unless the seller took in good faith from the purchaser a valid exemption certificate stating that the purchase was for an exempt purpose or the tax would be remitted directly to the department by the purchaser under a valid direct pay permit issued by the department. In addition to the provisions and requirements set forth in subrule 15.3(2), to be valid an exemption certificate issued by a purchaser to a seller in good faith under a direct pay permit must have included the purchaser's name, direct pay permit number, and date the direct pay permit was issued by the department. A seller who has taken a valid exemption certificate under a direct pay permit must keep records of sales made in accordance with rule 701—11.4(422,423). For more information regarding direct pay permits, see rule 701—12.3(422). Where tangible personal property or services have been purchased tax-free pursuant to a valid exemption certificate which was taken in good faith by the seller, and the tangible personal property or services were used or disposed of by the purchaser in a nonexempt manner, or the purchaser failed to pay tax to the department under a direct pay permit issued by the department, the purchaser was solely liable for the taxes and must remit the taxes directly to the department.

When a processor or fabricator purchases tangible personal property exempt from the sales or use tax and subsequently withdraws the tangible personal property from inventory for its own taxable use or consumption, the tax shall be reported in the period when the tangible personal property was withdrawn from inventory.

b. As of July 1, 2004, the requirement of "good faith" on the part of a seller is replaced by a different standard. For sales occurring on and after that date, the sales tax liability for all sales of tangible personal property and all sales of services is upon the seller and the purchaser unless the seller takes from the purchaser a valid exemption certificate stating under penalty of perjury that the purchase is for

a nontaxable purpose and is not a retail sale, or the seller is not obligated to collect tax due, or unless the seller takes a fuel exemption certificate. If the tangible personal property or services are purchased tax-free pursuant to a valid exemption certificate and the tangible personal property or services are used or disposed of by the purchaser in a nonexempt manner, the purchaser is solely liable for the taxes and shall remit the taxes directly to the department. The protection afforded a seller by this paragraph does not apply to a seller who fraudulently fails to collect tax or to a seller who solicits purchasers to participate in the unlawful claiming of an exemption.

c. The director is required to provide exemption certificates to assist retailers in properly accounting for nontaxable sales of tangible personal property or services to buyers for exempt purposes. These exemption certificates must be completed as to the information required on the form in order to be valid.

15.3(2) Retailer-provided exemption certificates. Retailers may provide their own exemption certificates. Those exemption certificates must contain information required by the department, including, but not limited to: the seller's name, the buyer's name and address, the buyer's nature of business (wholesaler, retailer, manufacturer, lessor, other), the reason for purchasing tax-exempt (e.g., resale or processing), the general description of the products purchased, and state sales tax or I.D. registration number. The certificate must be signed and dated by the buyer.

a. An exemption certificate or blanket exemption certificate as referred to in paragraph "b" cannot be used to make a tax-free purchase of any tangible personal property or service not covered by the certificate. For example, the certificate used to purchase a chemical consumed in processing cannot be used to purchase a generator which is going to become an integral part of other tangible personal property which will be ultimately sold at retail.

b. Any person repeatedly selling the same type of property or service to the same purchaser for resale, processing, or for any other exempt purpose may accept a blanket certificate covering more than one transaction. A seller who accepts a blanket certificate is required periodically to inquire of the purchaser to determine if the information on the blanket certificate is accurate and complete. Such an inquiry by the seller shall be deemed evidence of good faith on the part of the seller.

c. When due to extraordinary circumstances in the nature of fire, flood, or other cases of destruction beyond the taxpayer's control, a seller does not have an exemption certificate on file, the seller may show by other evidence, such as a signed affidavit by the purchaser, that the property or service was purchased for an exempt purpose.

d. The liability for the tax does not shift from the seller to the purchaser if the seller has not accepted a valid exemption certificate in good faith. If the seller has actual knowledge of information or circumstances indicating that it is unlikely that the property or services will be used by the purchaser in an exempt manner, then in order to act in good faith the seller must make further inquiry to determine the facts supporting the exemption certificate. In addition, if the nature of the business of the purchaser, as shown by the exemption certificate, indicates that it is unlikely that the property or services will be used in an exempt manner, then in order to act in good faith the seller must make further inquiry to determine the facts supporting the exemption certificate.

EXAMPLE 1. A seller is expected to inquire to discover the facts supporting the claimed exemption if the seller knows that the property or services will not be, or it is unlikely that the property or services will be, resold or used in processing by that purchaser. This further inquiry is expected even when there is nothing in the nature of the business as shown on the valid exemption certificate to cause the seller to make further inquiry.

EXAMPLE 2. A seller is expected to inquire to discover the facts supporting the claimed exemption of the sale of sawdust or a tool chest purchased by a gas station since such items are rarely resold by a gas station.

EXAMPLE 3. A seller is not expected to make further inquiry, in the absence of actual knowledge, to determine which light bulbs bought by a hardware store are for use in the store or those purchased for resale.

If the seller has met the requirements set forth above in accepting a valid exemption certificate, the seller shall be deemed to have acted in good faith and the liability for the tax shifts to the purchaser who becomes solely liable for the taxes.

e. A seller is relieved from liability for sales tax if (1) a purchaser deletes the tax reimbursement from the payment to the seller or if the purchaser makes a notation on an invoice such as "not subject to tax" or "resale" and (2) if the seller can produce written evidence to show that an attempt was made to obtain an exemption certificate to show that the transaction was exempt from tax but was unable to obtain said certificate from the purchaser.

f. The failure of a permit holder to act in good faith while giving or receiving exemption certificates may result in the revocation of the sales tax permit. Revocation is authorized under the provisions of Iowa Code section 422.53(5).

g. The purchase of tangible personal property 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 seller of the responsibility for tax if at some later time the transaction is determined to be taxable.

h. A person who is selling tangible personal property or services, but who is not making taxable sales at retail, shall not be required to hold a permit. When this person purchases tangible personal property 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.

i. For information regarding the use of exemption certificates for contractors, see 701—Chapter 19.

15.3(3) Fuel exemption certificates.

a. Definitions.

"Fuel" includes, but is not limited to, heat, steam, electricity, gas, water, or any other tangible personal property consumed in creating heat, power, or steam.

"Fuel consumed in processing" includes fuel used in grain drying, providing heat or cooling for livestock buildings, fuel used for generating electric current, fuel consumed in implements of husbandry engaged in agricultural production, as well as fuel used in "processing" as defined in rules 701—18.29(422,423) and 701—18.58(422,423). See rule 701—17.2(422) for a detailed description of "fuel used in processing." See rule 701—17.3(422,423) for extensive discussion regarding electricity and steam used in processing.

"Fuel exemption certificate" is a certificate given by a purchaser and signed under penalty of perjury to assist a seller in properly accounting for nontaxable sales of fuel consumed in processing. The fuel exemption certificate must contain information required by the department, including, but not limited to: the seller's name and address; the purchaser's name and address; the type of fuel purchased, e.g., electricity, propane; a description of the purchaser's business, e.g., farmer, manufacturer of steel products, food processor; a general description of the type of processing in which the fuel is consumed, e.g., grain drying, raising livestock, generating electricity, or manufacture of tangible personal property; and the percentage exemption claimed. The fuel exemption certificate must be signed under penalty of perjury by the purchaser and dated. 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. In the absence of separate metering, documentation reasonably necessary to support a claim for exemption will consist of either an electrical consultant's survey or of a document prepared by the purchaser in accordance with the requirements of subrule 15.3(4). Attachment of documentation is not necessary if the purchaser has furnished the seller with documentation when filing an earlier exemption certificate and a substantial change in the purchaser's operation had not occurred since the documentation was furnished or if fuel consumed by the purchaser in processing is separately metered and billed by the seller.

"Substantial change" means a change in the purchaser's use or disposition of tangible personal property and services such that the purchaser pays less than 90 percent of the purchaser's actual sales tax liability.

b. If fuel is purchased tax-free pursuant to a fuel exemption certificate which has been accepted by the seller and the purchaser uses or disposes of the fuel in a nonexempt manner, the purchaser is solely liable for sales tax and shall remit that tax directly to the department. A seller can, however, rely upon a fuel exemption certificate for sales occurring within five years subsequent to the date of the certificate only. For later sales, the seller must secure a new certificate of exemption from the purchaser.

c. A purchaser may apply to the department for review of any fuel exemption certificate. The department shall review the certificate and determine the correct amount of exemption within 12 months from the date of application. The department shall notify a purchaser of any determination that is different from the purchaser's claim of exemption. Failure to determine the correct amount of exemption within 12 months from the date of application shall constitute a determination on the department's part that the claim of exemption on the fuel certificate is correct as submitted. A determination regarding an exemption certificate is final unless the purchaser appeals to the director for a revision of the determination within 60 days from the date of the notice of determination. The director shall grant a hearing and upon the hearing, the director shall determine the correct exemption and notify the purchaser of the decision by mail. The decision is final unless the purchaser seeks judicial review of the director's decision under Iowa Code section 422.55 within 60 days from the date of the notice of the director's decision. The purchaser must notify the seller of any change in percentage.

d. The effective date of the legislation allowing use of an exemption certificate for fuel used in processing is January 1, 1988. However, a certificate which is complete and correct according to subrule 15.3(3), paragraph "a," and any other requirement of the director, which is signed and dated prior to January 1, 1988, shall, if accepted by a seller in good faith, protect the seller to the extent described in subrule 15.3(3), paragraph "b," for energy consumed on or after January 1, 1988. Exemption certificates filed with the seller prior to January 1, 1988, also expire five years from date of acceptance.

15.3(4) 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. See subrule 15.3(4), paragraph "e," for 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: Mr. Wilson is a farmer. He files an exemption certificate for the period beginning January 1, 1990. The year 1989 is one with a very mild winter, a relatively cool summer, and a very dry autumn. Mr. Wilson uses no electricity for grain drying and substantially less electricity than usual for heating and cooling his livestock buildings. Mr. Wilson must use a 12-month period which is more representative of his usual exempt electrical consumption than that of January through December 1989.

EXAMPLE: Mr. Jackson is also a farmer. He files an exemption certificate for the period beginning January 1, 1991. The year 1990 is one in which the summer is extraordinarily hot, the winter exceedingly cold, and the autumn very wet. Mr. Jackson uses far more electricity than normal to dry his grain and heat and cool his livestock buildings. He should use a 12-month period more representative of his customary exempt use of electricity than the period January through December 1990.

EXAMPLE: 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: Company B manufactures widgets. The "economic cycle" for widget production is, on the 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 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 percentage of exemption is to determine the number of kilowatts used per hour for each device in 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.

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:

$$\frac{\text{Watts} + .20 \text{ (Watts)}}{1,000} = \text{Kilowatts Per Hour}$$

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. For example, 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:

Kilowatts Per Hour	Hours Operated Per Week	Weeks Operated in 12-Month Period Equals Number of Exempt Kilowatt Hours
20	40	50 = 40000

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:

Kilowatts Per Hour	Hours of Exempt Use Per Month	Number of Months of Exempt Use Equals Total Number of Exempt Kilowatt Hours
30	200	3 = 18000

d. 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.

	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. The following are nonexclusive alternatives to the above method of determining the percentage of electricity which is exempt because it is used in processing. First, 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. If separate metering is impossible or impractical, it may be useful to employ the services of an energy consultant. If using 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 15.3(4) "b" above. This circumstance is especially true with regard to large electric motors.

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.

Ordinarily any method of determining the percentage of electricity used in processing will involve calculating both exempt and nonexempt usage. However, in certain instances it is acceptable to calculate only exempt or nonexempt usage in one column and to list separately the equipment or devices making the exempt or nonexempt use of the electricity separate. This practice can normally be followed where electrical usage does not fluctuate dramatically and where usage is either predominantly exempt or predominantly not exempt.

15.3(5) Applicability. The provisions of subrule 15.3(4) 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.

15.3(6) 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 (see subrule 15.3(2)) 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 sections 422.42(3), 422.42(13), 422.42(16), 422.47, 422.53 as amended by 1997 Iowa Acts, House File 266, and 423.1(1).
[ARC 2349C, IAB 1/6/16, effective 2/10/16; see Rescission note at end of chapter]

701—15.4(422,423) Bad debts. Bad debts shall be allowed as a credit on tax when all the following facts have been shown:

15.4(1) Tax has been previously paid on the gross receipts from the accounts on which the taxpayer claims credit for tax.

15.4(2) The accounts have been found to be worthless.

15.4(3) The taxpayer has records to show that the accounts have actually been charged off for income tax purposes.

Credit for bad debts shall not be allowed on merchandise which was exempt from tax when sold.

When credit on tax has been taken on account of bad debts and the debts are subsequently paid, the proceeds from the collection of such accounts shall be included in the gross receipts for the period in which payment is made.

Effective July 1, 1992, the sales and use tax rate increased from 4 percent to 5 percent.

Bad debts which occur prior to July 1, 1992, and are charged off on or after July 1, 1992, may be charged off at the tax rate of 5 percent. Bad debts which have been charged off prior to July 1, 1992,

and all or any part of the bad debt is recovered after July 1, 1992, will be subject to tax at the rate of 5 percent. All the provisions of this rule and rule 15.5(422,423) apply.

This rule is intended to implement Iowa Code sections 422.42(16), 422.46, and 423.1(10).

701—15.5(422,423) Recovery of bad debts by collection agency or attorney. When bad debts have been charged off and later recovered in whole, or in part, through the services of a collection agency or an attorney, the full amount of the debt recovered shall be included with the gross sales for the period which the collection was made. The services of an agency or attorney are services purchased by a retailer and shall not reduce the gross amount collected for the retailer by the agency or attorney.

This rule is intended to implement Iowa Code sections 422.42(16), 422.46, and 423.1(10).

701—15.6(422,423) Discounts, rebates and coupons.

15.6(1) Discounts. A discount is an abatement from the face of an account, with the remainder being the actual purchase price of the goods charged in the account. The purchaser entitled to the discount will never owe the face of the bill as a debt—this being the net of the bill after the agreed discount has been deducted. The word “discount” means “to buy at a reduction.” *Benner Tea Company v. Iowa State Tax Commission*, 252 Iowa 843, 109 N.W.2d 39 (1961).

Any discount allowed by a retailer and taken on taxable sales 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 gross charge rather than on the net charge. The customer must receive the benefit of the discount, for sales tax purposes, in order for the retailer to exclude it from gross receipts.

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.

15.6(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 gross receipts received from a sale or reduce the purchase price of a product. This rule applies even though the rebate is used by the seller to reduce the selling price or is used by the purchaser as a down payment. The rebate is considered a transaction between the manufacturer and the purchaser. See 1972 O.A.G. 332.

15.6(3) Coupons. Coupons issued by the producer of a product are not discounts and cannot be used as an abatement from the face of the account. Coupons issued by the retailer which actually reduce the price of the product to the purchaser are treated as a discount as per subrule 15.6(1). *Saxon-Western Corporation v. Mahin*, 369 N.E.2d 1185 (Ill. 1979).

EXAMPLE: C acquires a 30¢ off coupon issued by manufacturer of A-B Band-aids for A-B Band-aids which can be redeemed at a store which sells the product. C goes to store D and purchases a box of A-B Band-aids which shows a price of \$1.50. C pays \$1.20 + the 30¢ coupon. D is reimbursed the 30¢ for the coupon by the manufacturer. Tax is due on the \$1.50 because C’s total gross receipts are \$1.50. The coupon is not used as a discount in this situation.

EXAMPLE: E offers a two for the price of one coupon for its super hamburger. Each hamburger normally sells for \$2.00 each. The coupon can only be redeemed at E’s retail store. F acquires the coupon and redeems it at E’s store. The purchase price for F was \$2.00 for both hamburgers. The tax is due on the \$2.00 because this amount is the gross receipts for E, even though the value of the two hamburgers would normally be \$4.00. In this situation, the sales price for the two hamburgers was \$2.00.

This rule is intended to implement Iowa Code sections 422.42(6) and 423.1(3).

701—15.7(422,423) Trading stamps are not a discount. Rescinded IAB 11/14/01, effective 12/19/01.

701—15.8(422,423) 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 gross receipts.

An allowance shall not 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 gross receipts and tax previously paid.

This rule is intended to implement Iowa Code sections 422.42(6) and 423.1(3).

701—15.9(422) Goods damaged in transit. 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 shall be liable for tax upon the full sale price of the goods, as the sale to the consumer has been completed. *Harold D. Sturtz v. Iowa Department of Revenue*, 373 N.W.2d 131 (Iowa 1985).

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.

EXAMPLE: A company in Chicago transports furniture in its own truck to customer B in Des Moines. Under the contract of sale, delivery of the furniture would occur in Des Moines and sales tax would ordinarily be due upon the gross receipts of the sale. However, in East Moline, Illinois, the furniture truck is involved in an accident, and B's furniture is destroyed. There was no delivery of the furniture to B, thus no sale to B and thus no sales tax is due. Had the point of delivery been Chicago, Illinois, a sale would have occurred outside this state, but no use tax would be due because B never made any "use" of the furniture in Iowa.

This rule is intended to implement Iowa Code sections 422.42 and 422.43.

701—15.10(422) Consignment sales. 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 gross receipts from the sale of other merchandise.

Sale of tangible personal property by an agent or consignee for another person shall be exempt if the sales meet the requirements of a casual sale or any other exemptions.

This rule is intended to implement Iowa Code sections 422.42 and 423.43.

701—15.11(422,423) Leased departments. When a permit holder leases a part of the premises where the permit holder's retail business is conducted, the lessor shall immediately notify the department and supply the following information: (1) name and home office address of the lessee; (2) type of merchandise sold by the lessee or service performed; (3) date when the lessee began making sales or performing services at retail in Iowa on the leased premises; and (4) whether the lessee has secured a permit to account directly to the department for tax due or if the lessee's sales will be accounted for in the lessor's tax return. Upon request, the department shall furnish a form to the lessor on which to report this information.

If the lessor fails to notify the department that a part of the premises has been leased and does not furnish the requested information, the lessor shall be responsible for tax due as a result of sales by the lessee, unless the lessee has properly remitted the tax due.

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 and which net taxable sales are included in the lessor's return. If the lessee is reporting the tax directly to the department, the lessor shall show the permit number of the lessee.

When the lessee has terminated selling activities, the lessor shall immediately notify the department.

This rule is intended to implement Iowa Code sections 422.68(1) and 423.23.

701—15.12(422,423) Excise tax included in and excluded from gross receipts.

15.12(1) An excise tax which is not an Iowa sales or use tax may be excluded from the gross receipts 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 sale which the Iowa sales tax is imposed upon or upon the sale which measures the taxable use or upon a use identical to the Iowa taxable use and not upon some event or activity which precedes or occurs after the sale or use.

b. The legal incidence of the excise tax falls upon the purchaser who is 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. See *Gurley v. Rhoden*, 421 U.S. 200, 95 S. Ct. 1605, 44 L.Ed.2d 110 (1975) for 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 tax is specifically stated and the amount of the tax separately set out on the invoice, bill of sale, or upon another document which embodies a record of the sale.

EXAMPLE 1. The federal government imposes an excise tax upon the act of manufacturing 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 "b" and "c" above, it is not excludable because it does not meet the requirements of paragraph "a." The tax is not imposed upon the act of sale but upon the prior act of manufacture. 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 gross receipts 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 who 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 "b" above.

15.12(2) As of January 1, 1988, the following federal excise taxes are includable in the gross receipts of Iowa sales tax:

a. The federal gallonage taxes on distilled spirits, wines, and beer imposed by 26 U.S.C. Sections 5001, 5041, and 5051.

b. The tax imposed by 26 U.S.C. Section 5701 with regard to cigars, cigarettes, and cigarette papers and tubes.

c. The federal tax on gasoline imposed under 26 U.S.C. Section 4081.

d. The federal tax on tires, inner tubes, and tread rubber imposed by 26 U.S.C. Section 4071.

e. The federal manufacturer's excise tax imposed by 26 U.S.C. Section 4061 has been repealed.

15.12(3) The following excise taxes are excluded from the amount of gross receipts:

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 sections 422.42(6), 422.43, 423.1, and 423.2.

701—15.13(422,423) Freight, other transportation charges, and exclusions from the exemption applicable to these services. The determination of whether freight and other transportation charges shall be subject to sales or use tax is dependent upon the terms of the sale agreement.

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 gross receipts derived from the freight or transportation charges shall not be subject to tax. As of May 20, 1999, this exemption does not apply

to the service of transporting electrical energy. As of April 1, 2000, this exemption does not apply to the service of transporting natural gas.

When freight and other transportation charges are not separately stated in the sale agreement or are not separately sold, the gross receipts from the freight or transportation charges become a part of the gross receipts from 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 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. *Clarion Ready Mixed Concrete Company v. Iowa State Tax Commission*, 252 Iowa 500, 107 N.W.2d 553(1961); *Schemmer v. Iowa State Tax Commission*, 254 Iowa 315, 117 N.W.2d 420(1962); *City of Ames v. Iowa State Tax Commission*, 246 Iowa 1016, 71 N.W.2d 15(1959); *Dain Mfg. Company v. Iowa State Tax Commission*, 237 Iowa 531, 22 N.W.2d 786(1946).

Effective July 1, 2001, gross receipts from charges for delivery of electricity or natural gas are exempt from tax to the extent that the gross receipts from the sale, furnishing, or service of electricity or natural gas or its use are exempt from sales or use tax under Iowa Code chapters 422 and 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.

Freight and transportation charges include, but are not limited to, the following charges or fees: freight; transportation; shipping; delivery; or trip charges.

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 set out in this rule.

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 as well and constitutes separate sales of electricity and transportation services. In these circumstances, amounts which ABC pays DEF for transport of the electricity are taxable gross receipts. This transportation service would ordinarily then be excluded from tax under the exemption set out in this rule; however, separate transportation charges for transportation of electricity are excluded from the exemption (as of May 20, 1999, and are thereafter 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 as well 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. See Clarion Ready Mixed and Schemmer, generally, above.

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 goods 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 422.43 and 423.2, and section 422.45 as amended by 2001 Iowa Acts, House File 705.

701—15.14(422,423) 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 gross receipts from the sale. The installation charges would not be taxable if: (1) The installation service is not an enumerated service, and also (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, regardless 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. See rule 701—19.13(422, 423) and subrule 18.45(7), respectively. And also (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, regardless 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.

This rule is intended to implement Iowa Code sections 422.43 and 423.2.

701—15.15(422) Premiums and gifts. A person who gives away or donates tangible personal property shall be deemed to be a consumer of such property for tax purposes. The gross receipts from the sale of tangible personal property to such persons for such purposes shall be subject to tax.

When a retailer purchases tangible personal property, 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 at the retailer's cost price.

When a retailer sells tangible personal property and furnishes a premium with the property 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 422.42 and 422.43.

701—15.16(422) Gift certificates. 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 422.42 and 422.43.

701—15.17(422,423) 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 selling price. However, if a sale is made for a lump sum, the tax is due on the total selling price if finance charges are not separately stated.

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. *State ex. rel. Turner v. Younkers Bros., Inc.*, 210 N.W.2d 550 (Iowa 1973); *Road Machinery Supplies of Minneapolis, Inc., v. The Commissioner of Revenue*, Minnesota Tax Court of Appeals, 1977, 2 Minn. CCH State Tax Reporter II 200-835. See rule 701—16.47(422,423) relating to conditional sales contracts.

This rule is intended to implement Iowa Code sections 422.42(2) and 423.4.

701—15.18(422,423) Coins and other currency exchanged at greater than face value. Any exchange, transfer, or barter of merchandise for a consideration paid in gold, silver, or other coins or currency shall be subject to tax to the extent of the agreed-upon value of the coins or currency so exchanged. This agreed-upon value constitutes the gross receipts or purchase price subject to tax. Coins or currency becomes articles of tangible personal property having a value greater than face value when they 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 sale shall be subject to tax for the face value alone. *Losana Corp. v. Porterfield*, 14 Ohio St.2d 42, 236 N.E.2d 535 (1968).

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.

Also see Attorney General Opinion Griger to Bair, Director of Revenue, May 15, 1980, #80-5-13.

This rule is intended to implement Iowa Code section 422.42(6).

701—15.19(422,423) Trade-ins.

15.19(1) Trade-ins. When tangible personal property is traded toward the purchase price of other tangible personal property, the gross receipts shall be only that portion of the purchase price which is payable in money to the retailer if the following conditions are met:

- a. The tangible personal property is traded to a retailer, and the property traded is the type normally sold in the regular course of the retailer's business; and
- b. The tangible personal property traded to a retailer is intended by the retailer to be ultimately sold at retail; or
- c. 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. A owns a car valued at \$5,000. A trades his 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 A paid to XY used car dealer, as both conditions "a" and "b" 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 condition "a" has not been met. The property traded is not the type of property normally sold by ABC new and used 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. The local cooperative elevator normally sells grain in its regular course of business for processing into bread. The trade-in provision in this example would not apply because condition "b" would not be met. The grain traded toward the purchase price of the hand tools when ultimately sold by the cooperative elevator 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 A's used refrigerator at a value of \$150 toward the purchase price of the new refrigerator. A pays Hometown Appliance \$500 in money. The trade-in provision applies as both conditions "a" and "b" 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 "a" and "b" were met. The sale is "at retail," even if it is a retail sale 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 does know 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 "a" and "c" have been met.

15.19(2) All the provisions of subrule 15.19(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 15.19(1)"a" and "b" 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 amount 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 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 section 321.1.

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.

15.19(3) Trade for services. The trade-in provisions found in Iowa Code sections 422.42(5)"b" and 423.1(8) do not apply to taxable enumerated services. When taxable enumerated services are traded, the gross receipts would be determined based on the value of the service or other consideration.

15.19(4) Three-way trade-in transactions. In a three-way transaction, the agreement provides that a lessee sell to a third-party dealer a vehicle (or other tangible personal property) which 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. “A” enters into a three-way agreement with “B,” the lessor. Under the terms of the contract, “A” sells a 2000 Ford Taurus owned by “A” to “C,” a used-car dealer. The retail price for the Ford Taurus is \$30,000. “C” then sells the Ford Taurus to “B” for the reduced price of \$25,000. “B” then leases the Ford Taurus to “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 422.42(5) “b” and 423.1(8). See also *Reynolds Motor Co. et al v. Iowa Dep’t. of Revenue*, Equity 72050, Dist. Ct. of Scott Cty., Iowa, August 28, 1987.

701—15.20(422,423) Corporate mergers which 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 corporation to another pursuant to a statutory merger, the transfer is not a “sale” subject to tax if all of the following circumstances exist: (1) the merger is pursuant to statute (for example, Iowa Code section 490.1106); (2) by the terms of that statute, the title or possession of property or services transferred passes from a merging corporation to a surviving corporation and not for any consideration; and (3) the merging corporation is extinguished and dissolved the moment the merger occurs and, as a result of this dissolution, cannot receive any benefit from the merger. Transactions which are not of the type described above may involve taxable sales. See the following court cases relating to this area: *Nachazel v. Mira Co. Mfg.*, 466 N.W.2d 248 (Iowa 1991); *D. Canale & Co. v. Celauro*, 765 S.W.2d 736 (Tenn 1989); and *Commissioner of Revenue v. SCA Disposal Services*, 421 N.E.2d 766 (Mass 1981).

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. A’s transfer of tangible personal property to merged company C is not subject to sales or use tax.

EXAMPLE B: Corporations B, D, and E are independent entities. They enter into a merger agreement governed by Iowa Code section 490.1106 and agree to merge into one surviving corporation which will (after the dissolution of B and D) be E. They agree that the shares of merging corporations will be converted into shares of E on an equal basis. The transfers of property by the corporations which are parties to the merger are not sales subject to Iowa tax.

EXAMPLE C: Corporation F receives all of Corporation G’s outstanding shares from G’s sole stockholder. In return, G’s sole stockholder receives stock from F. Corporation G continues to exist after the transaction as a subsidiary of Corporation F. This particular transaction involves a trade or barter of the stock shares of F and G. There is a barter of the stocks and thus a “sale” as that term is understood for the purposes of Iowa sales tax law. However, because the sale involves only intangible property (the stock shares), that sale is not taxable. The stock exchange transaction would not prevent taxation of subsequent transfers of tangible personal property or services between F and G.

EXAMPLE D: 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 may be subject to Iowa sales tax. However, see 701—subrule 18.28(2) concerning a casual sale exemption applicable to the liquidation of a business.

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¹ Amendments to 15.3(3) “a,” definition of “Fuel consumed in processing,” (ARC 2349C, Item 1) rescinded by 2016 Iowa Acts, House File 2433, section 6, on 3/21/16. Amendments removed and prior language restored IAC Supplement 4/27/16.

CHAPTER 18
TAXABLE AND EXEMPT SALES DETERMINED BY METHOD
OF TRANSACTION OR USAGE
[Prior to 12/17/86, Revenue Department[730]]

701—18.1(422,423) Tangible personal property purchased from the United States government. Tangible personal property purchased from the United States government or any of the 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 422.44, 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 sections 422.44 and 423.3.

701—18.2(422,423) 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 shall be taxable.

When gas of this type is sold and motor vehicle fuel tax is collected by the seller, tax shall not be due. If Iowa motor vehicle fuel tax is not collected by the seller at the time of the sale, tax shall be collected and remitted to the department, unless the sale is specifically exempt.

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 application for a refund of the motor vehicle fuel tax.

The gross receipts 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. Gas converter equipment which might be sold to an ultimate consumer shall be subject to tax.

This rule is intended to implement Iowa Code sections 422.42, 422.43, 422.45(11), 423.1 and 423.2.

701—18.3(422,423) Chemical compounds used to treat water. Chemical compounds placed in water which 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 which 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 which are used to treat water that is not sold at retail or which are not used directly in processing shall be 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 does become a part of the finished product, shall be exempt from tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1, and 423.2.

701—18.4(422) Mortgages and trustees. Pursuant to the provisions of a chattel mortgage, the receipts 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.

The tax applies to inventory and noninventory goods provided the owner is in the business of making retail sales of tangible personal property or taxable services. *In Re Hubs Repair Shop, Inc.* 28 B.R. 858 (Bkrtcy. 1983).

This rule is intended to implement Iowa Code sections 422.42, 422.43, 423.1 and 423.2.

701—18.5(422,423) Sales to agencies or instrumentalities of federal, state, county and municipal government.

18.5(1) The gross receipts from the sale of tangible personal property or enumerated taxable services made directly by or to the United States government or to recognized agencies or departments of the United States government shall not be subject to sales tax.

The gross receipts from sales at retail made directly to patients, inmates or employees of an institution or department of the United States government shall be taxable, since they are not made directly to the government. However, sales similarly made by post exchanges and other establishments organized and controlled by federal authority shall not be subject to sales tax.

18.5(2) The gross receipts from sales to the United States government, state of Iowa, or federal bureaus, departments, or instrumentalities are not taxable. A sale to government occurs only if a government, pursuant to a contract for sale, takes title or ownership to tangible personal property as a buyer from a seller. No sale to government occurs if a government pays some portion of the cost of sale of an item of tangible personal property but title to and ownership of the property are transferred to another person as a result of the sale. See *AVCO Manufacturing Corporation v. Connelly*, 145 Conn. 161, 140 A.2d 479 (1958) and *Akron Home Medical Services, Inc. v. Lindley*, 25 Ohio St.3d 107, 495 N.E.2d 417 (1986).

EXAMPLE A: Patient A purchases a hospital bed from a drugstore. 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.

EXAMPLE B: A is a federal government employee. A stays at a hotel while on government business and eats meals there. A pays for the hotel room (treated as the sale of tangible personal property under Iowa sales tax law) and the meals with a credit card. The credit card was issued in A's name, and the cost of the room and meals is billed to A, who pays it. The federal government later reimburses A the entire cost of the room and meals. A has purchased the room and meals, and Iowa sales tax should be charged accordingly.

EXAMPLE C: B is a federal government employee who eats at a restaurant while on government business. B uses a credit card to pay for the meal. The credit card is issued in B's name, but the cost of the meal is billed to the U.S. government which pays that cost. In this situation, the government is the purchaser of the meal on B's behalf, and the sale is exempt from tax.

See rule 701—34.12(423) for an example of the application of this subrule to the motor vehicle use tax.

18.5(3) The gross receipts from the sale of goods, wares, merchandise, or services used for public purposes to any tax-certifying or tax-levying body of the state of Iowa or governmental subdivision thereof, including the state board of regents, state department of human services, state department of transportation, and all divisions, boards, commissions, agencies, or instrumentalities of the state, federal, county, or municipal government which have no earnings going to the benefit of an equity investor or stockholder, except the sale of goods, wares, merchandise or services used by or in connection with the operation of any municipally owned public utility engaged in selling gas, electricity, pay television service, or heat to the general public, shall be exempt. The exclusion from exemption for municipally owned pay television service is applicable to sales occurring and services provided on and after July 1, 1991. On and after April 1, 1992, providing sewage service or solid waste collection and disposal service to a county or municipality on behalf of nonresidential commercial operations located within the county or municipality shall be taxable (see rules 701—26.71(422,423) and 26.72(422,423) for more information). Goods, wares, merchandise, or services used for public purposes and sold to any municipally owned solid waste facility which sells all or part of its processed waste as a fuel to a municipally owned public utility shall be exempt.

EXAMPLES:

a. A group of exempt instrumentalities, such as cities, issues bonds to finance the construction of a sewage disposal facility. X, a corporation, purchases the bonds but is not involved in the project in any other way. Since X does not enjoy the benefits of earnings of the solid waste facility, the exemption provided the instrumentalities is applicable.

b. Corporation Y, which is an instrumentality of the federal government and which Congress has allowed by statute to be subject to state sales and use taxes, purchases tangible personal property. Said purchases are subject to tax because the profits of the corporation are distributed to the stockholders thereof.

c. An instrumentality of government includes an area agency on aging as designated by the Iowa department on aging pursuant to Iowa Code section 231.32.

This tax exemption does not apply to independent contractors who deal 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 which 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. See 701—Chapter 19. See also *NLO, Inc. v. Limbach*, 613 N.E.2d 193, 66 Ohio St.3d 389 (1993); *Bill Roberts Inc. v. McNamara*, 539 So.2d 1226 (La. 1989) reh. den. April 27, 1989; *White Oak Corporation v. Department of Revenue Services*, 503 A.2d 582, 198 Conn. 413 (1986).

This rule is intended to implement Iowa Code section 422.45(5).

701—18.6(422,423) Relief agencies.

18.6(1) Relief agency means the state, any county, city and county, city or district thereof, or any agency engaged in actual relief work. Nonexclusive examples of relief agencies are Salvation Army, Royal Neighbors, and Masonic Lodge. The sales of tangible personal property or enumerated services to relief agencies are subject to tax. A relief agency may apply to the director for refund of the amount of tax imposed and paid by it, upon the purchase of goods, wares, merchandise, or services rendered, furnished, or performed that are used for free distribution to the poor and needy.

18.6(2) Persons are determined to be in the poor and needy category when their incomes and resources are at or below poverty level. The department will use federal poverty guidelines in making this determination.

18.6(3) Listed below are some examples where the tax may or may not be refunded to the relief agency:

EXAMPLE: A relief agency purchases clothing for free distribution to a poor and needy person. The tax is refundable.

EXAMPLE: A relief agency pays the gas, light, or telephone bill for a person who is poor and needy. The tax is refundable.

EXAMPLE: An agency purchases items of clothing for residents of their living facility, and is partially reimbursed by the person using the items based upon the recipient's ability to pay. Tax on the portion of cost not recovered by the agency can be claimed as a refund of tax paid by using formula stated in 18.6(6).

18.6(4) Demolition v. repair costs. A nonprofit noneducational relief agency is not entitled to a refund of sales tax paid by contractors on building materials used in the alteration, expansion, repair, remodeling or construction of the facility since the materials were sold tax paid to the contractor who is the consumer of the material by statute. See Iowa Code section 422.42(9). However, the relief agency would be entitled to a refund of sales tax paid on the cost of the demolition of the building since the demolition of the building indirectly benefited the poor and needy. 1968 O.A.G. #841.

EXAMPLE: A relief agency, which is not part of a governmental unit, operates a home or orphanage for persons who are poor and needy or for orphan children. Food, lodging, and necessary items are furnished free-of-charge to the residents. The relief agency would be entitled to a refund of any taxes paid to operate this facility; such as, but not limited to, lights, heat, water, telephone, and repair items or services needed to maintain the facility.

18.6(5) Claims for refund must be filed quarterly with the department within 45 days after the end of the quarter for which the refund is claimed. Claims are to be submitted on forms provided by the department.

The claim shall include the following information:

a. The total amount or amounts, valued in money, expended directly or indirectly for goods, wares, merchandise, or services rendered, furnished, or performed used for free distribution to the poor and needy.

- b. List the persons making the sales to the relief agency.
1. Include the date of the sale.
2. Include the total amount expended, itemizing sales tax.
3. Include the date of payment.
4. Include the check number, receipt number, or paid invoice verifying payment.
- c. List the total operating income received (residents, donations, etc.)
- d. List the operating income received from residents only.
- e. The claim shall be signed by an authorized agent of the relief agency.

18.6(6) When a relief agency receives part of its operating income from the poor and needy it is serving, this income will be considered in computing the tax refund paid upon sales to it of products or services used for free distribution to the poor and needy.

To reasonably approximate the correct amount of tax to be refunded, where only a portion of the tax qualifies for refund, a formula will be used by the department. The prescribed formula the department will allow is operating income received from the poor and needy served divided by total operating income received. This percentage will be multiplied by the applicable gross receipts which are considered refundable to arrive at the correct amount of tax to be refunded.

If a person requests an alternative formula, the person shall first list the reasons why an alternative formula is necessary and, secondly, shall outline the proposed formula in detail. If approval is given, the department reserves the right to withdraw the approval or require adjustments in the formula upon notice to the person. Additional refunds or assessments may be made if an audit discloses the formula is incorrect.

This rule is intended to implement Iowa Code sections 422.42(7), 422.43, 422.47, 423.1 and 423.2.

701—18.7(422,423) Containers, including packing cases, shipping cases, wrapping material and similar items. The gross receipts from the sale of containers, labels, cartons, pallets, packing cases, wrapping paper, twine, bags, bottles, shipping cases, garment hangers, and other similar articles and receptacles sold to retailers or manufacturers which are purchased for the purpose of packaging or facilitating the transportation of tangible personal property which is sold either at retail or for resale shall be exempt from the tax.

For the purpose of this rule, producers, wholesalers and jobbers are considered retailers or manufacturers.

18.7(1) Sales to other than retailers or manufacturers.

a. Containers and all other specified items delivered with tangible personal property which are sold to a final buyer or ultimate consumer shall be exempt from the tax when no separate charge is made for the container. This group includes such items as boxes, cartons, pallets, paper bags, bottles, shipping cases, wrapping paper and twine. If a separate charge is made for the container, the sale of the container is subject to the tax. The sale of wrapping paper, paper bags and like items are subject to the tax when sold at retail.

EXAMPLE: A meat locker purchases materials such as wrapping paper and tape which it uses to wrap meat for customers to whom meat is sold. The wrapping paper and tape would be exempt from tax as being purchased as a packaging material of tangible personal property sold at retail.

EXAMPLE: A meat locker purchases materials such as wrapping paper and tape which it uses to wrap meat for customers who own the meat. The meat locker only performs the service of processing the meat. The wrapping paper and tape are subject to tax as they were not purchased for packaging or for the facilitating of transportation of tangible personal property sold at retail, but were used in the rendering of a service.

b. Packing paper, lining paper, paper used to line boxes and crates, and similar items shall be exempt from the tax if delivered with tangible personal property ultimately sold at retail when no separate charge is made for the paper.

18.7(2) Labels, tags and nameplates. Sales of labels, tags, and nameplates attached to products for the benefit of the vendor such as shipping tags, price tags and instructions to cashiers are subject to the tax, unless such items are sold to manufacturers and retailers for packaging or facilitating the transportation of tangible personal property ultimately sold at retail. Labels, tags or nameplates attached to products for the benefit of the final consumer which describe contents, or which relate to the product and are affixed to the product, are exempt from tax.

18.7(3) Pallets. Pallets purchased by manufacturers or retailers which are purchased for the purpose of packaging or facilitating the transportation of tangible personal property ultimately sold at retail shall be exempt from the tax.

18.7(4) Garment hangers. Garment hangers purchased by manufacturers or retailers and used to facilitate the transportation of tangible personal property or garment hangers delivered with tangible personal property ultimately sold at retail when no separate charge is made are exempt from tax.

Garment hangers used merely to display tangible personal property are taxable.

This rule is intended to implement Iowa Code sections 422.42(3), 422.45(19) and 423.1(1).

701—18.8(422) Auctioneers.

18.8(1) An auctioneer in making a sale, whether of tangible personal property or realty, is by virtue of this employment making the sale as the agent of the principal.

18.8(2) Where an auctioneer is conducting a sale and the principal meets the requirement of the casual sale exemption found in Iowa Code section 422.42(12), the gross receipts from the sale are exempt from the tax. See 1970 O.A.G. 774.

18.8(3) When an auctioneer is conducting a sale and the principal is in the business of making sales of tangible personal property or taxable services on a recurring basis, the gross receipts from the sale are taxable.

18.8(4) Where an auctioneer is selling tangible personal property that the auctioneer owns, the sale of the tangible property owned by the auctioneer is taxable.

This rule is intended to implement Iowa Code section 422.43.

701—18.9(422) Sales by farmers. 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 shall not be subject to tax.

Farmers selling tangible personal property not otherwise exempt to ultimate consumers or users shall hold a permit and collect and remit sales tax on the gross receipts from their sales.

701—18.10(422,423) Florists.

18.10(1) Florists are engaged in the business of selling tangible personal property at retail and shall be liable for payment of tax measured by the receipts from the sale of flowers, wreaths, bouquets, potted plants and other items of tangible personal property.

18.10(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, measured at the current rate of tax on gross receipts from the total amount collected from the customer, except the cost of a telegram when a separate charge is made therefor.

b. In cases where a florist receives an order pursuant to which the florist gives telephonic instructions to a second florist located outside Iowa for delivery to a point outside Iowa, tax is not owing with respect to any receipts which the florist may realize from the transaction.

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 tax with respect to any receipts which the florist may realize from the transaction.

d. Rescinded IAB 2/28/96, effective 4/3/96.

18.10(3) Florists engaged in selling shrubbery, trees, and similar items. See rule 18.11(422,423). This rule is intended to implement Iowa Code section 422.43.

701—18.11(422,423) Landscaping materials. The gross receipts from the sale of sod, dirt, trees, shrubbery, bulbs, sand, rock, woodchips 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.

When the retailer of sod, dirt, trees, shrubbery, bulbs, sand, rock, woodchips 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 gross receipts shall be subject to tax. Any retailer’s charges for “landscaping” shall be taxable. See rule 701—26.62(422) for a description of this service. 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: A sodding contractor agrees to furnish and install 20 yards of sod for the lump sum of \$20.00 per yard. The sodding contractor must charge the customer \$20.00 sales tax ($5\% \times \400.00).

EXAMPLE: XYZ Company enters into a contract for the landscaping of an existing office building. XYZ Company agrees to furnish shrubs at \$25.00 each, white rock for \$5.00 per bag and woodchips for \$4.00 per bag. XYZ Company also contracts to install all of the landscaping materials for a fee of \$25.00 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.

The gross receipts 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.

This rule does not apply to the gross receipts from the sale of plants and trees which are eligible for purchase with food coupons under rule 701—20.1(422,423).

This rule is intended to implement Iowa Code sections 422.42, 422.45(12) and 423.1.

701—18.12(422,423) Hatcheries. The gross receipts from the sale of egg-type cockerel chicks, broiler chicks and turkey poult shall be subject to tax. If sale of domestic poultry is for breeding, see rule 701—17.9(422,423).

When pullets and poult are sold for production purposes, the receipts from the sales shall be exempt from tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

701—18.13(422,423) 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 gross receipts from taxable retail sales of tangible personal property and taxable services.

This rule does not apply to sales made by cities and counties in the state of Iowa which are specifically exempted from collecting tax by Iowa Code section 422.45(20).

This rule is intended to implement Iowa Code chapters 422 and 423.

701—18.14(422,423) Sales of livestock and poultry feeds. Tax shall not apply to the sale of feed for any form of animal life when the product of the animals constitutes food for human consumption. Tax shall apply on feed sold for consumption by pets.

Antibiotics, when administered as an additive to feed or drinking water, and vitamins and minerals sold for livestock and poultry shall be exempt from tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

701—18.15(422,423) Student fraternities and sororities. Student fraternities and sororities are not considered to be engaged in the business of selling tangible personal property at retail within the meaning of the sales tax law 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—20.1(422,423).

Student fraternities or sororities engaged in the business of serving meals to persons other than members for which separate charges are made, or owning and operating canteens through which tangible personal property is sold are deemed to be making taxable sales.

When student fraternities or sororities do not provide their own meals but are provided by caterers, concessionaires or other persons, such caterers, concessionaires or other persons shall be liable for the collection and remittance of tax with respect to their receipts from meals furnished. A similar liability is attached to persons engaged in the business of operating boarding houses, whether for students or other persons.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

701—18.16(422,423) Photographers and photostaters. Tax shall apply to the sale of photographs and photostat copies, whether or not produced to the special order of the customer and to charges for the making of photographs or photostat copies out of materials furnished by the customer. 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.

Tax shall not apply to the sale of tangible personal property to photographers and photostat producers which 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 sale of materials to photographers or producers which is used in the processing of photographs or photostat copies.

18.16(1) Sales of photographs to newspaper or magazine publishers for reproduction. The sale of photographs by a person engaged in the business of making and selling photographs to newspaper or magazine publishers for reproduction shall be taxable.

18.16(2) Reserved.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

701—18.17(422,423) 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 not only provides for the sale and delivery of materials but also the conversion of the materials into realty improvements, the contractor is the ultimate consumer of the material used and shall be liable for tax. Tax shall apply on the purchase price of the material.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 422.45(5), 423.1 and 423.2.

701—18.18(422,423) Sale of ice. The sale of ice for human consumption which may be purchased with food coupons is exempt from tax. The sale of ice used for cooling is subject to tax. See rule 701—20.1(422,423).

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 422.45(12), 423.2 and 423.4.

701—18.19(422,423) Antiques, curios, old coins or collector's postage stamps. 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 shall be subject to tax.

18.19(1) Stamps, whether canceled or uncanceled, which are sold by a collector or person engaged in retailing stamps to collectors shall be taxable.

18.19(2) The distinction between stamps which are purchased by a collector and stamps which are purchased for their value as evidence of the privilege of the owner to have certain mail carried by the United States government is that which determines whether or not a stamp is taxable or 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, it shall not be subject to either sales or use tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 423.1 and 423.2.

701—18.20(422,423) Communication services. This rule applies to sales of communication services billed prior to November 23, 2011. For communication service, telecommunication service, ancillary service and other related communication service billed on or after November 23, 2011, refer to 701—Chapter 224, Iowa Administrative Code. The gross receipts from the sale of all communication services provided in this state are subject to tax. (Communication services are not subject to use tax prior to July 1, 2001. See rule 701—31.7(423).)

18.20(1) Definitions.

a. Communication service shall mean the act of providing, for a consideration, any medium or method for, or the act of transmission and receipt of, information between two or more points. Each point must be capable of both transmitting and receiving information if "communication" is to occur. The term "communication service" includes, but is not limited to, the transmission and receipt of sound, printed materials (including letters and materials printed by teletype), other images perceived visually and data encoded in computer languages. Any separate charge for the service of transmitting and receiving information between automatic data processing equipment and remote facilities shall be subject to tax, see paragraph 18.34(3) "c."

b. Communication service is provided "in this state" only if both the points of origination and termination of the communication are within the borders of Iowa. Communication service between any other points is "interstate" in nature and not subject to tax.

c. "Gross receipts" from the sale of communication service in this state shall mean all charges to any person which are necessary for the ultimate user to secure the service, except those charges which are in the nature of a sale for resale (see subrule 18.20(4)). Such charges shall be taxable if the charges are necessary to secure communication service in this state even though payment of the charge may also be necessary to secure other services. Any charge necessary to secure only interstate communication service shall not be subject to tax if the nature of the service is separately stated and the charge for the service separately billed. For the present, the charges imposed by the Federal Communications Commission and referred to as "access charges for interstate or foreign access services" to an "end user" shall not be subject to tax if separately stated and billed.

Charges imposed or approved by the utilities division of the department of commerce which are necessary to secure long distance service in this state, for example, "end user intrastate access charges," are taxable. Such charges are taxable whether they result from an expense incurred from operations or are imposed by the mandate of the utilities division and unrelated to any expense actually incurred in providing the service.

If company A collects gross receipts from ultimate users for communication services performed in this state by company B, company A shall treat those gross receipts as its own, collect tax upon them, and remit the tax to the department. The situation is similar to a consignment sale of tangible personal property, and tax must be remitted by the company collecting the gross receipts from the users of the communication services.

As of April 4, 1990, the amount of a surcharge for enhanced 911 emergency telephone service shall not be subject to sales tax if the amount is no more than \$1 per month per telephone access line and the surcharge is separately identified and separately billed. An enhanced 911 emergency telephone service surcharge is one which routes a 911 call to the appropriate public safety answering point and automatically displays a name, address, and telephone number of an incoming 911 call at that answering point.

d. Paging services. A one-way paging service is not a taxable enumerated service in Iowa because one-way paging only receives information and is not capable of transmitting information. As a result, this type of pager service is not a two-way transmission.

18.20(2) This subrule is applicable to various specific circumstances involving the sale of communication services.

a. Companies which bill their subscribers for communication services on a quarterly, semiannual, annual or any other periodic basis shall include the amount of such billings in their gross receipts. The date of the billing shall determine the period for which sales tax shall be remitted. 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 gross receipts contained in the bill shall be included in the sales tax 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 sales tax deposit to the department.

b. The gross receipts from the service of transmitting messages, night letters, day letters and all other messages of similar nature between two or more points within this state are subject to sales tax.

c. Receipts from communication services performed for all divisions, boards, commissions, agencies or instrumentalities of federal, Iowa, county or municipal government, and private, nonprofit educational institutions in this state for educational purposes are exempt from tax, except sales to any tax-levying body used by or in connection with the operation of any municipally owned utility engaged in selling gas, electricity or heat to the general public are subject to tax.

18.20(3) This subrule is specifically applicable to companies and other persons providing telephone service in this state. Any reasoning contained in this subrule may also be applied to companies or other persons providing other communication services.

a. All companies must have a permit for each business office which provides communication service in this state. The companies must collect and remit tax upon the gross receipts from the operation of such offices.

b. If a minimum amount is guaranteed to a company from the operation of any coin-operated telephone, tax shall be computed on the minimum amount guaranteed or the actual taxable gross receipts collected whichever is the greater.

c. In computing tax due, the federal taxes identified as such, separately billed and payable by the customer shall be excluded from gross receipts. If the taxes are not separately billed, they shall be subject to Iowa sales tax.

d. Telegrams and like charges made to the accounts of subscribers and billed by companies providing telephone service which appear on the subscribers' toll bills are subject to tax.

e. Charges for directory assistance service rendered in this state shall be subject to tax. Charges for directory assistance service, separately stated and billed, shall not be subject to tax if the service is interstate in nature.

f. The gross receipts from the installation or repair of any inside wire which provides electrical current that allows an electronics device to function shall be subject to tax. Such gross receipts are from the enumerated service of electrical repair or installation, and are thus subject to tax. The gross receipts from "inside wire maintenance charges" for services performed under a service or warranty contract shall also be subject to tax. Depending on circumstances, such receipts are for the enumerated service of "electrical repair" or are incurred under an "optional service or warranty contract" for an enumerated service. In either event, the receipts are subject to tax. See rule 701—18.25(422,423).

g. The gross receipts from the rental of any device for home or office use or to provide a communication service to others shall be fully taxable; such receipts are for the enumerated service of "rental of tangible personal property." The gross receipts from rental include rents, royalties, and

copyright and license fees. Any periodic fee for maintenance of the device which is included in the gross receipts for the rental of the device shall also be subject to tax.

h. The sale of any device, new or used, in place at the time of sale on the customer's premises or sold to the customer elsewhere is the sale of tangible personal property, and thus a sale subject to tax. The sale of an entire inventory of devices may or may not be subject to tax, depending upon whether it does or does not come within the purview of the casual sales exemption, see Iowa Code section 422.42(2) and subrule 18.28(3). Other exemptions may be applicable as well. See Iowa Code section 422.45 and 701—Chapter 17.

i. The gross receipts for the repair or installation of inside wire or the repair or installation of any electronic device, including a telephone or telephone switching equipment shall, as a general rule, be subject to tax whether the customer or purchaser is billed by way of a flat fee or flat hourly charge covering all costs including labor and materials, or by way of a premises visit or trip charge, or by a single charge covering and not distinguishing between charges for labor and materials, or is billed by a charge with labor and material segregated, or is billed for labor only. An exception is this: If the gross receipts are for services on or in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure, the gross receipts shall not be subject to tax. For further information concerning the conditions under which such gross receipts for repair or installation would not be subject to tax, see rule 701—19.1(422,423) and 701—subrule 26.2(1).

j. If a company bills a handling charge to a customer for sending the customer an electronic device by mail or by a delivery service, this charge shall constitute a part of the gross receipts from the sale of the device and shall be subject to tax. The gross receipts of a mandatory service rendered in connection with the sale of tangible personal property are considered by the department to be a part of the gross receipts from the sale of the property itself and thus subject to tax.

k. The purchase or rental of tangible personal property by companies providing communication services shall be subject to tax.

l. The amount of any deposit paid by a customer to a company providing communication service if returned to the customer shall not be subject to tax. Any portion of a deposit utilized by a company as payment for the sale of tangible personal property or a taxable service shall be included in gross receipts or gross taxable services and shall be subject to tax.

m. On and after July 1, 1997, the gross receipts from sales of prepaid telephone calling cards and prepaid authorization numbers are subject to tax as sales of tangible personal property.

18.20(4) When one commercial communication company furnishes another commercial communication company services or facilities which are used by the second company in furnishing communication service to its customers, such services or facilities furnished to the second company are in the nature of a sale for resale; and the charges, including any carrier access charges, shall be exempt from sales tax. The charges for services or facilities initially purchased for resale and subsequently used or consumed by the second company shall be subject to tax, and the tax shall be collected and paid by the seller unless the seller has taken a valid exemption certificate in good faith from the purchaser and other requirements of 701—subrule 15.3(2) are met.

18.20(5) Prior to July 1, 1999, charges for access to or use of what is commonly referred to as the "Internet" or charges for other contracted on-line services are the gross receipts from the performance of a taxable service if access is by way of a local or in-state long distance telephone number and if the predominant service offered is two-way transmission and receipt of information from one site to another as described in paragraph "a" of subrule 18.20(1). If a user's billing address is located in Iowa, a service provider should assume that Internet access or contracted on-line service is provided to that user in Iowa unless the user presents suitable evidence that the site or sites at which these services are furnished are located outside this state.

On and after July 1, 1999, gross receipts from charges paid to a provider for access to an on-line computer service are exempt from tax. An "on-line computer service" is one which provides for or enables multiple users to have computer access to the Internet. Charges paid to a provider for other contracted on-line services which do not provide access to the Internet and which are communication services remain subject to Iowa tax through May 14, 2000.

On and after May 15, 2000, the furnishing of any contracted on-line service is exempt from Iowa tax if the information is made available through a computer server. The exemption applies to all contracted on-line services, as long as they provide access to information through a computer server.

18.20(6) The gross receipts paid for the performance of the service of sending or receiving any document commonly referred to as a "fax" from one point to another within this state are subject to sales tax. See 18.20(1) "a." Gross receipts paid for the service of providing a telephone line or other transmission path for the use of what is commonly called a "fax" machine are the gross receipts from the performance of a taxable service if the points of transmission and receipt of a fax are in this state. See 18.20(1) "a" and "b."

EXAMPLE A. Klear Kopy Services is located in Des Moines, Iowa. Klear Kopy charges a customer \$2 to transmit a fax (via its machine) to Dubuque, Iowa. The \$2 is taxable gross receipts. Midwest Telephone Company charges Klear Kopy \$500 per month for the intrastate communications on Klear Kopy's dedicated fax line. The \$500 is also gross receipts from a taxable communication service.

EXAMPLE B. The XYZ Law Firm is located in Des Moines, Iowa. The firm owns a fax machine and uses the fax machine in the performance of its legal work to transmit and receive various documents. The firm does not perform faxing services but will, on billings for legal services to clients, break out the amount of a billing which is attributable to expenses for faxing. For example, "bill to John Smith for August, 1997, \$1,000 for legal services performed, fax expenses which are part of this billing—\$30." The \$30 is not gross receipts for the performance of any taxable service, the faxing service performed being only incidental to the performance of the nontaxable legal services.

EXAMPLE C. The TUV Hospital is located in Cedar Rapids, Iowa. The surgeons successfully perform delicate brain surgery on patient W. To perform that surgery it was necessary for the surgeons to consult with a number of colleagues; the consultation was via E-mail. After the operation, the TUV Hospital sent patient W a bill for \$10,000 of nontaxable hospital services. Listed as an expense is "E-mail—\$200." The E-mail services are performed incidentally to the nontaxable hospital services; therefore, the \$200 is not taxable gross receipts.

EXAMPLE D. D is a dentist practicing in Mason City, Iowa. D subscribes to an on-line service which, in return for a monthly fee, informs its subscribers of the latest dental surgery techniques and advises them about how these techniques can be applied to individual patients. After consultation on patient E's problem through the on-line service, D performs complex surgery on patient E. D's bill to patient E reads as follows: "dental reconstruction—\$2,750; on-line consultation portion—\$240." The \$240 is not taxable gross receipts, this charge being incidental to the nontaxable charge for dental work.

18.20(7) *Communication service, telecommunications service, ancillary service, and other similar communication service.*

a. *Purpose.* This subrule covers various provisions related to communication service, telecommunications service, ancillary service, and other similar communication service.

b. *Definitions.*

(1) "*Air-to-ground radio telephone service*" means a radio service in which common carriers are authorized to offer and provide radio telecommunications service for hire to subscribers in aircraft.

(2) "*Ancillary services*" means services that are associated with or incidental to the provision of a telecommunications service. The term includes, but is not limited to, detailed communications billing service, directory assistance, vertical service, and voice mail services.

(3) "*Call-by-call basis*" means any method of charging for telecommunications services where the price is measured by individual calls.

(4) "*Communications channel*" means a physical or virtual path of communications over which signals are transmitted between or among customer channel termination points.

(5) "*Communication service*" means the act of communicating using any system or the act of transmission and receipt of information between two or more points. Each point must be capable of both transmitting and receiving information if communication is to occur. The term "communication service" includes, but is not limited to, the transmission and receipt of sound, printed materials (including letters and other materials), other images perceived visually and data encoded in computer languages.

Communication service also includes telecommunications service, ancillary service and other similar communication service.

(6) "*Conference bridging service*" means an ancillary service that links two or more participants of an audio or video conference call and may include the provision of a telephone number. Conference bridging service does not include telecommunications services used to reach the conference bridge.

(7) "*Customer*" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunications service. For purposes of sourcing sales of telecommunications services, the end user of the telecommunications service is the customer of the telecommunications service when the end user is not also the contracting party. "*Customer*" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

(8) "*Customer channel termination point*" means the location where the customer either inputs or receives the communications.

(9) "*Detailed telecommunications billing service*" means an ancillary service of separately stating information pertaining to individual calls on a customer's billing statement.

(10) "*Directory assistance*" means an ancillary service of providing telephone number information and address information.

(11) "*End user*" means the person who utilizes the telecommunication service. In the case of an entity, "*end user*" means the individual who utilizes the service on behalf of the entity.

(12) "*Fixed wireless service*" means a telecommunications service that provides radio communication between fixed points.

(13) "*Home service provider*" means the same as defined in Section 124(5) of Public Law 106-252, 4 U.S.C. § 124(5) (Mobile Telecommunications Sourcing Act). The home service provider is the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

(14) "*Interstate*" means a telecommunications service that originates in one United States state or a United States territory or possession and terminates in a different United States state or a United States territory or possession.

(15) "*Intrastate*" means a telecommunications service that originates in one United States state or a United States territory or possession and terminates in the same United States state or a United States territory or possession.

(16) "*Mobile telecommunications service*" means commercial mobile radio service; that is, a radio communication service carried on between mobile stations or receivers and land stations and by mobile stations communicating among themselves.

(17) "*Mobile wireless service*" means a telecommunications service that is transmitted, conveyed, or routed regardless of the technology used, whereby the origination and/or termination points of the transmission, conveyance, or routing are not fixed, including, by example only, telecommunications services that are provided by a commercial mobile radio service provider.

(18) "*Paging service*" means a telecommunications service that provides transmission of coded radio signals for the purpose of activating specific pagers. This transmission may include messages and sounds.

(19) "*Pay telephone service*" means a telecommunications service provided through any pay telephone. Pay telephone service also includes coin operated telephone service paid for by inserting money into a telephone accepting direct deposits of money to operate.

(20) "*Place of primary use*" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, the place of primary use must be within the licensed service area of the home service provider.

(21) "*Postpaid calling service*" means the telecommunications service obtained by making a payment on a call-by-call basis, either through use of a credit card or payment mechanism such as a

bank card, travel card, credit card or debit card, or by charge made to a telephone number which is not associated with the origination or termination of the telecommunications service. A postpaid calling service includes a telecommunications service, except a prepaid wireless calling service that would be a prepaid calling service except it is not exclusively a telecommunication service.

(22) "*Prepaid calling service*" means the right to access exclusively telecommunications services, which must be paid for in advance and which enable the origination of calls using an access number or authorization code, whether manually or electronically dialed, and that are sold in predetermined units or dollars of which the number declines with use in a known amount.

(23) "*Prepaid wireless calling service*" means a telecommunications service that provides the right to utilize mobile wireless service as well as other non-telecommunications services, including the download of digital products delivered electronically, content and ancillary services, which must be paid for in advance that is sold in predetermined units or dollars of which the number declines with use in a known amount.

(24) "*Private communication service*" means a telecommunication service that entitles the customer to exclusive or priority use of a communications channel or group of channels between or among termination points, regardless of the manner in which such channel or channels are connected, and includes switching capacity, extension lines, stations, and any other associated services that are provided in connection with the use of such channel or channels.

(25) "*Residential telecommunications service*" means a telecommunications service or ancillary services provided to an individual for personal use at a residential address, including an individual dwelling unit, such as an apartment. In the case of institutions where individuals reside, such as schools or nursing homes, telecommunications service is considered residential if it is provided to and paid for by an individual resident rather than the institution.

(26) "*Service address*" means:

1. The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

2. If the location in numbered paragraph "1" of this subparagraph is not known, "service address" means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

3. If the locations in numbered paragraphs "1" and "2" of this subparagraph are not known, the service address means the location of the customer's place of primary use.

(27) "*Telecommunications service*" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term includes any transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value-added. "Telecommunications service" does not include the following:

1. Data processing and information services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser's primary purpose for the underlying transaction is the processed data or information;

2. Installation or maintenance of wiring or equipment on a customer's premises;

3. Tangible personal property;

4. Advertising, including but not limited to directory advertising;

5. Billing and collection services provided to third parties;

6. Internet access service;

7. Radio and television audio and video programming services, regardless of the medium, including the furnishing of transmission, conveyance, or routing of the service by the programming service provider. Radio and television audio and video programming services shall include, but not be limited to, cable service and audio and video programming services delivered by a commercial mobile radio service provider;

8. Ancillary service;

9. Digital products delivered electronically, including but not limited to software, music, video, reading materials or ring tones.

(28) "*Value-added non-voice data service*" means a service that otherwise meets the definition of telecommunications services in which computer processing applications are used to act on the form, content, code, or protocol of the information or data primarily for a purpose other than transmission, conveyance, or routing.

(29) "*Vertical service*" means an ancillary service that is offered in connection with one or more telecommunications services, which offers advanced calling features that allow customers to identify callers and to manage multiple calls and call connections. Nonexclusive examples of vertical service include call forwarding, caller ID, three-way calling, and conference bridging services.

(30) "*Voice mail service*" means an ancillary service that enables the customer to store, send, or receive recorded messages. Voice mail service does not include any vertical services that the customer may be required to have in order to utilize the voice mail service.

c. *Taxable communication service, telecommunications service, ancillary service, and other similar communication service.* The sales price from the sale of communication service, telecommunications service, ancillary service, and other similar communication service is subject to the sales or use tax. The following is a nonexclusive list of services subject to the Iowa sales and use tax:

- (1) Air-to-ground radio telephone service;
- (2) Ancillary services except detailed communications billing service;
- (3) Conference bridging service;
- (4) Fixed wireless service;
- (5) Mobile wireless service;
- (6) Pay telephone service;
- (7) Postpaid calling service;
- (8) Prepaid calling service;
- (9) Prepaid wireless calling service;
- (10) Private communication service;
- (11) Residential telecommunications service.

d. *Nontaxable communication service, telecommunications service, ancillary service, and other similar communication service.* The following services are not subject to the Iowa sales and use tax:

- (1) Detailed communications billing service;
- (2) Internet access fees or charges;
- (3) One-way paging services that only receive information and are not capable of transmitting information;
- (4) Value-added non-voice data service;
- (5) Any charge necessary to secure only interstate communication service if the nature of the service is separately stated and the charge for the interstate service is separately billed.

e. *Sourcing of telecommunications services.*

(1) General sourcing principles apply to telecommunications services unless the service falls under one of the exceptions set out in paragraph "e."

(2) Exceptions. The following telecommunications services and products are sourced in accordance with the principles set out in subparagraph (2):

1. Mobile telecommunications service is sourced to the place of primary use, unless the service is prepaid wireless calling service.

2. Prepaid calling service is sourced as provided under Iowa Code section 423.15. However, if the seller has sufficient information available, the sale of prepaid wireless calling service may be sourced to the location of the place of primary use.

3. A sale of a private telecommunications service is sourced as follows:

- Service for a separate charge related to a customer channel termination point is sourced to each level of jurisdiction in which the customer channel termination point is located.

• Service where all customer termination points are located entirely within one jurisdiction or levels of jurisdiction is sourced in the jurisdiction in which the customer channel termination points are located.

• Service for segments of a channel between two customer channel termination points located in different jurisdictions and which segments of channel are separately charged is sourced 50 percent in each level of jurisdiction in which the customer channel termination points are located.

• Service for segments of a channel located in more than one jurisdiction or levels of jurisdiction and which segments are not separately billed is sourced in each jurisdiction based on the percentage determined by dividing the number of customer channel termination points in the jurisdiction by the total number of customer channel termination points.

4. The sale of Internet access service is sourced to the customer's place of primary use.

5. The sale of an ancillary service is sourced to the customer's place of primary use.

6. A postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either (a) the seller's telecommunications system or (b) information received by the seller from its service provider, where the system used to transport the signals is not that of the seller.

7. The sale of telecommunications service sold on a call-by-call basis is sourced to (a) each level of taxing jurisdiction where the call originates and terminates in that jurisdiction or (b) each level of taxing jurisdiction where the call either originates or terminates and in which the service address is also located.

8. The sale of telecommunications services sold on a basis other than a call-by-call basis is sourced to the customer's place of primary use.

9. The sale of the following telecommunication services is sourced to each level of taxing jurisdiction as follows:

• A sale of mobile telecommunications services, other than prepaid calling service, is sourced to the customer's place of primary use as required by the federal Mobile Telecommunications Sourcing Act.

• A sale of postpaid calling service is sourced to the origination point of the telecommunications signal as first identified by either (a) the seller's telecommunications system or (b) information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

f. *Bundled transaction.*

(1) A "bundled transaction" is the retail sale of two or more products where (a) the products are otherwise distinct and identifiable, and (b) the products are sold for one non-itemized price. 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.

(2) In the case of a bundled transaction that includes any of the following: telecommunications service, ancillary service, Internet access, or audio or video programming service:

1. If the price is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products will be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to, non-tax purposes.

2. If the price is attributable to products that are subject to tax at different tax rates, the total price may be treated as attributable to the products subject to tax at the highest tax rate unless the provider can identify by reasonable and verifiable standards the portion of the price attributable to the products subject to tax at the lower rate from its books and records that are kept in the regular course of business for other purposes, including but not limited to non-tax purposes.

3. The provisions of this subrule shall apply unless otherwise provided by federal law.

g. *Direct pay permit.* The department may issue a direct pay permit that allows the holder to purchase tangible personal property or taxable services without payment of the tax to the seller. The direct pay permit holder cannot use the direct pay permit for the purchase of communication service, telecommunications service, ancillary services, or other similar communication service. The seller

should charge and collect the sales or use tax from the purchaser on the taxable sales of communication service, telecommunications service, ancillary services, and other similar communication service.

h. Credit. A taxpayer subject to sales or use tax on communication service, telecommunications service, ancillary service or other similar communication service who has paid any legally imposed sales or use tax on such service to another jurisdiction outside the state of Iowa is allowed a credit against the sales or use tax imposed by the state of Iowa equal to the sales or use tax paid to the other taxing jurisdictions.

i. Sales of communication service, telecommunications service, ancillary service, or other similar communication service to the United States government or the state government of Iowa. Sales of communication service, telecommunications services, ancillary services, or other similar communication service to the United States government or its agencies or to the state of Iowa or its agencies are not subject to sales or use tax. In order to be a sale to the United States government or to the state government of Iowa, the government or agency involved must make the purchase of the services and pay directly to the vendor the purchase price of the services. Telecommunications service providers should obtain an exemption certificate from each agency for their records.

j. Retailers liable for collecting and remitting tax. Retailers that sell taxable communication service, telecommunications service, ancillary services, or other similar communication service are liable for collecting and remitting the state sales or use tax and any applicable local sales tax on the amounts of the sales.

This rule is intended to implement Iowa Code sections 34A.7(1) "c"(2), 422.42(2), 422.42(3), 422.43(9), 422.45(5), 422.45(8), 422.45 and 422.51(1) and Iowa Code Supplement section 422.45 as amended by 2000 Iowa Acts, chapter 1189, section 29.

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701—18.21(422,423) Morticians or funeral directors. A mortician or funeral director is engaged in the business of selling both tangible personal property and funeral services. Examples of the former are caskets, other burial containers, flowers, and grave clothing. Examples of the latter are cremation, transportation by hearse and embalming. Tax is due only upon gross receipts from the sale of tangible personal property and taxable services, and not upon gross receipts from the sale of nontaxable services.

If a mortician or funeral director separately itemizes charges for tangible personal property, taxable services and nontaxable services, as required by the rules of the Federal Trade Commission, or Iowa Code section 523A.8(1) "b," whichever is applicable, tax is due only upon the gross receipts from the sales of tangible personal property and taxable services. If contrary to the rules or the statute, or if the applicable rules are rescinded or the statute repealed, and the mortician or funeral director charges a lump sum to a customer covering the entire cost of the funeral without dividing the charges for sales of tangible personal property and taxable and nontaxable services, the mortician or funeral director shall report the full amount of the funeral bill less any cash advanced by the mortician or funeral director, with tax due on 50 percent of the difference. *Kistner v. Iowa State Board of Assessment and Review*, 224 Iowa 404, 280 N.W. 587 (1938). Cash advance items may include, but are not limited to, the following: cemetery or crematory services, pallbearers, public transportation, clergy honoraria, flowers, musicians, singers, nurses, obituary notices, gratuities, and death certificates.

The mortician or funeral director is considered to be purchasing caskets, outer burial containers, and grave clothing for resale, and may purchase these items from suppliers without payment of tax. The mortician or director should present the supplier with a certificate of resale as set out in rule 701—15.3(422,423). A mortician or director is considered to be the user or consumer of office furniture and equipment, funeral home furnishings, advertising calendars, booklets, motor vehicles and accessories, embalming equipment, instruments, fluid and other chemicals used in embalming, cosmetics, and grave equipment, stretchers, baskets, and other items if title or possession does not pass to the customer. *Kistner*, *supra*.

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 sections 422.42(3), 422.43, 423.1 and 423.2.

701—18.22(422,423) Physicians, dentists, surgeons, ophthalmologists, oculists, optometrists, and opticians. Physicians, dentists, surgeons, ophthalmologists, oculists, optometrists, and opticians shall not be liable for tax on services rendered such as examinations, consultations, diagnosis, surgery and other kindred services, nor on the applicable exemptions prescribed under 701—Chapter 20.

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 for use in the office of prescription drugs would not be subject to tax nor would the purchase of prosthetic devices such as artificial limbs or eyes.

Sales of tangible personal property 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 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 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 to ophthalmologists, oculists, 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 an item of equipment that is utilized directly in the care of an illness, injury or disease, which item would be exempt if purchased directly by the patient, is not subject to tax.

This rule is intended to implement Iowa Code sections 422.42(3), 422.43, 422.45(13-15), 423.2 and 423.4(4).

701—18.23(422) Veterinarians. Purchase of food, drugs, medicines, bandages, dressings, serums, tonics, and the like, but not to include tools and equipment, which are used in treating livestock raised as part of agricultural production is exempt from tax. Where these same items are used in treating animals maintained as pets for hobby purposes, sales tax is due. See rule 701—18.48(422,423) for an exemption for machinery used in livestock or dairy production which may be applicable to veterinarians but should be claimed only with caution by them.

A veterinarian engaged in retail sales, in addition to furnishing professional services, must account for sales tax on the gross receipts from such sales.

This rule is intended to implement Iowa Code sections 422.42(3) and 422.43.

701—18.24(422,423) Hospitals, infirmaries and sanitariums. Hospitals, infirmaries, sanitariums, and like institutions are engaged primarily in rendering services. These facilities shall not be subject to tax on their purchases of items of tangible personal property exempt under 701—Chapter 20 when the items would be exempt if purchased by the individual and if the item is used substantially for the tax-exempt purpose. See rule 18.59(422,423) for an exemption applicable to sales of goods and furnishing of services on and after July 1, 1998, to a nonprofit hospital.

Hospitals, infirmaries, and sanitariums may be the purchasers for use or consumption of tangible personal property used or consumed in furnishing services. *Modern Dairy Co. v. Department of Revenue*, 413 Ill. 55, 108 N.E.2d 8 (1952). However, tangible personal property can be purchased for resale by these facilities and, if purchased for resale, is exempt from tax on the purchases. *Burrows Co. v. Hollingsworth*, 415 Ill. 202, 112 N.E.2d 706 (1953); *Fefferman v. Marohn*, 408 Ill. 542, 97 N.E.2d 785 (1951). Property is purchased for resale if the conditions in subrule 18.31(1) are applicable. See also 701—subrule 15.3(2) with respect to resale exemption certificates.

Depending upon the circumstances, a nonprofit facility may be a charitable institution or organization; a profit facility is not. *Northwest Community Hospital v. Board of Review of City of Des Moines*, 229 N.W.2d 738 (Iowa 1975); *Readlyn Hospital v. Hoth*, 223 Iowa 341, 272 N.W. 90 (1937).

Sales by these nonprofit facilities would be exempt from tax if the requirements of Iowa Code section 422.45(3) are met. See rule 701—17.1(422,423).

This rule is intended to implement Iowa Code section 422.45 as amended by 1998 Iowa Acts, House File 2513, and chapter 423.

701—18.25(422,423) Warranties and maintenance contracts.

18.25(1) In general—definitions. “Mandatory warranty.” A warranty is mandatory within the meaning of this regulation when the buyer, as a condition of the sale, is required to purchase the warranty or guaranty contract from the seller. “Optional warranty.” A warranty is optional within the meaning of this regulation when the buyer is not required to purchase the warranty or guaranty contract from the seller.

18.25(2) Mandatory warranties. When the sale of tangible personal property or services includes the furnishing or replacement of parts or materials which 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 which is in connection with an enumerated taxable service is also exempt from tax.

18.25(3) Optional warranties. For periods after June 30, 1981.

a. The sale of optional service or warranty contracts which provide for the furnishing of labor and materials and require the furnishing of any taxable service enumerated under Iowa Code section 422.43 is considered a sale of tangible personal property the gross receipts from which are subject to tax at the time of sale except as described below.

b. On and after July 1, 1995, the sale of a residential service contract regulated under Iowa Code chapter 523C is not considered to be the sale of tangible personal property, and gross receipts from the sales of these service contracts are no longer subject to tax, and the gross receipts from taxable services performed for the providers of residential service contracts are now subject to tax. See the examples below for more detailed explanation. A “residential service contract” is defined in Iowa Code subsection 523C.1(8) to be: a contract or agreement between a residential customer and a service company which undertakes, for a predetermined fee and for a specified period of time, to maintain, repair, or replace all or any part of the structural components, appliances, or electrical, plumbing, heating, cooling, or air-conditioning systems of residential property containing not more than four dwelling units.

EXAMPLE A. John Jones purchases a residential service contract for \$3,000 on July 1, 1994. He pays \$150 of Iowa state sales tax. On December 1, 1994, his furnace malfunctions. The service company which sold Mr. Jones the contract pays Smith Furnace Repair \$700 to fix the furnace. No sales tax is due on the \$700 charge.

EXAMPLE B. Bob Jones purchases a residential service contract for \$3,000 on July 1, 1995. No sales tax is owing or paid. On December 1, 1995, his furnace becomes inoperable. The service company which sold Mr. Jones the contract pays Smith Furnace Repair \$900 to fix Mr. Jones’ furnace. Sales tax of \$45 is due based on the \$900.

c. On and after July 1, 1998, 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 and not for the furnishing of any materials, then no tax is imposed on the furnishing of those services under this subrule. 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 state sales tax of 5 percent shall be imposed on 50 percent of the gross receipts from the sale of the contract. If a charge for the performance of the nontaxable service is separately stated, see subrule 18.25(5) below.

18.25(4) A preventive maintenance contract is a contract which requires only the visual inspection of equipment and no repair is or shall be included. The gross receipts from the sale of a preventive maintenance contract is not subject to tax.

18.25(5) Additional charges for parts and labor furnished in addition to that covered by a warranty or maintenance contract which 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 sections 422.42 and 423.2 and Iowa Code Supplement section 422.43 as amended by 1998 Iowa Acts, Senate File 2288.

701—18.26(422) Service charge and gratuity. When the purchase of any food, beverage or meals 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, beverage or 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 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, beverage or 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, beverage or meal it shall be considered a tip and not subject to tax.

Cohen v. Playboy Club International, Inc., 19 Ill. App. 3d 215, 311 N.E.2d 336; *Baltimore Country Club, Inc. v. Comptroller of Treasury*, 272 Md. 65, 321 A.2d 308.

This rule is intended to implement Iowa Code section 422.43.

701—18.27(422) Advertising agencies, commercial artists, and designers.

18.27(1) Nontaxable services. Tax does not apply to charges by advertising agencies, commercial artists, or designers for services rendered that do not represent services that are a part of a sale of tangible personal property, or a labor or service cost in the production of tangible personal property. Examples of such nontaxable services are: writing original manuscripts and news releases; writing copy for use in newspapers, magazines, or other advertising, or to be broadcast on television or radio, compiling statistical and other information; placing or arranging for the placing of advertising in media, such as newspapers, magazines, or other publications; billboards and other facilities used in public transportation; and delivering or causing the delivery of brochures, pamphlets, cards, and similar items. Charges for such items as supervision, consultation, research, postage, express, transportation and travel expense, if involved in the rendering of such services, are likewise not taxable.

18.27(2) Agency fee or commission. When an amount billed as an agency “fee,” “service charge,” or “commission” represents a charge or part of the charge for any of the nontaxable services described under 18.27(1), the amount so billed is not taxable. Such charge by an advertising agency will be considered to be made for nontaxable services.

18.27(3) Items taxable. The tax applies to the entire amount charged to clients for items of tangible personal property such as drawings, paintings, designs, photographs, lettering, assemblies and printed matter. This includes the cost of typography and reproduction proofs when the latter is used as part of a paste-up, “mechanical” or assembly. Whether the items of property are used for reproduction or display purposes is immaterial.

18.27(4) Preliminary art. “Preliminary art” as used herein means roughs, visualizations, comprehensives and layouts prepared for acceptance by clients before a contract is entered into or approval is given for finished art. (“Finished art” as used herein means the final art used for actual reproduction by photo-mechanical or other processes.) Tax does not apply to separate charges for preliminary art, except where the preliminary art becomes physically incorporated into the finished art as for example, when the finished art is made by inking directly over a pencil sketch or drawing, or the approved layout is used as camera copy for reproduction.

The charge for preliminary art must be billed separately to the client, either on a separate billing or separately charged for on the billing for the finished art. It must be clearly identified on the billing as preliminary art, of one or more of the types mentioned in the preceding paragraph. Proof of ordering or

producing the preliminary art prior to date of contract or approval for finished art shall be evidenced by purchase orders of the buyer, or by work orders or other records of the seller.

The following situations are examples of when the sale of "finished art" is taxable:

a. Finished art which is sold to customers to be used for advertising purposes in newspapers, magazines or the like. After the advertiser contracts with the ad agency for the development of an advertising message or theme, the agency devises ideas (preliminary art) and produces the finished art. The finished art is then delivered to the advertiser or to an agent of the advertiser such as a printer or publisher who is under contract with the advertiser to publish the ad.

b. Finished art which is sold to customers, or their agents (e.g., printers), for use in producing printed material. The charge for finished art is taxable even though the art work may later be returned to the ad agency by the purchaser or the printer or used by the customer or the customer's agent to produce a nontaxable item. Since the finished art is not a part of the printed materials, the ad agency's customer is consuming the material and not buying it for resale, or using it in an exempt manner.

c. Finished art which is used to produce other tangible personal property sold by the ad agency such as letterhead stationery and business cards. The charge for such art is taxable as part of the selling price for such stationery or business cards. This is true whether or not the agency separately itemizes the charge for such stationery or business cards.

18.27(5) Items purchased by agency, artist or designer. An advertising agency, artist, or designer is the consumer of tangible personal property used in the operation of its business, such as stationery, ink, paint, tools, drawing tables, T-squares, pens, pencils, and other office supplies. Tax applies to the sale of such property to the agency, artist, or designer. Tax also applies where the agency, artist or designer is the consumer of taxable services.

The agency, artist, or designer is the seller of, and may purchase for resale, any item resold before use, or that becomes physically an ingredient or component part of tangible personal property sold, as, for example, illustration board, paint, ink, rubber cement, flap paper, wrapping paper, photographs, photostats, or art purchased from other artists. Tax also applies where the agency, artist, or designer is the seller at retail of taxable services.

In the event that an agency, artist, or designer is both a consumer and a retailer of such items of tangible personal property as noted in this subsection, such agency, artist or designer should:

a. Purchase such items without tax liability if the majority of the items are sold at retail and remit the tax at the time of resale or at the time such items are consumed in the operation of the business.

b. Pay tax to suppliers at the time of purchase if the majority of the items will be consumed in the operation of the business and deduct the original cost of any such items subsequently sold at retail when reporting tax on their returns.

18.27(6) Construction. Nothing contained in this rule shall be construed to provide for an exemption from tax for services expressly taxable in rules 701—26.17(422) and 26.39(422).

18.27(7) Advertising agencies, commercial artists and designers as agent of client or as a nonagent.

a. In general. A true agent 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 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 advertising agencies, artists and designers act as agents of their clients in acquiring tangible personal property, they are neither purchasers of the property with respect to the supplier nor sellers of the property with respect to their principals.

b. When advertising agencies, commercial artists, and designers act as agents of their clients in purchasing property for their clients, the tax applies to the gross receipts from the sale of such property to the advertising agencies, commercial artists, and designers. Unless such advertising agencies, commercial artists and designers 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 amount received for such property. Further, nothing in this rule should be construed to be in variance with the opinion of the Iowa Supreme Court in *Rowe vs. Iowa State Tax Commission*, 249 Iowa 1207, 91 N.W.2d 548 (1958).

c. To establish that a particular acquisition is made in the capacity of an agent for a client, advertising agencies, commercial artists, and designers (collectively herein referred to as 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 advertising agency, commercial artist, or designer establishes that it has acquired tangible personal property as agents 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.

e. Advertising agencies, commercial artists, and designers acting as agents shall not issue resale certificates to suppliers.

f. Advertising agencies, commercial artists, and designers act as retailers of all items of tangible personal property produced or fabricated by their own employees when they sell to their clients. Advertising agencies, commercial artists, and designers 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.

18.27(8) 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 422.43 and 423.2.

701—18.28(422,423) Casual sales.

18.28(1) Casual sales by persons not retailers or by retailers outside the regular course of business. Casual sales are exempt from the Iowa sales and use taxes except for the casual sale of vehicles subject to registration, and vehicles subject only to the issuance of a certificate of title. On and after July 1, 1988, the casual sale of aircraft is also taxable. 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 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 422.43 or, if so engaged, the sale must be outside the regular course of the seller's business (Order of State Board of Tax Review, Martin Development Corporation, Docket No. 136, December 1, 1976, incorporating by reference Order of Department of Revenue Hearing Officer in Docket No. 75-28-6A-A, July 9, 1976). See subrule 18.28(2) for an explanation of the casual sale exemption applicable to the liquidation of a trade or business.

If either of the conditions above are lacking, no casual sale occurs. Moreover, prior to July 1, 1985, the casual sale exemption was limited to sales of tangible personal property, and casual enumerated taxable services did not qualify for the exemption. *KTVO, Inc. v. Bair*, Equity No. 385 Linn County District Court, September 5, 1975.

For the purposes of this subrule, the word "aircraft" refers to any contrivance now known or hereafter invented, which is designed or used for navigation of or flight in the air, for the purpose of transporting persons, property, or both or for crop dusting, aerial surveillance, recreational flying, or for providing some other service. By way of nonexclusive example, balloons, gliders, helicopters, and "ultra lights" are aircraft. Also included within the meaning of the word "aircraft" is any craft registered under Iowa Code section 328.20 or any successor statute thereto.

Sales of capital assets such as equipment, machinery, and furnishings which 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.

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. *Des Moines Police Department v. Bair*, Equity No. CE3-1591, Polk County District Court, November 1, 1976.

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 goods or services for a profit, since the sales are recurring, there is no casual sale. *S & M Finance Co., Fort Dodge v. Iowa State Tax Commission*, 1968, Iowa 162 N.W.2d 505.

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. See rule 18.8(422).

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. *Des Moines Police Department v. Bair*, Equity No. CE3-1591, Polk County District Court, November 1, 1976.

EXAMPLE: I, a corporation, has one sales event every year whereby it auctions off capital assets which 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 such 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. See *Holland Bros. Construction Co., Inc. v. Iowa State Board of Tax Review*, 611 N.W.2d 495 (Iowa 2000).

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 18.28(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 which can and do exist, it is not possible to formulate more detailed rules on this subject matter.

18.28(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. See *Holland Bros. Construction Co., Inc. v. Iowa State Board of Tax Review*, 611 N.W.2d 495 (Iowa 2000). 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 18.28(1), and the resale exemption is always potentially applicable to sales of inventory. See the examples below for 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 18.28(1) for criteria which 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 18.28(1) because (1) it is nonrecurring, and (2) it is outside the usual course of L's business. See *Holland Bros. Construction Co., Inc.*, supra.

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 which 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 18.28(1) for the criteria of a casual sale exemption which could apply.

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 which can and do exist, it is not possible to formulate more detailed rules on this subject matter.

18.28(3) Casual sales of services. Special rule for services rendered, furnished, or performed on or after July 1, 1985. The "casual sale" of an enumerated service has occurred if the following circumstances exist:

- a. The service was rendered, furnished, or performed on or after July 1, 1985; and
- b. 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 422.43, or, if so engaged, the sale was outside the regular course of the seller's business; or
- c. 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; see rule 701—26.60(422). 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," gross receipts from the lawn care are 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 goods or taxable enumerated services. A casual sale qualifying for the exemption exists.

This rule is intended to implement Iowa Code sections 422.42(12), 422.45(6) and 423.4.

701—18.29(422,423) Processing, a definition of the word, its beginning and completion characterized with specific examples of processing.

18.29(1) Processing—a definition. For the purpose of these rules, "processing" means an operation or a series of operations whereby tangible personal property is subjected to some special treatment by artificial or natural means which changes its form, context, or condition, and results in marketable tangible personal property. These operations are commonly associated with fabricating, compounding, germinating, or manufacturing. *Linwood Stone Products Co. v. State Department of Revenue*, 175 N.W.2d 393 (Iowa 1970).

18.29(2) The beginning of processing. Processing begins when the "form, context, or condition" of tangible personal property is changed with the intent of eventually transforming the property into a saleable finished product. The severance of raw material from real estate is not processing, even if this severance results in a change in the form, context, or condition of the real estate. *Linwood Stone Products Co. v. State Department of Revenue*, 175 N.W.2d 393 (Iowa 1970). Furthermore, transportation of raw material after it is severed from real estate but prior to the time the initial change in the form, context, or condition of the raw material occurs is not processing. *Southern Sioux County Rural Water System, Inc. v. Iowa Department of Revenue*, 383 N.W.2d 585 (Iowa 1986).

18.29(3) The completion of processing. Processing ends when the property being processed is in the form in which it is ultimately intended to be sold at retail, *Hy-Vee Food Stores v. Iowa Department of Revenue*, 379 N.W.2d 37 (Iowa App. 1985). The storage or transport of property after that property is transformed into a finished product is not a part of processing.

18.29(4) Examples of when processing begins and ends. The following examples are intended to clarify but not to contradict the explanation of processing set out in subrules 18.29(2) and 18.29(3).

EXAMPLE A: A company blasts limestone from the ground, bulldozers pick the limestone up and put it in trucks; these trucks transport the limestone to a crusher some distance from the quarry site. The first change in the “form” or “condition” of the limestone, while it is tangible personal property, occurs when the stone is crushed in the crusher. The blasting of the stone from the ground and its transport to the crusher would be acts preparatory to and not a part of processing. Thus, fuel used in the bulldozers and transport trucks would not be fuel used in processing. *Linwood Stone Products*, *supra*.

EXAMPLE B: Pumps remove water from underground wells and pump that water through pipes to a water treatment plant. At the treatment plant, the water passes initially through an aeration system which adds oxygen to it. At other points in the plant, potassium and chlorine are added to the water and iron is removed. After these acts are performed, clean, drinkable water exists. The first change, however, in the condition of the water occurs when it passes through the aeration system and oxygen is added to it. The withdrawal of the water from the ground and its transport to the aeration system would not be a part of processing. Thus, electricity used by the pumps which pump the water to the aeration system would not be used in processing. However, by way of contrast, electricity used to transport the water between, for example, the aeration system and the point where potassium is added to the water would be used in processing. *Southern Sioux Rural Water System, Inc.*, *supra*.

EXAMPLE C: Water is processed in a treatment plant. The last act at the plant necessary to render the water drinkable or a “finished product” is the addition of chlorine. After the addition of chlorine, the water is pumped first into wells and later into water towers where it is held for distribution. The pumping of this drinkable water from the point where the chlorine is added to the wells and the tower is not a part of processing because processing of the water ended with the addition of the chlorine; thus, electricity used in these pumps is not electricity used in processing. *Southern Sioux County Rural Water System, Inc.*, *supra*.

18.29(5) Integral part of the production of the product test. Certain activities may be exempt as part of processing if those activities are very closely interconnected with, or an integral part of, the operation of the processing equipment while processing is occurring. *Southern Sioux Rural Water System, Inc.*, *supra*. Merely because an activity is vital or essential to a processing operation does not make that activity exempt as part of processing unless the activity itself is closely interconnected with, or an integral part of, the operation of the processing equipment while processing is occurring. *Mississippi Valley Milk Producers Ass'n v. Iowa Dept. of Revenue*, 387 N.W.2d 611 (Iowa App. 1986). See the nonexclusive example below.

A manufactures nails. In A's factory is a machine which draws steel into long rods the width of whatever nail A may wish to manufacture. After this machine draws the steel into the desired-size rods, the rods are moved to a second machine by a conveyor belt. This second machine cuts the rods into the length of nail which A desires. A second conveyor belt then transports these cut rods to a third machine which sharpens one end of the rod to a point and puts a “nail head” on the other end of the rod. The activities of the three machines are clearly processing, in that they are activities which change the form, context or condition of raw material, and as a result of those activities, marketable tangible personal property or a finished product is created. The two conveyor belts move the partially finished nails from one piece of processing equipment to another while processing is occurring. Since the activities of the conveyors are very closely interconnected with and an integral part of the operation of the various pieces of processing equipment while processing is occurring, the conveyor belts are involved in processing as well.

18.29(6) Other specific examples of processing. The Iowa Supreme Court has also stated that the following activities are processing: manufacturing ice, refrigerating cheese to age it from “green” to edible, refrigerating eggs to change their flavor, pasteurizing and subsequent refrigeration of milk, “hard” freezing of meat and butter for aging, canning vegetables and cooking foodstuffs; *Fischer Artificial Ice & Cold Storage Co. v. Iowa State Tax Commission*, 248 Iowa 497, 81 N.W.2d 437 (1957); and, *Mississippi Valley Milk Producers v. Iowa Dept. of Revenue and Finance*, 387 N.W.2d 611 (Ia. App. 1986), also crushing of “flat rock” limestone and treating limestone in kilns. *Linwood Stone Products Co. v. State*

Dept. of Revenue, 175 N.W.2d 393 (Iowa 1970). See 701—subrule 17.3(2) for an expanded definition of processing with regard to food manufacturing.

18.29(7) Other department rules concerned with processing. Various sections of the Iowa Code set out activities which are defined by statute to be “processing”. The rules interpreting these statutes for the purposes of sales and use tax law are the following:

- a. 15.3(422,423) Certificates of resale, processing, and fuel used in processing.
- b. 17.2(422) Fuel used in processing—when exempt.
- c. 17.3(422,423) Electricity, steam, or other taxable services to be used in the processing of tangible personal property intended to be sold ultimately at retail are exempt from sales tax.
- d. 17.9(422,423) Sales of breeding livestock, fowl, and certain other property used in agricultural production. See 701—subrules 17.9(4), 17.9(5), 17.9(6), and 17.9(7) for processing exemptions.
- e. 17.14(422,423) Chemicals, solvents, sorbents, or reagents used in processing.
- f. 18.3(422,423) Chemical compounds used to treat water.
- g. 18.45(422,423) Sale or rental of computers, industrial machinery and equipment; refund of and exemption from tax paid for periods prior to July 1, 1997.
- h. 18.58(422,423) Sales or rentals of machinery, equipment, and computers and sales of fuel and electricity to manufacturers and sales or rentals of computers to commercial enterprises for periods on and after July 1, 1997.
- i. 26.2(422) Enumerated services exempt. See 701—subrule 26.2(2) for the processing exemption.
- j. 28.2(423) Processing of property defined.
- k. 33.3(423) Fuel consumed in creating power, heat, or steam for processing or generating electric current.
- l. 33.7(423) Property used to manufacture certain vehicles to be leased.

[ARC 2349C, IAB 1/6/16, effective 2/10/16; see Rescission note at end of chapter]

701—18.30(422) Taxation of American Indians.

18.30(1) Definitions.

“American Indians” means all persons of Indian descent who are members of any recognized tribe.

“Settlement” means all lands within the boundaries of the Mesquakie Indian settlement located in Tama County, Iowa and any other recognized Indian settlement or reservation within the boundaries of the state of Iowa.

18.30(2) Retail sales tax—tangible personal property. Retail sales of tangible personal property made on a recognized settlement or reservation to Indians who are members of the tribe located on that settlement or reservation, where delivery occurs on the reservation, are exempt from tax (*Bryan v. Itasca County*, 426 U.S. 373, 376-77 (1976); *Moe v. Confederated Salish & Kootenai Tribes*, 425 U.S. 463, 475-81 (1976)). Retail sales of tangible personal property made on a recognized settlement or reservation to Indians where delivery occurs off the reservation are subject to tax. Retail sales of tangible personal property made to non-Indians on a recognized settlement or reservation are subject to tax regardless of where the delivery occurs. Sales made to non-Indians are taxable even though the seller may be a member of a recognized settlement or reservation.

18.30(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 Indians who are members of the tribe located on the recognized settlement or reservation where delivery of the service occurs are exempt from tax (*Bryan v. Itasca County*, 426 U.S. 373, 376-77 (1976); *Moe v. Confederated Salish & Kootenai Tribes*, 425 U.S. 463, 475-81 (1976)). Sales of enumerated taxable services or sales made by municipal corporations furnishing gas, electricity, water, heat, or communication services to Indians where delivery of the services occurs off a recognized settlement or reservation are subject to tax.

18.30(4) Off-reservation purchases. Purchases made by Indians off a recognized settlement or reservation are subject to tax if delivery occurs off the reservation. Purchases made by Indians off a

recognized settlement or reservation are not subject to tax if delivery is made on the reservation to Indians who are members of the tribe located on that reservation.

See rule 701—33.5(423) for the taxation of tangible personal property and services where the state use tax may be applicable.

This rule is intended to implement Iowa Code sections 422.42, 422.43, and 422.45(1).

701—18.31(422,423) Tangible personal property purchased by one who is engaged in the performance of a service.

18.31(1) In general. (Effective July 1, 1990)

a. On and after July 1, 1990, tangible personal property purchased by one who is 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. Prior to July 1, 1990, in those circumstances in which tangible personal property is purchased by one who is engaged in the performance of a service and the property is transferred to the customer in conjunction with a performance of the service in a form or quantity which is capable of any fixed or definite price value, but the actual sale of the property is not indicated by a separate charge for the identifiable item, the burden of proving that the property was purchased for resale by one engaged in the performance of a service and not subject to tax at the time of purchase is upon the person engaged in the performance of a service who asserts this.

c. Tangible personal property which is not sold in the manner set forth in "a" or "b" above is not purchased for resale and thus is subject to tax at the time of purchase by one 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: An investment counselor purchases envelopes. These envelopes are used to send out monthly reports to the investment counselor's clients regarding their 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 which 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.

An automobile repair shop purchases solvents which are used in cleaning automobile parts and thus in performing its automobile repair service. Tax is due at the time the automobile repair shop purchases the solvent since the solvents are not sold to the customer and, in this case, the item is not transferred to a customer in a form or quantity which is capable of a fixed or definite price value. Thus, the solvent is deemed consumed by the purchaser engaged in the performance of the service.

EXAMPLE: A retailer purchases television tubes tax-free where the retailer makes a separate charge for the tube to the customer and since the tube is transferred to the customer in a form or quantity capable of a fixed or definite price value.

EXAMPLE: A beauty or barber shop purchases shampoo and other items to be used in the performance of its service. Tax is due at the time the beauty or barber shop purchases such items from its supplier, where the customers of the beauty or barber shop are not separately billed for the item, and because it is not transferred to the customer in a form or quantity capable of a fixed or definite price value, it is being consumed by the beauty or barber shop.

EXAMPLE: A car wash purchases water, electricity, or gas used in the washing of a car. The car wash would be the consumer of the water, electricity, or gas and tax is due at the time of purchase. The items purchased by the car wash are not transferred to the customer in a form or quantity capable of a fixed or definite price value, and the customer is not billed for the item.

EXAMPLE: An accounting firm purchases plastic binders which are used to cover the reports issued to its 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, there being no sale to the customer in such a case.

EXAMPLE: A meat locker purchases materials such as wrapping paper and tape which it 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 they are not sold to the customer in a form or quantity capable of a fixed or definite price value.

EXAMPLE: 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 where they 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: A lawn care service applies fertilizer, herbicides, and pesticides to its customers' lawns. The following are examples of invoices to customers which 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 which 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."

18.31(2) Purchases made by automobile body shops or garages with body shops (effective October 1, 1980).

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. See Iowa Code section 422.42(2) and *Cedar Valley Leasing Inc. v. Iowa Department of Revenue*, 274 N.W.2d 357 (Iowa 1979).

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 events is missing, there is no purchase for resale and the body shop is deemed the consumer of the item purchased.

When body shops purchase items which will be resold (see list of items in this rule) in the course of the repair activity, the vendors selling to the body shops are encouraged to accept a valid resale certificate at the time of purchase. See rule 701—15.3(422,423). Failure of the vendor to accept a valid resale 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 or retail use tax permit.

For insurance purposes, body shops are reimbursed by insurance companies for "materials" which such shops consume in rendering repair services. Some of the materials are transferred to the recipients of the repair services and some are not. Of those so transferred, such transfer is in irregular quantities and is not in a form or quantity capable of a fixed or definite price value. Therefore, body shops are generally deemed to be the consumers of materials and must pay tax on these items at the time of purchase. Nonexclusive examples of items most likely to be included in this category of "materials," whether actually transferred to customers of body shops or not, are as follows:

- Abrasives
- Accessories
- Battery water
- Body filler or putty
- Body lead
- Bolts, nuts and washers
- Brake fluid
- Buffing pads

Chamois
Cleaning compounds
Degreasing compounds
Floor dry
Hydraulic jack oil
Lubricants
Masking tape
Paint
Polishes
Rags
Rivets and cotter pins
Sand paper
Sanding discs
Scuff pads
Sealer and primer
Sheet metal
Solder
Solvents
Spark plug sand
Striping tape
Thinner
Upholstery tacks
Waxes
White sidewall cleaner

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.

Batteries
Brackets
Bulbs
Bumpers
Cab corners
Chassis parts
Doors
Door guards
Door handles
Engine parts
Fenders
Floor mats
Grills
Headlamps
Hoods
Hub caps
Radiators
Rocker panels
Shock absorbers
Side molding
Spark plugs
Tires
Trim
Trunk lids
Wheels

Window glass
Windshield ribbon
Windshields

The following are nonexclusive examples of tools and supplies which 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 and 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 bit
Drop cords
Equipment parts
Fire extinguisher fluids
Floor jacks
Hand soap
Hand tools
Office supplies
Paint brushes
Paint sprayers
Sanders
Spreaders for putty
Signs
Washing equipment and parts
Welding equipment and parts

Because of the nature of their business and the formulas devised by the insurance industry to reimburse body shops for cost of "materials," it is possible for body shops, in their invoices to their customers, to separately set forth labor, resold parts, and materials. While the materials can be separately invoiced as one general item, there is no way to ascertain a definite and fixed price for each item of the materials listed in this rule and consumed by the body shops and some of such individual materials are not even transferred by body shops to their customers. Therefore, the body shops are generally the "consumers" of "materials" and do not purchase them for resale. *W.J. Sandberg Co. v. Iowa State Board of Assessments and Review*, 225 Iowa 103, 278 N.W. 643 (1938). Thus, body shops should pay tax to their suppliers on all materials purchased and consumed by them. If materials are purchased from non-Iowa suppliers who do not collect Iowa tax from body shops, such body shops should remit consumer use tax to the Department of Revenue on such materials.

Body shops must collect sales tax on the taxable service of repairing motor vehicles. See rule 701—26.5(422). However, due to the nature of the insurance formulas, it is possible for body shops to itemize that portion of their billing which would be for repair services and that portion relating to consumed "materials." It is also possible for body shops to itemize that portion of their charges for parts which they purchase for resale to their customers. Body shops do not and cannot resell the tools and supplies previously listed in this rule and are taxable on their purchases of such items.

Therefore, as long as body shops separately itemize on their invoices to their customers the amounts for labor, parts, and for "materials," body shops should collect sales tax on the labor and the parts, but not on the materials as enumerated in this rule.

EXAMPLE: 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, solder and polishes. In its invoice to the customer, the labor is separately listed at \$300, the part (fender) is separately listed at \$300, and the category of "materials" is separately listed for a lump sum of \$100, for a total billing of \$700. The Iowa

sales tax computed by the body shop should be on \$600 which is the amount attributable to the labor and the parts. The materials consumed by the body shop were separately listed and would not be included in the tax base for “gross taxable services” as defined in Iowa Code subsection 422.42(16), which is taxable in Iowa Code section 422.43.

In this example, if the “materials” were not separately listed on the invoice, but had been included in either or both of the labor or part charges by marking up such charges, the body shop would have to collect sales tax on the full charges for parts or labor even though tax was paid on materials by the body shop to its supplier at time of purchase.

This rule is intended to implement Iowa Code sections 422.42, 422.43 and 423.2.

701—18.32(422,423) Sale, transfer or exchange of tangible personal property or taxable enumerated services between affiliated corporations.

18.32(1) *In general.* The sale, transfer or exchange of tangible personal property or taxable services among affiliated corporations, included 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. Transactions between affiliated corporations may not be subject to tax where it can be shown that the affiliated corporations are operating as a unit within the meaning of Iowa Code sections 422.42(1) and 423.1(8).

18.32(2) *Affiliated corporations acting as a unit.* If an affiliated corporation acts as an agent for the other affiliated corporation in a transaction listed in 18.32(1) such corporation shall be considered as acting as a unit as set forth herein and such transactions may not be subject to tax.

This rule should not be equated with the unitary business concept used in corporation income tax law.

This rule is intended to implement Iowa Code sections 422.42(1) and 423.1(8).

701—18.33(422,423) Printers’ and publishers’ supplies exemption with retroactive effective date.

18.33(1) For the purposes of this rule, a “printer” is any person, a portion of whose business involves the completion of a finished, printed product for sale at retail by that person or another person. A “printer” is also any person, a portion of whose business involves the completion of a finished printed packaging material used to package products for ultimate sale at retail. The term “printer” does not include any person printing or copyrighting printed material for its own use or consumption and not for resale. A “publisher” means and includes any person who owns the right to produce, market, and distribute printed literature and information for ultimate sale at retail.

18.33(2) Effective May 4, 1995, and retroactive to July 1, 1983, the gross receipts from the sale or rental of the following to a printer or publisher are exempt from tax: acetate; antihalation backing; antistatic spray; back lining; base material used as a carrier for light sensitive emulsions; blankets; blow-ups; bronze powder; carbon tissue; cudas; color filters; color separations; contacts; continuous tone separations; creative art; custom dies and die cutting materials; dampener sleeves; dampening solution; design and styling; diazo coating; dot etching; dot etching solutions; drawings; drawsheets; driers; duplicate films or prints; electronically digitized images; electrotypes; end product of image modulation; engravings; etch solutions; film; finished art or final art; fix; fixative spray; flats; flying pasters; foils; goldenrod paper; gum; halftones; illustrations; ink; ink paste; keylines; lacquer; lasering images; layouts; lettering; line negatives and positives; linotypes; lithographic offset plates; magnesium and zinc etchings; masking paper; masks; masters; mats; mat service; metal toner; models, modeling; mylar; negatives; nonoffset spray; opaque film process paper; opaquing; padding compound; paper stock; photographic materials: acids, plastic film, desensitizer emulsion, exposure chemicals, fix, developers, paper; photography, day rate; photopolymer coating; photographs; photostats; photo-display tape; phototypesetter materials; pH-indicator sticks; positives; press pack; printing cylinders; printing plates, all types; process lettering; proof paper; proofs and proof processes, all types; pumice powder; purchased author alterations; purchased composition; purchased phototypesetting; purchased stripping and paste-ups; red litho tape; reducers; roller covering; screen tints; sketches; stepped plates; stereotypes; strip types; substrate; tints; tissue overlays; toners; transparencies; tympan;

typesetting; typography; varnishes; Veloxes; wood mounts; and any other items used in a similar capacity to any of the above-enumerated items by the printer or publisher to complete a finished product for sale at retail. Expendable tools and supplies not enumerated in this subrule are subject to tax.

18.33(3) Claim for refunds of tax, interest, or penalty paid for the period of July 1, 1983, to June 30, 1995, must be limited to \$25,000 in the aggregate and will not be allowed unless filed prior to October 1, 1995. If the amount of claimed refunds for this period totals more than \$25,000, the department must prorate the \$25,000 among all claims.

701—18.34(422,423) Automatic data processing.

18.34(1) In general.

a. *Applicability of tax.* For the purposes of this rule, the tax on automatic data processing is applicable to the gross receipts of:

(1) Sales and rentals of data processing equipment (hardware).

(2) Sales and rentals of tangible personal property produced or consumed by data processing equipment or prewritten (canned) computer software used in data processing operations.

(3) Certain enumerated services performed on or connected with data processing such as rental of tangible personal property, machine repair, services of machine operators, office and business machines repair, electrical installation, and any other taxable service enumerated in Iowa Code section 422.43.

b. *Definitions.*

(1) "*Computer*" means a programmed or programmable machine or device having information processing capabilities and includes word processing equipment, testing equipment, and programmed or programmable microprocessors and any other integrated circuit embedded in manufactured machinery or equipment.

(2) "*Hardware*" means the physical computer assembly and peripherals including, but not limited to, such items as the central processing unit, keyboards, consoles, monitors, memory, disk and tape drives, terminals, printers, plotters, modems, tape readers, document sorters, optical readers and digitizers.

(3) "*Canned software*" is prewritten computer software which is offered for general or repeated sale or rental to customers with little or no modification at the time of the transaction beyond specifying the parameters needed to make the program run. Canned software is tangible personal property. The term also includes programs offered for general or repeated sale or rental which were initially developed as custom software. Evidence of canned software includes the selling or renting of the software more than once. Software may qualify as custom software for the original purchaser or lessor but is canned software with respect to all others. Canned software includes program modules which are prewritten and later used as needed for integral parts of a complete program.

(4) "*Custom software*" is specified, designed, and created by a vendor at the specific request of a customer to meet a particular need and is considered to be a sale of a service rather than a sale of tangible personal property. It includes those services represented by separately stated charges for the modification of existing prewritten software when the modifications are written or prepared exclusively for a customer. Modification to existing prewritten software to meet the customer's needs is custom computer programming only to the extent of the modification and only to the extent that the actual amount charged for the modification is separately stated. Examples of services that do not result in custom software include loading parameters to initialize program settings and arranging preprogrammed modules to form a complete program.

When the charges for modification of a prewritten program are not separately stated, tax applies to the entire charge made to the customer for the modified program unless the modification is so significant that the new program qualifies as a custom program. If the prewritten program before modification was previously marketed, the new program will qualify as a custom program if the price of the prewritten program was 50 percent or less of the price of the new program. If the prewritten program was not previously marketed, the new program will qualify as a custom program if the charge made to the customer for custom programming services, as evidenced by the records of the seller, was more than 50 percent of the contract price to the customer.

The department will consider the following records in determining the extent of modification to prewritten software when there is not a separate charge for the modification: logbooks, timesheets, dated documents, source codes, specifications of work to be done, design of the system, performance requirements, diagrams of programs, flow diagrams, coding sheets, error printouts, translation printouts, correction notes, and invoices or billing notices to the client.

(5) "Storage media" includes hard disks, compact disks, floppy disks, diskettes, diskpacks, magnetic tape, cards, or other media used for nonvolatile storage of information readable by a computer.

(6) "Rental" includes any lease or license agreement between a vendor and a customer for the customer's use of hardware or software.

(7) "Program" is interchangeable with the term "software" for purposes of this rule.

18.34(2) Taxable sales, rentals 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 by which a lessee secures for a consideration the use of equipment which may or may not be used on the lessee's premises, the rental or lease payments are subject to tax. See rule 701—26.18 on tangible personal property rental.

c. *Canned software.* The sale or rental for a consideration of any computer software which is not custom software is a transfer of tangible personal property and is taxable. Canned software may be transferred to a customer in the form of diskettes, disks, magnetic tape, or other storage media or by listing the program instructions on coding sheets.

(1) Tax applies whether title to the storage media on which the software is recorded, coded, or punched passes to the customer or the software is recorded, coded, or punched on storage media furnished by the customer. A fee for the temporary transfer of possession of canned software for the purpose of direct use to be recorded, coded, or punched by the customer or by the lessor on the customer's premises, is a sale or rental of canned software and is taxable.

(2) Tax applies to the entire amount charged to the customer for canned software. Where the consideration consists of license fees, royalty fees, right to use fees or program design fees, whether for a period of minimum use or for extended periods, all fees includable in the purchase price are subject to tax.

d. *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.

e. *Services a part of the sale or lease of equipment.* Where services, such as programming, training or maintenance services, are provided to those who purchase or lease automatic data processing and related equipment, 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.)

f. *Materials and supplies.* The transfer of title, for a consideration, of tangible personal property, including property on which or into which information has been recorded or incorporated is a sale subject to tax.

Generally service bureaus are consumers of all tangible personal property, including cards and forms, which they use in providing services unless a separate charge is made to customers for the materials, in which case, tax applies to the charge made for the materials.

g. *Additional copies.* When additional copies of records, reports, tabulation, etc., are sold, tax applies to the charges made for the additional copies. "Additional copies" are all copies in excess of those produced on multipart carbon paper simultaneously with the production of the original and on the same printer, whether the copies are prepared by rerunning the same program, by using multiple simultaneous printers, by looping a program such that the program is run continuously, by using different programs to produce the same output product, or by other means. Where additional copies are prepared, the tax will be measured by the charge made by the service bureau to the customer. If no separate charge is made

for the additional copies, tax applies to that portion of the gross receipts which the cost of the additional computer time (if any) and the cost of materials and labor cost to produce the additional copies bear to the total job cost. Charges for copies produced by means of photocopying, multilithing, or by other means are subject to tax. Tax applies to a contract where data on magnetic tape are converted into combinations of alphanumeric printing, curve plotting or line drawings, and put on microfilm or photorecording paper.

h. Mailing lists. Addressing (including labels) for mailing. Where the service bureau addresses, through the use of its automatic data processing equipment or otherwise, material to be mailed, with names and addresses furnished by the customer or maintained by the service bureau for the customer, tax does not apply to the charge for addressing. Similarly, where the service bureau prepares, through the use of its automatic data processing equipment or otherwise, labels to be affixed to material to be mailed, with names and address furnished by the customer or maintained by the service bureau for the customer, tax does not apply to the charge for producing the labels, regardless of whether the service bureau 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 bureau. (See "f" above.) Mailing lists in the form of Cheshire tapes, gummed labels, and heat transfers which are attached to envelopes and placed in the mail by a service bureau constitute tangible personal property and are subject to tax.

i. Services of a machine operator. The services of a machine operator, such as a key punch operator or the operator of any other data processing equipment, when hired to operate another person's machinery or equipment, are subject to tax when contracted for and performed by someone other than an employee of the owner of the machinery and equipment.

j. Maintenance contracts. Maintenance contracts sold in connection with the sale or lease of canned software generally provide that the purchaser will be entitled to receive storage media on which prewritten program improvements have been recorded. The maintenance contract may also provide that the purchaser will be entitled to receive certain services, including error corrections and telephone or on-site consultation services.

(1) Nonoptional maintenance contract. If the maintenance contract is required as a condition of the sale or rental of canned software, it will be considered as part of the sale or rental of the canned software, and the gross sales price is subject to tax whether or not the charge for the maintenance contract is separately stated from the charge for software.

(2) Optional maintenance contracts prior to July 1, 1998. If the maintenance contract is optional to the purchaser of canned software, then only the portion of the contract fee representing improvements delivered on storage media is subject to sales tax if the fee for other services, including consultation services and error corrections, is separately stated. If the fee for other services, including consultation services and error corrections, is not separately stated from the fee for improvements delivered on storage media, the entire charge for the maintenance contract is subject to sales tax.

(3) Optional maintenance contracts on and after July 1, 1998. If an optional software maintenance or support contract provides for technical support services only, then no tax is imposed on the gross receipts from the performance of those services. If an optional software maintenance or support contract separately states the charges which represent improvements delivered on storage media from charges which represent other services, including consultation services and error correction, then only that portion of the contract fee representing improvements delivered on the storage media is subject to sales tax. If an optional software maintenance or support contract provides for the taxable transfer of tangible personal property and the provision of nontaxable services, and there is no separately stated charge for the taxable transfer of property or for the nontaxable service, then state sales tax of 5 percent shall be imposed on 50 percent of the gross receipts from the sale of such contracts. See 701—paragraph 18.25(3)"c" for more information.

18.34(3) Nontaxable items and activities.

a. Custom programs. These are programs prepared to the special order of a customer. Tax does not apply to the transfer of custom programs in the form of written procedures, such as program instructions listed on coding sheets. Tax applies to the sale of material transferred to the customer in the form of typed or printed sheets if separately invoiced.

b. Processing a client's data. Generally speaking, if a person enters into a contract to process a client's data by the use of a computer program, or through an electrical accounting machine programmed by a wired plugboard, the processing of a client's data is nontaxable. Such contracts usually provide that the person will receive the client's source documents, record data in machine readable form, such as in punch cards or on magnetic tape, make necessary corrections, rearrange or create new information as the result of the processing and then provide tabulated listings or record output on other media. This service will be considered nontaxable even if the total charge is broken down into specific charges for each step. The furnishing of computer programs and data by the client for processing under direction and control of the person providing the service is nontaxable even though charges may be based on computer time. The true object of these contracts is considered to be a service, even though some tangible personal property is incidentally transferred to the client. However, tax will apply to tangible personal property separately invoiced to the client.

c. Time sharing. Charges made for the use of automatic data processing equipment, on a time-sharing basis, where access to the equipment is by means of remote facilities, are not subject to tax. Time sharing which is, in fact, a rental of equipment and the lessee exercises the right of possession or control over the equipment is subject to tax. See 18.34(2) "b" and rule 701—26.18(422).

d. Designing of systems, converting of systems, consulting, training, and miscellaneous services. These services consist of the developing of ideas, concepts and designs. Common examples of these nontaxable services are:

- (1) Designing and implementing computer systems (e.g., determining equipment and personnel required and how they will be utilized).
- (2) Designing storage and data retrieval systems (e.g., determining what data communications and high speed input-output terminals are required).
- (3) Converting manual systems to automatic data processing systems, converting present automatic data processing systems to new systems (e.g., changing a second generation system to a third generation system).
- (4) Consulting services (e.g., studies of all or part of a data processing system).
- (5) Feasibility studies (e.g., studies to determine what benefits would be derived if procedures were automated).
- (6) Evaluation of bids (e.g., studies to determine which manufacturer's proposal for computer equipment would be most beneficial).
- (7) Providing technical help such as analysts and programmers, usually on an hourly basis.
- (8) Writing (coding) and testing of programs—contract programming. These services result in the production of customized programs. This type of service is not taxable because programming requires the development or ascertainment of information, and the evaluation of data, in addition to other development skills.

Persons engaged in providing nontaxable computer services are the consumers of all tangible personal property used in such activities, and the tax must be paid on their acquisition of such property.

This paragraph, 18.34(3) "d," shall become effective for periods beginning on or after April 1, 1992.

e. Installation charges. Where installation charges are separately contracted for or where no contract exists, are separately invoiced, or do not constitute enumerated taxable services, they are exempt from tax. See rule 701—15.14(422,423).

f. Pickup and delivery charges. The tax will not apply to pickup and delivery charges which are separately contracted for or where no contract exists, are separately invoiced.

g. Rental of computer programs. Prior to July 1, 1984, the rental of computer programs was not subject to tax since the program did not constitute equipment. *KTVO, Inc. vs. Bair*, 1977, Iowa 225 N.W.2d, 111. For the rule regarding prewritten (canned) programs subsequent to that date, see 18.3(2) "c."

This rule is intended to implement Iowa Code sections 422.42, 422.45 and 423.2 and Iowa Code Supplement section 422.43 as amended by 1998 Iowa Acts, Senate File 2288.

701—18.35(422,423) Drainage tile. The sale or installation of drainage tile which is to be used in disease control, weed control, or the health promotion of plants or livestock produced as part of agricultural production for market is exempt from tax. Drainage tile, when purchased for these purposes, is therefore not subject to tax. In all other cases, drainage tile will be considered a building material and subject to tax under the provisions of Iowa Code subsection 422.42(9).

This rule is intended to implement Iowa Code sections 422.42(3), 422.42(9), and 423.2.

701—18.36(422,423) True leases and purchases of tangible personal property by lessors.

18.36(1) True leases and purchases by lessors prior to, on, and subsequent to July 1, 1978. The definition of a sale specified in Iowa Code subsection 422.42(2) does not include leases. Hence, the exemption from tax on sales for resale is inapplicable to the purchase of tangible personal property for the purpose of leasing such property to others, but not for the purpose of reselling such property. *Cedar Valley Leasing, Inc. v. Iowa Department of Revenue*, 274 N.W.2d 357 (Iowa 1979). However, even though the general rule is that the acquisition cost of tangible personal property purchased for the purpose of leasing it to others is subject to the Iowa sales or use tax, certain transactions are exempted from tax by statute. See subrule 18.36(4).

18.36(2) General. Prior to July 1, 1984, tax is due on the lease or rental payments derived from the service of equipment rental only and not from the lease or rental of other tangible personal property. See 701—subrule 26.18(1). Tax would also be due on the gross receipts received on the disposal of the tangible personal property provided no exemption exists. When property is purchased for the purpose of financing under a conditional sales contract, the property is purchased for resale, and the acquisition of the property is not subject to Iowa tax. See rule 701—16.47(422,423).

The gross receipts from the leasing of property for subletting purposes is exempt from tax as a resale of a service, but the lessee must collect tax on the gross receipts from subletting unless such subletting is otherwise exempt from tax.

a. Where a resident or nonresident lessor leases equipment to a resident or nonresident lessee and the lease contract is executed in Iowa and the equipment is delivered to the lessee in Iowa, the rental payments are subject to Iowa sales tax, even if the equipment is taken by the lessee to another state. *Williams Rentals, Inc. v Tidwell*, 516 S.W.2d 614 (Tenn. 1974).

b. Where a nonresident lessor leases equipment to a resident or nonresident lessee and the lessee uses the equipment in Iowa, the nonresident lessor has the responsibility of collecting Iowa use tax on the lease payments, provided the lessor maintains a place of business in Iowa as provided in Iowa Code sections 423.1(6) and 423.9. Whether the lease agreement is executed in Iowa or not is irrelevant. *State Tax Commission v. General Trading Co.*, 322 U.S. 335, 64 S.Ct. 1028, 88 L.Ed 1309, (1944).

c. Where a lessee is the recipient of equipment rental services as defined in "a" and "b" above 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 is the recipient of equipment rental services, and the lessor does not maintain a place of business in Iowa and does not collect use tax pursuant to Iowa Code section 423.10, such lessee shall remit tax on its rental payments to the department.

d. Where a resident lessor leases equipment to a nonresident lessee outside of 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 and uses it in Iowa, Iowa use tax applies to rental payments, but see "g" below.

e. Where a resident or nonresident lessor purchases tangible personal property in Iowa for subsequent lease in or out of Iowa and takes delivery of the equipment in Iowa, the lessor's purchase is subject to Iowa sales tax. *Dodgen Industries, Inc. v. Iowa State Tax Commission*, 160 N.W.2d 289 (Iowa 1968).

f. When a resident or nonresident lessor purchases tangible personal property outside of Iowa for the purpose of leasing it in Iowa and the equipment is brought into Iowa and used by the resident or nonresident lessee in this state, the lessor is considered as having a "use" of the property in Iowa and Iowa use tax will apply to the lessor's purchase price of the property, regardless whether or not the lessor

makes any physical use of the property in Iowa. *Union Oil Company of California v. State Board of Equalization*, 1963, 34 Cal. Rpts. 872, 386 P.2d 496.

g. If a sales or use tax has already been paid to another state on the purchase price of equipment prior to the use of that equipment 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 a 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. *Henneford v. Silas Mason Co.*, 1937, U.S.577, 57 S.Ct. 524, S1 L.Ed. 814.

18.36(3) Leases relating to vehicles subject to registration.

a. Vehicles as defined in Iowa Code subsections 321.1(4), (6), (8), (9), and (10) (motor trucks, truck tractors, road tractors, trailers, and semitrailers), except when designed primarily for carrying persons, can be purchased free of use tax when purchased for lease and actually leased for use outside Iowa if the subsequent sole use in Iowa is in interstate commerce or interstate transportation.

b. Tangible personal property which by means of fabrication, compounding, or manufacturing becomes an integral part of vehicles as defined in 18.36(3)"a" when manufactured for lease and actually leased to a lessee for use outside the state of Iowa, can be purchased free of use tax provided the sole subsequent use of the vehicle in Iowa is in interstate commerce or interstate transportation. (Iowa purchases which would be subject to Iowa sales tax do not qualify for this exemption.) See rule 701—33.7(423).

The provisions of "a" and "b" are effective for periods beginning on January 1, 1973. Also see 701—Chapter 34 of the rules relating to vehicles subject to registration.

18.36(4) Special rules for lessors on or after July 1, 1978. If tangible personal property is purchased for leasing, the purchase of the property is exempt from tax if the following conditions are met:

- a. The person (lessor) purchasing the property is regularly engaged in the business of leasing,
- b. The period of the lease is for more than one year for sales or property occurring from July 1, 1978, to May 18, 1997, inclusive; for sales of property occurring on and after May 19, 1997, the period of the lease must be for more than five months, and
- c. The lease or rental receipts must be subject to tax under the service of equipment rental.

All three conditions must be met before the exemption applies.

If the exemption is properly claimed, it is lost when the property is made use of for any purpose other than leasing and the person claiming the exemption is liable for the tax based on the original purchase price. Tax paid on the leasing or rental payments would be allowed as a credit against the tax due on the purchase price.

In the following examples, assume, unless stated to the contrary, that the lease or rental receipts are subject to tax. The examples are written on the assumption that the period for an exempt lease is five months or longer. Thus, these examples are basically applicable to the period beginning May 19, 1997; however, the examples illustrate principles which are applicable to the purchase for lease exemption for periods longer than one year which was the requirements for exemption prior to May 19, 1997.

EXAMPLE: A restaurant makes a one-time purchase of office furniture which it leases to an insurance company for a period of four years. The purchase of office furniture by the restaurant would be subject to tax because the restaurant is not regularly engaged in the business of leasing. However, if the restaurant established a pattern of regularly purchasing office furniture or other tangible personal property for lease, the exemption would apply.

EXAMPLE: A company purchases a computer which will be leased for a period of three years, at which time the computer is returned to the company. The sole business of the company is to purchase this one computer for lease. The purchase of the computer is exempt from tax because the company is regularly engaged in the business of leasing.

EXAMPLE: A leasing company purchases three lawn mowers which will be leased to individuals for periods of time less than five months. The purchase of the lawn mowers by the leasing company would be subject to tax because the periods of the leases are for less than five months.

EXAMPLE: A leasing company purchases a computer which will be leased for a period of three years. The purchase of the computer is exempt from tax because the period of the lease is for more than five months.

EXAMPLE: A leasing company buys a computer. The company claims the exemption from tax, but the company uses the computer in its own operations. Tax is due on the original purchase price and the leasing company is liable for the tax due.

EXAMPLE: A leasing company purchases a copying machine which will be leased for a period of two years. After four months, the machine is returned to the leasing company and then the machine is immediately re-leased without being used by the leasing company for any other purpose. The exemption would apply because it was properly claimed and nothing occurred to cause loss of the exemption.

EXAMPLE: A leasing company purchases a copying machine which will be leased for a period of two years. After four months, the machine is returned and the leasing company then uses the machine in its own business. The exemption would no longer apply and the leasing company would be liable for the tax based on the original purchase price. Credit would be allowed against the tax due on the purchase price for any tax paid on the lease or rental payments. Assume the leasing company paid \$2,000 for the copying machine and charged \$200 per month plus \$10 in tax per month. Since the machine is returned and the exemption is not applicable, the leasing company would owe \$100 on the \$2,000 acquisition cost. However, the leasing company collected \$40 (four months x \$10) tax on the monthly rental charges. Allowing the credit for tax collected of \$40 against the total tax liability of \$100 leaves a net tax liability of \$60 owed by the leasing company.

EXAMPLE: A manufacturer and seller of office furniture also leases office furniture. The leases always run for a period longer than five months and the company usually has only two leases per year. The leasing operation only accounts for 1 percent of the company's total business. The company still qualifies for the exemption because it is regularly engaged in the business of leasing and the period of the lease is for more than five months.

EXAMPLE: A leasing company purchases an airplane from an aircraft dealer and leases it for a period of three years. The lease or rental payments are not taxed because of the exemption for transportation services. The leasing company would owe tax based on the acquisition cost because the lease or rental payments are not subject to tax under the service of equipment rental.

EXAMPLE: A leasing company purchases equipment and leases it to a lessee for a period of 18 months. For the first 3 months, the equipment is used by the lessee in making repairs to existing structures and the lease receipts are taxable. For the remainder of the lease period, the equipment is used in new construction of buildings and structures and the lease receipts are exempt from tax. The acquisition cost of the equipment is exempt because the exemption was properly claimed and was not subsequently lost by a use other than leasing.

EXAMPLE: A leasing company purchases from an Iowa retailer equipment on May 18, 1997, for the purpose of leasing it for a period of six months. The lease receipts will be taxable. The sales tax exemption on the acquisition cost to the lessor cannot be claimed because the sale occurred before May 19, 1997, and, at the time of the sale, no sales tax exemption applied to such acquisition cost. The exemption for acquisition cost should not be given a retroactive effect. *Jones v. Gordy*, 1935, 169 Md. 173, 180 Atl. 272.

EXAMPLE: A leasing company purchases equipment outside of Iowa on May 1, 1997. The lessee brings the equipment into Iowa on June 1, 1997, and uses it in Iowa. The lease period is nine months, and the lessee's use in Iowa is subject to Iowa use tax on the lease payments. Under these circumstances, the Iowa use tax exemption on the lessor's acquisition cost applies because it is the law in effect at the time of use in Iowa, not at the time of sale, which determines whether a use tax exemption applies. *City of Ames v. Iowa State Tax Commission*, 1955, 246 Iowa 1016, 71 N.W.2d 15; *Allis-Chalmers Mfg. Co. v. Iowa State Tax Commission*, 1958, 250 Iowa 193, 92 N.W.2d 129.

EXAMPLE: A leasing company purchases equipment not for resale and leases it to the lessee for a period of more than five months. After three months, the equipment is returned to the leasing company which then sells the equipment. Such sale is not part of the regular course of the leasing company's business. The exemption, though properly claimed, is lost because, by reason of such sale, the leasing

company made use of the property for a purpose other than leasing or renting. Had the equipment been returned to the leasing company on or after five months and one day from the commencement of the lease period, and the leasing company then sold the equipment outside the regular course of its business or used the equipment in its business, the exemption for acquisition cost would not be lost. Had the equipment been purchased for resale and leased prior to such resale, the acquisition cost to the leasing company would be exempt from tax. *Herman M. Brown Co. v. Johnson*, 1957, 248 Iowa 1143, 82 N.W.2d 134. If the equipment is traded in toward the purchase price of other equipment by the leasing company, or if the leasing company disposes of the equipment after it is fully depreciated, the exemption for acquisition cost is not lost. Where sale of equipment outside the regular course of business is made by the leasing company, see also rule 18.28(422) to determine whether the casual sale exemption applies to the receipts from such sale.

EXAMPLE: A leasing company purchases equipment which is leased to the lessee. Assume that the exemption for acquisition cost of the equipment was properly claimed. Thereafter, the lessee makes an assignment of the lease. The exemption is not lost since the assignee stands in the same position as the original lessee and such an assignment does not change the nature of the original lease period. *Berg v. Ridgway*, 1966, 258 Iowa 640, 140 N.W.2d 95.

EXAMPLE: A leasing company purchases equipment which is leased to the lessee in accordance with the criteria creating the acquisition cost exemption. The leasing company sells the lease contracts, as commercial paper, to others. The exemption for acquisition cost can still be claimed and such sales of lease contracts do not cause loss of the exemption.

EXAMPLE: A leasing company purchases equipment which is leased to the lessee in accordance with the criteria creating the acquisition cost exemption. Thereafter, the lease can no longer be performed because the property is destroyed by an act of God. The acquisition cost exemption is not lost.

EXAMPLE: A leasing company purchases equipment which is leased to the lessee in accordance with the criteria creating the acquisition cost exemption. Thereafter, the lessee is adjudged bankrupt and the equipment is returned to the leasing company and is re-leased without being used by the leasing company for any other purpose. The acquisition cost exemption is not lost since the leasing company makes no use for any purpose other than leasing or renting.

EXAMPLE: A leasing company purchases equipment which is leased to a lessee. The criteria for the acquisition cost exemption are present. The lessee then sublets the equipment to another for a period less than five months. The acquisition cost exemption is not lost.

18.36(5) Lease or rental of all tangible personal property now subject to tax. On and after July 1, 1984, the lease or rental of all tangible personal property is subject to tax. See rule 701—26.18(422) for information concerning additional transactions subject to tax after that effective date.

This rule is intended to implement Iowa Code sections 422.42(2), 422.43, 422.45, 423.1, and 423.4.

701—18.37(422,423) Motor fuel, special fuel, aviation fuels and gasoline.

18.37(1) In general. The gross receipts from the sale of motor fuel and special fuel are exempt from sales tax under Iowa Code section 422.45(11) if (1) the fuel is consumed for highway use, in watercraft, or in aircraft, (2) the Iowa fuel tax has been imposed and paid, and (3) no refund or credit of fuel tax has been made or will be allowed. However, beginning July 1, 1985, the gross receipts from the sale of special fuel for diesel engines used in commercial watercraft on rivers bordering Iowa are exempt from sales tax, even though no fuel tax has been imposed and paid, providing the seller delivers the fuel to the owner's watercraft while it is afloat. Prior to July 1, 1988, retail sales of aviation gasoline were not exempt from sales tax under Iowa Code subsection 422.45(11). See subrule 18.37(4).

18.37(2) Refunds or credits of motor fuel and special fuel. Claims for refund or credit of fuel taxes under the provisions of Iowa Code chapter 452A must be reduced by any sales or use tax owing the state unless a sales tax exemption is applicable. Generally, refund claims or credits are allowed where fuel is purchased tax paid and used for purposes other than to propel a motor vehicle or used in watercraft.

18.37(3) Refunds of tax on fuel purchased in Iowa and consumed out of Iowa. Even though fuel is purchased in Iowa, fuel tax paid in Iowa, and the fuel tax is subject to refund under the provisions of division III of Iowa Code chapter 452A relating to interstate motor vehicle operations, the refund of

the fuel tax does not subject the purchase of the fuel to sales tax. Subjecting the purchase to sales tax has the effect of imposing sales tax when fuel is consumed in interstate commerce while fuel consumed on Iowa highways in intrastate commerce is exempt from sales tax pursuant to Iowa Code subsection 422.45(11). The effect for sales tax purposes is to impose a greater tax burden on non-Iowa highway fuel consumption than Iowa highway fuel consumption thereby discriminating against interstate commerce. In addition, the effect of imposing sales tax on interstate excess purchases where intrastate highway use is not subject to the tax constitutes an export duty for purchasing fuel in Iowa and exporting it for use in another state. Such effects are in violation of the commerce clause of the United States Constitution. *Boston Stock Exchange v. State Tax Commission*, 1977, 429 U.S. 319, 97 S.Ct. 599, 50 L.Ed.2d 514 and *Coe v. Errol*, 1886, 116 U.S. 517, 6 S.Ct. 475, 29 L.Ed. 715.

18.37(4) Aviation gasoline. Tax treatment prior to July 1, 1988, all Iowa fuel tax paid on aviation gasoline used in aircraft was refundable under Iowa Code section 452A.17. Generally, aviation gasoline is not purchased for highway use or for use in watercraft, therefore, the exemption from sales and use tax found in Iowa Code subsection 422.45(11) was generally not applicable to purchases of aviation gasoline. However, Iowa Code subsection 422.52(4) provides for the collection of sales tax by way of deduction from motor fuel tax refunds allowable under Iowa Code chapter 452A. Therefore, sales tax is not assessed at the retail level but only in instances where the fuel tax paid on aviation gasoline has been refunded. If no application for a fuel tax refund relating to aviation fuel has been made, no sales tax is assessed on the aviation gasoline purchase.

18.37(5) Ethanol. For tax periods after April 30, 1981. Retail sales of ethanol are exempt from Iowa sales or use tax.

18.37(6) Tax base. The basis for computing the Iowa sales tax will be the retail selling price of the fuel less any Iowa fuel tax included in such price. Federal excise tax should not be removed from the selling price in determining the proper sales tax due. *W.M. Gurley v. Arny Rhoden* supra. Also see rule 701—15.12(422,423).

This rule is intended to implement Iowa Code sections 422.31, 422.43, 422.45(11), 422.45(22), 422.52(4), 423.1, 452A.3, and 452A.17.

701—18.38(422,423) Urban transit systems. A privately owned urban transit system which is not an instrumentality of federal, state or county government is subject to sales tax on fuel purchases which are within the urban transit systems charter.

Tax shall not apply to 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.

Whether an urban transit company will be considered an instrumentality of federal, state or county government for the purpose of receiving sales tax exemption on its fuel purchases, which are also exempted from fuel tax and used for public purposes, depends upon consideration of the following:

1. Whether it is created by government.
2. Whether it is wholly owned by government.
3. Whether it is operated for profit.
4. Whether it is primarily engaged in the performance of some essential governmental function.
5. Whether the payment of tax will impose an economic burden upon the corporation, or that payment of tax serves to materially impair the usefulness or efficiency of the corporation or the payment of tax materially restricts the corporation in the performance of its duties.

These above enumerated considerations are not all inclusive and the presence of some and absence of others does not necessarily establish the exemption. *Unemployment compensation of North Carolina v. Wachovia Bank and Trust Company*, 2 S.E.2d 592, 595, 215 No. Car. 491 (1939); 1976 O.A.G. 823, 827, 828.

This rule is intended to implement Iowa Code subsection 422.45(1).

701—18.39(422,423) Sales or services rendered, furnished, or performed by a county or city. The gross receipts from the sales, furnishing, or service of gas, electricity, water, heat, and communication

service rendered, furnished, or performed by a county or city are subject to the tax. On and after July 1, 1985, the gross receipts from fees paid to cities and counties for the privilege of participating in any athletic sports are also subject to tax. On or after July 1, 1991, the gross receipts from any municipally owned pay television service are taxable as well. On and after April 1, 1992, the gross receipts from a county or municipality furnishing sewage service or solid waste collection and disposal service to nonresidential commercial operations are taxable (see rules 701—26.71(422,423) and 26.72(422,423) for more information).

Any other sales or services rendered, furnished, or performed by a county or city are not subject to the tax.

A “sport” is any activity or experience which involves some movement of the human body and gives enjoyment or recreation. An “athletic” sport is any sport which 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.

The following is a list of various fees which 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.

1. 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.

2. Fees paid to enter any tournament or league which 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.

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.

1. 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.

2. Sales of merchandise, e.g., food or drink, to persons watching or participating in any athletic sport are not subject to tax.

3. 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 which can be played within the facility.

4. 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 which the bridge club has paid to rent the shelter house and surrounding grounds would not be subject to tax.

5. Fees paid for the use of a campground or hiking trail are not subject to tax.

This rule is intended to implement Iowa Code sections 422.43 and 422.45.

701—18.40(422,423) Renting of rooms. The gross receipts from the renting of any and all rooms, including but not limited to sleeping rooms, banquet rooms or conference rooms in any hotel, motel,

inn, public lodging house, rooming or tourist court, or in any place where sleeping accommodations are furnished to transient guests, whether with or without meals, are subject to the tax. The rental of a mobile home or of manufactured housing which is tangible personal property is treated as room rental rather than tangible personal property rental. The renting of all rooms would be exempt from the tax if rented by the same person for a period of more than 31 consecutive days. The renter must contract to rent for a single period of 31 days or more. The renter may not accumulate these 31 days by contracting for two or more rental transactions. The incremental manner in which the hotel, motel, inn, public lodging house, rooming or tourist court, or any place where sleeping accommodations are furnished to transient guests bills its customers does not influence the accumulation of days that is required to claim the exemption.

This rule is intended to implement Iowa Code section 422.43.

701—18.41(422,423) Envelopes for advertising.

18.41(1) Some envelopes which contain advertising are exempt from tax. Envelopes which are not primarily used for advertising are taxable. The primary use of the envelopes should control whether they will be taxable or exempt. *Iowa Movers and Warehouseman's Assn. v. Briggs*, 237 N.W.2d 759 (Iowa 1976).

EXAMPLE 1: XYZ mails coupons and advertisements to persons giving discounts on a certain item which 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 Company 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.

18.41(2) Because of the difficulty of administering this exemption, purchasers of envelopes may petition to the department for permission to use a formula to represent to the seller the portion of taxable and exempt gross receipts from envelope purchases.

This rule is intended to implement Iowa Code subsection 422.45(9).

701—18.42(422,423) Newspapers, free newspapers and shoppers' guides.

18.42(1) *General observations.* The gross receipts from the sales of newspapers, free newspapers, and shoppers' guides are exempt from tax. The gross receipts from the sales of magazines, newsletters, and other periodicals which are not newspapers are taxable. Recent cases decided by the United States Supreme Court and the Supreme Court of Iowa prohibit exempting from taxation the sale of any periodical if that exemption from taxation is based solely upon the contents of that periodical. See *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 107 S.Ct. 1722, 95 L.Ed.2d 209 (1987) and *Hearst v. Iowa Department of Revenue & Finance*, 461 N.W.2d 295 (Iowa 1990).

18.42(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. Other frequent characteristics of newspapers are the following:

a. Newspapers usually contain photographs. The photographs are more often in black and white rather than color.

b. Information printed on newspapers is usually contained in columns on the newspaper pages.

c. The larger the cross section of the population which 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."

18.42(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.

18.42(4) Characteristics which 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 which are held together at one point only by a staple, rather than folded together.

This rule is intended to implement Iowa Code section 422.45(9).

701—18.43(422,423) Written contract. On and after July 1, 1985, the gross receipts from certain additional services are subject to tax. However, these newly taxable services are exempt from tax if performed pursuant to a written services contract in effect on April 1, 1985. The exemption from taxation for these services expires June 30, 1986. The services to which this “written contract” exemption is applicable are the following: cable television; campgrounds; gun repair; janitorial and building maintenance or cleaning; lawn care, landscaping and tree trimming and removal; lobbying service; pet grooming; reflexology; security and detective services; tanning beds or salons; water conditioning and softening; the rental of recreational vehicles, recreational boats or motor vehicles subject to registration which are registered for a gross weight of 13 tons or less; and fees paid to cities and counties for the privilege of participating in any athletic sports.

A “written contract” is one which is entirely in writing, so that all of its essential terms and provisions exist in writing, and oral statements are not necessary to set out any essential term or provision, such as who the parties to the contract are or what their rights and duties are under the contract. However, if it is necessary to resort to oral statements to explain the meaning of a written provision in a contract, a “written contract” can still exist. A written contract need not consist of one document or instrument only. It can consist of two or more writings, if all the necessary provisions of the contract are contained in those writings. For the purposes of this rule, the following must be stated in writing if a written contract is to exist: The nature and specification of the service to be provided, the name of the party providing the service, the name of the party receiving the service, the “consideration” (amount and method of payment) for providing the service, the signature of one or both of the parties to the contract, depending upon circumstances, and the date upon which the contract became effective.

The written contract must be in effect on April 1, 1985, if the service to which the contract pertains is to be exempt from tax. If a contract is signed by only one of the parties to it, that contract is still a “written contract” if the party which has not signed the contract acquiesces in the promises which the party who has signed the document makes within it. *McDermott v. Mahoney*, 139 Iowa 292, 115 N.W. 32, (Iowa 1908).

EXAMPLE: A security agency sends a proposed agreement to a potential customer promising to provide the services of a uniformed security guard for the customer’s business premises beginning March 15, 1985, and continuing until March 15, 1987. The agreement is signed by the security agency’s president and dated February 15, 1985. The agreement is received by the potential customer’s president, who does not sign it, but, on March 15, 1985, allows the security agency’s uniformed guard on the premises, and makes payment for those services as stipulated in the agreement. This agreement is a “written contract”; the services of the uniformed guard are not subject to tax for the period beginning July 1, 1985, and ending June 30, 1986. The services performed between July 1, 1986, and March 15, 1987, would be subject to tax.

This rule is intended to implement Iowa Code subsection 422.43(11).

701—18.44(422,423) Sale or rental of farm machinery and equipment. On and after July 1, 1987, the gross receipts from the sale or rental of farm machinery and equipment will be exempt from tax. Effective July 1, 1996, the gross receipts from the sale of property which 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 agricultural, livestock or dairy production are not subject to sales tax.

18.44(1) Characteristics of and limitations upon farm machinery and equipment. To be eligible for exemption from or refund of tax under this rule the machinery or equipment must:

- a. Be directly and primarily used in production of agricultural products; and
- b. 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 which improves the performance, safety, operation, or efficiency of a qualifying implement or grain dryer if sale or first use in Iowa is on or after July 1, 1995; or
 - (5) A replacement part for any item described in subparagraph (1), (2), (3), or (4).
- (6) Effective July 1, 1996, the gross receipts from the sale of property which 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 agricultural, livestock or dairy production.
- c. No vehicle subject to registration, as defined in Iowa Code subsection 423.1(7), implement customarily drawn or attached to a vehicle, auxiliary attachment, or any replacement part for a vehicle, implement, or auxiliary attachment is eligible for the exemption or refund allowed under this rule.

18.44(2) Definitions and characterizations. For the purposes of this rule, the following definitions apply.

- a. Production of agricultural products means the same as the term "agricultural production" which is defined in 701—subrule 17.9(3), paragraph "a," to mean a farming operation undertaken for profit by raising crops or livestock. Production of agricultural products begins with the cultivation of land previously cleared for planting of crops or with the purchase or breeding of livestock or domesticated fowl. Not included within the meaning of the phrase are the clearing or preparation of previously uncultivated land, the creation of farm ponds or the erection of machine sheds, confinement facilities, storage bins or other farm buildings. See *Trullinger v. Fremont County*, 223 Iowa 677, 273 N.W. 124 (1937). Machinery and equipment used for these purposes would be used for activities which are preparatory to but not a part of the production of agricultural products. The production of agricultural products ceases when an agricultural product has been transported to the point where it will be sold by the farmer or processed.

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 it 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 refund or exemption would apply. The elevator has not used its tractor and wagon in such production; refund or exemption would not be lawful.

b. Farm machinery and equipment means machinery and equipment specifically designed for use in the production of agricultural products or equipment and machinery not specifically designed for this use but which are directly and primarily used in the production of agricultural products.

EXAMPLE. Farmer Jones raises livestock and the farming operation requires that fences be built to confine the livestock. Farmer Jones purchases a posthole digger that is customarily attached to a tractor and uses the digger to construct the fences used to confine the livestock. The posthole digger is not specifically designed for use in the production of agricultural products but would be directly and primarily used in the production of agricultural products. Therefore, the exemption or refund applies.

c. Self-propelled implement has the same meaning as in 701—subrule 17.9(5), paragraph "c," where the term is defined to mean an implement which is capable of movement from one place to another under its own power. The term self-propelled implement includes but is not limited to the following items: skidloaders and tractors; and the following machinery if capable of movement under its own power: combines, corn pickers, fertilizer spreaders, hay conditioners/windrowers, sprayers, and bean buggies.

d. Implements customarily drawn or attached to self-propelled implements. The following is a nonexclusive, representative list of implements which are customarily drawn or attached to self-propelled implements: Augers, balers, blowers, combines, conveyors, cultivators, disks, drags, dryers (portable), farm wagons, feeder wagons, fertilizer spreaders, front- and rear-end loaders, harrows, hay loaders, mowers and rakes, husking machines, manure spreaders, planters, plows, rotary blade mowers, rotary hoes, sprayers and tanks, and tillage equipment.

e. Direct use in agricultural production. In determining whether farm machinery, equipment or any grain dryer is directly used in agricultural production, 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 coming 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. Grain dryer. The term grain dryer includes the heater and the blower necessary to force the warmed air into a grain storage bin. It does not include equipment used in grain storage or movement such as augers and spreaders or any other equipment that is not a grain dryer. Equipment other than a grain dryer which is used in grain drying may be exempt or subject to refund if the equipment is a self-propelled implement or customarily drawn or attached to a self-propelled implement.

g. Replacement parts, differing meanings of the term for the period ending June 30, 1988, and for the period beginning July 1, 1988.

(1) For the period beginning July 1, 1985, and ending June 30, 1988, a replacement part is refundable or exempt only if its cost is depreciable for state and federal income tax purposes. Replacement parts which are depreciable for state and federal income tax purposes include only those replacement parts which either materially add to the value of machinery or equipment or appreciably prolong its life. Replacement parts which only keep the machinery or equipment in its ordinarily efficient operating condition are not eligible for exemption or refund. Included within the meaning of replacement parts is any part the cost of which is depreciable for state and federal income tax purposes but which may also be deducted as a current expense. So long as the cost is depreciable the sale or lease of the replacement part is eligible for refund or exemption from tax. However, the person claiming the refund or exemption must show that the replacement part which was deducted as an expense could have been depreciated under state and federal income tax law.

(2) On and after July 1, 1988, the sale or lease of a replacement part is exempt from tax if the replacement part is essential to any repair or reconstruction necessary to farm machinery or equipment's exempt use in the production of agricultural products. The term "replacement part" does not include attachments and accessories which are not essential to the operation of the farm machinery or equipment. Nonexclusive examples of attachments or accessories are: cigarette lighters, radios, and add-on air-conditioning units.

18.44(3) Taxable and nontaxable transactions. The following are nonexclusive examples of sales and leases of farm machinery and equipment which are or are not subject to exemption and refund.

a. A lessor's purchase of farm machinery and equipment is not subject to tax, or is taxable subject to refund, 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 or subject to refund. To claim exemption from tax or a refund of tax paid, the lessor need not make exempt use of the machinery or equipment so long as the lessee does.

b. To claim refund or exemption, the owner or lessee of farm machinery or equipment need not be a farmer so long as the machinery and equipment is directly and primarily used in the production of agricultural products, and the owner or lessee and the equipment or machinery meet the other requirements of this rule. For example, a person who purchases an airplane designed for use in agricultural aerial spraying and so used after purchase is entitled to the benefits of this rule even though that person is not the owner or occupant of the land where the airplane is used.

c. 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 refund or exemption if those transactions are otherwise qualified under this rule.

18.44(4) Auxiliary attachments. The following is a list (not inclusive) of auxiliary attachments described in 18.44(1)"b"(4), the sale or first use in Iowa which is exempt from tax on and after July 1, 1995: 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, upperbeaters, silage bags, and weights.

18.44(5) and 18.44(6) Rescinded IAB 9/7/88, effective 10/12/88.

This rule is intended to implement Iowa Code subsections 422.43(3) and 422.45(26), Iowa Code chapter 422, Division IV, and Iowa Code section 422.45 as amended by 1996 Iowa Acts, chapter 1145.

701—18.45(422,423) Sale or rental of computers, industrial machinery and equipment; refund of and exemption from tax paid for periods prior to July 1, 1997. The sale or rental of computers, industrial machinery and equipment, including pollution control equipment, used in manufacturing, in research and development, or in the processing or storage of data or information by an insurance company, financial institution, or commercial enterprise is, under certain circumstances, exempt from tax and, under other circumstances, is subject to refund of sales or use tax paid. The sale or rental of machinery, equipment, or computers directly and primarily used in the recycling or reprocessing of waste products is also exempt from tax; see subrule 18.45(8). For purposes of the organization of this rule, items that may be exempt or subject to refund of tax are referred to as specified property unless the context of the rule indicates otherwise. See subrule 18.45(1) for definition of what constitutes specified property. See rule 18.58(422,423) for the manner in which the sale or rental of machinery, equipment, and computers to manufacturers and the sale or rental of computers to commercial enterprises are treated on and after July 1, 1997.

18.45(1) Definitions. The following words are defined for the purposes of this rule in the manner set out below.

“*Commercial enterprise*” includes businesses and manufacturers conducted for profit and includes centers for data processing services to insurance companies, financial institutions, businesses, and manufacturers, but excludes professions and occupations and nonprofit organizations. A hospital that is a not-for-profit organization would not be a “commercial enterprise.” The term “professions” means a vocation or employment requiring specialized knowledge and often long and intensive academic preparation. The term “occupations” means the principal business of an individual. Included within the meaning of “occupations” is the business of farming. A professional corporation which carries on any business which is a “profession” or “occupation” is not a commercial enterprise.

“*Computer*” means stored program processing equipment and all devices fastened to it by means of signal cables or any communication medium that serves the function of a signal cable. Nonexclusive examples of devices fastened by a signal cable or other communication medium are: terminals, printers, display units, card readers, tape readers, document sorters, optical readers, and card or tape punchers. Excluded from the definition of “computer” is point-of-sale equipment. For a characterization of “point-of-sale equipment” see 701—subrule 71.1(7).

Also included within the meaning of the word “computer” is any software consisting of an operating system or executive program. Such software coordinates, supervises, or monitors the basic operating procedures of a computer. An operating system or executive program is exempt from sales tax only if purchased as part of the sale of the computer for which it operates. An operating system or executive program priced separately or sold at a later time is subject to the provisions of rule 18.34(422,423). Excluded from the meaning of the word “computer” is any software consisting of an application program. For purposes of this subrule, “operating system or executive program” means a computer program which is fundamental and necessary to the functioning of a computer. The operating system or executive program software controls the operation of a computer by managing the allocation of

all system resources, including the central processing unit, main and secondary storage, input/output devices, and the processing of programs. This is in contrast to application software which is a collection of one or more programs used to develop and implement the specific applications which the computer is to perform, and which calls upon the services of the operating system or executive program.

“*Directly used.*” Property is “directly used” only if it is used to initiate, sustain, or terminate the transformation of any activity. In determining whether any property is “directly used,” consideration should be given to the following factors:

1. The physical proximity of the property in question to the activity in which it is used;
2. The proximity of the time of use of the property in question to the time of use of other property used before and after it in the activity involved; and
3. The active causal relationship between the use of the property in question and the activity involved. 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.

“*Financial institution*” is a bank incorporated under Iowa Code chapter 524 or federal law; a savings and loan association incorporated under Iowa Code chapter 534 or federal law; a credit union organized under Iowa Code chapter 533 or federal law; or any corporation licensed as an industrial loan company under Iowa Code chapter 536A. Excluded from the meaning of the term are loan brokers governed by Iowa Code chapter 535C and production credit associations.

“*Industrial machinery and equipment*” means machinery and equipment used by a manufacturer in a manufacturing establishment. Machinery is any mechanical, electrical or electronic device designed and used to perform some function and to produce a certain effect or result. The word 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. The word 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. Jigs, dies, tools, and 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.” See *Deere Manufacturing Co. v. Zeiner*, 247 Iowa 1264 78 N.W.2d 527 (1956). Machinery does not include buildings designed specifically to house or support machinery. Equipment is any tangible personal property used in an operation or activity. Nonexclusive examples of equipment are: tables on which property is assembled on an assembly line and chairs used by assembly line workers.

“*Insurance company*” means an insurer organized or operating under Iowa Code chapter 508, 514, 515, 518, 519, or 520 or authorized to do business in Iowa as an insurer. An insurance company must have 50 or more persons employed in Iowa, excluding licensed insurance agents. Effective April 8, 1996, an insurance company means an insurer organized or operating under Iowa Code chapter 508, 514, 515, 518, 518A, 519, or 520 or authorized to do business in this state as an insurer or licensed insurance agent under Iowa Code chapter 522. Excluded from the definition of “insurance company” are fraternal and beneficial societies governed by Iowa Code chapter 512 and health maintenance organizations governed by Iowa Code chapter 514B. This list of exclusions is not intended to be exclusive.

“*Manufacturer*” means any person, firm, or corporation who purchases, receives, or holds personal property for the purpose of adding to its value by any process of manufacturing, refining, purifying, combining of different materials, or by packing of meats with an intent to sell at a gain or profit. Those who are in the business of printing, newspaper publication, bookbinding, lumber milling, and production of drugs and agricultural supplies are illustrative, nonexclusive examples of manufacturers. Construction contracting; quarrying; remanufacture or rebuilding of tangible personal property (such as automobile engines); provision of health care; farming; transportation for hire; mining; and the activities of restaurateurs, hospitals, and medical doctors are illustrative, nonexclusive examples of businesses which are not manufacturers. See *Associated General Contractors of Iowa v. State Tax Commission*, 255 Iowa 673, 123 N.W.2d 922 (1963) and *River Products Co. v. Board of Review of Washington County*, 332 N.W.2d 116 (Iowa Ct. App. 1982).

“Pollution control equipment” means any disposal system or apparatus used or placed in operation primarily for the purpose of reducing, controlling or eliminating air or water pollution. The term does not include any apparatus used to eliminate “noise pollution.” Liquid, solid, and gaseous wastes are included within the meaning of the word “pollution.”

“Processing” means an operation or series of operations whereby tangible personal property is subjected to some special treatment by artificial or natural means which changes its form, context, or condition, and results in marketable tangible personal property. See rule 18.29(422,423).

“Processing or storage of data or information.” Not only a computer, but machinery or equipment may be used in the processing or storage of data or information. All computers store and process information. However, only if the “final output” for a user or consumer is stored or processed data will the computer be subject to refund or exemption of tax.

“Recycling” means any process by which waste, or materials which would otherwise become waste, are collected, separated, or processed and revised or returned for use in the form of raw materials or products. The term includes, but is not limited to, the composting of yard waste which has been previously separated from other waste. “Recycling” does not include any form of energy recovery.

“Replacement parts.” Replacement parts which are depreciable for state and federal income tax purposes include only those replacement parts which either materially add to the value of industrial machinery, equipment, or computers or appreciably prolong their lives. Replacement parts which only keep machinery, equipment, or computers in their ordinarily efficient operating condition are not eligible for exemption. Included within the meaning of replacement parts is any part the cost of which is depreciable for state and federal income tax purposes but which may also be deducted as a current expense. So long as the cost is depreciable the sale or lease of the replacement part is eligible for exemption from tax. However, the person claiming the exemption must show that the replacement part which was deducted as an expense could have been depreciated under state and federal income tax law.

“Research and development” means experimental or laboratory activity which has as its ultimate goal the development of new products, processes of manufacturing, refining, purifying, combining of different materials, or meat packing. The ultimate goal of research and development must be that of adding value to products. The term “research and development” does not include testing or inspection for quality control purposes, efficiency surveys, management studies, consumer surveys, advertising, promotions, or research in connection with literary, historical, or similar projects. Machinery, equipment, and computers are used “directly” in research and development only if they are used in actual experimental or laboratory activity that qualifies as research and development under this subrule.

“Specified property” means property that is a computer or industrial machinery and equipment including pollution control equipment and depreciable replacement parts for that property.

18.45(2) Requirements. The sale or rental of specified property is exempt from tax if:

a. The property is real property within the scope of Iowa Code section 427A.1(1) “e” or “j.” For sales occurring after January 1, 1994, the property is not required to be subject to taxation as real property (however, see subrules 18.45(4) and 18.45(8)); and

b. The property is directly and primarily used in one of the following:

1. By a manufacturer in processing tangible personal property; or

2. In research and development of new products or processes of manufacturing, refining, purifying, combining of different materials or packing of meats to be used for the purposes of adding value to products; or

3. In processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.

c. To qualify for refund or exemption, a computer may be taxable as either commercial or industrial real estate. Machinery and equipment must be taxable as industrial real estate only to be similarly qualified. Research and development machinery and equipment that is not taxable as industrial real estate does not qualify for refund or exemption. See 701—subrules 71.1(5) and 71.1(6) for characterizations of “commercial” and “industrial” real estate. However, see subrule 18.45(4) for an exception to the requirement that certain property be taxable as real property.

d. The following are examples of machinery which is not directly used in manufacturing:

1. Machinery used exclusively for the efficient use of other machinery. Examples are: air cooling, air conditioning, and exhaust systems.

2. Machinery used in support operations, such as a machine shop, in which production machinery is assembled, maintained or repaired.

3. Machinery used by administrative, accounting, and personnel departments.

4. Machinery used by plant security, fire prevention, first aid, and hospital stations.

5. Machinery used in plant cleaning, disposal of scrap and waste, plant communications, lighting, safety, or heating.

e. The following is an example of property directly used in research and development: Frontier Hybrid, Inc. maintains a research and development laboratory for use in developing a corn plant which is a perennial. It purchases the following items for use in its research and development laboratory: a computer which will process data relating to the genetic structure of the various corn plants which Frontier Hybrid is testing, an electron microscope for examining the structure of corn plant genes, a "steam cleaner" for cleaning rugs in the laboratory offices, and a typewriter for use by the laboratory director's secretary. The computer and the microscope are "directly" used in the research in which the laboratory is engaged; the steam cleaner and the typewriter only indirectly used. Therefore, purchase of the computer and microscope would be exempt from tax; purchase of the steam cleaner and typewriter would be subject to tax.

f. The following is an example of property used in processing or storage of information or data: A health insurance company has three computers. Computer A is used to monitor the temperature within the insurance company's building. The computer transmits messages to the building's heating and cooling systems telling them when to raise or lower the level of heating or air conditioning as needed. Computer B is used to store patient records and will recall those records on demand. Computer C is used to tabulate statistics regarding the amount of premiums paid in and the amount of benefit paid out for various classes of insured. The "final output" of Computer A is neither stored nor processed information. The final output of Computer B is stored information. The final output of Computer C is processed information. The sale, lease, or use of Computers B and C would qualify for exemption or refund.

g. The following is an example of property not used in manufacturing: A manufacturing plant located in Warren County which manufactures widgets fabricates its own patterns used in manufacturing the widgets on a metal press machine in its machine shop located in Story County. The machine shop does not sell the patterns and the metal press machine is used for no other purpose than to fabricate the patterns. The metal press machine is not used in manufacturing because there is no intent to sell the patterns used by the machine shop at a gain or profit.

18.45(3) Exceptions. The following specified property is not exempt:

a. Property assessed by the department of revenue pursuant to Iowa Code chapters 428, 433, 434 and 436 to 438, inclusive. For electric, gas, water, and other companies assessed under Iowa Code chapter 428, only property owned by the company is assessed by the department. For railroad, telephone, pipeline, and electric transmission lines companies, property leased to as well as owned by the company is assessed by the department. See 701—Chapters 71 and 77.

b. Hand tools.

c. Point-of-sale equipment. See 701—subrule 71.1(7).

18.45(4) Inclusions. Property exempt from taxation for property tax purposes under the provisions of Iowa Code chapters 404 and 427B relating to urban revitalization property and industrial machinery receiving partial exemption by ordinance is also eligible for exemption from sales and use taxes even though the property is not subject to taxation as real property. Urban revitalization property and industrial machinery receiving partial exemption by ordinance are discussed in rules 701—80.8(404) and 80.6(427B), respectively. This property must meet the other requirements in subrule 18.45(2) in order to be exempt from sales and use taxes.

18.45(5) Lessor purchases of specified property. The analysis contained in rule 18.44(422,423) regarding lessor purchases of farm machinery and equipment is applicable to explain that same problem regarding specified property. See subrule 18.44(3) for analysis.

18.45(6) Rights of refund and exemption. Rescinded IAB 10/13/93, effective 11/17/93.

18.45(7) Designing or installing new industrial machinery or equipment. On and after July 1, 1985, the gross receipts from the services of designing or installing new industrial machinery or equipment shall be exempt from tax. The enumerated services of electrical or electronic installation are included in this exemption. To qualify for the exemption, the sale or rental of the machinery or equipment must be subject to refund or exemption under this rule. In addition, the machinery or equipment must be "new." For purposes of this subrule, "new" means never having been used or consumed by anyone. The exemption is not applicable to reconstructed, rebuilt or repaired or previously owned machinery or equipment. The exemption is applicable to new machinery and equipment designed or installed for rental as well as for sale. The gross receipts from design or installation must be separately identified, charged separately, and reasonable in amount for the exemption to apply. A "computer" is not considered to be machinery or equipment, and its installation or design is not eligible for this exemption.

18.45(8) Property used in recycling or reprocessing of waste products. On and after July 1, 1989, the gross receipts from the sale or rental of machinery, equipment, or computers directly and primarily used in the recycling or reprocessing of waste products shall be exempt from tax. Machinery or equipment used in the recycling or reprocessing of waste products includes, but is not limited to, compactors, balers, crushers, grinders, cutters, or shears directly and primarily used for this purpose. The sale of an endloader, forklift, truck, or other moving device is exempt from tax if the device is directly and primarily used in the movement of property which is an integral part of recycling or reprocessing. See 18.45(8) "c." The sale of a bin for storage ordinarily would not be exempt from tax, storage without more not being a part of recycling or reprocessing. Certain limits for exemption placed upon industrial machinery and equipment are not applicable to machinery and equipment used in recycling or reprocessing.

For example, machinery, equipment or a computer need not meet the requirements of 18.45(2) "a" concerning specified property being real property for the exemption to apply. Furthermore, the exemption will apply even if the machinery, equipment or computer is purchased by a person other than an insurance company, financial institution or commercial enterprise. For instance, a person engaged in a profession or occupation could purchase property for direct and primary use in recycling or reprocessing of waste products and the exemption would apply.

a. By way of nonexclusive examples, recycling or reprocessing can begin when waste or material which would otherwise become waste is collected or separated. A vehicle used directly and primarily for collecting waste which will be recycled or reprocessed could be a vehicle used for an exempt purpose under this rule. Thus, the purchaser of a garbage truck could claim this exemption if the truck were directly and primarily used in recycling and not, for instance, in hauling garbage to a landfill. Machinery or equipment used to segregate waste from material to be recycled or reprocessed or used to separate various forms of materials which will be reprocessed (e.g., glass and aluminum) can also be used at the beginning of recycling or reprocessing.

b. Machinery and equipment directly and primarily used in recycling or reprocessing. See subrule 18.45(1) for the definition of "directly used" which is applicable to this subrule. The examples of machinery not directly used in manufacturing set out in 18.45(2) "d" should be studied for guidance in determining whether similar machinery is or is not used in recycling or reprocessing; e.g., machinery used in plant security (see 18.45(2) "d" "4") is not machinery directly used in recycling or reprocessing.

c. Integral use in recycling or reprocessing. Ordinarily, any operation or series of operations which does not transform waste or material which would otherwise become waste into new raw materials or products would not be a part of recycling or reprocessing. However, activities which do not do this, but are an "integral part" of recycling or reprocessing, are themselves recycling or reprocessing. For example, an endless belt which moves aluminum cans from a machine where they are shredded to a machine where the shredded aluminum is crushed into blocks would be an endless belt used in recycling or reprocessing and the exemption applies. See subrule 18.29(5) for a discussion of when an activity is an integral part of "processing." Some of that discussion is applicable to this subrule.

d. The end of recycling or reprocessing. Recycling or reprocessing ends when waste or a material which would otherwise become waste is in the form of raw material in which it will be used in manufacturing or in the form of a product which will be sold for use other than as a raw material in manufacturing. For instance, a corporation purchases a machine which grinds logs, stumps, pallets, and

crates and other waste wood into wood chips. After grinding, the wood chips are sold and transported to purchasers to various sites where the chips are dumped on and spread out over the ground for use in erosion control. The machine which grinds the wood chips is a machine used in recycling. The truck which transports the wood chips from the machine to the sites is not used in reprocessing because, at the time the chips are placed in the truck, they are in the form in which they will be sold for use other than as a raw material in manufacturing.

This rule is intended to implement Iowa Code section 422.45(26), Iowa Code section 422.45(27) as amended by 1996 Iowa Acts, chapter 1049, and Iowa Code section 422.45(29).

701—18.46(422,423) Automotive fluids. The gross receipts from the sales of certain automotive fluids are exempt from tax. To be considered exempt, the sale must possess the following characteristics: (1) the sale must be to a retailer who will install the automotive fluid in or apply the automotive fluid to a motor vehicle; and (2) the installation or application must be done while the retailer is providing a taxable enumerated service (e.g., automobile lubrication); or (3) the automotive fluid must be installed in or applied to a motor vehicle which the retailer intends to sell and the sale of which will be subject to Iowa use tax.

Specific but nonexclusive examples of “automotive fluids” are motor oil and other automobile lubricants, hydraulic, brake, and transmission fluids, sealants, undercoatings, antifreeze, and gasoline additives.

This rule is intended to implement Iowa Code section 422.45(33).

701—18.47(422,423) Maintenance or repair of fabric or clothing.

18.47(1) As of July 1, 1987, sales of chemicals, solvents, sorbents, or reagents consumed in the maintenance or repair of fabric or clothing are exempt from tax. See 701—subrule 17.14(1) 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 which 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.

18.47(2) Also, on and after July 1, 1987, the sale of property which 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 which 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 Division IV of Iowa Code chapter 422.

701—18.48(422,423) Sale or rental of farm machinery, equipment, replacement parts, and repairs used in livestock, dairy, or plant production. Sales or rental of farm machinery and equipment used in livestock or dairy production and replacement parts which occur on or after July 1, 1988, are exempt from sales and use tax. On and after July 1, 1995, machinery, equipment, and replacement parts used in the production of flowering, ornamental, or vegetable plants are exempt from tax. See rule 701—18.57(422,423).

18.48(1) Definitions and characterizations. For the purposes of this rule, the following definitions and characterizations of words apply.

a. "Machinery" means major mechanical machines or major components thereof which contribute directly and primarily to the livestock or dairy production process. Usually, a machine is a large object with moving parts which performs work by the expenditure of energy, either mechanical (e.g., gasoline or kerosene) or electrical.

b. "Equipment" is tangible personal property (other than a machine) directly and primarily used in livestock or dairy production. It may be characterized as property which performs a specialized function which, of itself, has no moving parts or if it does possess moving parts, its source of power is external to it. The following examples attempt to differentiate between machinery and equipment:

EXAMPLE A. An electric pump is used to pump milk into a bulk milk tank. The electric pump is machinery; the bulk milk tank is equipment.

EXAMPLE B. An auger places feed into a cattle feeder. If not "real property" (see 18.48(1) "c") the auger is a piece of machinery; the cattle feeder is a piece of equipment.

c. Property used in livestock or dairy production which 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, *Mid-American Growers, Inc. v. Dept. of Revenue*, 493 N.E.2d 1097 (Ill. App. Ct. 1986). Therefore, tangible personal property which is sold for incorporation into the ground or a building in such a manner that it will become a part of the ground or the building is taxable. Generally, property incorporated into the ground or a building has become a part of the ground or the building if removal of the property from the ground or building will substantially damage the property, ground, or building or substantially diminish the value of the property, ground, or building. Fence posts embedded in concrete and electrical wiring, light fixtures, fuse boxes, and switches are examples of property sold for incorporation into the ground or a building, respectively. The property referred to in 18.48(1) "c"(1) can be identified by applying the following test: Assume that the property is being sold to a contractor rather than a person engaged in livestock or dairy production. If sold to a contractor, would the retailer be required to consider the property "building material" and charge the contractor sales tax upon the purchase of this building material. If this is the case, sale of the property is not exempt from Iowa tax law. Iowa department of revenue rule 701—19.3(422,423) contains a characterization of "building material" and a list of specific examples of building material.

(2) "Supplies" are neither machinery nor equipment. Tangible personal property is part of farm supplies 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 which is not machinery or equipment. The sale of some farm supplies is exempt from tax. See

701—subrule 17.9(3). See List B in subrule 18.48(7) for examples of farm supplies which could be mistaken for equipment and are not exempt from tax on other grounds.

d. “Hand tools” are tools which can be held in the hand or hands and which 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 or some source other than human muscle power are, if otherwise qualified, exempt from tax as “farm machinery.” See subrule 18.48(7), List C, for examples of “hand tools” exempt and not exempt from tax.

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. Subrule 18.48(1), paragraph “g,” describes when livestock or dairy production begins and ends. If the machinery or equipment is used in livestock or dairy production, to be “directly” so used, that use must constitute an integral and essential part of production as distinguished from a use in production which is incidental, merely convenient to or remote from production. The fact that machinery or equipment is essential or necessary to livestock or dairy production does not mean that it is also “directly” used in production. Machinery or equipment may be necessary to livestock or dairy production but so remote from it that it is not directly used in that production.

(1) In determining whether machinery or equipment is used directly, consideration should be given to the following factors:

1. The physical proximity of the machinery or equipment to other machinery or equipment whose direct use is unarguable. The closer the machinery or equipment whose direct use is questioned is to the machinery or equipment whose direct use is not questioned, the more likely it is that the former is directly used in livestock or dairy production.

2. The proximity in time of the use of machinery or equipment whose direct use is questionable to the use of machinery whose direct use is not questioned. The closer in time the use, the more likely that the questioned machinery or equipment’s 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.

(2) The following are examples of machinery and equipment directly used in livestock or dairy production:

1. Machinery and equipment used to transport or limit the movement of livestock and dairy animals (e.g., electric fence equipment, head gates, and loading chutes).

2. 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).

3. 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).

4. Machinery or equipment used to test or inspect livestock or dairy animals during production.

(3) The following are nonexclusive examples of machinery or equipment which would not be directly used in livestock or dairy production.

1. 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).

2. Machinery used in farm management, administration, advertising, or selling (e.g., a recordkeeping computer, calculating machine, office safe, telephone, books, and farm magazines).

3. Machinery or equipment used in the exhibit of livestock or dairy animals (e.g., blankets, halters, prods, leads, and harnesses).

4. Machinery or equipment used in safety or fire prevention, even though the machinery or equipment is required by law.

5. 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 are 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 of a migrant labor camp, or other facilities for farm employees.

6. Machinery and equipment used for heating, cooling, ventilation, and illumination of farm buildings generally rather than specifically in the immediate area where livestock are kept.

7. Vehicles subject to registration.

f. "Primarily" used in livestock or dairy production. Machinery or equipment is "primarily used in livestock or dairy production" if of the total time that unit of machinery or equipment is used, more than 50 percent of the time is in livestock or dairy production. If a unit of machinery or equipment is used more than 50 percent of the time for production and the balance of time for other business purposes, the exemption applies. If a unit of equipment is used 50 percent or more of the time for business purposes other than livestock or dairy production, the exemption does not apply. Any unit of machinery or equipment used more than 50 percent of the time directly in livestock or dairy production is subject to the 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 and dairy production ceases when an animal or the product of an animal's body (e.g., wool or milk) has been transported to the point where it will be sold by the farmer or processed.

h. Farm machinery and equipment means machinery and equipment specifically designed for use in livestock and dairy production or equipment and machinery not specifically designed for this use but which are directly and primarily used in livestock or dairy production except for common or ordinary hand tools. See 18.48(1) "d" for a definition of "hand tools."

EXAMPLE. Farmer Jones raises livestock and fans must be used to cool the animals. Farmer Jones buys fans designed for use in a residence which he uses directly and solely to cool the livestock. The exemption applies.

i. "Self-propelled implement" has the same meaning as in 701—subrule 17.9(5), paragraph "c" where the term is defined to mean an implement which is capable of movement from one place to another under its own power. The term self-propelled implement includes but is not limited to the following items: skidloaders and tractors; and the following machinery if capable of movement under its own power: combines, corn pickers, fertilizer spreaders, hay conditioners/windrowers, sprayers, and bean buggies.

j. Implements customarily drawn or attached to self-propelled implements. The following is a nonexclusive, representative list of implements which are customarily drawn or attached to self-propelled implements: augers, balers, blowers, combines, conveyors, cultivators, disks, drags, dryers (portable), farm wagons, feeder wagons, fertilizer spreaders, front- and rear-end loaders, harrows, hay loaders, mowers and rakes, husking machines, manure spreaders, planters, plows, posthole diggers, rotary blade mowers, rotary hoes, sprayers and tanks, and tillage equipment.

k. The term "grain dryer" includes the heater and the blower necessary to force the warmed air into a grain storage bin. It does not include equipment used in grain storage or movement such as augers and spreaders or any other equipment that is not a grain dryer. Equipment other than a grain dryer which is used in grain drying may be exempt or subject to refund if the equipment is a self-propelled implement or customarily drawn or attached to a self-propelled implement.

l. The term "replacement parts essential to any repair or reconstruction necessary to farm machinery or equipment's exempt use in the production of agricultural products" does not include attachments and accessories not essential to the operation of the machinery or equipment itself (except when sold as part of the assembled unit) such as cigarette lighters, radios, canopies, air conditioning units, cabs, deluxe seats, and tools or utility boxes.

18.48(2) Right of refund for farm machinery and equipment used in livestock or dairy production, basic requirements. Rescinded IAB 10/13/93, effective 11/17/93.

18.48(3) *Treatment of replacement parts.* Rescinded IAB 10/13/93, effective 11/17/93.

18.48(4) *Packing material used in agricultural, livestock, or dairy production.* For sales occurring on or after July 1, 1996, the gross receipts from the sale of property which 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 agricultural, livestock, or dairy production are not subject to sales tax. This exemption also applies to producers of ornamental, flowering, or vegetable plants in commercial greenhouses or other places which sell such items in the ordinary course of business since that activity is considered to be agricultural.

18.48(5) Rescinded IAB 11/20/96, effective 12/25/96.

18.48(6) *Auxiliary attachments exemption.* On and after July 1, 1995, sales of auxiliary attachments which improve the performance, safety, operation, or efficiency of machinery or equipment are exempt from tax. Sales of replacement parts for these auxiliary attachments are also exempt on and after that date.

18.48(7) *Lists.* Lists (representative but not all-inclusive) of tangible personal property for which sales or use tax paid is or is not refundable.

LIST A. Property Used in Livestock and Dairy
Production Which is Usually Real Property. See
18.48(1) "c"(1). Its sale is usually taxable.

barn ventilators*	livestock feeders*
conveyers*	silos
farrowing crates*	specialized flooring*
fence posts	sprinklers
fencing wire	stanchions
furnaces*	watering tanks*
gestation stalls*	ventilators*

*These items also appear in List D. Tax paid on their sale can be refundable or their sale exempt if the items are not real property.

LIST B. Taxable Farm Supplies
Which Are Not Machinery or Equipment

burlap*	lubricants
disposable hypodermic syringes	marking chalk
ear tags	packages for one-time use
hog rings	

*Burlap is exempt when used in the form of a bag, container, wrap or other receptacle or packaging material.

LIST C. Hand Tools—Taxable and Nontaxable

axes	lanterns
brooms	milk cans*
buckets	mops
cleaning brushes	paintbrushes
dehorners (nonelectric)*	pliers
garden hoses	scrapers
grease guns	screwdrivers
hammers	shovels
hay hooks*	wheelbarrows
hog ringers*	wrenches
lamps	

*Hand tools specially designed for use in livestock or dairy production are equipment. Tax paid on the sale or use of these hand tools is refundable.

**LIST D. Farm Machinery and Equipment Directly and
Primarily Used in Livestock or Dairy Production.
Tax Paid is Usually Refundable or the Sale Exempt.**

artificial insemination equipment	gates*
augers*	grain augers
automatic feeding systems*	head gates
bulk feeding tanks*	heating pads and lamps
bulk milk coolers	hog feeders*
bulk milk tanks	hypodermic syringes and needles, nondisposable
cattle weaners and feeders	livestock feeding, watering and handling
cattle currying and oiling machines	equipment*
cattle feeders*	loading chutes*
conveyers*	LP gas tanks
dehorners, electric	manure handling equipment*
electric fence equipment	milk coolers
fans*	milk strainers
farrowing crates, houses and stalls*	milking machines
feed bins*	refrigerators used to cool raw milk
feed carts	silo unloaders
feed elevators*	specialized flooring*
feed grinders	space heaters
feed tanks*	sprayers
feeders	squeeze chutes*
foggers	vacuum coolers
furnaces*	ventilators*

*If not real property. See 18.48(1) "c"(1).

18.48(8) Seller's and purchaser's liability for sales tax. The seller shall be relieved of sales tax liability if the seller takes from the purchaser an exemption certificate stating that the purchase is of machinery or equipment meeting the requirements of subrule 18.48(4). An exemption certificate can take the form of a stamp imprinted onto one of the documents of sale. 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 liable for the taxes and shall remit the tax directly to the department.

This rule is intended to implement Iowa Code section 422.45 as amended by 1996 Iowa Acts, chapter 1145.

701—18.49(422,423) Aircraft sales, rental, component parts, and services exemptions prior to, on, and after July 1, 1999.

18.49(1) Prior to July 1, 1999, sales in Iowa of aircraft subject to registration were subject to sales tax. On and after July 1, 1999, sales of aircraft in Iowa are subject to Iowa use tax rather than Iowa sales tax. See rule 701—31.6(423). Also, on and after that date, the use tax imposed on sales of aircraft in Iowa is collected by the Iowa department of transportation at the time of the aircraft's registration. Sales of certain aircraft parts in Iowa, the performance of taxable services in Iowa on or in connection with the repair, remodeling, or maintenance of aircraft, and the rental of aircraft in Iowa remain subject to Iowa sales tax on and after July 1, 1999. See subrule 18.49(3).

18.49(2) For the purposes of this subrule only, an "aircraft" is any contrivance known or hereafter invented which is designed for navigation of or flight in the air and is used in a scheduled interstate Federal Aviation Administration certified air carrier operation.

a. *Exempt aircraft sales.* As of July 1, 1988, and up to and including June 30, 1999, gross receipts from the sale of aircraft are exempt from tax.

b. *Exempt rental of aircraft.* Effective May 1, 1995, and retroactive to July 1, 1988, the taxable rental (see 701—26.74(422,423)) of aircraft, as defined in the introductory paragraph of this subrule, is exempt from tax.

c. *Exempt sale or rental of aircraft parts.* Effective May 1, 1995, and retroactive to July 1, 1988, gross receipts from the sale or rental of tangible personal property permanently affixed to any aircraft as a component part of that aircraft are exempt from tax. The term "component parts" includes, but is not limited to, repair or replacement parts and materials.

d. *Exempt performance of services.* Effective May 1, 1995, and retroactive to July 1, 1988, gross receipts from the rendering, furnishing, or performing of services in connection with the repair, remodeling, or maintenance of aircraft (including aircraft engines and component materials or parts) are exempt from tax.

18.49(3) For the purposes of this subrule only, an "aircraft" is any aircraft used in a nonscheduled interstate Federal Aviation Administration certified air carrier operation conducted under 14 CFR ch. 1, pt. 135. On and after July 1, 1998, the gross receipts from the sale or rental of tangible personal property permanently affixed or permanently attached as a component part of these aircraft, including but not limited to repair or replacement materials or parts, are exempt from tax. Also exempt, on and after that date, are the gross receipts from the performance of any service used for aircraft repair, remodeling, or maintenance when the service is performed on an aircraft, aircraft engine, or aircraft component material or part exempt under this subrule. Gross receipts from the sale or rental of aircraft are not exempt from tax under this subrule.

18.49(4) For the purposes of this subrule only, an "aircraft" is any contrivance known or hereafter invented which is designed for navigation of or flight in the air. On and after July 1, 1998, and up to and including June 30, 1999, the gross receipts from the sale of an aircraft to an aircraft dealer who rents or leases the aircraft to another are exempt from tax if all of the following circumstances exist:

- a. The aircraft is kept in the inventory of the dealer for sale at all times.
- b. The dealer reserves the right to immediately take the aircraft from the renter or lessee when a buyer is found.
- c. The renter or lessee is aware that the dealer will immediately take the aircraft when a buyer is found.

As soon as an aircraft, the sale of which is exempt under this subrule, is used for any purpose other than leasing or renting, or the conditions set out in paragraphs "a," "b," and "c" are not continuously met, the dealer claiming the exemption is liable for the tax which would have been due but for the exemption set out in this subrule. Tax will be computed on the original purchase price paid by the dealer.

See rule 701—32.13(423) for a description of the manner in which transactions described in this subrule are exempted from tax on and after July 1, 1999.

This rule is intended to implement Iowa Code section 422.45, subsections 38, 38A, 38B and 38C and Iowa Code section 423.2 as amended by 1999 Iowa Acts, chapter 168.

701—18.50(422,423) Property used by a lending organization. On and after July 1, 1988, the gross receipts from the sale of tangible personal property 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. 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) which the nonprofit organization might need for its ongoing existence.

This rule is intended to implement Iowa Code section 422.45(36).

701—18.51(422,423) Sales to nonprofit legal aid organizations. On and after July 1, 1988, the gross receipts from the sale or rental of tangible personal property or from services performed, rendered, or furnished to a nonprofit legal aid organization are exempt from tax.

This rule is intended to implement Iowa Code subsection 422.45(37).

701—18.52(422,423) Irrigation equipment used in farming operations. On and after July 1, 1989, the gross receipts from the sale or rental of irrigation equipment used in farming operations are exempt from tax. The term "irrigation equipment" includes, but is not limited to, circle irrigation systems and trickle irrigation systems. The term "farming operations" has the same meaning as the term "agricultural production" set out in 701—subrule 17.9(3), paragraph "a," and as further characterized in 18.44(2)"a."

Effective May 18, 2001, and retroactive to April 1, 1995, the gross receipts from the sale or rental of irrigation equipment, as defined above, whether installed above or below ground are exempt from tax as long as the equipment is sold or rented by a contractor or farmer and the equipment is primarily used in agricultural operations.

Contractors or farmers entitled to the exemption set forth in the previous paragraph may apply for a refund of taxes, interest or penalties paid on the sale or rental of qualifying irrigation equipment for transactions that occurred between April 1, 1995, and May 18, 2001. To be eligible for refund, refund claims must be filed with the department prior to October 1, 2001. Refund claims are limited to \$25,000 in the aggregate and will not be allowed if not timely filed. If the amount of refund claims totals more than \$25,000 in the aggregate, the department will prorate the \$25,000 among all claimants in relation to the amounts of the claimants' valid claims.

This rule is intended to implement Iowa Code section 422.45 and 2001 Iowa Acts, House File 723.

701—18.53(422,423) Sales to persons engaged in the consumer rental purchase business. On and after July 1, 1989, the gross receipts from the sale of tangible personal property, except vehicles subject to registration, to persons regularly engaged in the consumer purchase business are exempt from tax if the property (1) is sold for the purpose of utilization in a transaction involving a "consumer rental purchase agreement" as defined in Iowa Code subsection 537.3604(8), and (2) the gross receipts from the consumer rental of the property are subject to Iowa sales or use tax.

If property exempt under this rule is made use of for any purpose other than a consumer rental purchase, the person claiming the exemption is liable for the tax that would have been due had the exemption not existed. The tax shall be computed on the original purchase price to the person claiming

the exemption. The aggregate of the tax paid on the consumer rental purchase of the property, not exceeding the amount of sales or use tax owed, shall be credited against the tax.

This rule is intended to implement Iowa Code section 422.45(18).

701—18.54(422,423) Sales of advertising material. On and after July 1, 1990, gross receipts from the sales of advertising material to any person in Iowa are exempt from tax if that person, or any agent of that person, will, after the sale, send that advertising material outside of Iowa and subsequent sole use of that material will be outside this state.

For the purposes of this rule “advertising material” is tangible personal property only, including paper. “Advertising material” is limited to the following: brochures, catalogs, leaflets, fliers, order forms, return envelopes, floppy discs, CD-ROMs, videotapes, and any similar items of tangible personal property which will be used to promote sales of property or services.

This rule is intended to implement Iowa Code section 422.45.

701—18.55(422,423) Drop shipment sales. A “drop shipment” generally involves two sales 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. The two sales transactions in question are the sale of property from the supplier to the out-of-state retailer, and the further sale of that property from the out-of-state retailer to the consumer in 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 in turn ships the property directly to the consumer in Iowa. Under Iowa law the supplier in a drop shipment sale cannot be required to collect tax (either sales or use) from the consumer, even if the requisite “nexus” to require collection exists. See the next to last paragraph of this rule for a characterization of “nexus.” The supplier transfers possession of the goods to the consumer; however, transfer of possession alone has never been held to be a “sale” for the purposes of Iowa sales and use tax law. *Sturtz v. Iowa Department of Revenue*, 373 N.W.2d 131 (Iowa 1985) and *Cedar Valley Leasing v. Iowa Department of Revenue*, 274 N.W.2d 357 (Iowa 1979).

With reference to drop shipment sales: If delivery of the goods under the contract for sale has occurred outside of Iowa, sale of the goods has occurred outside of Iowa. If delivery of the goods under the contract for sale has occurred within Iowa, the sale has occurred here. See *Sturtz* above for more information regarding sales and delivery. If the sale has occurred in Iowa and the retailer possesses the requisite nexus to require it to collect Iowa tax, the retailer is obligated to collect Iowa sales tax upon the “gross receipts” from its sale of the goods to the consumer. If the sale has occurred outside this state, and the retailer possesses the nexus to require it to collect Iowa tax, the retailer is obligated to collect Iowa retailer’s use tax upon the purchase price of the goods. If the retailer does not have nexus sufficient to require it to collect either Iowa sales or Iowa use tax, or if the retailer fails to collect either tax, the consumer is obligated to pay a consumer use tax directly to the department upon the purchase price of the goods. These rules are illustrated in the following examples.

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 consumer’s 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 Iowa, and delivery under the contract for sale occurs in Iowa. Under these circumstances, 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 D: 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 retailer's use tax. The supplier is not obligated to collect or pay any Iowa tax.

EXAMPLE E: 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 no nexus with this state. Delivery can occur in either Minnesota or Iowa. In this example, the consumer is obligated to pay Iowa consumer's use tax directly to the department. Neither the retailer nor the supplier is obligated to collect any Iowa tax.

EXAMPLE F: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier located in Madison, Wisconsin, to ship the goods to the consumer in Des Moines. The retailer has nexus with Iowa, and delivery under the contract for sale is in Iowa. Under these circumstances, the retailer is obligated to collect and the consumer obligated to pay Iowa sales tax. The supplier is not obligated to collect any Iowa tax.

EXAMPLE G: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier located in Madison, Wisconsin, to ship the goods to the consumer in Des Moines. The retailer has nexus with Iowa with delivery in Madison, Wisconsin. Under these circumstances, the retailer is obligated to collect and the consumer obligated to pay Iowa retailer's use tax. The supplier is not obligated to collect any Iowa tax.

EXAMPLE H: A consumer in Des Moines, Iowa, purchases goods from a retailer in Minneapolis, Minnesota. The retailer contracts with a supplier located in Madison, Wisconsin, to ship the goods to the consumer in Des Moines. The retailer has no nexus with Iowa. Delivery under the contract for sale may be in Iowa or Wisconsin. Under these circumstances, the consumer is obligated to pay Iowa consumer's use tax directly to the department. Neither the retailer nor the supplier is obligated to collect any Iowa tax.

As used in these examples, the requirement of "nexus" is discussed in *Good's Furniture House Inc. v. Iowa State Bd. of Tax Review*, 382 N.W.2d 145 (Iowa 1986); cert. den. 479 U.S. 817; *State Tax Commission v. General Trading Co.*, 10 N.W.2d 659, 233 Iowa 877 (1943) affd. 64 S.Ct. 1028, 322 U.S. 335, 88 L.Ed. 1309; and *Nelson v. Sears, Roebuck & Co.*, 292 N.W. 130, 228 Iowa 1273 (1940) reversed 61 S.Ct. 586, 312 U.S. 359, 85 L.Ed. 522, as well as other judicial decisions, and Iowa Code section 422.43(12).

This rule is intended to implement Iowa Code subsections 422.42(2) and 422.42(5).

701—18.56(422,423) Wind energy conversion property. On and after July 1, 1993, the gross receipts from the sale of property used to convert wind energy to electrical energy or the gross receipts from the sale of materials used to manufacture, install, or construct property used to convert wind energy to electrical energy shall be exempt from tax.

For the purposes of this rule, "property used to convert wind energy to electrical energy" means any device which converts wind energy to usable electrical energy including, but not limited to, wind chargers, windmills, wind turbines, pad mount transformers, substations, power lines, and tower equipment.

This rule is intended to implement Iowa Code section 422.45 as amended by 1993 Iowa Acts, chapter 161.

701—18.57(422,423) Exemptions applicable to the production of flowering, ornamental, and vegetable plants. On and after July 1, 1995, 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. The word "plants" does not include trees, shrubs, other woody perennials,

or fungus. The exemption also applies to implements, machinery, equipment, and replacement parts directly and primarily used in the production of flowering, ornamental, or vegetable plants and fuel used for providing heating or cooling for greenhouses or buildings or parts of buildings dedicated to the production of flowering, ornamental, or vegetable plants intended for sale in the ordinary course of business. The following exemptions are applicable to the production of flowering, ornamental, or vegetable plants.

18.57(1) Sales of fertilizer, limestone, herbicides, pesticides, insecticides, plant food, and medication for use in disease, weed, insect control, or other health promotion of flowering, ornamental, or vegetable plants to a commercial greenhouse are exempt from tax. For the purposes of this subrule a virus, bacteria, fungus, or insect which is purchased for use in killing insects or other pests is an "insecticide" or "pesticide." See rules 701—17.4(422,423) and 17.9(422,423) for more information regarding these exemptions.

18.57(2) Sales of fuel to provide heating or cooling for a greenhouse or building or a part of a building dedicated to the production of flowering, ornamental, or vegetable plants held for sale in the ordinary course of business are exempt from tax. Electricity is a "fuel" for the purposes of this subrule. Fuel used in a plant production building for purposes other than heating or cooling (e.g., lighting) or for purposes other than direct use in plant production (e.g., heating or cooling office space) is not eligible for this exemption. For example, assume that there is a separate meter for electricity used only for heating or cooling. If a greenhouse is used, partially for growing plants and partially for a nonexempt purpose, a proportional exemption from sales tax may be claimed based upon a percentage calculated from a fraction, the numerator of which is the number of square feet of the greenhouse heated or cooled and used for raising plants, and the denominator of which is 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 plant production. Plant production has ended when a plant has grown to the point that it is of the size or weight at which it will be prepared for shipment to the destination where it will be marketed. 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 plants, housing of heating and cooling equipment and portions used for packaging plants for shipment. See rule 701—15.3(422,423) regarding fuel exemption certificates and subrule 18.48(8) regarding seller's and purchaser's liability for sales tax.

18.57(3) Sales of gas, electricity, steam or other tangible personal property for use as a fuel in implements of husbandry used in the production of plants in a commercial greenhouse or elsewhere are exempt from tax. See 701—subrule 17.9(6), paragraph "a," for a definition of "implements of husbandry."

18.57(4) Sales of self-propelled implements. Sales of self-propelled implements or implements customarily drawn by 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 plants in commercial greenhouses or elsewhere. See rule 701—18.44(422,423) for an extensive explanation of this exemption. Implements exempt under this subrule include, but are not limited to, forklifts used to transport pallets of plants; wagons containing sterilized soil and tractors used to pull the same.

18.57(5) Sale of water used in the production of plants is exempt from tax. If water is not separately metered, the grower of plants must determine by use of a percentage that portion which is used for a taxable purpose and that portion which is used for an exempt purpose.

Nonexclusive examples of taxable usage would be rest rooms, sanitation, lawns, and vehicle wash.

18.57(6) For sales occurring on or after July 1, 1996, the gross receipts for the sale of property which 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 agricultural, livestock, or dairy production are not subject to sales tax. This exemption also applies to producers of ornamental, flowering, or vegetable plants in commercial greenhouses or other places which sell such items in the ordinary course of business since that activity is considered to be agricultural. A noninclusive list of containers and packaging materials would include boxes, trays, labels, sleeves, tape, and staples.

18.57(7) Sales of machinery and equipment used in plant production which are not self-propelled or attached to self-propelled machinery and equipment are also exempt from tax. See rule 701—18.48(422,423) for a thorough explanation of this exemption. Listed below are a number of examples of machinery and equipment which are directly and primarily used in plant production. Sales of this machinery and equipment to commercial growers are usually exempt from tax.

- Air-conditioning pads*
- Airflow control tubes
- Atmospheric CO₂ control and monitoring equipment
- Backup generators
- Bins holding sterilized soil
- Control panels = heating and cooling
- Coolers used to chill plants*
- Cooling walls* or membranes
- Equipment used to control water levels for subirrigation
- Fans = cooling and ventilating*
- Floor mesh for controlling weeds
- Germination chambers
- Greenhouse boilers*
- Greenhouse netting or mesh = used for light and heat control
- Greenhouse monorail systems*
- Greenhouse thermometers
- Handcarts used to move plants
- Lighting which provides artificial sunlight
- Overhead heating, lighting and watering systems
- Overhead tracks for holding potted plants*
- Plant tables*
- Plant watering systems*
- Portable buildings used to grow plants*
- Seeding and transplanting machines
- Soil pot and soil flat filling machines
- Steam generators for soil sterilization*
- Warning devices = excess heat or cold
- Watering booms

*If not real property. See 18.48(1) "c"(1).

18.57(8) Miscellaneous exempt and taxable sales. 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. Sales of portable buildings which will be used to display plants for retail sales are taxable. Finally, sales of whitewash which will be painted on greenhouses to control the amount of sunlight entering those houses are taxable sales of a "supply" rather than exempt sales of equipment. See 18.48(1) "c"(2) relating to "supplies." See rule 701—18.7(422,423) relating to containers, including packaging cases, shipping cases, wrapping materials, and similar items sold to retailers, and see subrule 18.57(6).

This rule is intended to implement Iowa Code sections 422.42(1), 422.42(4), 422.42(11), 422.45(39) and 422.47(4) and Iowa Code section 422.45 as amended by 1996 Iowa Acts, chapter 1145.

701—18.58(422,423) Exempt sales or rentals of computers, industrial machinery and equipment, and exempt sales of fuel and electricity on and after July 1, 1997. The sale or rental of machinery, equipment, or computers used by a manufacturer in processing; the sale or rental of a computer used in the processing or storage of data or information by an insurance company, financial institution, or commercial enterprise; and the sale or rental of various other types of tangible personal property are, under certain circumstances, exempt from tax as of July 1, 1997.

18.58(1) Definitions. The following terms are defined for the purposes of this rule in the manner set out below.

“*Commercial enterprise*” includes businesses and manufacturers conducted for profit and includes centers for data processing services to insurance companies, financial institutions, businesses, and manufacturers, but excludes professions and occupations and nonprofit organizations. A hospital that is a not-for-profit organization would not be a “commercial enterprise.” The term “professions” means a vocation or employment requiring specialized knowledge and often long and intensive academic preparation. The term “occupations” means the principal business of an individual. Included within the meaning of “occupations” is the business of farming. A professional corporation which carries on any business which is a “profession” or “occupation” is not a commercial enterprise.

“*Computer*” means stored program processing equipment and all devices fastened to it by means of signal cables or any communication medium that serves the function of a signal cable. Nonexclusive examples of devices fastened by a signal cable or other communication medium are terminals, printers, display units, card readers, tape readers, document sorters, optical readers, and card or tape punchers. Excluded from the definition of “computer” is point-of-sale equipment. For a characterization of “point-of-sale equipment,” see 701—subrule 71.1(7). Also included within the meaning of the word “computer” is any software consisting of an operating system or executive program. Such software coordinates, supervises, or monitors the basic operating procedures of a computer. An operating system or executive program is exempt from sales tax only if purchased as part of the sale of the computer for which it operates. An operating system or executive program priced separately or sold at a later time is subject to the provisions of rule 18.34(422,423). Excluded from the meaning of the word “computer” is any software consisting of an application program. For purposes of this subrule, “operating system or executive program” means a computer program which is fundamental and necessary to the functioning of a computer. The operating system or executive program software controls the operation of a computer by managing the allocation of all system resources, including the central processing unit, main and secondary storage, input/output devices, and the processing of programs. This is in contrast to application software which is a collection of one or more programs used to develop and implement the specific applications which the computer is to perform, and which calls upon the services of the operating system or executive program.

“*Contract manufacturer*” is any manufacturer who falls within the definition of “manufacturer” set out subsequently in this subrule except that a contract manufacturer does not sell the tangible personal property which it processes on behalf of other manufacturers.

“*Directly used.*” 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 in question to the activity in which it is used;
2. The proximity of the time of use of the property in question to the time of use of other property used before and after it in the activity involved; and
3. The active causal relationship between the use of the property in question and the activity involved. 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.

“*Financial institution*” is a bank incorporated under any state or federal law; a savings and loan association incorporated under any state or federal law; a credit union organized under any state or federal law; or any corporation licensed as an industrial loan company under Iowa Code chapter 536A. Excluded from the meaning of the term are loan brokers governed by Iowa Code chapter 535C and production credit associations.

“*Insurance company*” means an insurer organized or operating under Iowa Code chapter 508, 514, 515, 518, 518A, 519, or 520 or authorized to do business in Iowa as an insurer or as a licensed insurance agent under Iowa Code chapter 522. Excluded from the definition of “insurance company” are fraternal and beneficial societies governed by Iowa Code chapter 512 and health maintenance organizations governed by Iowa Code chapter 514B. This list of exclusions is not intended to be exclusive.

“Machinery and equipment” means machinery and equipment used by a manufacturer. 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. The term 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. Jigs, dies, tools, and 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.” See *Deere Manufacturing Co. v. Zeiner*, 247 Iowa 1264, 78 N.W.2d 527 (1956). Also see the definition of “replacement parts” infra. Machinery does not include buildings designed specifically to house or support machinery. Equipment is any tangible personal property used in an operation or activity. Nonexclusive examples of equipment are tables on which property is assembled on an assembly line and chairs used by assembly line workers.

“Manufacturer” means any person, firm, or corporation that purchases, receives, or holds personal property for the purpose of adding to its value by any process of manufacturing, refining, purifying, combining of different materials, or by packing of meats with an intent to sell at a gain or profit. Those who are in the business of printing, newspaper publication, bookbinding, lumber milling, and production of drugs and agricultural supplies are illustrative, nonexclusive examples of manufacturers. Construction contracting; remanufacture or rebuilding of tangible personal property (such as automobile engines); provision of health care; farming; transportation for hire; and the activities of restaurateurs, hospitals, medical doctors, and those who merely process data are illustrative, nonexclusive examples of businesses which are not manufacturers. See *Associated General Contractors of Iowa v. State Tax Commission*, 255 Iowa 673, 123 N.W.2d 922 (1963) and *River Products Co. v. Board of Review of Washington County*, 332 N.W.2d 116 (Iowa Ct. App. 1982). The term “manufacturer” includes a contract manufacturer. Ordinarily, the word does not include those commercial enterprises engaged in quarrying or mining. However, effective July 1, 1998, a commercial enterprise, the principal business of which is quarrying or mining, is a manufacturer with respect to activities in which it engages subsequent to quarrying or mining. These subsequent activities include, by way of nonexclusive example, crushing, washing, sizing, and blending of aggregate materials.

EXAMPLE: Company A owns and operates a gravel pit. It sells the gravel extracted from the pit to others who use the gravel for surfacing roads and as an ingredient in concrete manufacture. Company A removes overlay and raw gravel from the pit. It then transports the gravel to a plant where washing and sizing of the gravel take place. Company A is a manufacturer, but only with respect to those activities which occur after it severs the gravel from the ground.

“Pollution control equipment” means any disposal system or apparatus used or placed in operation primarily for the purpose of reducing, controlling, or eliminating air or water pollution. The term 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 the United States Government. Wastewater treatment facilities 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 (e.g., a gas mask).

“Processing” means a series of operations in which materials are manufactured, refined, purified, created, combined, transformed, or stored by a manufacturer, ultimately into tangible personal property. Processing encompasses all activities commencing with the receipt or producing of raw materials by the manufacturer and ending at the point products are delivered for shipment or transferred from the manufacturer. Processing includes, but is not limited to, refinement or purification of materials; treatment of materials to change their form, context, or condition; maintenance of the quality or integrity of materials, components, or products; maintenance of environmental conditions necessary for materials, components or products; quality control activities; construction of packaging and shipping devices; placement into shipping containers or any type of shipping device or medium; and the movement of materials, components, or products until shipment from the manufacturer.

“Processing or storage of data or information.” All computers store and process information. However, only if the “final output” for a user or consumer is stored or processed data will the computer be eligible for exemption of tax.

“Receipt or producing of raw materials” means activities performed upon tangible personal property only. 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.

“Recycling” means any process by which waste or materials which would otherwise become waste are collected, separated, or processed and revised or returned for use in the form of raw materials or products. The term includes, but is not limited to, the composting of yard waste which has been previously separated from other waste. “Recycling” does not include any form of energy recovery.

“Replacement parts.” A “replacement part” is any machinery, equipment, or computer part which is substituted for another part that has broken, has become worn out or obsolete, or is otherwise unable to perform its intended function. “Replacement parts” are those parts which materially add to the value of industrial machinery, equipment, or computers or appreciably prolong their lives or keep them in their ordinarily efficient operating condition. Excluded from the meaning of the term “replacement parts” are supplies, the use of which is necessary if machinery is to accomplish its intended function. Drill bits, grinding wheels, punches, taps, reamers, saw blades, lubricants, coolants, sanding discs, sanding belts, and air filters are nonexclusive examples of supplies. Sales of supplies remain taxable.

Tangible personal property with an expected useful life of 12 months or more which is used in the operation of machinery, equipment, or computers is rebuttably presumed to be a “replacement part.” Tangible personal property used in the same manner with an expected useful life of less than 12 months is rebuttably presumed to be a “supply.”

“Research and development” means experimental or laboratory activity which has as its ultimate goal the development of new products or processes of processing. Machinery, equipment, and computers are used “directly” in research and development only if they are used in actual experimental or laboratory activity that qualifies as research and development under this subrule.

18.58(2) Exempt sales. On and after July 1, 1997, sales or rentals of the following machinery, equipment, or computers (including replacement parts) are exempt from tax:

a. Machinery, equipment, and computers directly and primarily used in processing by a manufacturer.

b. Machinery, equipment, and computers directly and primarily used to maintain a manufactured product’s integrity or to maintain any unique environmental conditions required for the product.

c. Machinery, equipment and computers directly and primarily used to maintain unique environmental conditions required for other machinery, equipment, or computers used in processing by a manufacturer.

d. Test equipment directly and primarily used by a manufacturer in processing to control the quality and specifications of a product.

e. Machinery, equipment, or computers directly and primarily used in research and development of new products or processes of processing.

f. Computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise.

g. Machinery, equipment, and computers directly and primarily used in recycling or reprocessing of waste products.

h. Pollution control equipment used by a manufacturer. It is not necessary that the equipment be “directly and primarily” used in any kind of processing.

i. Materials used to construct or self-construct any machinery, equipment, or computer, the sale of which is exempted by paragraphs “a” through “h” above.

j. Exempt sales of fuel and electricity. Sales of fuel or electricity consumed by machinery, equipment, or computers used in any exempt manner described in paragraphs “a,” “b,” “c,” “d,” “e,” “g,” and “h” of this subrule are exempt from tax. Sales of electricity consumed by computers used in the manner described in paragraph “f” remain subject to tax.

18.58(3) Examples of exempt items. Sales of the following nonexclusive types of machinery and equipment, previously taxable, are exempt on and after July 1, 1997, if that machinery or equipment is sold for direct and primary use in processing by a manufacturer: coolers which do not change the nature of materials stored in them; equipment which eliminates bacteria; palletizers; storage bins; property used to transport raw, semifinished, or finished goods; vehicle-mounted cement mixers; self-constructed machinery and equipment; packaging and bagging equipment (including conveyer systems); equipment which maintains an environment necessary to preserve a product's integrity; equipment which maintains a product's integrity directly; quality control equipment and electricity or other fuel used to power the machinery and equipment mentioned above.

18.58(4) Processing—beginning to end.

a. *The beginning of processing.* Processing begins with a manufacturer's receipt or production of raw material. Thus, when a manufacturer produces its own raw material it is engaged in processing. Processing also begins when raw materials are transferred to a manufacturer's possession by a manufacturer's supplier.

b. *The completion of processing.* Processing ends when the finished product is transferred from the manufacturer or delivered for shipment by the manufacturer. Therefore, a manufacturer'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.

c. *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 which it uses as raw material. A's employees cut the trees, transport the logs to A's factory, offload them there, and store the logs in a warehouse (to begin the curing of their wood) before taking them to A's sawmill. The walnut trees are real property, *Kennedy v. Board of Assessment and Review*, 276 N.W. 205, 224 Iowa 405 (1937). 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. In this example, "processing" of the logs begins when they are placed on vehicles for transport to A's factory. However, note that even though the transport vehicles are used in processing, if they are "vehicles subject to registration," their use is not exempt from tax. See 18.58(6) "d" infra.

EXAMPLE B. Company A from the previous example also buys mahogany logs from a supplier in Honduras. Company A uses its own equipment to offload the logs from railroad cars at its manufacturing facility and then transports, 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 which it brews. It 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 whether those stages involve the transformation of the raw materials from one state to another, e.g., fermentation or aging, or simply involve holding the materials in an existing state, e.g., storage of hops in a bin or storage of the beer immediately prior to bottling. Also, any movement of the beer between containers is an activity which is a part of processing, whether this movement is an "integral part" of the production of the beer or not.

EXAMPLE D. After the brewing process is complete, Company C places its beer in various containers, stores it, and moves the beer to its customers by a common carrier that picks up the beer at C's brewery. C's activities of placing the beer into bottles, cans, and kegs, storing it after packaging, and moving the beer by use of a forklift to the common carrier's pickup site are activities which are part of processing.

18.58(5) Various unrelated inclusions in and exclusions from this exemption.

a. The following are nonexclusive examples of machinery which is not directly used in processing:

(1) Machinery used exclusively for the comfort of workers. Examples are air cooling, air conditioning, and ventilation systems.

(2) Machinery used in support operations, such as a machine shop, in which production machinery is assembled, maintained, or repaired.

(3) Machinery used by administrative, accounting, and personnel departments.

(4) Machinery used by plant security, fire prevention, first aid, and hospital stations.

(5) Machinery used in plant communications and safety.

b. The following is an example of property directly used in research and development. Frontier Hybrid, Inc. maintains a research and development laboratory for use in developing a corn plant which is a perennial. It purchases the following items for use in its research and development laboratory: a computer which will process data relating to the genetic structure of the various corn plants which Frontier Hybrid is testing, an electron microscope for examining the structure of corn plant genes, a "steam cleaner" for cleaning rugs in the laboratory offices, and a typewriter for use by the laboratory director's secretary. The computer and the microscope are "directly" used in the research in which the laboratory is engaged; the steam cleaner and the typewriter only indirectly used. Therefore, purchase of the computer and microscope would be exempt from tax; purchase of the steam cleaner and typewriter would be subject to tax.

c. The following is an example of computers used and not used in processing or storage of information or data. A health insurance company has four computers. Computer A is used to monitor the temperature within the insurance company's building. The computer transmits messages to the building's heating and cooling systems telling them when to raise or lower the level of heating or air conditioning as needed. Computer B is used to store patient records and will recall those records on demand. Computer C is used to tabulate statistics regarding the amount of premiums paid in and the amount of benefits paid out for various classes of insured. Computer D is used to train the insurance company's employees to perform various additional tasks or to better perform work they can already do. Computer D uses various canned programs to accomplish this. The "final output" of Computer A is neither stored nor processed information. Therefore, Computer A does not fit the definition of an exempt computer. The final output of Computer B is stored information. The final output of Computer C is processed information. The final output of Computer D is processed information consisting of the training exercises appearing on the computer monitor. The sale, lease, or use of Computers B, C, and D would qualify for exemption.

d. The following is an example of property not used in processing. A manufacturing plant located in Warren County which manufactures widgets fabricates its own patterns used in manufacturing the widgets on a metal press machine in its machine shop located in Story County. The machine shop does not sell the patterns, and the metal press machine is used for no other purpose than to fabricate the patterns. The metal press machine is not used in processing because there is no intent to sell the patterns used by the machine shop at a gain or profit.

18.58(6) Exceptions. Sales of the following machinery, equipment, or computers are not exempt:

a. Machinery, equipment, or computers assessed by the department of revenue pursuant to Iowa Code chapters 428, 433, 434, and 436 to 438, inclusive. For electric, gas, water, and other companies assessed under Iowa Code chapter 428, only property owned by the company is assessed by the department. For railroad, telephone, pipeline, and electric transmission lines companies, property leased to, as well as owned by, the company is assessed by the department. See 701—Chapters 71 and 77.

b. Hand tools. These are tools which can be held in the hand or hands and which are powered by human effort.

c. Point-of-sale equipment. See 701—subrule 71.1(7).

d. Vehicles subject to registration, except vehicles subject to registration which are directly and primarily used in recycling or reprocessing of waste products.

e. Machinery and equipment purchased by a person engaged in processing who is not a manufacturer. Restaurants, retail bakeries, food stores, and blacksmith shops are nonexclusive examples of businesses which process tangible personal property but are not manufacturers as that word is defined for the purposes of this rule.

f. The fact that the acquisition cost of rented or purchased machinery, equipment, or computers can be capitalized for the purposes of Iowa or federal income tax law is not an indication that their sale or rental would be exempt from tax under this rule.

18.58(7) Lessor purchases of machinery, equipment, or computers. The analysis regarding lessor purchases of farm machinery and equipment contained in subrule 18.44(3) explains that same problem regarding machinery, equipment, and computers.

18.58(8) Designing or installing new industrial machinery or equipment. The gross receipts from the services of designing or installing new industrial machinery or equipment are exempt from tax. The enumerated services of electrical or electronic installation are included in this exemption. To qualify for the exemption, the sale or rental of the machinery or equipment must be subject to exemption under this rule. In addition, the machinery or equipment must be "new." For purposes of this subrule, "new" means never having been used or consumed by anyone. The exemption is not applicable to reconstructed, rebuilt, or repaired or previously owned machinery or equipment. The exemption is applicable to new machinery and equipment designed or installed for rental as well as for sale. The gross receipts from design or installation must be separately identified, charged separately, and reasonable in amount for the exemption to apply. A "computer" is not considered to be machinery or equipment, and its installation or design is not eligible for this exemption.

18.58(9) Property used in recycling or reprocessing of waste products. Gross receipts from the sale or rental of machinery (including vehicles subject to registration), equipment, or computers directly and primarily used in the recycling or reprocessing of waste products are exempt from tax. "Reprocessing" is not a subcategory of "processing." Reprocessing of waste products is an activity separate and independent from the processing of tangible personal property. Machinery or equipment used in the recycling or reprocessing of waste products includes, but is not limited to, compactors, balers, crushers, grinders, cutters, or shears directly and primarily used for this purpose. The sale of an end loader, forklift, truck, or other moving device is exempt from tax if the device is directly and primarily used in the movement of property which is an integral part of recycling or reprocessing. The sale of a bin for storage ordinarily would not be exempt from tax; storage without more activity would not be a part of recycling or reprocessing. Certain limits for exemption placed upon industrial machinery and equipment are not applicable to machinery and equipment used in recycling or reprocessing. For example, the exemption will apply even if the machinery, equipment or computer is purchased by a person other than an insurance company, financial institution or commercial enterprise. A person engaged in a profession or occupation could purchase property for direct and primary use in recycling or reprocessing of waste products and the exemption would apply.

a. By way of nonexclusive examples, recycling or reprocessing can begin when waste or material which would otherwise become waste is collected or separated. A vehicle used directly and primarily for collecting waste which will be recycled or reprocessed could be a vehicle used for an exempt purpose under this rule. Thus, the purchaser of a garbage truck could claim this exemption if the truck were directly and primarily used in recycling and not, for instance, in hauling garbage to a landfill. Machinery or equipment used to segregate waste from material to be recycled or reprocessed or used to separate various forms of materials which will be reprocessed (e.g., glass and aluminum) can also be used at the beginning of recycling or reprocessing.

b. Machinery and equipment directly and primarily used in recycling or reprocessing. See subrule 18.58(1) for the definition of "directly used" which is applicable to this subrule. The examples of machinery not directly used in processing set out in 18.58(5) "a" should be studied for guidance in determining whether similar machinery is or is not used in recycling or reprocessing; e.g., machinery used in plant security (see 18.58(5) "a"(4)) is not machinery directly used in recycling or reprocessing.

c. Integral use in recycling or reprocessing. Ordinarily, any operation or series of operations which does not transform waste or material which would otherwise become waste into new raw materials or products would not be a part of recycling or reprocessing. However, activities which do not do this, but are an "integral part" of recycling or reprocessing, are themselves recycling or reprocessing. For example, an endless belt which moves aluminum cans from a machine where they are shredded to a machine where the shredded aluminum is crushed into blocks would be an endless belt used in recycling

or reprocessing and the exemption applies. See subrule 18.29(5) for a discussion of when an activity is an integral part of "processing." Some of that discussion is applicable to this subrule.

d. The end of recycling or reprocessing. Recycling or reprocessing ends when waste or a material which would otherwise become waste is in the form of raw material or in the form of a product. For instance, a corporation purchases a machine which grinds logs, stumps, pallets, crates, and other waste wood into wood chips. After grinding, the wood chips are sold and transported to various sites where the chips are dumped and spread out over the ground for use in erosion control. The machine which grinds the wood chips is a machine used in recycling. The truck which transports the wood chips from the machine to the sites is not used in recycling because at the time the chips are placed in the truck they are in the form in which they will be used in erosion control.

This rule is intended to implement Iowa Code Supplement section 422.45(27) as amended by 1998 Iowa Acts, Senate File 2288; Iowa Code section 422.45(29); and Iowa Code chapter 423. [ARC 2349C, IAB 1/6/16, effective 2/10/16; see Rescission note at end of chapter]

701—18.59(422,423) Exempt sales to nonprofit hospitals. On and after July 1, 1998, the gross receipts from sales or rentals of tangible personal property to and from the rendering, furnishing, or performing of services for a nonprofit hospital licensed under Iowa Code chapter 135B are exempt from tax if the property or service purchased is used in the operation of the hospital. A hospital is not entitled to claim a refund for tax paid by a contractor on the sale or use of tangible personal property or the performance of services in the fulfillment of a written construction contract with the hospital. However, see the circumstances set out below in which sales of goods, wares or merchandise, or taxable services to a hospital for use in the fulfillment of a construction contract, are exempt from Iowa tax.

For the purposes of this rule, the word "hospital" means a place which is devoted primarily to the maintenance and operation of facilities for diagnosis, treatment, or care, over a period exceeding 24 hours, of two or more nonrelated individuals suffering from illness, injury, or a medical condition (such as pregnancy). The word "hospital" includes general hospitals, specialized hospitals (e.g., pediatric, mental, and orthopedic hospitals, and cancer treatment centers), sanatoriums, and other hospitals licensed under Iowa Code chapter 135B. Also included are institutions, places, buildings, or agencies in which any accommodation is primarily maintained, furnished, or offered for the care, over a period exceeding 24 hours, of two or more nonrelated aged or infirm persons requiring or receiving chronic or convalescent care. Excluded from the meaning of the term "hospital" are institutions for well children; day nursery and child care centers; foster boarding homes and houses; homes for handicapped children; homes, houses, or institutions for aged persons which limit their function to providing food, lodging, and provide no medical or nursing care, and house no bedridden person; dispensaries or first-aid stations maintained for the care of employees, students, customers, members of any commercial or industrial plan, educational institution, or convent; freestanding hospice facilities which operate a hospice program in accordance with 42 CFR § 418 and freestanding clinics which do not provide diagnosis, treatment, or care for periods exceeding 24 hours. This list of inclusions and exclusions is not exclusive. For additional information see 481—Chapter 51.

Ordinarily, goods, wares, or merchandise (such as building materials, supplies, and equipment; see rule 701—19.3(422,423) for definitions) which is purchased by a hospital and used by a contractor in the fulfillment of a written contract with the hospital cannot be purchased exempt from Iowa tax. The goods, wares, and merchandise used in the fulfillment of these construction contracts are not used in the "operation" of a hospital but in activities at least one step removed from that operation. See *Polich v. Anderson-Robinson Coal Co.*, 227 Iowa 553, 288 N.W. 650 (1939).

However, for a limited period, the gross receipts from all sales of goods, wares, or merchandise or from services rendered, furnished, or performed are exempt from tax (or a claim for refund may be filed for tax paid) if the tangible personal property or the taxable service is used in the fulfillment of a written construction contract with a hospital and all of the following circumstances exist:

1. Deliveries under contracts of sale of the goods, wares, or merchandise occurred or the taxable services were rendered, furnished, or performed between July 1, 1998, and December 31, 2001, inclusive. A claim for refund may be filed for any tax paid for this period, so long as the claim is filed prior to April

1, 2002, and the requirements of "2" and "3" below are also met. Claims for refunds of tax, interest, or penalty paid for the period of July 1, 1998, to December 31, 2001, are limited to \$25,000 in the aggregate. If the amount of the claimed refunds for this period totals more than \$25,000, the department must prorate the \$25,000 among all claimants in relation to the amounts of the claimants' valid claims.

2. The written construction contract was entered into prior to December 31, 1999, or bonds to fund the construction were issued prior to December 31, 1999.

3. The property or services were purchased directly by the hospital or by a contractor as an agent of the hospital. For the purposes of this exemption, no hospital can retroactively designate a contractor to be its agent and by this means transform a contractor's purchases of goods, wares, merchandise, or services into its own. Upon the department's request, a hospital claiming that a contractor is or has been its purchasing agent must present suitable evidence of a principal-agent relationship between itself and the contractor during any period for which exempt sales or a refund is claimed. The best evidence of a principal and purchasing agent relationship is a written document setting out the terms of the relationship and the period for which the agency is in effect; however, other evidence, which is the equivalent of a written document in reliability, will be considered by the department when necessary.

This rule is intended to implement Iowa Code Supplement section 422.45 as amended by 2000 Iowa Acts, chapter 1207.

701—18.60(422,423) Exempt sales of gases used in the manufacturing process. Effective May 24, 1999, but retroactive to January 1, 1991, 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 which are similar to argon. An "inert gas" is any gas which is normally chemically inactive. It will not support combustion and cannot be used as either a fuel or as an oxidizer. Argon, nitrogen, carbon dioxide, helium, neon, krypton, and xenon are nonexclusive examples of inert gases. Oxygen, hydrogen, and methane are nonexclusive examples of gases which are not inert. These sales are exempt only if the gas is purchased by a "manufacturer," for used in "processing," as those terms are defined in subrule 18.45(1), for the period prior to July 1, 1997, and as those terms are defined in subrule 18.58(1) for the period beginning July 1, 1997.

This rule is intended to implement Iowa Code section 422.45 as amended by 1999 Iowa Acts, chapter 170.

701—18.61(422,423) Exclusion from tax for property delivered by certain media. For the period beginning March 15, 1995, a taxable "sale" of tangible personal property does not occur if the substance of the transaction is delivered to the purchaser digitally, electronically, or by utilizing cable, radio waves, microwaves, satellites, or fiber optics. This exclusion from tax is not applicable to any leasing of tangible personal property, a lease not being a "sale" of tangible personal property for the purposes of Iowa sales and use tax law, *Cedar Valley Leasing, Inc. v. Iowa Department of Revenue*, 274 N.W.2d 357 (Iowa 1979). The exclusion is also not applicable to property delivered by any medium other than those listed above. Sales of items such as artwork, drawings, photographs, music, electronic greeting cards, "canned" software (see subrule 18.34(1)), entertainment properties (e.g., films, concerts, books, and television and radio programs), and all other digitized products delivered as described above are not taxable, except the exclusion does not repeal by implication the tax on the service of providing pay television. See rule 701—26.56(422). If an order for a product is placed by way of any of the media described above but the product ordered is delivered by conventional, physical means, e.g., the U.S. Postal Service or common carrier, sale of the product is not excluded from tax under this rule.

This rule is intended to implement Iowa Code Supplement section 422.43 as amended by 2002 Iowa Acts, Senate File 2321.

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[◊] Two or more ARCs

¹ Effective date of 18.20(5) and 18.20(6) delayed 70 days by the Administrative Rules Review Committee at its meeting held February 10, 1997.

² Amendments to 18.29(7) and 18.58, introductory paragraph, (ARC 2349C, Items 2 and 3) rescinded by 2016 Iowa Acts, House File 2433, section 6, on 3/21/16. Amendments removed and prior language restored IAC Supplement 4/27/16.

CHAPTER 46
WITHHOLDING
[Prior to 12/17/86, Revenue Department[730]]

701—46.1(422) Who must withhold.

46.1(1) Requirement of withholding.

a. *General rule.* Every employer maintaining an office or transacting business within this state and required under provisions of Sections 3401 to 3404 of the Internal Revenue Code to withhold and pay federal income tax on compensation paid for services performed in this state to an individual is required to deduct and withhold from such compensation for each payroll period (as defined in Section 3401(b) of the Internal Revenue Code) an amount computed in accordance with subrules 46.2(1) and 46.2(2). Iowa income tax is not required to be withheld on any compensation paid in this state of a character which is not subject to federal income tax withholding (whether or not such compensation is subject to withholding for federal taxes other than income tax, e.g., FICA taxes), except as provided in rule 701—46.4(422).

b. *Examples.* Paragraph "a" above may be illustrated by the following examples:

(1) *Temporary help.* A is a typist in the offices of B corporation, where she has worked regularly for two months. A is, however, supplied to B corporation by C, a temporary help agency located in Iowa. C renders a weekly bill to B corporation for A's services, and C then pays A. B corporation is not A's "employer" within Section 3401(d) of the Internal Revenue Code, and B corporation is therefore not required by the Internal Revenue Code to withhold a tax on A's compensation. Since B corporation is not required to withhold a tax for federal purposes on A's compensation, B is not required to do so for Iowa purposes. C, the temporary help agency, however, is required to withhold from A's compensation for federal purposes and must also do so for Iowa purposes.

(2) *Domestic help.* A is employed as a cook by Mr. and Mrs. B. The B's are required to withhold FICA (i.e., Social Security) tax from compensation paid to A, but are not required to withhold income tax from such compensation under the Internal Revenue Code, because under Section 3401(a)(3), A's compensation does not constitute "wages". Since the B's are not required to withhold income tax for federal purposes, they are not required to do so for Iowa purposes.

(3) *Executives.* A is a corporate executive. On January 1, 1998, A entered into an agreement with B corporation under which he was to be employed by B in an executive capacity for a period of five years. Under the contract, A is entitled to a stated annual salary and to additional compensation of \$10,000 for each year. The additional compensation is to be credited to a bookkeeping reserve account and deferred, accumulated and paid in annual installments of \$5,000 on A's retirement beginning January 1, 2003. In the event of A's death prior to exhaustion of the account, the balance is to be paid to A's personal representative. A is not required to render any service to B after December 31, 2002. During 2003, A is paid \$5,000 while a resident of Iowa. The \$5,000 is not excluded from "wages" under Section 3401(a) of the Internal Revenue Code; therefore, B is required to withhold federal income tax, and, since it is compensation paid in this state, B must withhold Iowa income tax on A's deferred compensation.

(4) *Agricultural labor.* Wages paid for agricultural labor are subject to withholding for state income tax purposes to the same extent that the wages are subject to withholding for federal income tax purposes.

c. *Exemption from withholding.* An employer may be relieved of the responsibility to withhold Iowa income tax on an employee who does not anticipate an Iowa income tax liability for the current tax year.

An employee who anticipates no Iowa income tax liability for the current tax year shall file with the employer a withholding allowance certificate claiming exemption from withholding. An employee who meets this criterion may claim an exemption from withholding at any time; however, this exemption from withholding must be renewed by February 15 of each tax year that the criterion is met. If the employee wishes to discontinue or is required to revoke the exemption from withholding, the employee must file a new withholding allowance certificate within ten days from the date the employee anticipates a tax liability or on or before December 31 if a tax liability is anticipated for the next tax year. See subrule 46.3(2).

d. Withholding from lottery winnings. Every person, including employees and agents of the Iowa lottery authority, making any payment of “winnings subject to withholding” shall deduct and withhold a tax in an amount equal to 5 percent of the winnings. The tax shall be deducted and withheld upon payment of the winnings to a payee by the person or payer making this payment. Any person or payee receiving a payment of winnings subject to withholding must furnish the payer with a statement as is required under Treasury Regulation §31.3402(q)-1, paragraph “e,” with the information required by that paragraph. Payers of winnings subject to withholding must file Form W-2G with the Internal Revenue Service, the department of revenue, and the payee of the lottery winnings by the dates specified in the Internal Revenue Code and in Iowa Code section 422.16. The W-2G form shall include the information described in Treasury Regulation §31.3402(q)-1, paragraph “f.”

“Winnings subject to withholding” means any payment where the proceeds from a wager exceed \$600. The rules for determining the amount of proceeds from a wager under Treasury Regulation Section 31.3402(q)-1, paragraph “c,” shall apply when determining whether the proceeds from Iowa lottery winnings are great enough so that withholding is required. This rule shall apply to winnings from tickets purchased from the Powerball and Hot Lotto games or any other similar games to the extent the tickets were purchased within the state of Iowa.

e. Withholding from prizes from games of skill, games of chance, or raffles. Every person making any payment of a “prize subject to withholding” must deduct and withhold a tax in an amount equal to 5 percent of the prize from a game of skill, a game of chance, or a raffle. Effective July 1, 2015, any person making any payment of a “prize subject to withholding” for bingo must withhold tax in the same manner as persons making payments of prizes subject to withholding for games of skill, games of chance, or raffles. The tax must be deducted and withheld upon payment of the winnings to a payee by the person making this payment. Any person or payee receiving a payment of winnings subject to withholding must furnish the payer with a statement as is required under Treasury Regulation Section 31.3402(q)-1, paragraph “e,” with the information required by that paragraph. Payers of prizes subject to withholding must file Form W-2G with the Internal Revenue Service, the department of revenue, and the payee of the prize by the dates specified in the Internal Revenue Code and in Iowa Code section 422.16. The W-2G form must include the information described in Treasury Regulation Section 31.3402(q)-1, paragraph “f.”

“Prizes subject to withholding” means any payment of a prize where the amount won exceeds \$600.

f. Withholding from winnings from pari-mutuel wagers. Every person making any payment of “winnings subject to withholding” must deduct and withhold a tax in an amount equal to 5 percent of the winnings from pari-mutuel wagers. The tax must be deducted and withheld upon payment of the winnings to a payee by the person making this payment. Any person or payee receiving a payment of winnings subject to withholding must furnish the payer with a statement as is required under Treasury Regulation Section 31.3402(q)-1, paragraph “e,” with the information required by that paragraph. Payers of winnings subject to withholding must file Form W-2G with the Internal Revenue Service, the department of revenue, and the payee of the winnings by the dates specified in the Internal Revenue Code and in Iowa Code section 422.16. The W-2G form must include the information described in Treasury Regulation Section 31.3402(q)-1, paragraph “f.”

“Winnings subject to withholding” are winnings in excess of \$1,000.

g. Withholding from winnings from slot machines on riverboat gambling vessels and from winnings from slot machines at racetracks. Withholding of state income tax is required if the winnings from slot machines on riverboat gambling vessels or from slot machines at racetracks exceed \$1,200.

46.1(2) Withholding on pensions, annuities and other nonwage payments to Iowa residents. State income tax is required to be withheld from payments of pensions, annuities, supplemental unemployment benefits and sick pay benefits and other nonwage income payments made to Iowa residents in those circumstances mentioned in the following paragraphs. This subrule covers those nonwage payments described in Sections 3402(o), 3402(p), 3402(s), 3405(a), 3405(b), and 3405(c) of the Internal Revenue Code. This includes, but is not limited to, payments from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts, lump-sum distributions from qualified retirement plans, other retirement plans, and annuities, endowments and life insurance contracts issued by life

insurance companies. These payments are subject to Iowa withholding tax if they are also subject to federal withholding tax. However, no state income tax withholding is required from nonwage payments to residents to the extent those payments are not subject to state income tax. See paragraph 46.1(2) "h" for threshold amounts for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement incomes which are made on or after January 1, 2001. In the case of some nonwage payments to residents, such as payments of pensions and annuities, no state income tax is required to be withheld if no federal income tax is being withheld from the payments of the pensions and annuities. The rate of withholding on the nonwage payments described in this subrule is 5 percent of the payment amounts or 5 percent of the taxable amounts unless specified otherwise.

For purposes of this subrule, an individual receiving nonwage payments will be considered to be an Iowa resident and subject to this subrule if the individual's permanent residence is in Iowa. The fact that a nonwage payment is deposited in a recipient's account in a financial institution located outside Iowa does not mean that the recipient's permanent residence is established in the place where the financial institution is situated.

Payers of pension and annuity benefits and other nonwage payments have the option of either withholding Iowa income tax from these payments on the basis of tables and formulas included in the Iowa withholding tax guide of the department of revenue or withholding Iowa income tax from these payments at the rate of 5 percent. State income tax is required to be withheld by payers in situations when federal income tax is being withheld from the nonwage payments.

a. *Withholding from pension and annuity payments to residents.* Withholding of state income tax is required from payments of pensions and annuities to Iowa residents to the extent that the recipients of the payments have not filed with the payers of the benefits election forms which specify that no federal income tax is to be withheld. Therefore, state income tax is to be withheld when federal income tax is being withheld from the pensions or annuities. See paragraph 46.1(2) "h" for threshold amounts for withholding from payments of pensions, annuities, and other retirement incomes which are made on or after January 1, 2001.

However, although Iowa income tax is ordinarily required to be withheld from pension and annuity payments made to Iowa residents if federal income tax is being withheld from the payments, no state income tax is required to be withheld if pension and annuity payments are not subject to Iowa income tax, as in the case of railroad retirement benefits which are exempt from Iowa income tax by a provision of federal law.

b. *Withholding from payments to residents from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts and from annuities, endowments and life insurance contracts issued by life insurance companies.* Payments to Iowa residents from profit-sharing plans, stock bonus plans, deferred compensation plans, individual retirement accounts and payments from life insurance companies for contracts for annuities, endowments or life insurance benefits are subject to withholding of state income tax if federal income tax is withheld from the benefits. However, no state income tax is to be withheld from the income tax payments described above to the extent those income tax payments are exempt from Iowa income tax. See paragraph 46.1(2) "h" for thresholds for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement incomes which are made on or after January 1, 2001.

In cases where the recipients elect withholding of state income tax from the income payments, the payers are to withhold from the payments at a rate of 5 percent on the taxable portion of the payment, if that can be determined by the payer or on the entire income payment if the payer does not know how much of the payment is taxable. Once a recipient makes an election for state income tax withholding, that election will remain in effect until a later election is made.

c. *Withholding from payments to residents for supplemental unemployment compensation benefits and sick pay benefits.* Income payments made for supplemental unemployment compensation benefits described in Section 3402(o)(2)(a) of the Internal Revenue Code and for sick pay benefits are subject to withholding of state income tax. In the case of supplemental unemployment compensation benefits, those benefits are treated as wages for purposes of state income tax withholding. Therefore, state income tax should be withheld from these payments when federal income tax is withheld. The amount of state

income tax withholding should be determined by the withholding tables provided in the Iowa employers' "Withholding Tax Guide."

In the case of state income tax withholding for sick pay benefits paid by third-party payers in accordance with Section 3402(o)(1) of the Internal Revenue Code, state income tax is to be withheld from the benefits by the payer only if state income tax withholding is requested by the payee of the benefits. However, payees of sick pay benefits should probably not request withholding from the benefits if the payees are eligible for the disability income exclusion authorized in Iowa Code section 422.7 and described in rule 701—40.22(422). If withholding is requested by the payee, the withholding should be done at a 5 percent rate on the sick pay benefits. Once withholding is started, it should continue until such time as the payee requests that no state income tax be withheld. For sick pay benefits not paid by third-party payers, state income tax is required to be withheld since federal income tax is required to be withheld.

d. Voluntary state income tax withholding from unemployment benefit payments. Recipients of unemployment benefit payments described in Section 3402(p)(2) of the Internal Revenue Code may elect to have state income tax withheld from the benefit payments at a rate of 5 percent. An individual's election to have state income tax withheld from unemployment benefits is separate from any election to have federal income tax withheld from the benefits.

e. Withholding on lump-sum distributions from qualified retirement plans. For lump-sum distribution payments from qualified retirement plans made to Iowa residents, state income tax is required to be withheld under the conditions described in this paragraph. No state income tax is required to be withheld from a lump-sum distribution payment to an Iowa resident in a situation where the payment is not subject to Iowa income tax. See paragraph 46.1(2) "h" for thresholds for withholding on lump-sum distributions issued on or after January 1, 2001. Iowa income tax is to be withheld from a lump-sum distribution made to an Iowa resident to the extent that federal income tax is being withheld from the distribution. The rate of withholding of state income tax from the lump-sum distribution is 5 percent from the total distribution or 5 percent from the taxable amount if that amount is known by the payer. Note that in the case of a lump-sum distribution, the Iowa income tax imposed on the taxable amount of the distribution is 25 percent of the federal income tax on the distribution.

f. Withholding of state income tax from nonwage payments to residents on the basis of tax tables and tax formulas. State income tax from the nonwage payments made to Iowa residents may be withheld on the basis of formulas and tables included in the Iowa withholding tax guide of the department of revenue. See paragraph 46.1(2) "h" for threshold amounts for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement incomes which are made on or after January 1, 2001. When state income tax is being withheld based upon the formulas or tables in the withholding guide, the amounts of the nonwage payments are treated as wage payments for purposes of the tables or the formulas.

The frequency of the nonwage payments determines which of the withholding tables to use or the number of pay periods in the calendar year to use in the formula. For example, if the nonwage payment is made on a monthly basis, the monthly wage bracket withholding table should be utilized for withholding or 12 should be utilized in the formula to indicate that there will be 12 nonwage payments in the year.

The payers of nonwage payments should withhold state income tax from the nonwage payments to Iowa residents when federal income tax is being withheld from the nonwage payments. The payers should withhold from the nonwage payments to Iowa residents from tables or the formulas in the Iowa withholding guide on the basis of the number of withholding exemptions claimed on Form IA W-4 which has been completed by the payees of the payments. However, if a payee of a nonwage payment has not completed an IA W-4 form (Iowa employee's withholding allowance certificate) by the time a nonwage payment is to be made by the payer of the nonwage payment, the payer is to withhold state income tax on the basis that the payee has claimed one withholding allowance or exemption.

In a situation when a payee of a nonwage payment completes Form IA W-4 and claims exemption from state income tax withholding when federal income tax is being withheld from the nonwage payment, the payer of the nonwage payment should withhold state income tax using one withholding allowance or exemption unless the payee has verified exemption from state income tax.

g. Withholding on distributions from qualified retirement plans that are not directly rolled over. State income tax is to be withheld at a rate of 5 percent from the gross amount or taxable amount if known by the payer of the distribution made to Iowa residents if the distributions are not transferred directly to an IRA, Section 403(a) annuity or another qualified retirement plan. The distributions that are subject to state income tax withholding are those distributions that are subject to 20 percent withholding for federal income tax purposes. See paragraph 46.1(2) "h" for thresholds for withholding from payments of pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans which are made on or after January 1, 2001.

h. Withholding from distributions made on or after January 1, 2001, from pensions, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans. Effective for distributions made on or after January 1, 2001, from pension plans, annuities, individual retirement accounts, deferred compensation plans, and other retirement plans, state income tax is generally required to be withheld from the distributions when federal income tax is being withheld from the distributions, unless one of the exceptions for withholding in this paragraph applies. For purposes of this paragraph, the term "pensions and other retirement plans" includes all distributions of retirement benefits covered by the partial exemption described in rule 701—40.47(422).

State income tax is not required to be withheld from a distribution from a pension or other retirement plan if the distribution is an income which is not subject to Iowa income tax, such as a distribution of railroad retirement benefits. State income tax is also not required to be withheld from a pension plan or other retirement plan if the amount of the distribution is \$500 per month or less or if the taxable amount is \$500 or less and the person receiving the distribution is eligible for the partial exemption of retirement benefits described in rule 701—40.47(422), if the state taxable amount can be determined by the payee of the distribution. There is also no requirement for withholding state income tax from a pension or other retirement plan if the distribution is \$1,000 per month or less or if the taxable amount is \$1,000 or less and the person receiving the distribution is eligible for the partial exemption of retirement benefits described in rule 701—40.47(422) and that person has indicated an intention to file a joint state income tax return for the year in which the distribution is made. In instances where the distribution amount or the taxable amount is more than \$500 per month but less than \$6,000 for the year, no state income tax will be required to be withheld, if the person receiving the distribution is eligible for the partial exemption of retirement benefits.

Finally, there is no requirement for withholding from a lump-sum payment from a qualified retirement plan if the lump-sum payment is \$6,000 or less, the recipient is eligible for the partial exemption of distributions from pensions and other retirement plans, and the lump-sum payment is the only distribution from the retirement plan in the year.

46.1(3) Voluntary state income tax withholding from unemployment benefit payments. Rescinded IAB 3/2/05, effective 4/6/05.

This rule is intended to implement Iowa Code sections 96.3, 99B.21, 99D.16, 99E.19, 99F.18, 422.5, 422.7, and 422.16.

[ARC 8589B, IAB 3/10/10, effective 4/14/10; ARC 1303C, IAB 2/5/14, effective 3/12/14; ARC 2512C, IAB 4/27/16, effective 6/1/16]

701—46.2(422) Computation of amount withheld.

46.2(1) Amount withheld.

a. General rules. Every employer required to deduct and withhold a tax on compensation paid in Iowa to an individual shall deduct and withhold for each payroll period an amount the total of which will approximate the employee's annual tax liability. "Payroll period" for Iowa withholding purposes shall have the same definition as in Section 3401 of the Internal Revenue Code and shall include "miscellaneous payroll period" as that term is defined and used in that section and the associated regulations.

b. Methods of computations. Employers required to withhold Iowa income tax on compensation paid in this state shall compute the amount of tax to be withheld for each payroll period pursuant to the methods and rules provided herein.

(1) Tables. An employer may elect to use the withholding tables provided in the Iowa employers' withholding tax guide and withholding tables, which are available from the department of revenue.

(2) Formulas. Formulas that are provided in the Iowa employers' withholding tax guide and tax tables are available for employers who have a computerized payroll system.

(3) Other methods. An employer may request and be granted the use of an alternate method for computing the amount of Iowa tax to be deducted and withheld for each payroll period so long as the alternate proposal approximates the employee's annual Iowa tax liability. When submitting an alternate formula, the withholding agent should explain the formula and show examples comparing the amount of withholding under the proposed formula with the department's tables or computer formula at various income levels and by using various numbers of personal exemptions. Any alternate formula must be approved by the department prior to its use.

c. *Supplemental wage payments.* A supplemental wage payment is the payment of a bonus, commission, overtime pay, or other special payment that is made in addition to the employee's regular wage payment in a payroll period. When such supplemental wages are paid, the amount of tax required to be withheld shall be determined by using the current withholding tables or formulas. If supplemental wages are paid at the same time as regular wages, the regular tables or formulas are used in determining the amount of tax to be withheld as if the total of the supplemental and regular wages were a single wage payment for the regular payroll period. If supplemental wages are paid at any other time, the regular tables or formulas are used in determining the amount of tax to be withheld as if the supplemental wage were a single wage payment for the regular payroll period. When a withholding agent makes a payment of supplemental wages to an employee and the employer withholds federal income tax on a flat-rate basis, pursuant to Treasury Regulation §31.3402(g)-1, state income tax shall be withheld from the supplemental wages at a rate of 6 percent without consideration for any withholding allowances or exemptions.

d. *Vacation pay.* Amounts of so-called "vacation allowances" shall be subject to withholding as though they were regular wage payments made for the period covered by the vacation. If the vacation allowance is paid in addition to the regular wage payment for such period, the allowance shall be treated as supplemental wage payments.

46.2(2) Correction of underwithholding or overwithholding.

a. *Underwithholding.* If an employer erroneously underwithholds an amount of Iowa income tax required to be deducted and withheld from compensation paid to an employee within a payroll period, the employer should correct the error within the same calendar year by deducting the difference between the amount withheld and the amount required to be withheld from any compensation still owed the employee, even though such compensation may not be subject to withholding. If the error is discovered in a subsequent calendar year, no correction shall be made by the employer.

b. *Overwithholding.* If an employer erroneously overwithholds an amount of tax required to be deducted and withheld from compensation paid to an employee, repayment of such overwithheld amount shall be made in the same calendar year. Repayment may be made in either of two ways: (1) the amount of overwithholding may be repaid directly to the employee, in which case the employer must obtain written receipt showing the date and amount of the repayment, or (2) the employer may reimburse the employee by applying the overcollection against the tax required to be deducted and withheld on compensation to be paid in the same calendar year in which the overcollection occurred. If the error is discovered in a subsequent calendar year, no repayment shall be made.

c. *Cross-reference.* Rescinded IAB 3/2/05, effective 4/6/05.

46.2(3) Withholding on supplemental wage payments. Rescinded IAB 3/2/05, effective 4/6/05.

This rule is intended to implement Iowa Code section 422.16.

701—46.3(422) Forms, returns and reports.

46.3(1) Employer registration. Every employer or payer required to deduct and withhold Iowa income tax must register with the department of revenue by filing an "Iowa Business Tax Registration Form." The form shall indicate the employer's or payer's federal identification number. If an employer or payer has not received a federal employer's identification number, the department will issue a

temporary identification number. The employer or payer must notify the department when the federal employer identification number is assigned.

When initial payment of wages subject to Iowa withholding tax occurs late in the calendar quarter, or before the employer's or payer's federal employer's identification number is assigned by the Internal Revenue Service, the Iowa business tax registration form shall be forwarded along with the first quarterly withholding return. The responsible party(ies) shall be listed on the form.

If an employer deducts and withholds Iowa income tax but does not file the Iowa business tax registration form, the department may register the employer using the best information available. If an employer uses a service provider to report and remit Iowa withholding tax on behalf of the employer, the department may use information obtained from the service provider to register the employer if an Iowa business tax registration form is not filed. This information would include, but is not limited to, the name, address, federal employer's identification number, filing frequency, withholding agent and responsible party(ies) of the employer.

46.3(2) Allowance certificate.

a. *General rules.* On or before the date on which an individual commences employment with an employer, the individual shall furnish the employer with a signed Iowa employee's withholding allowance certificate (IA W-4) indicating the number of withholding allowances which the individual claims, which in no event shall exceed the number to which the individual is entitled. The employer is required to request a withholding allowance certificate from each employee. If the employee fails to furnish a certificate, the employee shall be considered as claiming no withholding allowances. See subrule 46.3(4) for information on Form IA W-4P which is to be used by payers of pensions, annuities, deferred compensation, individual retirement accounts and other retirement incomes.

The employer must submit to the department of revenue a copy of a withholding allowance certificate received from an employee if:

- (1) The employee claimed more than a total of 22 withholding allowances, or
- (2) The employee is claiming an exemption from withholding and it is expected that the employee's wages from that employer will normally exceed \$200 per week.

Employers required to submit withholding certificates should use the following address:

Iowa Department of Revenue
Compliance Division
Examination Section
Hoover State Office Building
P.O. Box 10456
Des Moines, Iowa 50306

The department will notify the employer whether to honor the withholding certificate or to withhold as though the employee is claiming no withholding allowances.

b. *Form and content.* The "Iowa Employee's Withholding Allowance Certificate" (IA W-4) must be used to determine the number of allowances that may be claimed by an employee for Iowa income tax withholding purposes. Generally, the greater number of allowances an employee is entitled to claim, the lower the amount of Iowa income tax to be withheld for the employee. The following withholding allowances may be claimed on the IA W-4 form:

- (1) Personal allowances. An employee can claim one personal allowance or two if the individual is eligible to claim head of household status. The employee can claim an additional allowance if the employee is 65 years of age or older and another additional allowance if the employee is blind.

If the employee is married and the spouse either does not work or is not claiming an allowance on a separate W-4 form, the employee can claim an allowance for the spouse. The employee may also claim an additional allowance if the spouse is 65 years of age or older and still another allowance if the spouse is blind.

- (2) Dependent allowances. The employee can claim an allowance for each dependent that the employee will be able to claim on the employee's Iowa return.

- (3) Allowances for itemized deductions. The employee can claim allowances for itemized deductions to the extent the total amount of estimated itemized deductions for the tax year for the

employee exceeds the applicable standard deduction amount by \$200. In instances where an employee is married and the employee's spouse is a wage-earner, the total allowances for itemized deductions for the employee and spouse should not exceed the aggregate amount itemized deduction allowances to which both taxpayers are entitled.

(4) Allowances for the child/dependent care credit. Employees who expect to be eligible for the child/dependent care credit for the tax year can claim withholding allowances for the credit. The allowances are determined from a chart included on the IA W-4 form on the basis of net income shown on the Iowa return for the employee. If the employee is married and has filed a joint federal return with a spouse who earns Iowa wages subject to withholding, the withholding allowances claimed by both spouses for the child/dependent care credit should not exceed the aggregate number of allowances to which both taxpayers are entitled. Taxpayers that expect to have a net income of \$45,000 or more for a tax year beginning on or after January 1, 2006, should not claim withholding allowances for the child and dependent care credit, since these taxpayers are not eligible for the credit.

(5) Allowances for adjustments to income. For tax years beginning on or after January 1, 2008, employees can claim allowances for adjustments to income which are set forth in Treasury Regulation §31.3402(m)-1, paragraph "b." This includes adjustments to income such as alimony, deductible IRA contributions, student loan interest and moving expenses which are allowed as deductions in computing income subject to Iowa income tax. In instances where an employee is married and the employee's spouse is a wage earner, the withholding allowances claimed by both spouses for adjustments to income for the employee and spouse should not exceed the aggregate number of allowances to which both taxpayers are entitled.

c. Change in allowances which affect the current calendar year.

(1) Decrease. If, on any day during the calendar year, the number of withholding allowances to which an employee is entitled is less than the number of withholding allowances claimed by the individual on a withholding certificate then in effect, the employee must furnish the employer with a new Iowa withholding allowance certificate relating to the number of withholding allowances which the employee then claims, which must in no event exceed the number to which the employee is entitled on such day.

(2) Increase. If, on any day during the calendar year, the number of withholding allowances to which an employee is entitled is more than the number of withholding allowances claimed by the employee on the withholding allowance certificate then in effect, the employee may furnish the employer with a new Iowa withholding allowance certificate on which the employee must in no event claim more than the number of withholding allowances to which the employee is entitled on such day.

d. Change in allowances which affect the next calendar year. If, on any day during the calendar year, the number of withholding allowances to which the employee will be, or may reasonably be expected to be, entitled to for the employee's taxable year which begins in, or with, the next calendar year is different from the number to which the employee is entitled on such day, the following rules shall apply:

(1) If such number is less than the number of withholding allowances claimed by an employee on an Iowa withholding allowance certificate in effect on such day, the employee must within a reasonable time furnish the employee's employer with a new withholding allowance certificate reflecting the decrease.

(2) If such number is greater than the number of withholding allowances claimed by the employee on an Iowa withholding allowance certificate in effect on such day, the employee may furnish the employee's employer with a new withholding allowance certificate reflecting the increase.

e. Duration of allowance certificate. An Iowa withholding allowance certificate which is in effect pursuant to these regulations shall continue in effect until another withholding allowance certificate takes effect. Employers should retain copies of the IA W-4 forms for at least four years.

46.3(3) Reports and payments of income tax withheld.

a. Returns of income tax withheld from wages.

(1) Quarterly returns. Every withholding agent required to withhold tax on compensation paid for personal services in Iowa shall make a return for the first calendar quarter in which tax is withheld and for each subsequent calendar quarter, whether or not compensation is paid therein, until a final return

is filed. The withholding agent's "Quarterly Withholding Return" is the form prescribed for making the return required under this paragraph. Monthly tax deposits or semimonthly tax deposits may be required in addition to quarterly returns. See subparagraphs (2) and (3) of paragraph 46.3(3) "a." In some circumstances, only an annual return and payment of withheld taxes will be required; see paragraph 46.3(3) "c."

Payments shall be based upon the tax required to be withheld and must be remitted in full.

A withholding agent is not required to list the name(s) of the agent's employee(s) when filing quarterly returns, nor is the withholding agent required to show on the employee's paycheck or voucher the amount of Iowa income tax withheld.

If a withholding agent's payroll is not constant, and the agent finds that no wages or other compensation was paid during the current quarter, the agent shall enter the numeral "zero" on the return and submit the return as usual.

(2) Monthly deposits. Every withholding agent required to file a quarterly withholding return shall also file a monthly deposit if the amount of tax withheld during any calendar month exceeds \$500, but is less than \$10,000. A withholding agent needs to file a monthly deposit even if no payment is due. No monthly deposit is required for the third month in any calendar quarter. The information otherwise required to be reported on the monthly deposit for the third month in a calendar quarter shall be reported on the quarterly return filed for that quarter, and no monthly deposit need be filed for such month.

(3) Semimonthly deposits. Every withholding agent who withholds more than \$5,000 in a semimonthly period must file a semimonthly tax deposit. A semimonthly period is defined as the period from the first day of a calendar month through the fifteenth day of a calendar month, or the period from the sixteenth day of a calendar month through the last day of a calendar month. When semimonthly deposits are required, a withholding agent must still file a quarterly return.

(4) Final returns. A withholding agent who in any return period permanently ceases doing business shall file the returns required by subparagraphs (1), (2) and (3) of paragraph 46.3(3) "a" as final returns for such period. The withholding agent shall cancel the withholding tax registration by notifying the department.

b. Time for filing returns.

(1) Quarterly returns. Each return required by subparagraph 46.3(3) "a" (1) shall be filed on or before the last day of the first calendar month following the calendar quarter for which such return is made.

(2) Monthly tax deposits. Monthly deposits required by subparagraph 46.3(3) "a" (2) shall be filed on or before the fifteenth day of the second and third months of each calendar quarter for the first and second months of each calendar quarter, respectively.

(3) Semimonthly tax deposits. Semimonthly deposits required by subparagraph 46.3(3) "a" (3) for the semimonthly period from the first day of the month through the fifteenth day of the month shall be filed with payment of the tax on or before the twenty-fifth day of the same month. The semimonthly deposits required by subparagraph 46.3(3) "a" (3) for the semimonthly period from the sixteenth day of the month through the last day of the month shall be filed with payment of the tax on or before the tenth day of the month following the month in which the tax is withheld.

For withholding that occurs on or after January 1, 2005, quarterly returns, amended returns, monthly deposits and semimonthly deposits shall be made electronically in a format and by means specified by the department of revenue. Tax payments are considered to have been made on the date that the tax is transmitted and released by the vendor to the department.

(4) Determination of filing status. Effective July 1, 2002, the department and the department of management have the authority to change filing thresholds by department rule. This paragraph sets forth the filing thresholds for each filer based on the amount withheld for withholding that occurs on or after January 1, 2003.

The following criteria will be used by the department to determine if a change in filing status is warranted.

<u>Filing Status</u>	<u>Threshold</u>	<u>Test Criteria</u>
Semimonthly	Greater than \$120,000 in annual withholding taxes (more than \$5,000 in a semimonthly period).	Tax remitted in 3 of most recent 4 quarters examined exceeds \$30,000.
Monthly	Between \$6,000 and \$120,000 in annual withholding taxes (more than \$500 in a monthly period).	Tax remitted in 3 of most recent 4 quarters examined exceeds \$1,500 per quarter.
Quarterly	Less than \$6,000 in annual withholding taxes.	Tax remitted in 3 of most recent 4 quarters examined is less than \$1,500 per quarter.
Annual	Less than 3 employees.	

When it is determined that a withholding agent's filing status is to be changed, the withholding agent shall be notified in writing. A withholding agent has the option of requesting, within 30 days of the department's notice of a change in filing frequency, that the withholding agent file more or less frequently than required by the department. To request filing on a less frequent basis than assigned by the department, the request must be in writing and submitted to the department. A withholding agent's written request to be allowed to file less frequently than the filing status assigned by the department will be reviewed by the department, and a written determination will be issued to the withholding agent who made the request.

A change in assigned filing status to file on a less frequent basis will be granted in only two instances:

- Incorrect historical data is used in the conversion. A business may meet the criteria based on the original filing data, but, upon investigation, the filing history may prove that the business does not meet the dollar criteria because of adjustments, amended returns, or requests for refunds.
- Data available may have been distorted by the fact that the data reflected an unusual pattern in tax collection. The factors causing such a distortion must be documented and approved by the department.

A withholding agent may also request to file more frequently than assigned by the department. This request may be made orally, in writing, in person, or by telephone.

The department and the department of management may perform review of filing thresholds every five years or as needed based on department discretion. Factors the departments will consider in determining if the filing thresholds need to be changed include, but are not limited to: tax rate changes, inflation, the need to maintain consistency with required multistate compacts, changes in law, and migration between filing brackets.

c. Reporting annual withholding.

(1) Any withholding agent who does not have employee withholding but who is required to withhold state income tax from other distributions is exempted from the provisions of subparagraphs (2) and (3) of paragraph 46.3(3) "a," if these distributions are made annually in one calendar quarter. These withholding agents need only comply with the reporting requirements of the one calendar quarter in which the tax is withheld, and make the required year-end reports.

(2) Every withholding agent employing not more than two individuals and who expects to employ either or both for the full calendar year may pay with the withholding tax return due for the first calendar quarter of the year the full amount of income taxes which would be required to be withheld from the wages for the full calendar year. The withholding agent shall advise the department of revenue that annual reporting is contemplated and shall also state the number of persons employed. The withholding agent shall compute the annual withholding from wages by determining the normal withholding for one pay period and multiply this amount by the total number of pay periods within the calendar year. The withholding agent shall be entitled to recover from the employee(s) any part of such lump-sum payment that represents an advance to the employee(s). If a withholding agent pays a lump sum with the first quarterly return, the agent shall be excused from filing further quarterly returns for the calendar year.

involved unless the agent hires other or additional employees. The “Verified Summary of Payments Report” shall be filed at the end of the tax year.

d. Reports for employee.

(1) General rule. Every employer required to deduct and withhold tax from compensation of an employee must furnish to each employee with respect to the compensation paid in Iowa by such employer during the calendar year, a statement containing the following information: the name, address, and federal employer identification number of the employer; the name, address, and social security number of the employee; the total amount of compensation paid in Iowa; the total amount deducted and withheld as tax under subrule 46.1(1).

(2) Form of statement. The information required to be furnished an employee under the preceding paragraph shall be furnished on an Internal Revenue Service combined Wage and Tax Statement, Form W-2, hereinafter referred to as “combined W-2.” Any reproduction, modification or substitution for a combined W-2 by the employer must be approved by the department. Employers should keep copies of the combined W-2 for four years from the end of the year for which the combined W-2 applies.

(3) Time for furnishing statement. Each statement required by paragraph “d” to be furnished for a calendar year and each corrected statement required for any prior year shall be furnished to the employee on or before January 31 of the year succeeding such calendar year, or if an employee’s employment is terminated before the close of a calendar year without expectation that it will resume during the same calendar year, within 30 days from the day on which the last payment of compensation is made, if requested by such employee. See paragraph 46.3(3) “e” for provisions relating to the filing of copies of the combined W-2 with the department of revenue.

(4) Corrections. An employer must furnish a corrected combined W-2 to an employee if, after the original statement has been furnished, an error is discovered in either the amount of compensation shown to have been paid in Iowa for the prior year or the amount of tax shown to have been deducted and withheld in the prior year. Such statement shall be marked “corrected by the employer.” See paragraph 46.3(3) “e” for provisions relating to the filing of a corrected combined W-2 with the department.

(5) Undelivered combined W-2. Any employee’s copy of the combined W-2 which, after reasonable effort, cannot be delivered to an employee shall be transmitted to the department with a letter of explanation.

(6) Lost or destroyed. If the combined W-2 is lost or destroyed, the employer shall furnish a substitute copy to the employee. The copy shall be clearly marked “Reissued by Employer.”

e. Annual verified summary of payments reports.

(1) Every withholding agent required to withhold Iowa income tax under subrules 46.1(1), 46.1(2), 46.1(3), and 46.4(1) is to furnish to the department of revenue on or before the last day of February following the tax year an annual “Verified Summary of Payments Report” (VSP).

The withholding agent completing the VSP form must enter the total Iowa income tax withheld that is shown on the W-2 forms and 1099 forms for the year, the new jobs credits, supplemental jobs credits, accelerated career education credits and housing assistance credits claimed on withholding returns for the year. In addition, the withholding agent must enter on the VSP the withholding payments made for the year. If the amount of Iowa income tax withholding remitted to the department of revenue for the year is less than the withholding tax and withholding credits claimed, the withholding agent is to report the additional withholding tax due on an amended return and submit payment to the department.

If the Iowa income tax shown as withheld on the W-2s and 1099s issued for the tax year is less than the amount of withholding tax remitted to the department of revenue by the withholding agent, the agent should file an amended return with the department reflecting the excess tax paid.

(2) For Verified Summary of Payments Report forms filed with the department of revenue for the year 2000 and subsequent years, the withholding agents are not to submit W-2 forms and 1099 forms with the reports. However, the withholding agents should supply W-2 forms or 1099 forms as requested by personnel of the department of revenue if the request for the forms is made within three years from the end of the year for which the W-2 forms or 1099 forms apply. Therefore, if a request is made to a withholding agent for a W-2 form or a 1099 form for the year 2000, the request is valid if the request is postmarked, faxed or made on or before December 31, 2003.

f. Withholding deemed to be held in trust. Funds withheld from wages for Iowa income tax purposes are deemed to be held in trust for payment to the department of revenue. The state and the department shall have a lien upon all the assets of the employer and all the property used in the conduct of the employer's business to secure the payment of the tax as withheld under the provisions of this rule. An owner, conditional vendor, or mortgagee of property subject to such lien may exempt the property from the lien granted to Iowa by requiring the employer to obtain a certificate from the department, certifying that such employer has posted with the department security for the payment of the amounts withheld under this rule.

g. Payment of tax deducted and withheld. The amount of tax shown to be due on each deposit or return required to be filed under subrule 46.3(3) shall be due on or before the date on which such deposit or return is required to be filed.

h. Correction of underpayment or overpayment of taxes withheld.

(1) Underpayment. If a return is filed for a return period under rule 701—46.3(422) and less than the correct amount of tax is reported on the return and paid to the department, the employer shall report and pay the additional amount due by filing an amended withholding tax return.

(2) Overpayment. If an employer remits more than the correct amount of tax for a return period, the employer must file an amended withholding tax return and request a refund of the withholding tax paid which was not due.

46.3(4) Iowa W-4P—withholding certificate for pension or annuity payments. For payments made from pension plans, annuity plans, individual retirement accounts, or deferred compensation plans to residents of Iowa, payers of these retirement benefits are to use Form IA W-4P for withholding of state income tax from the benefits. Generally, state income tax is required to be withheld from payments of distributions from the retirement incomes described above when federal income tax is being withheld from the payments. However, no state income tax is required to be withheld to the extent the monthly payment amount is \$500 or less or the taxable amount per month is \$500 or less if the payee is eligible for the retirement benefits exclusion described in rule 701—40.47(422). In addition, no state income tax is required to be withheld to the extent the monthly payment amount is \$1,000 or less or the taxable amount per month is \$1,000 or less if the payee is married and eligible for the retirement benefits exclusion described in rule 701—40.47(422).

Form IA W-4P is available from the department for payers of retirement benefits that intend to withhold at a rate of 5 percent from the payment amount or taxable payment amount after the \$6,000 to \$12,000 exclusion is considered. Note that the \$6,000 to \$12,000 exclusion is to be allocated to all retirement benefit payments made in the year and not just the first \$6,000 to \$12,000 in payments made in the year to an individual. If an individual receives retirement benefits and has not completed Form IA W-4P, the payer is directed to withhold Iowa income tax from the retirement benefit payment after a \$6,000 exclusion is allowed on an annual basis.

Payers of retirement benefits that want to use withholding formulas or tables to withhold state income tax instead of at the 5 percent rate may design their own IA W-4P withholding certificate form without approval of the department.

The payers are not responsible for improper choices made by a payee in completion of the IA W-4P. However, payers cannot accept a request for exemption from the withholding of state income tax made by a payee if federal income tax is being withheld unless the payee is eligible for exemption from withholding.

This rule is intended to implement Iowa Code sections 422.7 and 422.12C, and section 422.16 as amended by 2007 Iowa Acts, House File 904, section 3.

[ARC 8589B, IAB 3/10/10, effective 4/14/10]

701—46.4(422) Withholding on nonresidents.

46.4(1) General rules. Payers of Iowa income to nonresidents are required to withhold Iowa income tax and to remit the tax to the department on all payments of Iowa income to nonresidents except payments of wages to nonresidents engaged in film production or television production described in subrule 46.4(5); income payments for agricultural commodities or products described in subrule

46.4(6); deferred compensation payments, pension, and annuity payments attributable to personal services in Iowa by nonresidents described in subrule 46.4(7); and partnership distributions from certain publicly traded partnerships described in subrule 46.4(8). Withholding agents should use the following methods and rates in withholding for nonresidents:

a. *Wages or salaries.* Use the same withholding procedures, tables, formulas, and rates as are used for residents. See rule 701—46.2(422). Subrule 46.4(5) is an exception to the general rule. In addition, in accordance with the reciprocal tax agreement between Iowa and Illinois described in 701—subrule 38.13(1), Iowa withholding tax is not withheld on wages of Illinois residents who perform personal services in Iowa.

b. *Payments other than wages, salaries, and other compensation for personal services.* In lieu of using withholding tables or computer formulas to determine the amount of Iowa income tax to be withheld from payments made to nonresidents other than for salaries, wages, or other compensation for personal services, or income payments to nonresidents for agricultural commodities or products, Iowa income tax should be withheld at a rate of 5 percent of the amount of the payment. Subrule 46.4(6) describes the optional exemption from withholding of income payments made to nonresidents for the sale of agricultural commodities or products.

Nonresidents who prefer to make Iowa estimate payments instead of having Iowa income tax withheld from income payments from Iowa sources should refer to subrule 46.4(3) and rule 701—49.3(422).

46.4(2) Income of nonresidents subject to withholding. Listed below are various types of income paid to nonresidents which are subject to withholding tax. The list is for illustrative purposes only and is not deemed to be all-inclusive.

1. Personal service, including salaries, wages, commissions and fees for personal service wholly performed within this state and such portions of similar income of nonresident traveling salespersons or agents as may be derived from services rendered in this state.

2. Rents and royalties from real or personal property located within this state.

3. Interest or dividends derived from securities or investments within this state, when such interests or dividends constitute income of any business, trade, profession or occupation carried on within this state and subject to taxation.

4. Income derived from any business of a temporary nature carried on within this state by a nonresident, such as contracts for construction and similar contracts.

5. The distributive share of a nonresident beneficiary of an estate or trust, limited, however, to the portion thereof subject to Iowa income tax in the hands of the nonresident.

6. Income derived from sources within this state by attorneys, physicians, engineers, accountants, and similar sources as compensation for services rendered to clients in this state.

7. Compensation received by nonresident actors, singers, performers, entertainers, and wrestlers for performances in this state. See subrule 46.4(5) for an exception to this rule.

8. Income received by a nonresident partner or shareholder of a partnership or S corporation doing business in Iowa. See subrule 46.4(8) for the exemption from withholding for partnership distributions from certain publicly traded partnerships.

9. The Iowa gross income of a nonresident who is employed and receiving compensation for services shall include compensation for personal services which are rendered within this state. Compensation for personal services rendered by a nonresident wholly without the state is excluded from gross income of the nonresident even though the payment of such compensation may be made by a resident individual, partnership or corporation.

10. The gross income from commissions earned by a nonresident traveling salesperson, agent or other employee for services performed or sales made whose compensation depends directly on volume of business transacted by the nonresident, includes that proportion of the total compensation received which the volume of business or sales by the employee within this state bears to the total volume of business or sales within and without the state.

11. Payments made to landlords by agents, including elevator operators, for grain or other commodities which have been received by the landlord as rent constitute taxable income of the landlord

when sold by the landlord. See subrule 46.4(6) for the exemption from withholding on incomes paid to nonresidents for the sale of agricultural commodities or products.

12. Wages paid to nonresidents of Iowa who earn the compensation from regularly assigned duties in Iowa and one or more other states for a railway company or for a motor carrier are not taxable to Iowa. Pursuant to the Amtrak Reauthorization and Improvement Act of 1990, the nonresidents in this situation are subject only to the income tax laws of their states of residence. Thus, when an Iowa resident performs regularly assigned duties in two or more states for a railroad or a motor carrier, the only state income tax that should be withheld from the wages paid for these duties is Iowa income tax.

13. Wages paid to nonresidents of Iowa who earn compensation from regularly assigned duties in Iowa and one or more states for an airline company. In accordance with Public Law 103-272 enacted by Congress, airline employees who are nonresidents of Iowa are subject only to the income tax laws of their states of residence or the state in which they perform 50 percent or more of their duties.

14. Wages paid to nonresidents of Iowa who earn compensation from regularly assigned duties in Iowa for a merchant marine company. In accordance with Public Law 106-489 enacted by Congress, interstate waterway workers who are nonresidents of Iowa are subject only to the income tax laws of their states of residence.

46.4(3) Nonresident certificate of release. Where a nonresident payee makes the option to pay estimated Iowa income tax, a certificate of release from withholding will be issued by the Iowa department of revenue to the designated payers. The certificate of release will be forwarded to the specified withholding agent(s) and payer(s), and will state the amount of income covered by the estimated tax payment. Any income paid in excess of the amount so stated will be subject to withholding tax at the current rate. See 701—Chapter 49 for information on making estimate payments.

46.4(4) Recovering excess tax withheld. A nonresident payee may recover any excess Iowa income tax withheld from income of the payee by filing an Iowa income tax return after the close of the tax year and reporting income from Iowa sources in accordance with the income tax return instructions.

46.4(5) Exemption from withholding of nonresidents engaged in film production or television production in this state. Nonresidents engaged in film production or television production in this state are not subject to state withholding on wages earned from this activity if the nonresidents' employer has applied to the department for exemption from withholding of state income tax and the employer's application includes the following information about the nonresident employees:

- a. The employees' names.
- b. The employees' permanent mailing addresses.
- c. The employees' social security numbers.
- d. The estimated amounts the employees are to be paid for services provided by the employees in this state.

The employer's application for exemption from withholding for the nonresident employees will not be approved by the department if the employer fails to provide all the required information.

Only those nonresident employees described in the application for exemption from withholding will be covered when the application is approved by the department. If additional nonresident employees are hired after the initial application for exemption is filed, those employees should be described in an amendment to the application for exemption which must be filed with the department of revenue.

Applications for exemption from withholding for nonresident employees engaged in film production or television production should be directed to the Iowa Department of Revenue, Compliance Division, Examination Section, Hoover State Office Building, P.O. Box 10456, Des Moines, Iowa 50306.

46.4(6) Exemption from withholding for the sale of agricultural commodities or products. Withholding agents are not required to withhold state income tax from income payments made to nonresidents or representatives of the nonresidents for the sales of agricultural commodities or products, if the withholding agents provide certain information to the department of revenue about the sales. The following paragraphs describe the agricultural commodities and products that are included in the exemption from withholding, specify the information needed on the sales and clarify other issues related to the exemption from withholding. 701—subrule 49.3(4) describes an election for

withholding agents to make estimate payments on behalf of nonresident taxpayers for net incomes of the nonresidents from agricultural commodities or products.

a. Agricultural commodities or products included in the exemption from withholding. Withholding agents are not required to withhold state income tax from income payments they make to nonresidents or representatives of the nonresidents for the sale of commodity credit certificates, grain (corn, soybeans, wheat, oats, etc.), livestock (cattle, hogs, sheep, horses, etc.), domestic fowl (chickens, ducks, turkeys, geese, etc.), or any other agricultural commodities or products, if the withholding agents provide the department of revenue with the information specified in paragraph "b" of this subrule.

b. Information to be provided to the department by withholding agents claiming exemption from withholding on income payments made to nonresidents for the sales of agricultural items. The following information is to be provided on a listing to the department of revenue by withholding agents electing exemption from withholding of state income tax on income payments made in the calendar year to nonresidents or representatives of the nonresidents on the sales of agricultural commodities or products made in the year:

- (1) Name of the nonresident (last name, first name and middle initial).
- (2) Home address of the nonresident.
- (3) Social security number of the nonresident.
- (4) Aggregate payments made in the calendar year for the nonresident (includes payments made to a representative of the nonresident on behalf of the nonresident).
- (5) Two-digit Iowa county code number of the first one of the following that applies to the nonresident:
 1. County in which the nonresident owns real property or personal property.
 2. County in which the nonresident leases real property or personal property.
 3. County in which the nonresident has agricultural products stored or in which livestock is located.
 4. County where the nonresident has performed custom farming activities in the year.
 5. County where the nonresident has other business activities in Iowa other than merely sales activities.

If a nonresident does not own or lease property in Iowa or have other connection with Iowa as described in subparagraph 46.4(6)"b"(5), items "3," "4," and "5," the nonresident is not subject to Iowa income tax on the income payments for agricultural commodities or products and the nonresident's income payments should not be included on the listing.

In a situation where a withholding agent is unable to get all the information that is to be provided to the department on income payments on sales of agricultural items, the agent is relieved of the requirement to withhold if the agent can provide written evidence showing an attempt was made to acquire all the information.

The listing of aggregate income payments to nonresidents with an Iowa connection for sales of agricultural commodities and products in the calendar year should be sent to the department by the withholding agent on or before April 1 of the year following the year in which the income payments were made. In lieu of the listing, the withholding agent may compile the information on aggregate income payments to nonresidents on a magnetic tape, diskette or other electronic reporting, provided the submission meets departmental guidelines described in 701—paragraph 8.3(1)"e."

The listing, magnetic tape or other electronic submission should be sent to the following address: Iowa Department of Revenue, Compliance Division, Examination Section, Hoover State Office Building, P.O. Box 10456, Des Moines, Iowa 50306; idr@iowa.gov.

A withholding agent is not exempt from withholding of state income tax on income payments to nonresidents on sales of agricultural commodities or products if the withholding agent does not provide the department of revenue with information on income payments made during the year by April 1 of the subsequent year.

c. Rescinded IAB 3/2/05, effective 4/6/05.

46.4(7) *Exemption from withholding of payments made to nonresidents for deferred compensation, pensions, and annuities.* Iowa income tax withholding is not required from payments of deferred

compensation, pensions, and annuities made to nonresidents which are attributable to personal services of the nonresidents in Iowa since these payments are not subject to Iowa income tax. See rule 701—40.45(422) for the exclusion from Iowa income tax for these payments received by nonresidents.

46.4(8) Exemption from withholding of partnership distributions made to nonresidents of certain publicly traded partnerships. For tax years beginning on or after January 1, 2008, a nonresident who is a partner in a publicly traded partnership as defined in Section 7704(b) of the Internal Revenue Code is not subject to state withholding tax on the partner's pro rata share, provided that the publicly traded partnership submits the following information to the department for each partner whose Iowa income from the partnership exceeded \$500:

- a. Partner's name.
- b. Partner's address.
- c. Partner's taxpayer identification number.
- d. Partner's pro rata share of Iowa income from the partnership for the tax year.

A partnership is a publicly traded partnership if the interests in the partnership are traded on an established securities market or the interests in the partnership are readily traded on a secondary market or its substantial equivalent.

This rule is intended to implement Iowa Code section 422.15, Iowa Code section 422.16 as amended by 2007 Iowa Acts, House File 923, section 3, and Iowa Code sections 422.17 and 422.73.

[ARC 7761B, IAB 5/6/09, effective 6/10/09]

701—46.5(422) Penalty and interest.

46.5(1) Penalty. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991. See rule 701—10.8(421) for statutory exemptions to penalty for tax periods beginning on or after January 1, 1991.

46.5(2) Computation of interest on unpaid tax. Interest shall accrue on tax due from the original due date of the return. Interest on refunds of any portion of the tax imposed by statute which has been erroneously refunded and which is recoverable by the department shall bear interest as provided by law from the date of payment of the refund, with each fraction of a month considered to be an entire month. See rule 701—10.2(421) for the statutory interest rate.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due.

46.5(3) Computation of interest on overpayments. If the amount of tax determined to be due by the department is less than the amount paid, the excess to be refunded will accrue interest from the first day of the second calendar month following the date of payment or the date the return was due to be filed or was filed, whichever is the later.

This rule is intended to implement Iowa Code sections 421.27, 422.16 and 422.25.

701—46.6(422) Withholding tax credit to workforce development fund. Upon payment in full of a certificate of participation or other obligation issued to fund a job training program under Iowa Code chapter 260E, the community college which provided the training is to notify the economic development authority of the amount paid by the employer or business to the community college during the previous 12 months. The economic development authority is to notify the department of revenue of this amount. The department is to credit 25 percent of this amount to the workforce development fund in each quarter for the next ten years from the withholding tax paid by the employer or business. If the withholding tax paid by the employer or business for a quarter is not sufficient to cover the sum to be credited to the workforce development fund, the sum to be credited is to be reduced accordingly. The aggregate amount from all employers to be transferred to the workforce development fund in a year is not to exceed \$4 million for fiscal years beginning on or after July 1, 2001, but before July 1, 2014. The aggregate amount is not to exceed \$5,750,000 for the fiscal year beginning July 1, 2014, and the aggregate amount is not to exceed \$6,000,000 for fiscal years beginning on or after July 1, 2015.

This rule is intended to implement Iowa Code section 422.16A as amended by 2014 Iowa Acts, House File 2460.

[ARC 1665C, IAB 10/15/14, effective 11/19/14]

701—46.7(422) ACE training program credits from withholding. The accelerated career education (ACE) program is a training program administered by the Iowa department of economic development to provide technical training in state community colleges for employees in highly skilled jobs in the state to the extent that the training is authorized in an agreement between an employer or group of employers and a community college for the training of certain employees of the employer or group of employers. If a community college and an employer or group of employers enter into a program agreement for ACE training, a copy of the agreement is to be sent to the department of revenue. No costs incurred prior to the date of the signing between a community college and an employer or group of employers may be reimbursed or are eligible for program job credits, including job credits from withholding unless the costs are incurred on or after July 1, 2000.

46.7(1) The costs of the ACE training program may be paid from the following sources:

- a. Program job credits which the employer receives on the basis of the number of program job positions agreed to by the employer for the training program;
- b. Cash or in-kind contributions by the employer toward the costs of the program which must be at least 20 percent of the total cost of the program;
- c. Tuition, student fees, or special charges fixed by the board of directors of the community college to defray costs of the program;
- d. Guarantee by the employer of payments to be received under paragraphs "a" and "b" of this subrule.

This rule pertains only to the program job credits from withholding described in paragraph "a."

46.7(2) ACE training programs financed by job credits from withholding. In situations when an employer or group of employers and a community college have entered into an agreement for training under the ACE program and the agreement provides that the training will be financed by credits from withholding, the amount of funding will be determined by the program job credits identified in the agreement. Eligibility for the program job credits is based on certification of program job positions and program job wages by the employer at the time established in the agreement with the community college. An amount of up to 10 percent of the gross program job wage as certified by the employer in the agreement shall be credited from the total amount of Iowa income tax withheld by the employer. For example, if there were 20 employees designated to be trained in the agreement and their gross wages were \$600,000, the gross program job wage would be \$600,000. Therefore, 10 percent of the gross program job wage in this case would be \$60,000, and this amount would be credited against Iowa income tax which would ordinarily be withheld from the wages of all employees of the employer and remitted to the department of revenue on a quarterly basis. The amount credited against the withholding tax liability of the employer would be paid to the community college training the employer's employees under the ACE program. The employer may take the credits against withholding tax on returns filed with the department of revenue until such time as the program costs of the ACE program are considered to be satisfied.

This rule is intended to implement Iowa Code sections 260G.4A and 422.16.

701—46.8(260E) New job tax credit from withholding. The Iowa industrial new jobs training program is a program administered by the economic development authority for projects established by a community college for the creation of jobs by providing education and training of workers for new jobs for new or expanding industries. For employers that have entered into an agreement with a community college under Iowa Code chapter 260E, a credit equal to 1.5 percent of the wages paid by the employer to each employee covered by the agreement can be taken on the Iowa withholding tax return. If the amount of withholding by the employer is less than 1.5 percent of the wages paid to the employees covered by the agreement, the employer can take the remaining credit against Iowa tax withheld for other employees. An employee does not include a resident of Illinois who earns wages in Iowa since these employees are not subject to Iowa withholding tax in accordance with the Iowa-Illinois reciprocal tax agreement discussed in 701—subrule 38.13(1). The administrative rules for the Iowa industrial

new jobs training program administered by the economic development authority may be found in 261—Chapter 5.

This rule is intended to implement Iowa Code section 260E.2 as amended by 2012 Iowa Acts, Senate File 2212, and section 260E.5.

[ARC 0337C, IAB 9/19/12, effective 10/24/12]

701—46.9(15) Supplemental new jobs credit from withholding and alternative credit for housing assistance programs.

46.9(1) Supplemental new jobs credit from withholding. For eligible businesses approved by the economic development authority under Iowa Code section 15A.7, a credit equal to an additional 1.5 percent of the wages paid to employees in new jobs for these eligible businesses can be taken on the Iowa withholding tax return. This supplemental new jobs credit is in addition to the credit described in rule 701—46.8(260E). The administrative rules for the supplemental new jobs credit from withholding may be found in 261—paragraph 59.6(3) “a.”

46.9(2) Alternative credit for housing assistance programs. As an alternative to the credit described in subrule 46.9(1) for eligible businesses in an enterprise zone, a business may provide a housing assistance program in the form of down payment assistance or rental assistance for employees in new jobs. A credit equal to 1.5 percent of the wages paid to employees participating in a housing assistance program may be claimed on the Iowa withholding tax return for wages paid prior to July 1, 2009. Effective July 1, 2009, the alternative credit for housing assistance programs was repealed. The administrative rules for the enterprise zone program administered by the Iowa department of economic development may be found in 261—Chapter 59.

This rule is intended to implement Iowa Code section 15A.7 and 2014 Iowa Code sections 15E.196 and 15E.197.

[ARC 8605B, IAB 3/10/10, effective 4/14/10; ARC 1744C, IAB 11/26/14, effective 12/31/14]

701—46.10(403) Targeted jobs withholding tax credit. For employers that enter into a withholding agreement with pilot project cities approved by the economic development authority and create or retain targeted jobs in a pilot project city, a credit equal to 3 percent of the gross wages paid to employees under the withholding agreement can be taken on the Iowa withholding tax return. The employer shall remit the amount of the credit to the pilot project city. The administrative rules for the targeted jobs withholding tax credit program administered by the economic development authority may be found in 261—Chapter 71.

If the amount of withholding by the employer is less than 3 percent of the wages paid to the employees covered under the withholding agreement, the employer can take the remaining credit against Iowa tax withheld for other employees or may carry the credit forward for up to ten years or until depleted, whichever is the earlier.

If an employer also has a new job credit from withholding provided in rule 701—46.8(260E) or the supplemental new jobs credit from withholding provided in subrule 46.9(1), these credits shall be collected and disbursed prior to the collection and disbursement of the targeted jobs withholding tax credit.

The following nonexclusive examples illustrate how this rule applies:

EXAMPLE 1: Company A does not have a withholding credit under Iowa Code chapter 260E or a supplemental new jobs credit under Iowa Code chapter 15E. Company A enters into a withholding agreement, and the withholding rate for employees covered under the agreement is 4 percent of the wages paid. Company A will be allowed a credit on the Iowa withholding return equal to 3 percent of the wages paid to each employee covered under the withholding agreement, since the targeted jobs withholding tax credit cannot exceed 3 percent.

EXAMPLE 2: Company B does not have a withholding credit under Iowa Code chapter 260E or a supplemental new jobs credit under Iowa Code chapter 15E. Company B enters into a withholding agreement, and the withholding rate for employees covered under the agreement is 2.5 percent of the wages paid. Company B will be allowed a credit on the Iowa withholding return equal to 3 percent of the wages paid to each employee covered under the withholding agreement. The extra withholding credit

equal to 0.5 percent may be used to offset withholding tax for Company B's employees not covered under the withholding agreement.

EXAMPLE 3: Company C has a withholding credit under Iowa Code chapter 260E of 1.5 percent of the wages paid to new employees and a supplemental new jobs credit under Iowa Code chapter 15E of 1.5 percent of the wages paid to new employees. Company C also enters into a withholding agreement for the same employees covered under the 260E agreement and supplemental new jobs credit agreement, and the withholding rate for employees covered under these agreements is 5 percent of the wages paid. Company C will be allowed a credit on the Iowa withholding return equal to 5 percent of the wages paid to each employee covered under these agreements. Since the community college receives disbursement of the credit before the pilot project city, the community college will receive 3 percent of the wages paid to each employee covered under the agreements, and the pilot project city will receive the remaining 2 percent of the wages paid to each employee covered under the agreements.

EXAMPLE 4: Company D has a withholding credit under Iowa Code chapter 260E of 1.5 percent of the wages paid to new employees and a supplemental new jobs credit under Iowa Code chapter 15E of 1.5 percent of the wages paid to new employees. Company D also enters into a withholding agreement for the same employees covered under the 260E agreement and supplemental new jobs credit agreement, and the withholding rate for employees covered under the agreement is 2.5 percent of the wages paid. Company D will be allowed a credit on the Iowa withholding tax return equal to 6 percent of the wages paid to each employee covered under these agreements. The extra withholding credit equal to 3.5 percent may be used to offset withholding tax for Company D's employees not covered under these agreements.

46.10(1) Notification by the employer. Once a withholding agreement is entered into with a pilot project city, the employer shall notify the department of revenue that an agreement has been executed. With this notification, the employer must also provide its address, tax identification number and the number of new jobs created under the agreement. In addition, for each year that the withholding agreement is in place, the employer must notify the department of revenue by January 31 of the number of new jobs created as of December 31 of the preceding year.

46.10(2) Notification by the pilot project city. The pilot project city must notify the department of revenue on a quarterly basis of the amount of the targeted jobs withholding credit that each employer covered by a withholding agreement remitted to the city. This notification must occur within 45 days after the end of each calendar quarter. In addition, the pilot project city must notify the department of revenue immediately when a withholding agreement with an employer is terminated.

This rule is intended to implement Iowa Code section 403.19A as amended by 2013 Iowa Acts, Senate File 433.

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CHAPTER 80
PROPERTY TAX CREDITS AND EXEMPTIONS
[Prior to 12/17/86, Revenue Department[730]]

701—80.1(425) Homestead tax credit.

80.1(1) Application for credit.

a. No homestead tax credit shall be allowed unless the first application for homestead tax credit is signed by the owner of the property or the owner's qualified designee and filed with the city or county assessor on or before July 1 of the current assessment year. (1946 O.A.G. 37) Once filed, the claim for credit is applicable to subsequent years and no further filing shall be required provided the homestead is owned and occupied by the claimant or the claimant's spouse on July 1 of each year and, in addition, the claimant or the claimant's spouse occupies the homestead for at least six months during each calendar year in which the fiscal year for which the credit is claimed begins. It is not a requirement that the six-month period of time be consecutive. If the credit is disallowed and the claimant failed to give written notice to the assessor that the claimant ceased to use the property as a homestead, a civil penalty equal to 5 percent of the amount of the disallowed credit shall be assessed against the claimant in addition to the amount of credit allowed. The assessor, county auditor, and county board of supervisors shall act on the claim in accordance with Iowa Code section 425.3. A claim filed after July 1 of any calendar year applies to the following assessment year.

b. In the event July 1 falls on either a Saturday or Sunday, applications for the homestead tax credit may be filed the following Monday.

c. In the event July 1 falls on either a Saturday or Sunday, applications submitted by mail shall be accepted if postmarked on the following Monday.

d. An assessor may not refuse to accept an application for homestead tax credit. If it is the opinion of the assessor that a homestead tax credit should not be allowed, the assessor shall accept the application for credit and recommend disallowance.

e. If the owner of the homestead is on active duty in the armed forces of this state or of the United States, or is 65 years of age or older or is disabled, the application for homestead tax credit may be signed and delivered by a member of the owner's family or the owner's guardian, conservator or designated attorney-in-fact. For purposes of this rule, any person related to the owner by blood, marriage or adoption shall be considered a member of the owner's family.

f. If a person makes a false application for credit with fraudulent intent to obtain the credit, the person is guilty of a fraudulent practice and the claim shall be disallowed. If the credit has been paid, the amount of the credit plus a penalty equal to 25 percent of the amount of the disallowed credit and interest shall be collected by the county treasurer.

g. For purposes of the homestead tax credit statute, the occupancy of the homestead may constitute actual occupancy or constructive occupancy. However, more than one homestead cannot be simultaneously occupied by the claimant and multiple simultaneous homestead tax credits are not allowable. (Op. St. Bd. Tax Rev. No. 212, February 29, 1980.) Generally, a homestead is occupied by the claimant if the premises constitute the claimant's usual place of abode. Once the claimant's occupancy of the homestead is established, such occupancy is not lost merely because the claimant, for some valid reason, is temporarily absent from the homestead premises with an intention of returning thereto (1952 O.A.G. 78).

80.1(2) Eligibility for credit.

a. If homestead property is owned jointly by persons who are not related or formerly related by blood, marriage or adoption, no homestead tax credit shall be allowed unless all the owners actually occupy the homestead property on July 1 of each year. (1944 O.A.G. 26; Letter O.A.G. October 18, 1941)

b. No homestead tax credit shall be allowed if the homestead property is owned or listed and assessed to a corporation, other than a family farm corporation, partnership, company or any other business or nonbusiness organization. (1938 O.A.G. 441; *Verne Deskin v. Briggs*, State Board of Tax Review, No. 24, February 1, 1972)

c. A person acquiring homestead property under a contract of purchase remains eligible for a homestead tax credit even though such person has assigned his or her equity in the homestead property as security for a loan. (1960 O.A.G 263)

d. A person occupying homestead property pursuant to Iowa Code chapter 499A or 499B is eligible for a homestead tax credit. (1978 O.A.G. 78-2-5; 1979 O.A.G. 79-12-2)

e. A person who has a life estate interest in homestead property shall be eligible for a homestead tax credit, provided the remainderman is related or formerly related to the life estate holder by blood, marriage or adoption or the reversionary interest is held by a nonprofit corporation organized under Iowa Code chapter 504A. (1938 O.A.G. 193)

f. A homestead tax credit may not be allowed upon a mobile home which is not assessed as real estate. (1962 O.A.G. 450)

g. A person occupying homestead property under a trust agreement is considered the owner of the property for purposes of the homestead tax credit. (1962 O.A.G. 434)

h. A remainder is not eligible to receive a homestead tax credit until expiration of the life estate to which such person has the remainder interest. (1938 O.A.G. 305)

i. In order for a person occupying homestead property under a contract of purchase to be eligible for a homestead tax credit, the contract of purchase must be recorded in the office of the county recorder where the property is located. A recorded memorandum or summary of the actual contract of purchase is not sufficient evidence of ownership to qualify a person for a homestead tax credit.

j. An owner of homestead property who is in the military service or confined in a nursing home, extended-care facility or hospital shall be considered as occupying the property during the period of service or confinement. The fact that the owner rents the property during the period of military service is immaterial to the granting of the homestead tax credit. (1942 O.A.G. 45) However, no homestead tax credit shall be allowed if the owner received a profit for the use of the property from another person while such owner is confined in a nursing home, extended-care facility or hospital.

k. A person owning a homestead dwelling located upon land owned by another person or entity is not eligible for a homestead tax credit. (1942 O.A.G. 160, O.A.G. 82-4-9) This rule is not applicable to a person owning a homestead dwelling pursuant to Iowa Code chapter 499B or a person owning a homestead dwelling on land owned by a community land trust pursuant to 42 U.S.C. Section 12773.

l. An heir occupying homestead property that is part of an estate in the process of administration is considered an owner of the property and is eligible for the homestead credit. (1938 O.A.G. 272)

80.1(3) *Disabled veteran's homestead tax credit.*

a. *Qualification for credit.* The disabled veteran tax credit may be claimed by any of the following owners of homestead property:

(1) A veteran who acquired homestead property under 38 U.S.C. Sections 21.801 and 21.802 or Sections 2101 and 2102.

(2) A veteran, as defined in Iowa Code section 35.1, with a permanent service-connected disability rating of 100 percent, as certified by the U.S. Department of Veterans Affairs, or a permanent and total disability rating based on individual unemployability that is compensated at the 100 percent disability rate, as certified by the U.S. Department of Veterans Affairs.

(3) A former member of the national guard of any state who otherwise meets the service requirements of Iowa Code section 35.1(2) "b"(2) or 35.1(2) "b"(7), with a permanent service-connected disability rating of 100 percent, as certified by the U.S. Department of Veterans Affairs, or a permanent and total disability rating based on individual unemployability that is compensated at the 100 percent disability rate, as certified by the U.S. Department of Veterans Affairs.

(4) An individual who is a surviving spouse or a child and who is receiving dependency and indemnity compensation pursuant to 38 U.S.C. Section 1301 et seq., as certified by the U.S. Department of Veterans Affairs.

b. *Application for credit.* Except for the 2014 assessment year, an application for the disabled veteran tax credit must be filed with the local assessor on or before July 1 of the assessment year. Any supporting documentation required by the assessor must be current within the previous 12 months of the date on which the application is filed. The filing deadline for applications for the 2014 assessment year

shall be July 1, 2015. The credit applicable to assessment year 2014 shall be allowed only on a homestead which the owner occupied on July 1, 2014, and for at least six months during the 2014 assessment year.

c. *Amount of credit.* The amount of the credit is equal to the entire amount of tax payable on the homestead.

d. *Continuance of credit.* The credit shall continue to the estate or surviving spouse and child who are the beneficiaries of an owner described in subparagraph 80.1(3) "a"(1), (2), or (3) if the surviving spouse remains unmarried. If an owner or beneficiary of an owner ceases to qualify for the credit, the owner or beneficiary must notify the assessor of the termination of eligibility.

80.1(4) Application of credit.

a. Except as provided in 80.1(1) "a," if the homestead property is conveyed to another person prior to July 1 of any year, the new owner must file a claim for credit on or before July 1 to obtain the credit for that year. If the property is conveyed on or after July 1, the credit shall remain with the property for that year provided the previous owner was entitled to the credit. However, when the property is transferred as part of a distribution made pursuant to Iowa Code chapter 598 (Dissolution of Marriage) the transferee spouse retaining ownership and occupancy of the homestead is not required to refile for the credit.

b. A homestead tax credit may be allowed even though the property taxes levied against the homestead property have been suspended by the board of supervisors. (1938 O.A.G. 288)

c. A homestead tax credit shall not be allowed if the property taxes levied against the homestead property have been canceled or remitted by the board of supervisors. (1956 O.A.G. 78)

d. Only one homestead tax credit can be allowed per legally described tract of land. For purposes of this rule, a legally described tract of land shall mean all land contained in a single legal description. (1962 O.A.G. 435)

e. If the owner of homestead property is also eligible for a military service tax exemption and claims the exemption on the homestead property, the military service tax exemption shall be applied prior to the homestead tax credit when computing net property tax. (*Ryan v. State Tax Commission*, 235 Iowa 222, 16 N.W.2d 215)

f. If the homestead property contains two dwelling houses and one of the dwelling houses and a portion of the land is sold after a valid application for homestead tax credit has been filed, the assessor shall prorate the assessment so as to allow the seller a homestead tax credit on that portion of the property which is retained and also allow the purchaser a homestead tax credit on that portion of the property which is purchased, provided the purchaser files a valid application for homestead tax credit by July 1 of the claim year.

g. A homestead tax credit shall be allowed against the assessed value of the land on which a dwelling house did not exist as of January 1 of the year in which the credit is claimed provided a dwelling house is owned and occupied by the claimant on July 1 of that year.

h. The county treasurer shall, pursuant to Iowa Code section 25B.7, be required to extend to the claimant only that portion of the credit estimated by the department to be funded by the state appropriation.

This rule is intended to implement Iowa Code chapter 425 as amended by 2006 Iowa Acts, House File 2794.

[ARC 2507C, IAB 4/27/16, effective 6/1/16]

701—80.2(22,35,426A) Military service tax exemption.

80.2(1) Application for exemption.

a. No military service tax exemption shall be allowed unless the first application for the military service tax exemption is signed by the owner of the property or the owner's qualified designee and filed with the city or county assessor on or before July 1 of the current assessment year (1970 O.A.G. 437). Once filed, the claim for exemption is applicable to subsequent years and no further filing shall be required provided the claimant or the claimant's spouse owns the property on July 1 of each year. The assessor, county auditor, and county board of supervisors shall act on the claim in accordance with Iowa Code section 426A.14. A claim filed after July 1 of any calendar year applies to the following assessment year.

b. In the event July 1 falls on either a Saturday or Sunday, applications for the military service tax exemption may be filed the following Monday.

c. In the event July 1 falls on either a Saturday or Sunday, applications submitted by mail shall be accepted if postmarked on the following Monday.

d. An assessor may not refuse to accept an application for a military service tax exemption. If it is the opinion of the assessor that a military service tax exemption should not be allowed, the assessor shall accept the application for exemption and recommend disallowance.

e. If the owner of the property is on active duty in the armed forces of this state or of the United States, or is 65 years of age or older or is disabled, the application for military service tax exemption may be signed and delivered by a member of the owner's family or the owner's guardian, conservator or designated attorney-in-fact. For purposes of this rule, any person related to the owner by blood, marriage or adoption shall be considered a member of the owner's family.

80.2(2) Eligibility for exemption.

a. A person who was discharged from the draft is not considered a veteran of the military service and is not entitled to a military service tax exemption. (1942 O.A.G. 79)

b. A military service tax exemption shall not be allowed to a person whose only service in the military was with a foreign government. (1932 O.A.G. 242; 1942 O.A.G. 79)

c. Former members of the United States armed forces, including members of the Coast Guard, who were on active duty for less than 18 months must have served on active duty during one of the war or conflict time periods enumerated in Iowa Code Supplement section 35.1. If former members were on active duty for at least 18 months, it is not necessary that their service be performed during one of the war or conflict time periods. Former members who opted to serve five years in the reserve forces of the United States qualify if any portion of their enlistment would have occurred during the Korean Conflict (June 25, 1950, to January 31, 1955). There is no minimum number of days a former member of the armed forces of the United States must have served on active duty if the service was performed during one of the war or conflict time periods, nor is there a minimum number of days a former member of the armed forces of the United States must have served on active duty if the person was honorably discharged because of a service-related injury sustained while on active duty.

Former and current members of the Iowa national guard and reserve forces of the United States need not have performed any active duty if they served at least 20 years. Otherwise, they must have been activated for federal duty, for purposes other than training, for a minimum of 90 days. Also, it is not a requirement for a member of the Iowa national guard or a reservist to have performed service within a designated war or conflict time period.

d. With the exception of members of the Iowa national guard and members of the reserve forces of the United States who have served at least 20 years and continue to serve, a military service tax exemption shall not be allowed unless the veteran has received a complete and final separation from active duty service. (*Jones v. Iowa State Tax Commission*, 247 Iowa 530, 74 N.W.2d 563, 567-1956; *In re Douglas A. Coyle*, State Board of Tax Review, No. 197, August 14, 1979; 1976 O.A.G. 44)

e. As used in Iowa Code subsection 426A.12(3), the term minor child means a person less than 18 years of age or less than 21 years of age and enrolled as a full-time student at an educational institution.

f. A veteran of more than one qualifying war period is entitled to only one military service tax exemption, which shall be the greater of the two exemptions. (1946 O.A.G. 71)

g. The person claiming a military service tax exemption must be an Iowa resident. However, the veteran need not be an Iowa resident if such person's exemption is claimed by a qualified individual enumerated in Iowa Code section 426A.12. (1942 O.A.G. 140)

h. A person who has a life estate interest in property may claim a military service tax exemption on such property. (1946 O.A.G. 155; 1976 O.A.G. 125)

i. A remainder is not eligible to receive a military service tax exemption on property to which a remainder interest is held until expiration of the life estate. (1946 O.A.G. 155)

j. A military service tax exemption shall not be allowed on a mobile home which is not assessed as real estate. (1962 O.A.G. 450)

k. A divorced person may not claim the military service tax exemption of a former spouse who qualifies for the exemption. (Letter O.A.G. August 8, 1961)

l. A surviving spouse of a qualified veteran, upon remarriage, loses the right to claim the deceased veteran's military exemption as the surviving spouse is no longer an unremarried surviving spouse of the qualified veteran. (1950 O.A.G. 44)

m. An annulled marriage is considered to have never taken place and the parties to such a marriage are restored to their former status. Neither party to an annulled marriage can thereafter be considered a spouse or surviving spouse of the other party for purposes of receiving the military service tax exemption. (Op. Att'y. Gen. 61-8-10(L))

n. No military service tax exemption shall be allowed on property that is owned by a corporation, except for a family farm corporation where a shareholder occupies a homestead as defined in Iowa Code section 425.11(1), partnership, company or any other business or nonbusiness organization. (1938 O.A.G. 441)

o. In the event both a husband and wife are qualified veterans, they may each claim their military service tax exemption on their jointly owned property. (1946 O.A.G. 154) If property is solely owned by one spouse, the owner spouse may claim both exemptions on the property providing the nonowner spouse's exemption is not claimed on other property.

p. No military service tax exemption shall be allowed if on July 1 of the claim year, the claimant or the claimant's unremarried surviving spouse is no longer the owner of the property upon which the exemption was claimed.

q. A person shall not be denied a military service tax exemption even though the property upon which the exemption is claimed has been pledged to another person as security for a loan. (1960 O.A.G. 263)

r. A qualified veteran who has conveyed property to a trustee shall be eligible to receive a military service tax exemption on such property providing the trust agreement gives the claimant a beneficial interest in the property. (1962 O.A.G. 434)

s. A person owning property pursuant to Iowa Code chapter 499A or 499B is eligible for a military service tax exemption. (1978 O.A.G. 78-2-5; 1979 O.A.G. 79-12-2)

t. The person claiming the exemption shall have recorded in the office of the county recorder evidence of property ownership and either the military certificate of satisfactory service or, for a current member of the Iowa national guard or a member of the reserve forces of the United States, the veteran's retirement points accounting statement issued by the armed forces of the United States or the state adjutant general. The military certificate of satisfactory service shall be considered a confidential record pursuant to Iowa Code section 22.7.

u. An heir of property that is part of an estate in the process of administration is considered an owner of the property and is eligible for the military exemption.

80.2(3) Application of exemption.

a. When the owner of homestead property is also eligible for a military service tax exemption and claims the exemption on the homestead property, the military service tax exemption shall be applied prior to the homestead tax credit when computing net property tax. (*Ryan v. State Tax Commission*, 235 Iowa 222, 16 N.W.2d 215)

b. If a portion of the property upon which a valid military service tax exemption was claimed is sold on or before July 1 of the year in which the exemption is claimed, the seller shall be allowed a military service tax exemption on that portion of the property which is retained by the seller on July 1. The purchaser is also eligible to receive a military service tax exemption on that portion of the property which was purchased, provided the purchaser is qualified for the exemptions and files a valid application for the exemption on or before July 1 of the claim year.

c. A military service tax exemption may be allowed even though the taxes levied on the property upon which the exemption is claimed have been suspended by the board of supervisors. (1938 O.A.G. 288)

d. A military service tax exemption shall not be allowed if the taxes levied on the property upon which the exemption is claimed have been canceled or remitted by the board of supervisors. (1956 O.A.G. 78)

e. The county treasurer shall, pursuant to Iowa Code section 25B.7, be required to extend to the claimant only that portion of the exemption estimated by the department to be funded by the state appropriation.

This rule is intended to implement Iowa Code sections 22.7, 35.1, and 35.2 and chapter 426A.
[ARC 7726B, IAB 4/22/09, effective 5/27/09]

701—80.3(427) Pollution control and recycling property tax exemption.

80.3(1) To secure an exemption for pollution control or recycling property, an application must be filed with the assessing authority on or before February 1 of the assessment year for which the exemption is first claimed. It is the responsibility of the taxpayer to secure the necessary certification from the department of natural resources in sufficient time to file the application for exemption with the assessing authority on or before February 1. An exemption for new pollution control or recycling property can be secured by filing an application with the assessing authority by February 1 of the assessment year following the year in which the property is installed or constructed. If no application is timely filed in that year, the property will first qualify for exemption in any subsequent year in which an application is filed with the assessing authority on or before February 1.

80.3(2) In the event February 1 falls on either a Saturday or Sunday, applications for the exemption may be filed the following Monday.

80.3(3) In the event February 1 falls on either a Saturday or Sunday, applications submitted by mail shall be accepted if postmarked on the following Monday.

80.3(4) No exemption shall be allowed unless the application is signed by the owner of the property or the owner's qualified designee.

80.3(5) An assessor may not refuse to accept an application for a pollution control exemption if timely filed and if the necessary certification has been obtained from the department of natural resources.

80.3(6) The sale, transfer, or lease of property does not affect its eligibility for exemption as long as the requirements of Iowa Code subsection 427.1(19) and rule 701—80.3(427), Iowa Administrative Code, are satisfied.

80.3(7) No exemption shall be allowed unless the department of natural resources has certified that the primary use of the property for which the taxpayer is seeking an exemption is to control or abate air or water pollution or to enhance the quality of any air or water in this state or that the primary use of the property is for recycling. Recycling property is property used primarily in the manufacturing process and resulting directly in the conversion of waste glass, waste plastic, wastepaper products, waste paperboard, or waste wood products into new raw materials or products composed primarily of recycled material.

80.3(8) In the event that qualified property is assessed as a unit with other property not having a pollution control or recycling function, the exemption shall be limited to the increase in the assessed valuation of the unit which is attributable to the pollution control or recycling property.

EXAMPLE

Valuation of unit with pollution control or recycling property	\$ 100,000
Valuation of unit without pollution control or recycling property	<u>50,000</u>
Allowable amount of exemption	\$ 50,000

80.3(9) The value of property to be exempt from taxation shall be the fair and reasonable market value of such property as of January 1 of each year for which the exemption is claimed, rather than the original cost of such property.

80.3(10) An assessor shall not exempt property from taxation without first assessing the property for taxation and subsequently receiving an application for tax exemption from the taxpayer.

This rule is intended to implement Iowa Code Supplement section 427.1(19) as amended by 2006 Iowa Acts, House File 2633, and Iowa Code sections 427.1(18) and 441.21(1)(i).
[ARC 7726B, IAB 4/22/09, effective 5/27/09]

701—80.4(427) Low-rent housing for the elderly and persons with disabilities.

80.4(1) As used in Iowa Code subsection 427.1(21), the term “nonprofit organization” means an organization, no part of the net income of which is distributable to its members, directors or officers.

80.4(2) As used in Iowa Code subsection 427.1(21), the term “low-rent housing” means housing the rent for which is less than that being received or which could be received for similar properties on the open market in the same assessing jurisdiction. Federal rent subsidies received by the occupant shall be excluded in determining whether the rental fee charged meets this definition.

80.4(3) As used in Iowa Code subsection 427.1(21), the term “elderly” means any person at least 62 years of age.

80.4(4) As used in Iowa Code subsection 427.1(21), the term “persons with physical or mental disabilities” means a person whose physical or mental condition is such that the person is unable to engage in substantial gainful employment.

80.4(5) The exemption granted in Iowa Code subsection 427.1(21) extends only to property which is owned and operated, or controlled, by a nonprofit organization recognized as such by the Internal Revenue Service. Property owned and operated, or controlled, by a private person is not eligible for exemption under Iowa Code subsection 427.1(21).

80.4(6) The income of persons living in housing eligible for exemption under Iowa Code subsection 427.1(21) shall not be considered in determining the property’s taxable status.

80.4(7) An organization seeking an exemption under Iowa Code subsection 427.1(21) shall file a statement with the local assessor pursuant to Iowa Code subsection 427.1(14).

80.4(8) The exemption authorized by Iowa Code subsection 427.1(21) extends only until the final payment due date of the borrower’s original low-rent housing development mortgage on the property or until the borrower’s original low-rent housing development mortgage is paid in full or expires, whichever is sooner. If the original mortgage is refinanced, the exemption shall apply only until what would have been the final payment due date under the original mortgage or until the refinanced mortgage is paid in full or expires, whichever is sooner. This exemption for refinanced projects applies to those projects refinanced on or after January 1, 2005.

80.4(9) In complying with the requirements of Iowa Code subsection 427.1(14), the provisions of rule 701—78.4(427) shall apply.

80.4(10) In determining the taxable status of property for which an exemption is claimed under Iowa Code subsection 427.1(21), the appropriate assessor shall follow rules 701—78.1(427,441) to 701—78.5(427).

80.4(11) If a portion of a structure is used to provide low-rent housing units to elderly persons and persons with disabilities and the other portion is used to provide housing to persons who are not elderly or disabled, the exemption for the property on which the structure is located shall be limited to that portion of the structure used to provide housing to the elderly and disabled. Vacant units and projects under construction that are designated for use to provide housing to elderly and disabled persons shall be considered as being used to provide housing to elderly and disabled persons. The valuation exempted shall bear the same relationship to the total value of the property as the area of the structure used to provide low-rent housing for the elderly and persons with disabilities bears to the total area of the structure unless a better method for determining the exempt valuation is available. The valuation of the land shall be exempted in the same proportion.

80.4(12) The property tax exemption provided in Iowa Code subsection 427.1(21) shall be based upon occupancy by elderly or persons with disabilities as of July 1 of the assessment year. However,

nothing in this subrule shall prevent the taxation of such property in accordance with the provisions of Iowa Code section 427.19.

This rule is intended to implement Iowa Code section 427.1(14) and Supplement section 427.1(21).
[ARC 7726B, IAB 4/22/09, effective 5/27/09]

701—80.5(427) Speculative shell buildings.

80.5(1) Authority of city council and board of supervisors. A city council or county board of supervisors may enact an ordinance granting property tax exemptions for value added as a result of new construction of speculative shell buildings or additions to existing buildings or structures, or may exempt the value of an existing building or structure being reconstructed or renovated and the value of the land on which the building or structure is located, if the reconstruction or renovation constitutes complete replacement or refitting of an existing building or structure owned by community development organizations, not-for-profit cooperative associations under Iowa Code chapter 499A, or for-profit entities. See Iowa Code Supplement section 427.1(27) as amended by 2008 Iowa Acts, Senate File 2419, for definitions. The value added exemption for new construction includes reconstruction and renovation constituting complete replacement or refitting of existing buildings and structures if the reconstruction or renovation is required due to economic obsolescence, or to implement industry standards in order to competitively manufacture or process products, or to market a building or structure as a speculative shell building. The exemption for reconstruction or renovation not constituting new construction does not have to meet these requirements but has to meet only the requirements set forth in the definition of a speculative shell building. The council or board in the ordinance authorizing the exemption shall specify if the exemption will be allowed to community development organizations, not-for-profit cooperative associations under Iowa Code chapter 499B, or for-profit entities, and the length of time the exemption is to be allowed.

80.5(2) Eligibility for exemption. The value added by new construction, reconstruction, or renovation and first assessed prior to January 1 of the calendar year in which an ordinance authorizing a tax exemption becomes effective is not eligible for exemption. However, the value added as of January 1 of the calendar year in which the ordinance becomes effective is eligible for exemption if the ordinance is in effect on February 1 of that calendar year. This subrule does not apply to new construction projects having received prior approval. For reconstruction and renovation projects not constituting new construction, the ordinance authorizing the exemption must be in effect by February 1 of the year the project commences for the exemption to be allowable in the subsequent assessment year.

80.5(3) Application for exemption.

a. A community development organization, not-for-profit cooperative association, or for-profit entity must file an application for exemption with the assessor between January 1 and February 1, inclusive, of the year in which the value added for new construction is first assessed for the exemption to be allowable for that assessment year. For reconstruction and renovation projects not constituting new construction, an application for exemption must be filed by February 1 of the assessment year in which the project commences for the exemption to be allowable the following assessment year. If approved, no application for exemption is required to be filed in subsequent years for the value added exemption or the reconstruction or renovation exemption not constituting new construction. An application cannot be filed if a valid ordinance has not been enacted. If an application is not filed by February 1 of the year in which the value added for new construction is first assessed, the organization, association, or entity cannot receive, in subsequent years, the exemption for that value added. However, if the organization, association, or entity has received prior approval, the application must be filed by February 1 of the year in which the total value added for the new construction is first assessed.

b. If February 1 falls on either a Saturday or Sunday, applications for exemption may be filed the following Monday.

c. Applications submitted by mail must be accepted if postmarked on or before February 1 or, if February 1 falls on either a Saturday or Sunday, a postmark date of the following Monday is acceptable.

80.5(4) Prior approval. To obtain prior approval for a project, the proposal of the organization, association, or entity must be approved by a specific ordinance addressing the proposal and passed by

the city council or board of supervisors. The original ordinance providing for the exemption does not constitute the granting of prior approval for a project. If an organization, association, or entity has obtained a prior approval ordinance from a city council or board of supervisors, the exemption for new construction cannot be obtained until the year in which all value added for the completed project is first assessed. Reconstruction and renovation projects constituting new construction must receive prior approval to qualify for exemption. Reconstruction and renovation projects that do not constitute new construction need not receive prior approval.

80.5(5) Termination of exemption. The exemption continues until the property is leased or sold, the time period for the exemption specified in the ordinance elapses, or the exemption is terminated by ordinance of the city council or board of supervisors. If the ordinance authorizing the exemption is repealed, all existing exemptions continue until their expiration and any projects having received prior approval for exemption for new construction are to be granted an exemption upon completion of the project. If the shell building or any portion of the shell building is leased or sold, the exemption for new construction shall not be allowed on that portion of the shell building leased or sold in subsequent years. If the shell building or any portion of the shell building is leased or sold, the exemption for reconstruction or renovation not constituting new construction shall not be allowed on that portion of the shell building leased or sold and a proportionate share of the land on which the shell building is located in subsequent years.

This rule is intended to implement Iowa Code Supplement section 427.1(27) as amended by 2008 Iowa Acts, Senate File 2419.

701—80.6(427B) Industrial property tax exemption.

80.6(1) Authority of city council and board of supervisors. A partial exemption ordinance enacted pursuant to Iowa Code section 427B.1 shall be available to all qualifying property. A city council or county board of supervisors does not have the authority to enact an ordinance granting a partial exemption to only certain qualifying properties (1980 O.A.G. 639). As used in this rule, the term “qualifying property” means property classified and assessed as real estate pursuant to 701—subrule 71.1(6), warehouses and distribution centers, research service facilities, and owner-operated cattle facilities. “Warehouse” means a building or structure used as a public warehouse for the storage of goods pursuant to Iowa Code sections 554.7101 to 554.7603, except that it does not mean a building or structure used primarily to store raw agricultural products or from which goods are sold at retail. “Distribution center” means a building or structure used primarily for the storage of goods which are intended for subsequent shipment to retail outlets. Distribution center does not mean a building or structure used primarily to store raw agricultural products, used primarily by a manufacturer to store goods to be used in the manufacturing process, used primarily for the storage of petroleum products, or used for the retail sale of goods. A “research service facility” is one or more buildings devoted primarily to research and development activities or corporate research services. Research and development activities include, but are not limited to, the design and production or manufacture of prototype products for experimental use. A research service facility does not have as its primary purpose the providing of on-site services to the public. “Owner-operated cattle facility” means a building or structure used primarily in the raising of cattle and which is operated by the person owning the facility.

80.6(2) Prior approval. Only upon enactment of a partial property tax exemption ordinance in accordance with Iowa Code section 427B.1 may a city council or board of supervisors enact a prior approval ordinance for pending individual projects in accordance with Iowa Code section 427B.4. To obtain prior approval for a project, a property owner’s proposal must be approved by a specific ordinance addressing the proposal and passed by the city council or board of supervisors. The original ordinance providing for the partial exemption does not constitute the granting of prior approval for a project. Also, prior approval for a project can only be granted by ordinance of the city council or board of supervisors; an official or representative of a city or county does not have the independent authority to grant prior approval for a project. If a taxpayer has obtained a prior approval ordinance from a city council or board of supervisors, the partial exemption cannot be obtained until the year in which all value added for the project is first assessed. (1980 O.A.G. 639)

80.6(3) Repeal of ordinance. A new construction project having received prior approval for exemption in accordance with subrule 80.6(2) shall be granted such exemption upon completion of the project even if the city council or board of supervisors subsequently repeals the ordinance passed in accordance with Iowa Code section 427B.1. (1980 O.A.G. 639)

80.6(4) Annexation of property previously granted exemption. A partial property tax exemption which has been granted and is in existence shall not be discontinued or disallowed in the event that the property upon which such exemption has been previously granted is located in an area which is subsequently annexed by a city or becomes subject to the jurisdiction of a county in which an ordinance has not been passed by the city council or county board of supervisors allowing such exemptions within that jurisdiction. The existing exemption shall continue until its expiration.

80.6(5) Eligibility for exemption.

a. The value added by new construction or reconstruction and first assessed prior to January 1 of the calendar year in which an ordinance authorizing a partial property tax exemption becomes effective, and new machinery and equipment assessed as real estate acquired and utilized prior to January 1 of the calendar year in which the ordinance or resolution becomes effective, are not eligible for exemption. However, the value added as of January 1 of the calendar year in which the ordinance becomes effective is eligible for exemption if the ordinance is in effect prior to February 1 of that calendar year and if all other eligibility and application requirements are satisfied.

EXAMPLE 1: A \$1,000,000 new construction project on qualifying property is begun in July 1984. \$500,000 in value of the partially completed project is completed in 1984 and first assessed as of January 1, 1985. The project is completed in 1985 adding an additional value of \$500,000 which is first assessed as of January 1, 1986, bringing the total assessed value of the completed project to \$1,000,000 as of the January 1, 1986, assessment.

A city ordinance authorizing the partial exemption program is passed and becomes effective January 15, 1987. This project is not eligible for a property tax exemption for any value added as a result of the new construction project.

EXAMPLE 2: Assuming the same factual situation as in Example 1, except that the ordinance authorizing the partial exemption program becomes effective on January 15, 1986, the \$500,000 in assessed value added as of the January 1, 1986, assessment is eligible for the partial exemption if an application is filed with the assessor between January 1 and February 1, 1986, inclusive.

EXAMPLE 3: Assuming the same factual situation as in Example 1, except that the ordinance authorizing the partial exemption program becomes effective on February 15, 1986. Since the statutory application filing deadline is February 1, no value added and first assessed as of January 1, 1986, is eligible for a partial exemption. The project in this example would receive no exemption for any value added as a result of the new construction.

This subrule does not apply to new construction projects having received prior approval in accordance with subrule 80.6(2).

b. New machinery and equipment assessed as real estate shall be eligible for partial exemption only if used primarily in the manufacturing process. For example, computer equipment used primarily to maintain payroll records would not be eligible for exemption, whereas computer equipment utilized primarily to control or monitor actual product assembly would be eligible.

c. If any other property tax exemption is granted for the same assessment year for all or any of the property which has been granted a partial exemption, the partial property tax exemption shall be disallowed for the year in which the other exemption is actually received.

d. Only qualifying property is eligible to receive the partial property tax exemption (O.A.G. 81-2-18).

e. A taxpayer cannot receive the partial property tax exemption for industrial machinery or equipment if the machinery or equipment was previously assessed in the state of Iowa. Industrial machinery and equipment previously used in another state may qualify for the partial exemption if all criteria for receiving the partial exemption are satisfied.

f. Industrial machinery and equipment is eligible to receive the partial property tax exemption if it changes the existing operational status other than by merely maintaining or expanding the existing

operational status. This rule applies whether the machinery and equipment is placed in a new building, an existing building, or a reconstructed building. If new machinery is used to produce an existing product more efficiently or to produce merely a more advanced version of the existing product, the existing operational status would only be maintained or expanded and the machinery would not be eligible for the exemption. However, if the new machinery produces a product distinctly different from that currently produced, the existing operational status has been changed.

80.6(6) Application for exemption.

a. An eligible property owner shall file an application for exemption with the assessor between January 1 and February 1, inclusive, of the year for which the value added is first assessed for tax purposes. The amount of "actual value added" shall be the difference between the assessed value of the property on January 1 of the year value is added to the property and the assessed value of the property the following assessment year. An application cannot be filed if a valid ordinance has not been enacted in accordance with Iowa Code section 427B.1 (O.A.G. 82-3-5). If an application is not filed by February 1 of the year for which the value added is first assessed, the taxpayer cannot receive in subsequent years the partial exemption for that value added (O.A.G. 82-1-17). However, if a taxpayer has received prior approval in accordance with Iowa Code section 427B.4 and subrule 80.6(2), the application is to be filed by not later than February 1 of the year for which the total value added is first assessed as the approved completed project.

b. In the event that February 1 falls on either a Saturday or Sunday, applications for the industrial property tax exemption may be filed the following Monday.

c. Applications submitted by mail shall be accepted if postmarked on or before February 1, or in the event that February 1 falls on either a Saturday or Sunday, a postmark date of the following Monday shall be accepted.

80.6(7) Change in use of property. If property ceases to be used as qualifying property, no partial exemption shall be allowed as of January 1 of the year following the calendar year in which the change in use takes place or for subsequent years. If property under construction ceases to be constructed for use as qualifying property, no partial exemption shall be allowed as of January 1 of the year following the calendar year in which this cessation occurs. However, such a change in the use of the property does not affect the validity of any partial exemption received for the property while it was used or under construction as qualifying property.

This rule is intended to implement Iowa Code sections 427B.1 to 427B.7.
[ARC 7726B, IAB 4/22/09, effective 5/27/09]

701—80.7(427B) Assessment of computers and industrial machinery and equipment.

80.7(1) Computers and industrial machinery and equipment are to be assessed at 30 percent of the property's net acquisition cost through the 1998 assessment year, 22 percent of the net acquisition cost in the 1999 assessment year, 14 percent of the net acquisition cost in the 2000 assessment year, and 6 percent of the net acquisition cost in the 2001 assessment year. The property will be exempt from tax beginning with the 2002 assessment year.

Computers and industrial machinery and equipment acquired after December 31, 1993, and not previously assessed in Iowa, are exempt from tax.

Computers and industrial machinery and equipment assessed pursuant to Iowa Code section 427B.17 are not eligible to receive the partial property tax exemption under Iowa Code sections 427B.1 to 427B.7.

80.7(2) Computers assessed under Iowa Code section 427A.1(1)"j" are limited to the percent of the computer's net acquisition cost as provided in Iowa Code section 427B.17 regardless of the classification of the real estate in which the computer is located.

80.7(3) For computers and industrial machinery and equipment, the net acquisition cost shall be the acquired cost of the property.

80.7(4) Computation of taxpayer's value. Assume a machine is acquired at a net acquisition cost of \$10,000. Assume also that the actual depreciated value of the machine is \$9,000. The value on which taxes would be levied would be limited to \$3,000 ($\$10,000 \times .30$). This percent will change over the course of the phaseout of the tax.

80.7(5) If all or a portion of the value of property assessed pursuant to Iowa Code section 427B.17 is eligible to receive an exemption from taxation, the amount of value to be exempt shall be subtracted from the net acquisition cost of the property before the taxpayer's value prescribed in Iowa Code section 427B.17 is determined. For example, if property has a net acquisition cost of \$30,000 and is eligible to receive a pollution exemption for \$15,000 of value, the taxable net acquisition cost would be \$15,000 and the taxpayer's value would be \$4,500 ($\$15,000 \times .30$). This percent will change over the course of the phaseout of the tax.

80.7(6) In the event the actual depreciated fair market value of property assessed pursuant to Iowa Code section 427B.17 is less than the valuation determined as a percent of the net acquisition cost of the property as provided in Iowa Code section 427B.17, the taxpayer's assessed value would be equal to the actual depreciated fair market value of the property.

80.7(7) Property ineligible for phaseout and exemption. Computers and industrial machinery and equipment, the taxes on which are used to fund a new jobs training project approved on or before June 30, 1995, do not qualify for the exemption provided in Iowa Code section 427B.17(2) nor the phaseout contained in Iowa Code section 427B.17(3) until the assessment year following the calendar year in which the funding obligations have been retired, refinanced, or refunded. At that time, the property will be subject to phaseout if acquired prior to January 1, 1994, or exempt from tax if acquired after December 31, 1993, and not previously assessed in Iowa. See subrule 80.7(1). The community college must notify the assessor by February 15 of each assessment year if the community college will be using a taxpayer's machinery and equipment taxes to finance a project that year. In any year in which the community college does rely on a taxpayer's machinery and equipment taxes for funding, the phaseout and exemption will not apply to that taxpayer that year.

80.7(8) County replacement.

a. For fiscal years beginning July 1, 1996, and ending June 30, 2001, the county replacement amount shall be equal to the difference between the assessed value of computers and industrial machinery and equipment as of January 1 of the previous calendar year and the assessed value of such property as of January 1, 1994, multiplied by the tax levy rate for that fiscal year. If there is an increase in valuation (the January 1, 1994, value is less), there will be no replacement for that fiscal year.

b. For fiscal years beginning July 1, 2001, and ending June 30, 2004, the county replacement amount shall be equal to the difference between the assessed value of computers and industrial machinery and equipment as of January 1 of the previous calendar year and the assessed value of such property as of January 1, 1994, less, if any, the increase in the assessed value of commercial and industrial property as of January 1 of the previous calendar year and the assessed value of such property as of January 1, 1994, multiplied by the tax levy rate for that fiscal year. If the calculation results in a negative amount, there will be no replacement for that fiscal year.

c. The replacement amounts shall be determined for each taxing district and a replacement claim summarizing the total amounts for the county prepared and submitted by the county auditor to the department of revenue by September 1 of each year. The department shall pay the replacement amount to the county treasurer in September and March of each year.

d. No replacement is allowable if a community college elects not to fund a new jobs training project with a tax on computers and industrial machinery and equipment.

This rule is intended to implement Iowa Code chapter 427B as amended by 2003 Iowa Acts, Senate File 453.

701—80.8(404) Urban revitalization partial exemption.

80.8(1) Area designated. An area containing only one building or structure cannot be designated as an urban revitalization area (1980 O.A.G. 786).

80.8(2) Prior approval. To obtain prior approval for a project, a property owner's proposal must be approved by a specific resolution addressing the proposal and passed by the city council or county board of supervisors. The original ordinance providing for the urban revitalization area does not constitute the granting of prior approval for any particular project. Also, prior approval for a project can only be

granted by resolution of the city council or county board of supervisors; an official or representative of a city or county does not have the independent authority to grant prior approval for a project.

80.8(3) Eligibility for exemption. Improvements made as a result of a project begun more than one year prior to a city's or county's adoption of an urban revitalization ordinance are not eligible to receive the partial exemption even though some of the improvements are added during the time the area was designated as an urban revitalization area. For a project commenced within one year prior to the adoption of an urban revitalization ordinance, the partial exemption can be allowed only for those improvements constructed on or after the effective date of the ordinance. (1982 O.A.G. 358)

80.8(4) Minimum value added. Once the minimum value added required by Iowa Code section 404.3(7) has been assessed, any amount of additional value added to the property in subsequent years is eligible for the partial exemption. The value added subject to partial exemption for the first year for which an exemption is claimed and allowed shall include value added to the property for a previous year even if the value added in the previous year was not by itself sufficient to qualify for the partial exemption.

For example, assume that an urban revitalization project is begun on commercial property having an actual value of \$50,000 as of January 1, 1984. As a result of improvements made during 1984, the actual value of the property as of January 1, 1985, is determined to be \$55,000. Additional improvements made during 1985 increase the actual value of the property to \$70,000 for the 1986 assessment. In this example, no partial exemption can be allowed for 1985 since the value added for that year is less than 15 percent of the actual value of the property prior to construction of the improvements. A partial exemption can be allowed for 1986 and subsequent years for the \$20,000 value added in both 1985 and 1986, providing a valid application for the partial exemption is filed between January 1, 1986, and February 1, 1986, inclusive.

80.8(5) Application for partial exemption.

a. *Prior approval.* If a taxpayer has secured a prior approval resolution from the city council or the county board of supervisors, the partial exemption cannot be obtained until the year in which all value added for the project is first assessed. A partial exemption can be allowed only if an application is filed between January 1 and February 1, inclusive, of the year in which all value added for the project is first assessed. If an application is not filed during that period, no partial exemption can be allowed for that year or any subsequent year. The submission to the city council or the county board of supervisors of a proposal to receive prior approval does not by itself constitute an application for the partial exemption.

For example, assume a city council or county board of supervisors approves a prior approval resolution in April 1984 for a revitalization project to be completed in September 1986. Assuming all construction on the project is completed in 1986, no partial exemption can be allowed until 1987 since that would be the year in which all value added for the project is first assessed. To receive the partial exemption, a valid application would have to be filed between January 1, 1987, and February 1, 1987, inclusive.

b. *No prior approval.* If a project has not received a prior approval resolution, a taxpayer has the option of receiving the partial exemption beginning with any year in which value is added to the property or waiting until all value added to the property is first assessed in its entirety. To secure a partial exemption prior to the completion of the project, an application must be filed between January 1 and February 1, inclusive, in each year for which the exemption is claimed.

For example, assume a revitalization project is begun in June 1984 and completed in September 1985, that no prior approval resolution for the project has been approved, and that a ten-year exemption period has been selected. Assume further that as a result of construction on the project, value is added for the assessment years 1985 and 1986. If an application is filed between January 1, 1985, and February 1, 1985, inclusive, a partial exemption could be allowed for the value added for 1985 beginning with the 1985 assessment and ending with the 1994 assessment. If an application is filed between January 1, 1986, and February 1, 1986, inclusive, a partial exemption could be allowed for the value added for 1986 beginning with the 1986 assessment and ending with the 1995 assessment. The partial exemption allowable for the years 1986 through 1995 would be against the value added for 1986 as a result of improvements made during calendar year 1985.

In the example above, the taxpayer may elect not to file an application for the partial exemption in 1985. In this situation, if an application is filed between January 1, 1986, and February 1, 1986, inclusive, a partial exemption could be allowed for the total value added for 1985 and 1986 and would apply to assessments for the years 1986 through 1995.

c. *Filing deadline.* If February 1 falls on a Saturday or Sunday, an application for the partial exemption may be filed the following Monday. Applications submitted by mail must be postmarked on or before February 1, or on or before the following Monday if February 1 falls on a Saturday or Sunday.

d. *Extended filing deadline.* The exemption is allowable for the total number of years in the exemption schedule if a claim for exemption is filed within two years of the original February 1 filing deadline. The city council or county board of supervisors may by resolution provide that an application for the partial exemption can be filed by February 1 of any assessment year the area is designated as an urban revitalization area. The exemption shall be allowed for the same number of years remaining in the exemption schedule selected as would have been remaining had the claim for exemption been timely filed.

80.8(6) *Value exempt.* The partial exemption allowed for a year in which an application is filed shall apply to the value added and first assessed for that year and any value added to the project and assessed for a preceding year or years and for which a partial exemption had not been received.

80.8(7) *Minimum assessment.* The partial exemption shall apply only to the value added in excess of the actual value of the property as of the year immediately preceding the year in which value added was first assessed. If the actual value of the property is reduced for any year during the period in which the partial exemption applies, any reduction in value resulting from the partial exemption shall not reduce the assessment of the property below its actual value as of January 1 of the assessment year immediately preceding the year in which value added was first assessed. This subrule applies regardless of whether the reduction in actual value is made by the assessor, the board of review, a court order, or an equalization order of the director of revenue.

80.8(8) *Value added.* As used in this rule, the term "value added" means the amount of increase in the actual value of real estate directly attributable to improvements made as part of a revitalization project. The amount of "actual value added" shall be the difference between the assessed value of the property on January 1 of the year value is added to the property and the assessed value of the property the following assessment year. "Value added" does not include any increase in actual (market) value attributable to that portion of the real estate assessed prior to the year in which revitalization improvements are first assessed. The sales price of the property rather than the assessed value of the property may be used in determining the percentage increase required to qualify for exemption if the improvements were begun within one year of the date the property was purchased.

80.8(9) *Repeal of ordinance.* An urban revitalization project which has received proper prior approval shall be eligible to receive the partial exemption following completion of the project even if the city council or county board of supervisors subsequently repeals the urban revitalization ordinance before improvements in the project are first assessed (1980 O.A.G. 639).

This rule is intended to implement Iowa Code chapter 404 as amended by 2002 Iowa Acts, House File 2622.

[ARC 7726B, IAB 4/22/09, effective 5/27/09]

701—80.9(427C,441) Forest and fruit-tree reservations.

80.9(1) *Determination of eligibility for exemption.* Property for which an application for exemption as a forest or fruit-tree reservation has been filed shall be inspected by the assessor or county conservation board. The county board of supervisors designates whether all inspections in the county are to be made by the assessor, including any city assessor, or by the county conservation board. When appropriate, aerial photographs may be used in place of an on-site inspection of the property. The assessment or exemption of the property is to be based upon criteria established by the state conservation commission and findings obtained by the inspection of the property or the examination of aerial photographs of the property.

80.9(2) Application for exemption.

a. An application for exemption must be filed with the appropriate assessor between January 1 and February 1, inclusive, of the assessment year for which the exemption is first claimed. If the inspection of the property is to be made by the county conservation board, the assessor shall forward the application to the board for its recommendation. Once the application has been accepted, the exemption is applicable to the current and subsequent assessment years and no further application shall be required so long as the property remains eligible for the exemption.

b. If February 1 falls on a Saturday or Sunday, an application for exemption may be filed the following Monday.

c. An application shall be considered to be timely filed if postmarked on or before February 1 or the following Monday if February 1 falls on a Saturday or Sunday.

80.9(3) Notification to property owner. If the property is to be inspected by the county conservation board, the board shall make every effort to submit its recommendation to the assessor in sufficient time for the assessor to notify the claimant by April 15. The assessor shall notify the claimant by April 15 of the disposition of the application for exemption. If because of the date on which an application is filed a determination of eligibility for the exemption cannot be made in sufficient time for notification to be made by April 15, the assessor shall assess the property and notify the property owner of the inability to act on the application. The notification shall contain the actual value and classification of the property and a statement of the claimant's right of appeal to the local board of review.

80.9(4) Appeal of eligibility determination. If a property for which a claim for exemption as a forest or fruit-tree reservation is assessed for taxation, the property owner may appeal the assessment to the board of review under Iowa Code section 441.37.

80.9(5) Valuation of property. For each assessment year for which property is exempt as a forest or fruit-tree reservation, the assessor shall determine the actual value and classification that would apply to the property were it assessed for taxation that year. In any year for which the actual value or classification of property so determined is changed, the assessor shall notify the property owner pursuant to Iowa Code sections 441.23, 441.26 and 441.28.

80.9(6) Recapture tax.

a. *Assessment of property.* If the county conservation board or the assessor determines a property has ceased to meet the eligibility criteria established by the state conservation commission, the property shall be assessed for taxation and subject to the recapture tax. The property shall be subject to taxes levied against the assessment made as of January 1 of the calendar year in which the property ceased to qualify for exemption. In addition, the property shall be subject to the tax which would have been levied against the assessment made as of January 1 of each of the five preceding calendar years for which the property received an exemption.

b. *Assessment procedure.* If the determination that a property has ceased to be eligible for exemption is made by the assessor by April 15, the assessor shall notify the property owner of the assessment as of January 1 of the year in which the determination is made in accordance with Iowa Code sections 441.23, 441.26, and 441.28. The assessment of the property for any of the five preceding years and for the current year, if timely notice by April 15 cannot be given, shall be by means of an omitted assessment as provided in Iowa Code section 443.6 (*Talley v. Brown*, 146 Iowa 360, 125 N.W. 243(1910)). Appeal of the omitted assessment may be taken pursuant to Iowa Code sections 443.7 and 443.8.

c. *Computation of tax.* The county auditor shall compute the tax liability for each year for which an assessment has been made pursuant to subrule 80.9(6), paragraph "b." The tax liability shall be the amount of tax that would have been levied against each year's assessment had the property not received the exemption. In computing the tax, the valuations established by the assessor shall be adjusted to reflect any equalization order or assessment limitation percentage applicable to each year's assessment.

d. *Entry on tax list.* The tax liability levied against assessments made as of January 1 of any year preceding the calendar year in which the property ceased to qualify for exemption shall be entered on the tax list for taxes levied against all assessments made as of January 1 of the year immediately preceding the calendar year in which the property ceased to qualify for exemption. However, if those taxes have

already been certified to the county treasurer, the recapture taxes shall be entered on the tax list for taxes levied against assessments made as of January 1 of the year in which the property ceased to qualify for exemption. The tax against the assessment made as of January 1 of the year in which the property ceased to qualify for exemption shall be levied at the time taxes are levied against all assessments made as of that date.

e. *Delinquencies.* Recapture taxes shall not become delinquent until the time when all other unpaid taxes entered on the same tax list become delinquent.

f. *Exceptions to recapture tax.*

(1) Fruit-tree or forest reservations. Property which has received an exemption as a fruit-tree or forest reservation is not subject to the recapture tax if the property is maintained as a fruit-tree or forest reservation for at least five full calendar years following the last calendar year for which the property was exempt as a fruit-tree or forest reservation.

(2) Property which has been owned by the same person or the person's direct descendants or antecedents for at least ten years prior to the time the property ceases to qualify for exemption shall not be subject to the recapture tax.

(3) Property described in subparagraphs 80.9(6) "f"(1) and 80.9(6) "f"(2) is subject to assessment as of January 1 of the calendar year in which the property ceases to qualify for exemption.

This rule is intended to implement Iowa Code chapter 427C as amended by 2001 Iowa Acts, House File 736, and Iowa Code section 441.22.

[ARC 7726B, IAB 4/22/09, effective 5/27/09]

701—80.10(427B) Underground storage tanks.

80.10(1) Authority of city councils and county boards of supervisors. A city council or county board of supervisors may provide by ordinance to grant property tax credits to small business owners for payment of underground storage tank cleanup costs. The ordinance is to designate the period of time over which the credit is to be granted (not to exceed ten years) and the percentage of credit to be granted each year. If the ordinance is repealed, existing credits are to continue through their designated expiration date. A small business means a business with gross receipts of less than \$500,000 per year.

80.10(2) Application for credit. The small business owner is required to file an application for credit with the respective city council or county board of supervisors by September 30 of the year following the calendar year in which cleanup costs were paid and each succeeding year the credit is applicable. The application for credit shall be prescribed by the director of revenue and shall contain, but not be limited to, the small business owner's cleanup costs and gross receipts for the most recent tax year.

80.10(3) Allowance of credit. Credits granted by a county board of supervisors are applicable only to property located outside the corporate limits of a city and credits granted by a city council are only applicable to property located within the corporate limits of the city. The amount of the credit granted cannot exceed the small business owner's cleanup costs nor the amount of city or county taxes paid on the property where the underground storage tank is located for any fiscal year the credit is applicable. Upon approval of the application for credit, the city council or county board of supervisors shall direct its city clerk or county treasurer to reimburse the small business owner in the amount of the designated credit.

This rule is intended to implement Iowa Code sections 427B.20 to 427B.22.

701—80.11(425A) Family farm tax credit.

80.11(1) Eligibility for credit. Generally, the family farm tax credit is only intended to benefit tracts of agricultural land that are owned by certain individuals or enumerated legal entities if the owner or other specified persons are actively engaged in farming.

a. In order for a tract of land to qualify for the family farm tax credit, the following three criteria must be satisfied:

(1) The tract of land must be an "eligible tract of agricultural land" as defined in Iowa Code subsection 425A.2(5). This means the tract must be ten acres or more or contiguous to a tract of more than ten acres and used in good faith for agricultural or horticultural purposes. More than half of

the acres in the tract must be devoted to the production of crops or livestock by a designated person. Contiguous tracts under the same legal ownership and located within the same county are considered one tract. Only tracts of land that are classified as agricultural real estate qualify for the credit.

(2) The tract of land must be owned by:

1. An individual or persons related or formerly related to each other, or
2. A partnership where all the partners are related or formerly related to each other, or
3. A family farm corporation as defined in Iowa Code subsection 9H.1(8), or
4. An authorized farm corporation as defined in Iowa Code subsection 9H.1(3).

The ownership criteria must be met on June 30 of the fiscal year prior to the fiscal year in which the application for credit is filed. For example, the ownership criteria must be met on June 30, 1990, for applications for credit filed in 1990.

(3) A designated person must be “actively engaged in farming” the tract during the fiscal year prior to the fiscal year in which the application for credit is filed. If the tract is owned by an individual or related persons, the designated person who is actively engaged in farming must be an owner of the tract, the owner’s spouse, or the owner’s relative within the third degree of consanguinity or their spouses. This includes the owner’s child, stepchild, grandchild, great-grandchild, parent, grandparent, great-grandparent, brother, sister, uncle, aunt, niece, or nephew or their spouses. The only step relative that may qualify as a designated person is a stepchild. If the owner of the tract is a partnership, the designated person who is actively engaged in farming must be a partner or a partner’s spouse. If the owner of the tract of land is a family farm corporation, the designated person who is actively engaged in farming must be a family member who is a shareholder of the family farm corporation or the shareholder’s spouse. If the owner of the tract of land is an authorized farm corporation, the designated person who is actively engaged in farming must be the shareholder who owns at least 51 percent of the stock of the authorized farm corporation or that shareholder’s spouse.

If the owner is an individual who leases the land to a family farm corporation or partnership, a shareholder of the corporation or a partner of the partnership shall be considered a designated person if the combined stock of the family farm corporation or the combined partnership interest owned by the owner, the owner’s spouse and persons related to the owner within the third degree of consanguinity and their spouses is equal to at least 51 percent of the stock of the family farm corporation or the ownership interest in the partnership.

b. In order to be “actively engaged in farming” the designated person must be personally involved in the production of crops or livestock on the “eligible tract” on a regular, continuous and substantial basis. Personal involvement in the production of crops or livestock includes not only field activities such as soil preparation and testing, planting, fertilizing, spraying, inspecting, cultivating and harvesting but also managerial decision-making activities relating to hybrid selection, crop rotation planning, crop selection, equipment purchases and marketing strategies. Personal involvement in the production of crops or livestock also includes activities pertaining to crop insurance selection, loan selection, and financial record maintenance and preparation. A person performing activities in the capacity of a lessor, whether under a cash or crop-share lease and whether under a written or oral lease, is not actively engaged in farming on the area of the tract covered by the lease.

c. Tracts subject to a federal program pertaining to agricultural land. In lieu of satisfying the “actively engaged in farming” test, a designated person may demonstrate that the person was in general control of the tract which was subject to a federal program pertaining to agricultural land during the prior fiscal year. This alternative test is intended to apply in circumstances where the active farming criteria cannot be met because the land is in the Conservation Reserve Program (commonly referred to as the CRP) or a program substantially similar to the 0/92 option where the tract has been taken out of production.

d. The following examples illustrate family farm tax credit eligibility under various circumstances:

EXAMPLE 1. A and B jointly own land and were both personally involved in the farming operation. They are not related. No credit is allowable because it is a requirement that individual owners be related. If A and B were brothers, the land would qualify for the credit.

EXAMPLE 2. A owns the land and is retired. A leased the land to B, his son. B was personally involved in the farming operation. The land is eligible for the credit even though a lease arrangement existed because the actively engaged in farming requirement can be satisfied through the activities of the owner's spouse, or the owner's relative within the third degree of consanguinity or the relative's spouse. See paragraph "a," subparagraph (3), of this subrule. No credit would be allowable if A and B were not related.

EXAMPLE 3. A owns two contiguous 40-acre tracts. A farmed all of one tract but only 15 acres of the other tract. The other 25 acres of the second tract were leased to a nondesignated person. Both tracts qualify for the credit because contiguous tracts under the same legal ownership are considered one tract and more than half of the total of 80 acres ($40 + 15 = 55$) were farmed by A.

EXAMPLE 4. The land is owned by a partnership in which the partners A, B, C and D are brothers. A and B farm the land but C and D have no involvement in the farming operation. The land is eligible for the credit because it makes no difference what level of involvement each partner had nor does it matter that one or more of the partners were not personally involved in the farming operation. The only requirement for qualifying for the credit is that at least one of the partners or one of the partners' spouses was personally involved in the farming operation. No credit would be allowable if all the partners were not related to each other.

EXAMPLE 5. The land is owned by a family farm corporation in which the stock is owned equally by A, B and C. A and B are brothers but not related to C. All three partners were personally involved in the farming operation. The land qualifies for the credit because it is only a requirement that a family member who is a shareholder in the family farm corporation be involved in the farming operation. The land would qualify for the credit even if B was not involved in the farming operation. However, no credit would be allowable if only C was involved in the farming operation.

EXAMPLE 6. The land is owned by an authorized farm corporation in which 60 percent of the stock is owned by A and 40 percent of the stock is owned by B. Both A and B were personally involved in the farming operation. The credit is allowable as long as the stockholder who owns at least 51 percent of the stock was personally involved in the farming operation. No credit would be allowable if A was not personally involved in the farming operation.

80.11(2) Application for credit. To obtain the credit, the owner must file an application for credit with the assessor by November 1. If the claim for credit is approved, no further filing shall be required provided the ownership and the designated person actively engaged in farming the property remain the same during successive years. A new application for credit shall be required only if the property is sold or the designated person changes. The county board of supervisors shall review all claims and make a determination as to eligibility. The claimant may appeal a decision of the board to district court by giving written notice to the board within 20 days of the board's notice.

80.11(3) Application of credit. The county auditor shall certify to the department of revenue by April 1 the total amount of family farm tax credits due the county. The county auditor shall apply the credit to each eligible tract of land in an amount equal to the school district tax rate which is in excess of \$5.40 multiplied by the taxable value of the eligible tract.

80.11(4) Penalty. The owner shall provide written notice to the assessor if the designated person changes. Failure to do so shall result in the owner's being liable for the amount of the credit plus a penalty equal to 5 percent of the amount of the credit granted.

This rule is intended to implement Iowa Code chapter 425A as amended by 2001 Iowa Acts, House Files 712 and 713.

701—80.12(427) Methane gas conversion property.

80.12(1) Application for exemption. An application for exemption is required to be filed with the appropriate assessing authority by February 1 of each year. The assessed value of the property is to be prorated to reflect the appropriate amount of exemption if the property used to convert the methane gas to energy also uses another fuel. The first year exemption shall be equal to the estimated ratio that the methane gas consumed bears to the total fuel consumed times the assessed value of the property. The exemption for subsequent years shall be based on the actual ratio for the previous year.

80.12(2) Eligibility for exemption. To qualify for exemption, the property must be used either in an operation that decomposes waste and converts it to methane gas or other gases produced as a byproduct of waste decomposition, then collects the gases and converts them to energy; or in an operation that collects waste in order to decompose it to produce methane gas or other gases for conversion into energy. The exemption applies to both property used in connection with, or in conjunction with, a publicly owned sanitary landfill and to property not used in connection with, or in conjunction with, a publicly owned sanitary landfill.

The exemption for property not used in an operation connected with, or in conjunction with, a publicly owned sanitary landfill is limited to property originally placed in operation on or after January 1, 2008, and on or before December 31, 2012, and will be available for the ten-year period following the date the property was originally placed in operation.

This rule is intended to implement Iowa Code section 427.1(29) as amended by 2009 Iowa Acts, Senate File 478, section 224.

[ARC 7726B, IAB 4/22/09, effective 5/27/09; ARC 8358B, IAB 12/2/09, effective 1/6/10]

701—80.13(427B,476B) Wind energy conversion property.

80.13(1) Special valuation allowed by ordinance. A city council or county board of supervisors may provide by ordinance for the special valuation of wind energy conversion property. If the ordinance is repealed, the special valuation applies through the nineteenth assessment year following the first year the property was assessed. Once the ordinance has been repealed and the special valuation is no longer applicable, the property must be valued at market value rather than at 30 percent of net acquisition cost. The special valuation applies to property first assessed on or after the effective date of the ordinance. The local assessor must value the property in accordance with the schedule provided in Iowa Code section 427B.26(2). The property qualifies for special valuation provided the taxpayer files a declaration of intent with the local assessor by February 1 of the assessment year in which the property is first assessed for tax to have the property locally assessed. The property must not be assessed until the assessment year following the year the entire wind plant is completed. A wind plant is completed when it is placed in service.

80.13(2) Special valuation not allowed by ordinance. If a city council or county board of supervisors has not passed an ordinance providing for the special valuation of wind energy conversion property, the property is to be assessed by the department of revenue for a period of 12 years, and the taxes payable on the facilities are to be paid to the department at the same time as regular property taxes. The owner of the facility must file an annual report with the department by May 1 of each year during the 12-year assessment period, and the department must certify the assessed value of the facility by November 1 of each year to the county auditor. The board of supervisors must notify the county treasurer to state on the tax statement that the property taxes are to be paid to the department. The board must also notify the department of those facilities that are required to pay the property taxes to the department. The department must notify the county treasurer of the date the taxes were paid within five business days of receipt, and the notification is authorization for the county treasurer to mark the record as paid in the county system.

This rule is intended to implement Iowa Code section 427B.26 and chapter 476B as amended by 2009 Iowa Acts, Senate File 456, sections 2 and 4.

[ARC 7726B, IAB 4/22/09, effective 5/27/09; ARC 8358B, IAB 12/2/09, effective 1/6/10]

701—80.14(427) Mobile home park storm shelter.

80.14(1) Application for exemption. An application for exemption must be filed with the assessing authority by February 1 of the first year the exemption is requested. Applications for exemption are not required in subsequent years if the property remains eligible for exemption.

80.14(2) Eligibility for exemption. The structure must be located in a mobile home park as defined in Iowa Code section 435.1.

80.14(3) *Valuation exempted.* If the structure is used exclusively as a storm shelter, it shall be fully exempt from taxation. If the structure is not used exclusively as a storm shelter, the exemption shall be limited to 50 percent of the structure's commercial valuation.

This rule is intended to implement Iowa Code Supplement section 427.1(30).

701—80.15(427) Barn and one-room schoolhouse preservation. The increase in value added to a farm structure constructed prior to 1937 or one-room schoolhouse as a result of improvements made is exempt from tax. An application must be filed with the assessor by February 1 of the first assessment year only and the exemption is to continue as long as the structure continues to be used as a barn or in the case of a one-room schoolhouse is not used for dwelling purposes. A "barn" is an agricultural structure that is used for the storage of farm products or feed or the housing of farm animals, poultry, or farm equipment.

This rule is intended to implement Iowa Code sections 427.1(31) and 427.1(32) as amended by 2000 Iowa Acts, House File 2560.

701—80.16(426) Agricultural land tax credit.

80.16(1) *Eligibility for credit.* The credit shall be allowed on land in tracts of ten acres or more, or land of less than ten acres if part of other land of more than ten acres, and used for agricultural or horticultural purposes.

80.16(2) *Application for credit.* No application for credit is required.

80.16(3) *Application of credit.* The county auditor shall certify to the department of revenue by April 1 the total amount of agricultural land tax credits due the county. The county auditor shall apply the credit to each eligible tract of land in an amount equal to the school district tax rate which is in excess of \$5.40 multiplied by the taxable value of the eligible tract.

This rule is intended to implement Iowa Code chapter 426 as amended by 2001 Iowa Acts, House File 713.

701—80.17(427) Indian housing property. Property owned and operated by an Indian housing authority, as defined in 24 CFR 950.102, is exempt from taxation provided the exemption has been approved by the city council or county board of supervisors, whichever is applicable, and a valid claim for exemption has been filed pursuant to Iowa Code section 427.1(14) by February 1.

This rule is intended to implement Iowa Code section 427.1 as amended by 2001 Iowa Acts, Senate File 449.

701—80.18(427) Property used in value-added agricultural product operations. Fixtures used for cooking, refrigeration, or freezing of value-added agricultural products used in value-added agricultural processing or used in direct support of value-added agricultural processing are exempt from tax. Direct support includes storage by public refrigerated warehouses for processors of value-added agricultural products prior to the start of the value-added agricultural processing operation. The exemption does not apply to fixtures used primarily for retail sale or display. If the taxpayer is a retailer, there is a presumption that the fixtures are being used primarily for retail sale or display. The exemption applies only to fixtures that are attached in a manner set forth in Iowa Code section 427A.1(2).

The following definitions apply to this rule:

"Fixture" means property which was originally personal property but which by being physically attached to the realty becomes part of the realty and upon removal does not destroy the property to which it is attached.

"Value-added agricultural processing" means an operation whereby an agricultural product is subjected to some special treatment by artificial or natural means which changes its form, context, or condition, and results in a marketable agricultural product to be sold at retail. These operations are commonly associated with fabricating, compounding, germinating, or manufacturing.

“Value-added agricultural product” means an agricultural product which, through a series of activities or processes, may be sold at a higher price than its original purchase price.

This rule is intended to implement Iowa Code section 427A.1 as amended by 2001 Iowa Acts, House File 715.

701—80.19(427) Dwelling unit property within certain cities. Dwelling unit property owned and managed by a nonprofit community housing development organization that owns and manages more than 150 dwelling units in a city with a population of more than 110,000 is exempt from tax. The organization must be recognized by the state and the federal government pursuant to criteria contained in the HOME program of the federal National Affordable Housing Act of 1990 and must be exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code. The exemption does not extend to dwelling units located outside the city. The organization must file an application for exemption with the assessing authority not later than February 1 of the assessment year. Applications for exemption are not required in successive years if the property continues to qualify for the exemption.

This rule is intended to implement Iowa Code Supplement section 427.1(21A) as amended by 2006 Iowa Acts, House File 2792.

701—80.20(427) Nursing facilities. If the assessor determines that property is being used for a charitable purpose pursuant to Iowa Code section 427.1(8), it shall be fully exempt from tax if it is licensed under Iowa Code section 135C.1(13) by the department of inspections and appeals, exempt from federal income tax under Section 501(c)(3) of the Internal Revenue Code, and a valid application for exemption has been filed with the assessor by February 1 of the assessment year.

This rule is intended to implement Iowa Code Supplement section 427.1(14).

701—80.21(368) Annexation of property by a city. A city council may provide a partial tax exemption from city taxes against annexed property for a period of ten years. The exemption schedule is contained in Iowa Code Supplement section 368.11(3) “m.” All property owners included in the annexed area must receive the exemption if the city elects to allow the exemption.

This rule is intended to implement Iowa Code Supplement section 368.11(3) “m” as amended by 2006 Iowa Acts, House File 2794.

701—80.22(427) Port authority. The property of a port authority created pursuant to Iowa Code Supplement section 28J.2 when devoted to public use and not held for pecuniary profit is exempt from taxation.

This rule is intended to implement Iowa Code Supplement section 427.1(34).

701—80.23(427A) Concrete batch plants and hot mix asphalt facilities. A concrete batch plant includes the machinery, equipment, and fixtures used at a concrete mixing facility to process cement dry additive and other raw materials into concrete. A hot mix asphalt facility is any facility used to manufacture hot mix asphalt by heating and drying aggregate and mixing it with asphalt cements. These facilities shall not be assessed and taxed as real property regardless of the property’s attachment to real estate. The land on which the facilities are located is taxable.

This rule is intended to implement Iowa Code section 427A.1 as amended by 2006 Iowa Acts, Senate File 2391.

701—80.24(427) Airport property. Property owned by a city or county at an airport and leased to a fixed base operator providing aeronautical services to the public is exempt from taxation.

This rule is intended to implement Iowa Code section 427.1(2) as amended by 2006 Iowa Acts, House File 2794.

701—80.25(427A) Car wash equipment. Property that is equipment used for the washing, waxing, drying, or vacuuming of motor vehicles and point-of-sale equipment necessary for the purchase of car wash services shall not be assessed and taxed as real property.

This rule is intended to implement Iowa Code section 427A.1 as amended by 2006 Iowa Acts, House File 2794.

701—80.26(427) Web search portal and data center business property. This exemption includes computers and equipment necessary for the maintenance and operation of a web search portal or data center business, including cooling systems, cooling towers, and other temperature control infrastructure; power infrastructure for transformation, distribution, or management of electricity, including but not limited to exterior dedicated business-owned substations, and power distribution systems which are not subject to assessment under Iowa Code chapter 437A; back-up power generation systems, battery systems, and related infrastructure; and racking systems, cabling, and trays. The exemption does not apply to land, buildings, and improvements. The web search portal or data center business must meet the requirements contained in Iowa Code section 423.3, subsection 92, subsection 93, or subsection 95, for the exemption to be allowable. The owner of the property must file a claim for exemption with the assessor by February 1 of the first year the exemption is claimed. Claims for exemption in successive years will be required only for property additions.

This rule is intended to implement Iowa Code sections 427.1(35) and 427.1(36) and section 427.1 as amended by 2009 Iowa Acts, Senate File 478, section 200.

[ARC 8358B, IAB 12/2/09, effective 1/6/10]

701—80.27(427) Privately owned libraries and art galleries. Claims for exemption for libraries and art galleries owned and kept by private individuals, associations, or corporations for public use and not for private profit must be filed with the local assessor by February 1 of the first year the exemption is requested. Once the exemption is granted, the exemption shall continue to be granted for subsequent assessment years without further filing of claims as long as the property continues to be used as a library or art gallery for public use and not for private profit.

This rule is intended to implement Iowa Code Supplement section 427.1(7) as amended by 2008 Iowa Acts, Senate File 2400.

701—80.28(404B) Disaster revitalization area. The governing body of a city or county may, by ordinance, designate an area of the city or county a disaster revitalization area if that area is within a county or portion of a county in which the governor has proclaimed a disaster emergency or the United States president has declared a major disaster. All real property within a disaster revitalization area is eligible to receive a 100 percent exemption from taxation on the increase in assessed value of the property if the increase in assessed value is attributable to revitalization of the property occurring between May 25, 2008, and December 31, 2013. The amount of increase in value shall be the difference between the assessed value of the property on January 1, 2007, and the assessed value of the property on January 1, 2010, and subsequent assessment years. The exemption is for a period not to exceed five years, starting with an assessment year beginning on or after January 1, 2010. A city or county may adopt a tax exemption percentage different from the 100 percent exemption. The different percentage adopted must not allow a greater exemption, but may allow a smaller exemption. If the homeowner elects to take the exemption provided in this rule, the homeowner may not claim any other value-added exemption. An application must be filed for each revitalization project resulting in increased assessed value for which an exemption is claimed. The application for exemption must be filed by the owner of the property with the local assessor by February 1 of the first assessment year for which the exemption is requested. After the tax exemption is granted, the exemption will continue for succeeding years without the taxpayer's having to file an application for exemption unless additional revitalization projects occur on the property. The ordinance must expire or be repealed no later than December 31, 2016.

This rule is intended to implement 2009 Iowa Acts, Senate File 457, sections 23 to 30.
[ARC 8358B, IAB 12/2/09, effective 1/6/10]

701—80.29(427) Geothermal heating and cooling systems installed on property classified as residential.

80.29(1) *In general.* An exemption from property tax shall be allowed for any value added to property by any new construction or refitted installation of a geothermal heating or cooling system if the geothermal heating or cooling system is constructed or installed on or after July 1, 2012, on property classified as residential. The exemption shall also be allowed for a residential dwelling on agricultural land. The exemption does not have to be claimed the year subsequent to the year the geothermal system is constructed or installed. However, every individual claiming the exemption under this rule shall file with the appropriate assessor, not later than February 1 of the year for which the exemption is requested, an application for exemption. The assessor shall then allow or disallow the exemption.

Upon the filing and allowance of the claim, the claim shall be allowed on the property for ten consecutive years without further filing as long as the property continues to be classified as residential. However, if the property ceases to be classified as residential or if the geothermal heating and cooling system ceases to exist before the ten years have expired, no exemption is allowed for the year in which the change in classification took place or for any subsequent years. The exemption amount shall remain fixed at the same amount that was allowed in the first year the exemption was allowed.

The property tax exemption applies to any value added by the addition of mechanical, electrical, plumbing, ductwork, or other equipment, labor, and expenses included in or required for the construction or installation of the geothermal system that would not have been included in the home if not for the installation of the geothermal heating and cooling system. Additionally, the proportionate value of any well field associated with the system and attributable to the owner is exempt.

80.29(2) *Calculation of value added.* As used in this rule, the terms “any value added” and “value added” mean the amount of increase in the actual assessed value of the property that is directly attributable to the new construction or refit installation of a geothermal heating or cooling system as of the first year for which the geothermal heating and cooling system is actually assessed. “Any value added” does not include speculative or indirect increases in value which, for example, may be attributable to reductions in energy consumption or reductions in the negative impact to the environment. “Any value added” does not include changes in value which are attributable to general housing market fluctuations. Cost of the new construction or refit installation of the geothermal heating or cooling system is not determinative of the value added to a property. In the event the exemption is not filed in the same year the geothermal heating and cooling system is first assessed, the amount of the exemption, upon filing, shall be the same amount as it would have been had the exemption been filed in the year the geothermal heating and cooling system was first assessed.

In the case of new construction and refit installation of a geothermal heating or cooling system, the value added is the value that would not have been included in the home if not for the construction or refit installation of the geothermal heating and cooling system. That is, the value of mechanical, electrical, plumbing, ductwork, or other equipment, labor, and expenses that would have been included with a standard heating and cooling system shall not be considered in calculating the value added. To measure the value added by a geothermal heating and cooling system, the assessor shall compute the difference between the assessed value of the residential property if the property were outfitted with a non-geothermal (standard) heating and cooling system and the assessed value of the property outfitted with the geothermal system. In the case that the new construction or refit installation takes more than one year, the assessor shall make the comparison in the year the new construction or refit installation is completed.

EXAMPLE A: Mrs. Smith wants to upgrade her current standard heating and cooling system in her home with a geothermal system. The geothermal system installation is completed on August 1, 2012. On January 22, 2013, Mrs. Smith files a claim for exemption for the value added to her property that is directly attributable to the refit installation of the geothermal system. To determine the value added that is directly attributable to the geothermal system, the assessor shall compare the value of the home as though it was outfitted with the standard heating and cooling system which was upgraded with the value of the home outfitted with the geothermal heating and cooling system; the difference between the two values is the exemption amount. That exemption amount will remain fixed for the next ten years,

until Mrs. Smith's home ceases to be classified as residential, or until the geothermal system ceases to exist, whichever occurs first. For years subsequent to 2013, any increase in the value of Mrs. Smith's home beyond the assessed value of the home outfitted with the geothermal heating and cooling system is not attributable to the geothermal system and is subject to property tax. The property tax exemption amount for the geothermal heating and cooling system will remain the same as the first year for which the exemption was received even if the assessed value of Mrs. Smith's home drops.

EXAMPLE B: Same facts as Example A, except that on January 1 of year seven, Mrs. Smith's home is reclassified as commercial property. No property tax exemption is allowed for the value added by the geothermal system for year seven or any subsequent years.

EXAMPLE C: Mr. Larson is building a new home and plans to construct a new geothermal system in lieu of a standard heating and cooling system. The home and geothermal system are completed on October 24, 2012. To determine the value added that is directly attributable to the installation of the geothermal system, the assessor shall assess the home as though it had been outfitted with a standard heating and cooling system and compare that value with the assessed value of the home outfitted with the geothermal heating and cooling system. The difference between the two amounts is the value added that is directly attributable to the geothermal system and is the exemption amount. In 2013, the assessed value of Mr. Larson's home with a standard heating and cooling system is \$200,000. The assessed value of Mr. Larson's home with the geothermal system is \$210,000. Therefore, the value added to the property that is directly attributable to the geothermal system is \$10,000. Mr. Larson may claim an exemption amount of \$10,000 starting in assessment year 2013. Mr. Larson does not lose the exemption if he fails to claim the exemption by February 1, 2013; he may claim the exemption in any year subsequent to the completion of the construction of the home. An exemption amount of \$10,000 will continue for ten consecutive years after the exemption is claimed, until the property ceases to be classified as residential, or until the geothermal system ceases to exist, whichever occurs first.

EXAMPLE D: Same facts as Example C, except that Mr. Larson claims the exemption in 2019. The exemption amount in 2019, and the nine subsequent years, is the value added in the year the geothermal heating and cooling system was first assessed; here, \$10,000 in 2013. The value added and exemption amount is not calculated in the year Mr. Larson claims the exemption. The \$10,000 exemption will then continue until 2028, until the property ceases to be classified as residential or until the geothermal system ceases to exist, whichever occurs first.

This rule is intended to implement Iowa Code section 427.1.
[ARC 0467C, IAB 11/28/12, effective 1/2/13]

701—80.30(426C) Business property tax credit.

80.30(1) Definitions. For purposes of this rule, the following definitions shall govern.

"Contiguous parcels" means any of the following:

1. Parcels that share a common boundary. There is a rebuttable presumption that parcels separated by a roadway, alley, or waterway do not share a common boundary. The burden of proof shall be upon the property owners to provide evidence or verification that parcels separated by a roadway, alley, or waterway share a common boundary. Parcels owned to the middle of a road, waterway, alley, or railway in fee simple title are considered to share a common boundary.

2. Parcels within the same building or structure regardless of whether the parcels share a common boundary.

3. Permanent improvements to the land that are situated on one or more parcels of land that are assessed and taxed separately from the permanent improvements if the parcels of land upon which the permanent improvements are situated share a common boundary. This arrangement is more commonly referred to as buildings or permanent improvements that are taxed as buildings upon leased land.

"Dwelling unit" means an apartment, group of rooms, or single room that is occupied as separate living quarters, or, if vacant, is intended for occupancy as separate living quarters, in which a tenant can live and sleep separately from any other persons in the building. A vacant dwelling unit that does not have active utility services is not considered to be intended for occupancy. Dwelling units do not include hotels, motels, inns, or other buildings where rooms are rented for less than one month.

“Parcel” means each separate item shown on the tax list, manufactured or mobile home tax list, schedule of assessment, or schedule of rate change or charge. For fiscal years beginning on or after January 1, 2016, “parcel” also means each portion of a parcel assigned a distinct classification as set forth in rule 701—71.1(405,427A,428,441,499B).

“Person” means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

“Property unit” means contiguous parcels all of which are located within the same county, with the same property tax classification, are owned by the same person, and are operated by that person for a common use and purpose.

80.30(2) In general. Except as provided in subrule 80.30(8), for property taxes due and payable in fiscal years beginning on and after July 1, 2014, one business property tax credit is available to each parcel classified and taxed as commercial property, industrial property, or railway property unless the parcel is part of a property unit for which a business property tax credit is claimed. For property taxes due and payable in fiscal years beginning on and after July 1, 2014, one business property tax credit is available to each property unit made up of property assessed as commercial property, industrial property, or railway property.

80.30(3) Application for credit.

a. Notwithstanding paragraph 80.30(3) “*b*,” for a business property tax credit against property taxes due and payable during the fiscal year beginning July 1, 2014, the claim for credit shall be received in the office of the applicable city or county assessor not later than January 15, 2014.

b. For a business property tax credit against property taxes due and payable during fiscal years beginning on and after July 1, 2015, and before July 1, 2017, no business property tax credit shall be allowed unless the first application for business property tax credit is received in the office of the applicable city or county assessor on or before March 15 preceding the fiscal year during which the credit first is claimed. For example, the first application for a business property tax credit against property taxes due and payable during the fiscal year beginning July 1, 2016, must be received in the office of the applicable city or county assessor on or before March 15, 2016.

c. For a business property tax credit against property taxes due and payable during fiscal years beginning on or after July 1, 2017, no business property tax credit shall be allowed unless the first application for the business property tax credit is received in the office of the applicable city or county assessor on or before July 1 preceding the fiscal year during which the credit is first claimed. For example, the first application for a business property tax credit against property taxes due and payable during the fiscal year beginning July 1, 2017, must be received in the office of the applicable city or county assessor on or before July 1, 2016.

d. A claim filed after the filing deadlines set forth in paragraphs 80.30(3) “*a*,” 80.30(3) “*b*,” and 80.30(3) “*c*” will be applied against property taxes due and payable for the following year.

e. Once filed, the claim for credit is applicable to subsequent years, and no further filing shall be required as long as the parcel or property unit satisfies the requirements of the credit. If the parcel or property unit ceases to qualify for the credit, the owner shall provide written notice to the assessor by the date for filing claims in paragraphs 80.30(3) “*b*” and 80.30(3) “*c*,” as applicable, following the date on which the parcel or property unit ceases to qualify for the credit. When all or a portion of a parcel or property unit that is allowed a credit is sold or transferred or ownership otherwise changes, the buyer, transferee, or new owner who wishes to receive the credit shall refile the claim for credit. When a portion of a parcel or property unit that is allowed a credit is sold or transferred or ownership otherwise changes, the owner of the portion of the parcel or property unit for which ownership did not change shall refile the claim for credit. A transfer entered in the auditor’s transfer books under 2015 Iowa Code section 558.57 shall be *prima facie* evidence of a change in ownership of the parcel or property unit. The burden shall be on the claimant to prove that a transfer entered in the auditor’s transfer books did not result in a change in ownership. The deadline for refiling the claim shall be the same as the deadline for filing the claim.

f. In the event the application deadline falls on either a Saturday or Sunday, applications for the business property tax credit may be received in the office of the applicable city or county assessor the following Monday.

g. In the event the application deadline falls on a state holiday, applications for the business property tax credit may be received in the office of the applicable city or county assessor the following business day.

h. Table 1 shows the applicable claim receipt deadlines and the taxes toward which the claim applies.

Table 1

	Assessment Year 2013	Assessment Year 2014	Assessment Year 2015	Assessment Year 2016	Assessment Year 2017
Claim Receipt Deadline	January 15, 2014	March 16, 2015 ¹	March 15, 2016	July 1, 2016	July 3, 2017 ²
For Taxes Payable	September 2014 & March 2015	September 2015 & March 2016	September 2016 & March 2017	September 2017 & March 2018	September 2018 & March 2019

¹ March 15, 2015, falls on a Sunday.

² July 1, 2017, falls on a Saturday.

i. An assessor may not refuse to accept an application for business property tax credit. Assessors shall remit claims for credit to the county auditor with a recommendation to allow or disallow the claim. If it is the opinion of the assessor that a business property tax credit should not be allowed, the assessor's recommendation to the county auditor shall include in writing the reasons for recommending disallowance.

j. Upon receipt from the assessor of the claims and recommendations, the county auditor shall forward the claims to the board of supervisors. The board shall allow or disallow the claims. If the board disallows a claim for credit, the board shall send written notice by mail to the claimant at the claimant's last-known address. The written notice shall state the reasons for disallowing the claim for the credit. Notwithstanding the foregoing, the board is not required to send notice that a claim for credit is disallowed if the claimant voluntarily withdraws the claim.

80.30(4) Appeals.

a. *Initial appeal.* Any person whose claim is disallowed by the board of supervisors may appeal that action to the district court of the county in which the parcel or property unit is located. Notice of appeal must be given to the county auditor within 20 days from the date on which the notification of disallowance was mailed by the board of supervisors.

b. *Reversal.* If the board of supervisors' disallowance of the claim for credit is reversed upon appeal, the credit shall be allowed on the applicable parcel or property unit. The department of revenue, the county auditor, and the county treasurer shall provide the credit and change their books and records accordingly. If the claimant has paid one or both of the installments of the tax payable in the year or years in question, the county treasurer shall remit the amount of the credit to the claimant and submit a request to the department for reimbursement from the business property tax credit fund. The amounts payable as credits awarded on appeal shall be allocated and paid from the balance remaining in the business property tax credit fund established in Iowa Code section 426C.2.

80.30(5) Audit.

a. *Authority and period.* The department of revenue may audit any credit provided under Iowa Code section 426C.4. However, the department shall not adjust a credit allowed more than three years from October 31 of the year in which the claim for credit was filed.

b. *Recalculation or denial.* If an audit reveals that the amount of the credit was incorrectly calculated or that the credit should not have been allowed, the department shall recalculate the credit, if applicable, and notify both the claimant and the county auditor of the recalculation and the reasons it is being made.

c. *Recapture.* If the credit has already been paid, the department shall notify the claimant, the county treasurer, and the applicable assessor of the recalculation or denial of the credit. If the claimant still owns the parcel or property unit for which the credit was claimed, the county treasurer shall collect

the tax owed in the same manner as other due and payable property taxes are collected. If the claimant no longer owns the parcel or property unit for which the credit was claimed, the department may recover the amount of tax owed by filing a lien under Iowa Code section 422.26 or by issuing a jeopardy assessment under Iowa Code section 422.30. Upon collection, the amount of the erroneously allowed credit shall be deposited in the business property tax credit fund.

d. Appeal of recalculation or denial. The claimant or the board of supervisors may appeal any decision of the department to the director of revenue. The director shall review the department's decision within 30 days from the date of the notice of recalculation or denial provided to the claimant and county auditor. The director shall grant a hearing, at which the director shall determine the correct credit, if any. The director shall notify the claimant, board of supervisors, county auditor, and county treasurer of the decision by mail. The claimant or the board of supervisors may seek judicial review of the director's decision pursuant to the provisions of Iowa Code chapter 17A.

e. False claim and penalty. Any person who makes a false claim for the purpose of obtaining a credit or who knowingly receives the credit without being legally entitled to it is guilty of a fraudulent practice. The claim for a credit for such a person shall be disallowed, and the director shall send a notice of disallowance. If the credit has been paid, the amount shall be recovered in the manner described in paragraph 80.30(5) "c."

80.30(6) Property eligible for credit.

a. Eligible parcels and property units.

Parcels and property units classified and taxed as commercial property, industrial property, or railway property under Iowa Code chapter 434 are eligible for the business property tax credit for the unit. The assessor shall keep a permanent file of all eligible property units in the assessor's jurisdiction. Each assessment year, the assessor shall update the file based on transfers of property from the auditor's transfer book.

b. Taxable status of parcels and property units.

(1) Property that is fully exempt from property tax is not eligible to receive the business property tax credit.

(2) An application for the business property tax credit shall be denied if a parcel or parcels are fully exempt from property tax at the time the application for credit is filed with the city or county assessor.

(3) Determination of eligibility of parcel or property unit based on taxable status.

1. The taxable status of the property on July 1 of the assessment year shall determine the eligibility of the parcel or property unit to receive the credit. If the parcel or property unit becomes exempt from property tax prior to July 1 of the assessment year, the credit shall be disallowed. If the parcel or property unit was taxable on July 1 of the assessment year, but becomes exempt after July 1, the parcel or property unit may receive the credit only in the prorated amount that corresponds to the amount of tax paid in that fiscal year, if any.

2. The assessor shall give notice to the auditor of partial credits allowed due to a change in taxable status of a parcel or property unit. The auditor shall update the auditor's file and give notice on forms prescribed by the department to the department of revenue of partial credits allowed due to a change in taxable status of a parcel or property unit.

(4) The owner of any parcel or property unit that has been granted the credit but becomes exempt from property tax prior to July 1 of the assessment year shall provide written notice to the city or county assessor by the date for filing claims.

(5) The taxable portion of any partially exempted property shall receive the credit only in an amount applicable to the taxable portion.

80.30(7) Common use and purpose. Whether parcels are operated for a common use and purpose depends on all the facts and circumstances of each set of parcels. The following nonexclusive examples illustrate common use and purpose.

EXAMPLE 1. ABC Properties is in the business of building, owning, leasing, and managing large retail spaces. ABC builds and owns a large shopping mall that covers contiguous parcels, all of which are located within the same county. Although the retail establishments that lease retail space in the shopping mall offer different products and services, the shopping mall is owned and operated by ABC

for the common use and purpose of being a lessor. Thus, the parcels that make up the mall are eligible as a single property unit.

EXAMPLE 2. John's LLC owns four commercial parcels located within the same building, and they are, therefore, contiguous as defined in subrule 80.30(1). John's owns and operates two parcels as a beauty parlor. John's rents the other two parcels to a bicycle shop. The four parcels, together, do not have a common use and purpose. However, the two parcels used by John's as an owner-operator of the beauty parlor business are operated with the common use and purpose of providing beauty services and are eligible as one property unit. The two parcels that John's rents to the bicycle shop are operated with the common use and purpose of being rented out for profit as a landlord and are eligible as a second property unit.

80.30(8) *Property ineligible for credit.* The following are not eligible to receive a business property tax credit or to be part of a property unit that receives the business property tax credit:

a. Property that is rented or leased to low-income individuals and families as authorized by Section 42 of the Internal Revenue Code, as amended, and that is subject to assessment procedures relating to Section 42 property under Iowa Code section 441.21, subsection 2, for the applicable assessment year.

b. Property classified as multiresidential under 701—subrule 71.1(5).

80.30(9) *Application of credit.*

a. A person may claim and receive one business property tax credit for each eligible parcel unless the parcel is part of a property unit for which a credit is claimed.

b. A person may claim and receive one business property tax credit for each property unit. A claim for credit on a parcel that is part of a property unit constitutes a claim for credit on the entire unit.

c. A credit approved for a property unit shall be allocated to the several parcels within the property unit in the proportion that each parcel's total amount of property taxes due and payable bears to the total amount of property taxes due and payable on the property unit.

d. The classification of property used to determine eligibility for the business property tax credit shall be the classification of the property for the assessment year used to calculate the taxes due and payable in the fiscal year for which the credit is claimed.

e. Once filed and allowed, the credit shall continue to be allowed on the parcel or property unit for successive years without further filing of an application unless the parcel or property unit ceases to qualify for the credit under Iowa Code chapter 426C.

f. When all or a portion of a parcel or property unit is sold or transferred or ownership otherwise changes, the new owner must reapply for the credit. The owner of the portion of a parcel or property unit that did not change shall also reapply for the credit. When the composition of a property unit changes as the result of a sale, transfer, or change in ownership, the owner of the property unit must reapply for the credit on the entire unit.

g. The following noninclusive examples illustrate the application of the business property tax credit under various circumstances.

EXAMPLE 1. On February 13, 2015, Mr. Jones files with his county assessor an application for the business property tax credit for taxes due and payable in the fiscal year beginning July 1, 2015. The property that Mr. Jones claims is eligible for the credit is a single parcel that is classified as commercial property. The property is not rented or leased to low-income individuals and families as authorized by Section 42 of the Internal Revenue Code. The property is not a mobile home park, manufactured home community, land-leased community, or assisted living facility nor is it primarily used or intended for human habitation with three or more separate dwelling units. Therefore, Mr. Jones' application should be approved as a credit against the taxes due and payable in the fiscal year beginning July 1, 2015.

EXAMPLE 2. Same facts as in EXAMPLE 1, but Mr. Jones files his application on July 3, 2016. Mr. Jones' application should be approved, but the credit will be against taxes due and payable in the fiscal year beginning July 1, 2018.

EXAMPLE 3. Davidoff LLC owns two parcels of land, both of which are classified as industrial property. Each parcel is being operated for a common use and purpose. The parcels are separated by a road. If Davidoff owns the property parcels to the middle of the road in fee simple title, the parcels are considered contiguous and would qualify as a unit, and Davidoff would be eligible for a single business

property tax credit. If a third party, including the state, a municipality, or other government entity, owned the road in fee simple title, the parcels would not be considered contiguous, and Davidoff would be eligible for two separate business property tax credits.

EXAMPLE 4. In Madison County, Iowa, there is a wind farm that consists of four wind turbines that are taxed separately as permanent improvements to the land. All the wind turbines are owned by Windy LLC. The turbines sit upon four parcels of land that share a common boundary. Each parcel of land is owned by a different owner. The four wind turbines are contiguous because the wind turbines are taxed as permanent improvements to the land, they are situated upon four parcels of land that share a common boundary, and the land is assessed and taxed separately from the wind turbines. The four wind turbines qualify as a property unit and would be eligible for one business property tax credit.

80.30(10) Calculation of credit.

a. *Auditor certification.* On or before June 30 of each year, the county auditor shall certify to the department the following:

- (1) The claims allowed by the board of supervisors in that county;
- (2) The actual value, prior to the imposition of any applicable assessment limitations, of the parcels and property units for which credits were allowed in that county; and
- (3) The information applicable to the location of the parcels and property units.

b. *Department process and methodology.*

(1) Department of management information. The department shall obtain from the department of management tax district and applicable consolidated rates. The department shall calculate the credit using the estimated consolidated levy rates obtained from the department of management. The department shall modify the credit accordingly upon certification by the auditor of the actual consolidated levy rates.

(2) Initial amount of actual value. For each parcel or property unit certified by the county auditor, the department shall calculate, for each fiscal year, an initial amount of actual value to use for determining the amount of credit for each such parcel or property unit that provides the maximum possible credit according to the credit formula and limitations prescribed by Iowa Code section 426C.3(5). The department shall also calculate the initial amount of actual value so as to provide that the total dollar amount of credits against the taxes due and payable in the fiscal year equals 98 percent of the moneys in the business property tax credit fund following the deposit of the appropriation for the fiscal year, including any interest or earnings that have been credited to the fund.

(3) Credit amount. The amount of the credit shall be calculated as follows:

Step 1. Determine the lesser of the actual value calculated in paragraph 80.30(10) "a" and the initial value calculated in subparagraph 80.30(10) "b"(2).

Step 2. Multiply the amount determined in Step 1 by the difference between the assessment limitation percentage applicable to the parcel or property unit under Iowa Code section 441.21(5) and the assessment limitation applicable to residential property under Iowa Code section 441.21(4). For purposes of this calculation, such difference shall be stated as a percentage.

Step 3. Divide the product of Steps 1 and 2 by \$1000.

Step 4. Multiply the quotient obtained in Step 3 by the consolidated levy rate or average consolidated levy rate per \$1000 of taxable value applicable to the parcel or property unit for the fiscal year for which the credit is claimed as certified by the county auditor under Iowa Code section 426C.3(5).

(4) Allocation to parcels. The business property tax credit approved for a property unit shall be allocated to the several parcels within the property unit in the proportion that each parcel's total amount of property taxes due and payable bears to the total amount of property taxes due and payable on the property unit.

(5) Limitation on information. Notwithstanding the foregoing, the department's calculations shall be based upon the certified information it has received by June 30 of each fiscal year. Any information, whether certified or uncertified, received after June 30 of each fiscal year will not be included in the department's credit calculations for the applicable fiscal year.

This rule is intended to implement Iowa Code chapter 426C.

[ARC 1382C, IAB 3/19/14, effective 4/23/14; ARC 2508C, IAB 4/27/16, effective 6/1/16]

701—80.31 to 80.48 Reserved.

701—80.49(441) Commercial and industrial property tax replacement—county replacement claims. For each fiscal year beginning on or after July 1, 2014, the department of revenue shall pay to the county treasurer an amount equal to the amount of the commercial and industrial property tax replacement claims in the county. For fiscal years beginning on or after July 1, 2017, if an amount appropriated for a fiscal year is insufficient to pay all replacement claims, the director of revenue shall prorate the payment of replacement claims to the county treasurers and shall notify the county auditors of the pro rata percentage on or before September 30.

80.49(1) For each taxing district, the commercial and industrial property tax replacement claim amount is determined by multiplying the amounts calculated in 80.49(1) "a" and "b" and dividing the resultant amount by \$1,000.

a. The difference between the assessed valuation of all commercial property and industrial property for the assessment year used to calculate taxes which are due and payable in the applicable fiscal year and the actual value of all commercial property and industrial property that is subject to assessment and taxation for the same assessment year; and

b. The tax levy rate per \$1,000 of assessed value of each taxing district for that fiscal year.

80.49(2) Reporting requirements.

a. On or before July 1 of each fiscal year beginning on or after July 1, 2014, the assessor shall report to the county auditor the total actual value of all commercial and industrial property in the county that is subject to assessment and taxation for the assessment year used to calculate the taxes due and payable in that fiscal year.

b. On or before September 1 of each fiscal year beginning on or after July 1, 2014, the county auditor shall, based upon the information in the report required to be provided in paragraph "a" of this subrule, prepare and submit a statement to the department of revenue which lists, for each taxing district in the county, the information required in 80.49(1).

c. The department shall pay the replacement amount to the county treasurer in two installments in September and March of each year.

d. The county treasurer shall apportion the replacement claim payments among the eligible taxing districts in the county.

[ARC 1332C, IAB 2/19/14, effective 3/26/14]

701—80.50(427,441) Responsibility of local assessors.

80.50(1) The assessor shall determine the taxable status of all property. If an application for exemption is required to be filed, the assessor shall consider the information contained in the application in determining the taxable status of the property. The assessor may also request from any property owner or claimant any additional information necessary to the determination of the taxable status of the property. For property subject to Iowa Code subsection 427.1(14), the assessor shall not base the determination of the taxable status of property solely on the statement of objects or purposes of the organization, institution, or society seeking an exemption. The use of the property rather than the objects or purposes of the organization, institution, or society shall be the controlling factor in determining the taxable status of property. (*Evangelical Lutheran G.S. Society v. Board of Review of Des Moines*, 200 N.W.2d 509; *Northwest Community Hospital v. Board of Review of Des Moines*, 229 N.W.2d 738.)

80.50(2) In determining the taxable status of property, the assessor shall construe the appropriate exemption statute and these rules in a strict manner. If there exists any doubt as to the taxable status of property, the property shall be subject to taxation. The burden shall be upon the claimant to show that the exemption should be granted. (*Evangelical Lutheran G.S. Society v. Board of Review of Des Moines*, 200 N.W.2d 509; *Southside Church of Christ of Des Moines v. Des Moines Board of Review*, 243 N.W.2d 650; *Aerie 1287, Fraternal Order of Eagles v. Holland*, 226 N.W.2d 22.)

80.50(3) If the assessor determines that all or part of a property is subject to taxation, the assessor shall notify the taxpayer by the issuance of an assessment roll as provided in Iowa Code sections 441.26

and 441.27. If the assessor determines that property has been erroneously exempted from taxation, the assessor shall revoke the exemption for the current assessment year but not for prior assessment years.

80.50(4) The assessor's determination of the taxable status of property may be appealed to the local board of review pursuant to Iowa Code section 441.37.

This rule is intended to implement Iowa Code chapter 427 and sections 441.17(11), 441.26, and 441.27.

[ARC 7726B, IAB 4/22/09, effective 5/27/09]

701—80.51(441) Responsibility of local boards of review.

80.51(1) If the board of review determines that property has been erroneously exempted from taxation, the board of review shall revoke the exemption for the current assessment year, but not for prior assessment years, and shall give notice to the taxpayer as provided in Iowa Code section 441.36.

80.51(2) If the board of review acts in response to a protest arising from an assessor's determination of the taxable status of property, the board of review shall notify the taxpayer of its disposition of the protest in accordance with the provisions of Iowa Code section 441.37.

This rule is intended to implement Iowa Code sections 441.35, 441.36, and 441.37.

[ARC 7726B, IAB 4/22/09, effective 5/27/09]

701—80.52(427) Responsibility of director of revenue. The director may revoke or modify an exemption on property if the exemption is found to have been erroneously granted by the local taxing officials. Any taxpayer or taxing district may request that the director revoke or modify an exemption, or the director may on the director's own determination revoke or modify an exemption. The director may revoke or modify an exemption for the tax year commencing in the tax year in which the request is made to the director or for the tax year commencing in the tax year in which the director's own motion is filed. The director shall hold a hearing on the appropriateness of the exemption prior to issuing an order for revocation or modification. The director's order to revoke or modify an exemption may be appealed in accordance with Iowa Code chapter 17A or in the district court of the county in which the property is located.

This rule is intended to implement Iowa Code section 427.1(16).

[ARC 7726B, IAB 4/22/09, effective 5/27/09]

701—80.53(427) Application for exemption.

80.53(1) Each society or organization seeking an exemption under Iowa Code subsection 427.1(5), 427.1(8), 427.1(21), or 427.1(33) shall file with the appropriate assessor a statement containing the following information:

- a. The legal description of the property for which an exemption is requested.
- b. The use of all portions of the property, including the percentage of space not used for the appropriate objects of the society or organization and the percentage of time such space is so utilized.
- c. A financial statement showing the income derived and the expenses incurred in the operation of the property.
- d. The name of the organization seeking the exemption.
- e. If the exemption is sought under Iowa Code subsection 427.1(8), the appropriate objects of the society or organization.
- f. The book and page number on which is recorded the contract of purchase or the deed to the property and any lease by which the property is held.
- g. An oath that no persistent violations of the laws of the state of Iowa will be permitted or have been permitted on such property.
- h. The signature of the president or other responsible official of the society or organization showing that information contained in the claim has been verified under oath as correct.

80.53(2) The statement of objects and uses required by Iowa Code subsection 427.1(14) shall be filed only on forms prescribed by the director of revenue and made available by assessors.

80.53(3) Applications for exemptions required under Iowa Code subsection 427.1(14) must be filed with the assessor not later than February 1 of the year for which the exemption is requested.

80.53(4) If a properly completed application is not filed by February 1 of the assessment year for which the exemption would apply, no exemption shall be allowed against the property for that year (1964 O.A.G. 437).

This rule is intended to implement Iowa Code section 427.1, subsections 5, 8, 14, 19 to 24, 27, and 29 to 33.

[ARC 7726B, IAB 4/22/09, effective 5/27/09]

701—80.54(427) Partial exemptions. In the event a portion of property is determined to be subject to taxation and a portion of the property exempt from taxation, the taxable value of the property shall be an amount which bears the same relationship to the total value of the entire property as the area of the portion subject to taxation bears to the area of the entire property. If a portion of a structure is subject to taxation, a proportionate amount of the value assigned to the land upon which the structure is located shall also be subject to taxation.

This rule is intended to implement Iowa Code subsection 427.1(14).
[ARC 7726B, IAB 4/22/09, effective 5/27/09]

701—80.55(427,441) Taxable status of property.

80.55(1) The status of property on July 1 of the fiscal year which commences during the assessment year determines eligibility of the property for exemption in situations where no claim is required to be filed to procure a tax exemption. If the property is in a taxable status on July 1, no exemption is allowable for that fiscal year. If the property is in an exempt status on July 1, no taxes are to be levied against the property during that fiscal year. Exceptions to this rule are as follows:

a. Land acquired by the state of Iowa or a political subdivision thereof after July 1 in connection with the establishment, improvement, or maintenance of a public road shall be taxable for that portion of the fiscal year in which the property was privately owned.

b. All current and delinquent tax liabilities are to be canceled and no future taxes levied against property acquired by the United States or its instrumentalities, regardless of the date of acquisition, unless the United States Congress has authorized the taxation of specific federally owned property (1980 O.A.G. 80-1-19). The following exceptions apply:

(1) Property owned by the Federal Housing Authority (FHA) and property owned by the Federal Land Bank Association are subject to taxation, and any tax liabilities existing at the time of the acquisition are not to be canceled (1982 O.A.G. 82-1-16; 12 USCS §2055).

(2) Existing tax liabilities against property acquired by the Small Business Administration are not to be canceled if the acquisition takes place after the date of levy. However, no taxes are to be levied if the acquisition takes place prior to the levy date or for subsequent fiscal years in which the Small Business Administration owns the property on July 1 (15 USCS §646).

c. Land owned by the state and leased by the department of corrections or the department of human services pursuant to Iowa Code section 904.302, 904.705, or 904.706 to an entity that is not exempt from property tax is subject to taxation for the term of the lease. This provision applies to leases entered into on or after July 1, 2003. The lessor shall file a copy of the lease with the county assessor of the county where the land is located.

80.55(2) The status of property during the fiscal year for which an exemption was claimed determines eligibility of the property for exemption in situations where a claim is required to be filed to procure a tax exemption. If the property is used for an appropriate purpose for which an exemption is allowable for all of the fiscal year for which the exemption is claimed, no taxes are to be levied against the property during that fiscal year. If the property for which an exemption has been claimed and received is used for an appropriate purpose for which an exemption is allowable for only a portion of the fiscal year for which the exemption is claimed, the taxes shall be prorated in accordance with the period of time the property was in a taxable status during the fiscal year.

This rule is intended to implement Iowa Code sections 427.1(1), 427.1(2), 427.2, 427.18, and 427.19.
[ARC 7726B, IAB 4/22/09, effective 5/27/09]

701—80.56(427) Abatement of taxes. The board of supervisors may abate the taxes levied against property acquired by gift or purchase if the property was acquired after the deadline for filing a claim for property tax exemption if the property would have been exempt under Iowa Code section 427.1, subsection 7, 8, or 9, if a timely claim had been filed.

This rule is intended to implement Iowa Code section 427.3.

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◊ Two or more ARCs

CHAPTER 219 SALES AND USE TAX ON CONSTRUCTION ACTIVITIES

Rules in this chapter include cross references to provisions in 701—Chapters 15 to 20, 21, 26, 30, 32 and 33 that were applicable prior to July 1, 2004.

701—219.1(423) General information. 2005 Iowa Code subsection 423.2(1) imposes a tax upon the sales price from the sales of tangible personal property, consisting of goods, wares or merchandise sold at retail in this state to consumers and users. Also subject to tax are certain enumerated services. Those services relating to the construction industry include carpentry; roof, shingle and glass repair; electrical repair and installation; excavating and grading; house and building moving; laboratory testing; landscaping; machinery operator services; machine repair of all kinds; oilers and lubricators; painting, papering, and interior decorating; pipe fitting and plumbing; wood preparations; termite, bug, roach, and pest eradicators; tin and sheet metal repair; welding; well drilling; and wrecking services. Under Iowa law, contractors are consumers or users of certain tangible personal property. Contractors may also be retailers of tangible personal property and taxable enumerated services. It should be noted that these services are exempt from taxation when performed on or in connection with new construction, reconstruction, alteration, expansion, or remodeling of a building or structure. The services of a general building contractor, architect or engineer are exempt from tax when performed on or in connection with new construction, reconstruction, alteration, expansion, or remodeling of a building or structure. For the purposes of this exemption, a structure is defined as 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. See rule 701—219.12(423) relating to structures.

This chapter details the obligation of contractors, contractor-retailers, retailers, and repairpersons to pay or collect sales tax on the sales price from sales of building materials, supplies, equipment, and other tangible personal property and the obligation of these parties to collect tax or claim exemption for their performances of taxable services. How one is classified, whether as a contractor, contractor-retailer, retailer, or repairperson is the basis for determining many of those obligations. It can be very difficult for a person starting a business to determine if that business will be engaged in contracting, retailing, a combination of the two, or providing repair services. However, one status must be chosen. Any reasonable assessment of a new business's status will be honored by the department. A status, 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. For instance, if 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, and 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. Changing the status of a business from job to job to avoid the obligation to pay or collect tax is not a lawful activity.

2005 Iowa Code section 423.5 imposes a tax that is assessed upon tangible personal property purchased for use in this state and on taxable services which are rendered, furnished or performed in Iowa or where the product or result of such service is used in Iowa. "Use" of tangible personal property in Iowa is defined to mean and include the exercise by any person of any right or power over tangible personal property incident to the ownership of that property.

701—219.2(423) Contractors—consumers of building materials, supplies, and equipment by statute. 2005 Iowa Code subsection 423.2(1)"b" provides that sales of building materials, supplies and equipment to owners, contractors, subcontractors or builders for the erection of buildings or the alteration, repair or improvement of real property are retail sales in whatever quantity sold. This means that 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. Building materials and supplies would generally consist of items which are incorporated into real property, lose their identity as tangible personal property and cannot be removed without altering the realty, or which are consumed by the contractor during the performance of the construction contract. See subrules 219.3(1), 219.3(2) and 219.3(3). Building equipment would ordinarily consist of machinery and tools. See subrule 219.3(4). 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. See rules 701—219.3(423) and 701—219.4(423).

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; reference 701—subrule 19.12(5). 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.

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 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 19.12(5), 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. See rules 701—219.2(423) and 701—219.4(423). Materials purchased out of state for use in Iowa are subject to the Iowa use tax which is payable in the quarter that the materials are delivered into the state.

219.3(1) Building materials. The term “building materials” as used in this rule means materials used in construction work, and is not limited to materials used in constructing a building with sides and covering. The term may also include any type of materials used for improvement of the premises or anything essential to the completion of a building or structure for the use intended. *State v. James A. Head & Company, Inc.*, 306 So. 2d 5 (Ala. 1974).

219.3(2) Building supplies. The term “building supplies” as used in this rule 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 by the contractor. 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 which is performed on it. *United States Fidelity & Guaranty Co. v. Feenaughty Machinery Co.*, 85 P.2d 1085, 197 Wash. 569.

219.3(3) Typical items. While not intended to be inclusive, the following is a list of typical items regarded as 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(4) Building equipment. The term "building equipment" as used in this rule 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 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

Construction equipment purchased by a contractor which is intended for use in the performance of an Iowa construction contract is subject to the Iowa sales or use tax. Equipment which is rented for use on or in connection with an Iowa construction contract would normally be rented subject to tax. See rule 701—219.21(423) for an explanation of the existing exemption in favor of rented machinery used by a contractor on a job site.

- ¹ Floor coverings which are shaped to fit a particular room or area and which 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. Reference rule 701—16.48(422,423) for an exception concerning carpeting. 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 which are not attached but which 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 which includes reselling to the general public on a recurring “over-the-counter” basis the same type of building materials and supplies which 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 rule as a contractor-retailer. Any person who is engaged in the performance of construction contracts 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. A sale by a contractor-retailer of building materials, supplies and equipment which does not provide for installation of the merchandise sold is considered a retail sale and subject to sales tax. Conversely, a sale by a contractor-retailer of building supplies, materials and equipment which provides for installation of the merchandise is considered a construction contract and tax shall be paid by the contractor-retailer based upon the cost of materials at the time the materials are withdrawn from inventory for use in a construction contract performed in Iowa. 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. Reference rule 701—18.31(422,423) and rule 701—219.13(423).

The following is a list of the characteristics of the usual contractor-retailer:

1. A contractor-retailer is a business which makes frequent retail sales to the public or to other contractors and also engages in the performance of construction contracts (see rule 701—219.8(423)). 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.

2. 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.

3. 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. Reference rule 701—15.3(422,423) and rule 701—219.19(423) for a detailed explanation of this matter.

4. A contractor-retailer purchasing construction material which 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.

5. 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.

6. Contractor-retailers do not pay tax on materials withdrawn from inventory for use in construction projects performed outside Iowa. See 2005 Iowa Code subsection 423.2(1) "b."

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.

The following examples are offered to illustrate the responsibility for paying and remitting sales tax under this rule:

EXAMPLE 1. ABC Company operates a retail outlet that sells lumber and other building materials and supplies. ABC Company is also a contractor which builds residential and commercial structures. ABC Company would be considered a contractor-retailer and would, therefore, purchase all inventory items for resale. Those items which are used in the performance of a construction contract 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 which 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. EFG Company is a mechanical contractor and has no retail outlets. EFG Company rarely sells any of its inventory to other persons or to other contractors. EFG Company would not be considered a contractor-retailer under this rule. However, EFG Company 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, EFG Company 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. Home Town Construction Company is owned and operated by two individuals in a rural Iowa farming community. They do not have a retail outlet but they frequently make sales of building materials which are in their inventory to local residents. Home Town Construction Company would be a contractor-retailer and could purchase all inventory items for resale. Those items which are used in the performance of a construction contract 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 which 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. Down Home Construction Company is operated by two individuals in a rural Iowa farming community. They do not have a retail outlet and rarely make sales of building materials from their inventory to local residents. Down Home Construction Company would not be considered a contractor-retailer under this rule. Rather, Down Home Construction Company 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, Down Home Construction Company should have a sales tax permit. However, Down Home Construction Company 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. Intown Home Construction Company 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. Intown 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. Intown 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. See rule 701—231.11(423) for an explanation of the basis on which tax is computed.

EXAMPLE 6. Smith's Plumbing 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.

701—219.5(423) Building materials, supplies, and equipment used in the performance of construction contracts within and outside Iowa.

219.5(1) The use of building materials, supplies, or equipment in the performance of construction contracts by the manufacturer outside Iowa is not a sale of tangible personal property and, therefore, is not a taxable event. The use of tangible personal property as building materials, supplies, or equipment by the manufacturer in the performance of construction contracts 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. See rule 701—219.6(423) for a characterization of the term manufacturer's "fabricated cost."

219.5(2) A contractor-retailer's withdrawal of materials from inventory for use in construction contracts outside this state is not a taxable event.

219.5(3) A contractor is a consumer by statute. A contractor's purchase of materials for use in a construction contract is subject to tax whether the materials are purchased for use in construction contracts performed in Iowa or outside this state.

219.5(4) A manufacturer's purchase of tangible personal property consumed as building material in the manufacturer's or the manufacturer's subcontractor's performance of construction contracts within Iowa is taxable. The tax is computed on the fabricated cost or cost of production of the materials. See rule 701—219.6(423) for a characterization of the term "fabricated cost." The purchase of tangible personal property consumed by a manufacturer as building material in the manufacturer's or the manufacturer's subcontractor's performance of a construction contract outside Iowa is not subject to tax.

219.5(5) Reference rule 701—32.8(423) for an exemption from use tax for building materials, supplies, or equipment purchased outside Iowa, brought into this state, and subsequently used in the performance of a construction contract outside this state.

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, a "sale" occurs only if the equipment, materials, or supplies are used in the performance of a construction contract in Iowa. For purposes of this rule, the term "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. *Associated General Contractors of Iowa v. State Tax Commission*, 255 Iowa 673, 123 N.W.2d 922 (1963). Also see rule 701—219.4(423) relating to contractors and rule 701—219.5(423) relating to materials, supplies, and equipment used in construction contracts within and outside Iowa.

701—219.7(423) Prefabricated structures.

219.7(1) Basic concepts and general rules. A "prefabricated structure" is 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. The term "prefabricated structure" includes a "modular home" as defined in rule 701—231.11(423), a mobile home whether or not sold subject to the issuance of a certificate of title, "manufactured housing" (reference definition in rule 701—33.10(423)), sectionalized housing, precut housing packages, and panelized construction. With a few major exceptions (see subrule 219.7(2) regarding the "60 percent rule" and reference rule 701—33.10(423) regarding the taxation of manufactured housing while it is real property), the sales and use tax treatment of prefabricated structures generally follows the treatment of construction materials, that is, tax is due when those structures are sold to or used by owners,

contractors, subcontractors, or builders. Sales of prefabricated structures which have not been erected on a foundation are considered sales of tangible personal property and thus are taxable at the time of retail sale. The usual basis for computing sales or use tax is the purchase price charged to a consumer or user by the seller of a prefabricated structure. *Custom Built Homes Co. v. Kansas State Commission of Revenue and Taxation*, 184 Kan. 31, 334 P.2d 808 (1959). Sales or use tax is due on the full purchase price when a prefabricated structure is delivered under a contract for sale or sold for use in Iowa. *Dodgen Industries Inc. v. Iowa State Tax Commission*, 160 N.W.2d 289 (Iowa 1968).

219.7(2) Exceptions to the general rules. There are a number of exceptions to the general rules stated above in 219.7(1). Those exceptions are applicable to modular and mobile homes and manufactured housing. They are explained as follows:

a. *Modular homes.* Only 60 percent of the sales price from the sale of a modular home is subject to Iowa tax. See rule 701—231.11(423). This 60 percent rule is applicable only to a “modular home” as that phrase is defined in rule 701—231.11(423) and not to other types of prefabricated structures which 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.* Iowa use tax and not Iowa sales tax is imposed on mobile homes or manufactured housing sold subject to the issuance of a certificate of title, and, similar to 219.7(2) “a” above, use tax is imposed only upon 60 percent of the purchase price of these mobile homes or manufactured housing. Reference rule 701—32.3(423). 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 2005 Iowa Code chapter 423 and Iowa Code chapter 435.

219.7(3) 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 rule 701—219.4(423).

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 701—219.7(4) 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 (see rule 701—219.8(423)), and the dealer is a retailer who installs tangible personal property and is not a construction contractor.

219.7(4) 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. See rule 701—219.6(423) for a detailed description of the sales tax treatment of this sort of transaction. The 60 percent rule (see 219.7(2) above) is not applicable when calculating the amount of tax owed by a manufacturer.

219.7(5) 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 for erection 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 2005 Iowa Code subsection 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 which 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.

701—219.8(423) Types of construction contracts. The term “construction contract” is defined as an agreement under the terms of which an individual, corporation, partnership or other entity agrees to furnish the necessary building or structural materials, supplies, equipment or fixtures and to erect the same on the project site for a second party known as a sponsor. Nonexclusive examples of the types of 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.

The following is a nonexclusive list of activities and items which could fall within the meaning of a construction contract or are generally associated with new construction, reconstruction, alteration, or expansion of a building or structure. The list is provided merely for the purpose of illustration. It should not be used to distinguish machinery and equipment from real property or structures since such a determination is factual. See rules 701—219.11(423) and 701—219.12(423) for details.

- Ash removal equipment (installed as distinguished from portable units)
- Automatic sprinkler systems (fire protection)
- Awnings and venetian blinds which 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 which is permanently installed—see rule 701—16.48(422,423) for 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

701—219.9(423) Machinery and equipment sales contracts with installation. Machinery and equipment sales contracts with installation are transactions which 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 building 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 which 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.

In a “mixed contract” (a construction contract mingled with a machinery and equipment sales contract), the elements of the contract should be separated for sales tax purposes. See rule 701—219.10(423).

Certain services which are enumerated in 2005 Iowa Code section 423.2 are subject to tax when performed under a contract for the installation of machinery and equipment which is not done in connection with new construction, reconstruction, alteration, expansion or remodeling of a building or structure. Reference rule 701—15.14(422,423) relating to installation charges. Examples of the enumerated services are: electrical installation; plumbing; welding; and pipe fitting. Other labor charges for job site installation which 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.

701—219.10(423) Construction contracts with equipment sales (mixed contracts). Construction contracts 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. 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. Reference 701—Chapter 30 of the rules regarding use taxes. 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 which 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 which 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 which retain their identity as tangible personal property. The installation charges for the units which 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.

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.

Persons required to collect sales tax in Iowa under machinery and equipment contracts or a mixed contract are required to have a sales tax or a retailer's use tax permit.

701—219.11(423) Distinguishing machinery and equipment from real property. A construction contract may include many activities, but it does not include a contract for the sale and installation of machinery or equipment. Machinery and equipment includes property that is 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, it does not bear the weight of the structure, and it does not in any other manner constitute an integral part of a structure. Manufactured machinery and equipment which does not become permanently annexed to the realty remains tangible personal property after installation.

219.11(1) The following is a list of property which, under normal conditions, remains tangible personal property after installation. The list is nonexclusive and is offered for illustrative purposes only:

- a. Furniture, radio and television sets and antennas, 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. Office, bank and savings and loan association furniture and equipment, including office machines.
- e. Radio, television and cable television station equipment, but not broadcasting towers.
- f. 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. See Petition of Taylor Industries Inc. (Dkt No. 94-30-6-0367, 3-14-95).

219.11(2) The following is a list of property which, under normal conditions, becomes a part of realty. The list is nonexclusive and is offered for illustrative purposes only:

- a. Boilers and furnaces.
- b. Built-in household items such as kitchen cabinets, dishwashers, sinks (including faucets), fans, garbage disposals and incinerators.
- c. 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.
- d. Fixed (year-round) wharves and docks.
- e. 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. Reference rule 701—18.35(422,423) relating to drainage tile.
- f. Mobile and modular homes installed on foundations.
- g. Planted nursery stock.
- h. Residential water heaters, water softeners, intercoms, garage door opening equipment, pneumatic tube systems and music and sound equipment (except portable equipment).
- i. 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).
- j. Seating in auditoriums and theaters and theater stage lights (except portable seating and lighting).
- k. Silos and grain storage bins.
- l. Storage tanks constructed on the site.
- m. Swimming pools (wholly or partially underground (except portable pools)).
- n. Truck platform scale foundations.
- o. Walk-in cold storage units that become a component part of a building.

[ARC 2349C, IAB 1/6/16, effective 2/10/16; see Rescission note at end of chapter]

701—219.12(423) Tangible personal property which becomes structures. Items which 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. The following is a listing of criteria which courts have used in making such a determination:

1. The degree of architectural and engineering skills necessary to design and construct the structure.
2. The overall scope of the business and the contractual obligations of the person designing and building the structure.
3. The amount and variety of materials needed to complete the structure, including the identity of materials prior to assembly and the complexity of assembly.
4. The size and weight of the structure.
5. The permanency or degree of annexation of the structure to other real property which would affect its mobility.
6. The cost of building, moving or dismantling the structure.

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 7000 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. *Wisconsin Department of Revenue v. A. O. Smith Harvestore*, 240 N.W.2d 357 (Wisc. 1976).

The above criteria are intended only to be a summation of factors which the department will consider in determining whether or not a project involves construction. The following cases are used as reference material: *Wisconsin Department of Revenue v. A. O. Smith Harvestore Products, Inc.*, 240 N.W.2d 357 (Wisc. 1976); *Prairie Tank or Construction Co. v. Department of Revenue*, 364 N.W.2d 963 (Ill. 1977); *Levine v. State Board of Equalization*, 299 P. 2d 738 (Calif. 1956); *State of Alabama v. Air Conditioning Engineers, Inc.*, 174 So 2d 315 (Ala. 1965); *A. S. Schulman Electric Company v. State Board of Equalization*, 122 Cal. Rptr 278 (Calif. 1975); *Western Pipeline Constructors, Inc. v. J. M. Dickinson*, 310 S.W.2d 455 (Tenn.); and *City of Pella Municipal Light Plant*, Order of the Director of Revenue, June 16, 1975.

[ARC 2349C, IAB 1/6/16, effective 2/10/16; see Rescission note at end of chapter]

701—219.13(423) Tax on enumerated services. The tax on the services enumerated in 2005 Iowa Code section 423.2 is basically a tax on labor. When such services are performed on or connected with new construction, reconstruction, alteration, expansion or remodeling of real property or 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. See rule 219.21(423) for an explanation of the exemption in favor of rented machinery used by a contractor on a job site.

The distinction between a repair (see subrule 219.13(1)) and new construction, reconstruction, alteration, expansion and remodeling activities (see subrule 219.13(2)) can, oftentimes, be difficult to grasp. Therefore, the intent of the parties and the scope of the project may become the factors which determine whether certain enumerated services are taxable. 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. See *Board of Commissioners of Guadalupe County v. State*, 43 N.M. 409, 94 P.2d 515 (1939) and *City of Mayville v. Rosing*, 19 N.D. 98, 123 N.W. 393 (1909).

219.13(1) Repair is synonymous with mend, restore, maintain, replace and service. A repair contemplates an existing structure or tangible personal property which has become imperfect and constitutes the restoration to a good and sound condition. A repair is not a capital improvement; that is, it does not materially add to the value or substantially prolong the useful life of the property.

2005 Iowa Code section 423.1(42) defines a person engaged in the business of performing taxable services as a retailer. Since retailers may purchase building materials, supplies and equipment for resale, persons making taxable repairs (repairpersons and servicepersons) are not considered to be contractors and are not subject to the provisions of 2005 Iowa Code subsection 423.2(1) "b." In addition, such persons are not considered to be owners, subcontractors or builders. 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 2005 Iowa Code subsection 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. See rules 219.2(423) and 219.3(423). 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. 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 2005 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. Reference rule 701—18.31(422,423) for 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) 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 would be considered new construction.
- b. Adding a redwood deck to an existing structure would be considered new construction.
- c. Replacing a complete roof on an existing structure would be considered reconstruction or alteration.
- d. Adding a new room to an existing building would be considered new construction.
- e. Adding a new room by building interior walls would be considered alteration.
- f. Replacing kitchen cabinets with some modification would be considered an improvement.
- g. Paneling existing walls would be considered an improvement.
- h. Laying a new floor over an existing floor would be considered an improvement.
- i. Rebuilding a structure damaged by flood, fire or other uncontrollable disaster or casualty would be considered reconstruction.
- j. Building a new wing to an existing building would be considered an expansion.
- k. Rearranging the interior physical structure of a building would be considered remodeling.
- l. Installing manufactured housing or a modular or mobile home on a foundation would be considered new construction. However, reference rule 701—33.10(423) for a description of the special treatment of taxable installation charges when the taxable sale of manufactured housing as real estate occurs.
- m. Replacing an entire water heater, water softener, furnace or central air conditioning unit.
- n. Sign installation and well-drilling services are generally performed in connection with new construction.

In all the examples, the contractor is responsible for paying tax to any supplier on materials. However, there would be no tax on any enumerated services.

219.13(3) 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.

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. (Tax could

apply to the sales price of the production machinery and equipment; reference rule 701—18.58(422, 423)). 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. Reference 701—subrule 18.58(8) for the exemption regarding the installation of new industrial machinery and equipment.

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.

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.

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 general contractor to add a new room to an existing home (which is new construction; see 219.13(2) “d”). The existing home is in need of a number of the repairs described in 219.13(1); for example, it is in need of rewiring and replacement of a broken window. The general contractor rewires the home and repairs the window in addition to building the new room. The taxable services which 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.

The department would like to emphasize that facts and motives are important in the determination of the taxability of services relating to construction activities. However, it should also be noted that taxes on enumerated services are applicable to repair or installation work that is not a construction activity. Refer to subrule 219.13(1) relating to persons who make repairs or perform enumerated services for more information.

219.13(4) Excavating includes digging, hollowing out, scooping out, or making a hole in the earth. It also includes removal of materials or substance found beneath the surface. Grading includes a change in the earth’s structure by scraping and filling to a common level or a fixed line known as a grade. The enumerated services of excavating and grading are not subject to tax if performed on or connected with new construction. Removal of overburden which is directly related to road building, building of dikes, building of farm ponds, and creating drainage ditches would not be taxable as such activities would be considered on or connected with the creation of a structure. See *Maasdam v. Kirkpatrick*, 214 Iowa 1388 (1932). However, the mere removal of overburden, without more, would be taxable as the enumerated service of excavating or grading under 2005 Iowa Code subsection 423.2(6).

219.13(5) Services associated with new construction or reconstruction, for example, which 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.
[ARC 2349C, IAB 1/6/16, effective 2/10/16; see Rescission note at end of chapter]

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. Reference rule 701—15.13(422,423).

701—219.15(423) Start-up charges. Start-up 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.

701—219.16(423) Liability of subcontractors. A subcontractor who is providing materials and labor on the actual construction of the building or structure has the same status and tax responsibilities as a general contractor under the Iowa statutes. However, where an individual or firm is hired to provide machinery and equipment to a general contractor or another subcontractor, the individual or firm is considered a material 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 material suppliers to contractors shall be sold for resale and the contractor must provide the material supplier with a valid resale certificate.

701—219.17(423) Liability of sponsors. The sponsor cannot be held responsible for a tax liability incurred on building materials, supplies and equipment by a general contractor or subcontractor in the completion of a construction contract. Likewise, a general 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. 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.

701—219.18(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.

701—219.19(423) Resale certificates. Whenever machinery and equipment which will remain tangible personal property after installation is purchased for a machinery and equipment contract by a contractor from a supplier or a material supplier, it should be purchased for resale. See rule 701—219.9(423). 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. See rule 701—219.4(423) and subrule 219.13(1). Resale certificates can be obtained by contacting the Iowa department of revenue. Reference rule 701—15.3(422,423) for detailed information on resale certificates.

701—219.20(423) Reporting for use tax. An Iowa contractor can report use tax either on a consumer's use tax return or as consumed goods on a sales tax return. Tax is due in the quarter the materials are delivered into Iowa. Nonresident contractors should report use tax on a consumer's use tax return.

Consumer's use tax returns for nonresident contractors must be obtained directly from the department of revenue unless the contractor is registered with the department.

701—219.21(423) Exempt sale, lease, or rental of equipment used by contractors, subcontractors, or builders.

219.21(1) Exempt lease or rental of machinery and equipment. On and after July 1, 2004, 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 real property or structures and all machinery, equipment, and replacement parts which 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. Reference rule 701—26.18(422,423) for an extensive explanation of this matter.

219.21(2) Exempt sales, including lease or rental of equipment. Beginning July 1, 2005, 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 which 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. See 701—Chapter 241, division II, for an explanation of the new excise tax imposed on these transactions as of July 1, 2005.

These rules are intended to implement 2005 Iowa Code subsections 423.1(42), 423.2(1) "b" and "c," 423.2(6), 423.3(64), and 423.5(2) and 2005 Iowa Code Supplement subsections 423.3(37) and 423.3(85).

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¹ Amendments to 219.11, 219.12 and 219.13(3) (ARC 2349C, Items 4 to 6) rescinded by 2016 Iowa Acts, House File 2433, section 6, on 3/21/16. Amendments removed and prior language restored IAC Supplement 4/27/16.

CHAPTER 230
EXEMPTIONS PRIMARILY BENEFITING MANUFACTURERS AND
OTHER PERSONS ENGAGED IN PROCESSING

Rules in this chapter include cross references to provisions in 701—Chapters 15, 18 and 26 that were applicable prior to July 1, 2004.

701—230.1 Reserved.

701—230.2(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 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.

230.2(1) “Manufacturer” characterized. A manufacturer is a person or entity different from a merchant, dealer, or retailer. See *Commonwealth v. Thackara Mfg. Co.*, 27 A. 13 (Pa. 1893). In order for a business to be a manufacturer, the principal business of that business must be manufacturing. See *Associated General Contractors v. State Tax Commission*, 123 N.W.2d 922 (Iowa 1963). Another distinction is that a merchant or retailer sells in order to earn a profit and a manufacturer sells to take profits already earned from prior activity. See *State v. Coastal Petrol Inc.*, 198 So. 610 (Ala. 1940). A person primarily engaged in selling tangible personal property in order to earn a profit and only incidentally engaged in creating products suitable for use from raw materials is not a manufacturer. A retail grocery store, incidentally and not primarily engaged in manufacturing activities such as meat cutting or production and packaging of baked goods, is not a “manufacturer of food products for human consumption” and is not entitled to claim the special processing exemption allowed to those manufacturers. Retail food stores, restaurants, and other persons incidentally engaged in food manufacturing activities can, however, continue to claim on their incidental processing activities the processing exemption allowed to persons who are not manufacturers of food products for human consumption. See rule 701—230.3(423).

230.2(2) The following activities constitute processing when performed by a manufacturer to create food products for human consumption. 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. “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 and the maintenance or the changing of temperature levels necessary to avoid spoilage or to hold the food 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 at a temperature necessary to maintain quality or integrity or to avoid spoilage of the food or to hold the food product 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. Also, processing of food products for human consumption does not cease when the food product 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 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 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 food product. 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 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 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 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, 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 into shipping containers is exempt from tax. For example, electricity used by a food manufacturer to place food products 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 or used to move the marketable food product 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 food product and taxable services used in door openers which open doors for forklifts or other devices moving the material or product. 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 to a loading dock is exempt from tax. If a food product 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 2005 Iowa Code Supplement subsection 423.3(49).

701—230.3(423) Services used in processing. Electricity, steam, or any taxable service is used in processing only if the service is used in any operation which subjects raw material to some special treatment which 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. The following are nonexclusive examples of what would and would not be considered electricity, steam, or taxable services used in processing:

230.3(1) 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 is to be distinguished from that of electricity or steam consumed for the purpose of lighting, ventilating, or heating manufacturing plants, warehouses, or offices. The latter sales price would be taxable.

230.3(2) 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. See *Fischer Artificial Ice & Cold Storage Co. v. Iowa State Tax Commission*, 81 N.W.2d 437 (Iowa 1957).

230.3(3) 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. See *Fischer Artificial Ice, supra*.

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 which is consumed for taxable purposes. When practical, electricity or steam consumed as power or used directly in processing must be separately metered and separately billed by the supplier thereof to clearly distinguish energy so consumed from electricity or steam which 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. Reference 701—subrule 15.3(2). 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(49).

701—230.4(423) Chemicals, solvents, sorbents, or reagents used in processing. Chemicals, solvents, sorbents, and reagents directly used and consumed, dissipated, or depleted in processing tangible personal property intended to be sold ultimately at retail shall be 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. See 701—Chapter 211 for definition of the words "chemicals," "solvents," "sorbents," and "reagents."

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.

To qualify for this exemption, all of the following conditions must be met:

1. The item must be a chemical, solvent, sorbent, or reagent.
2. The chemical, solvent, sorbent, or reagent must be directly used and consumed, dissipated, or depleted during processing as defined in referenced rule 701—18.29(422,423).
3. The processing must be performed on tangible personal property intended to be sold ultimately at retail.
4. 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(50).

701—230.5(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 which are similar to argon. An "inert gas" is any gas which 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 which 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 referenced 701—subrule 18.58(1).

This rule is intended to implement Iowa Code section 423.3(51).

[ARC 2349C, IAB 1/6/16, effective 2/10/16; see Rescission note at end of chapter]

701—230.6(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,

which 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 oil, water, gas, etc.; or a shaft or excavation in the earth, in mining, from which run branches. *Pacific Gas and Electric Company v. Hufford*, 319 P.2d 1033, 1040 (Calif. 1957), citing Webster's New International Dictionary, 2nd ed., unabridged.

This rule is intended to implement Iowa Code section 423.3(52).

701—230.7(423) Wind energy conversion property. The sales price from the sale of property used to convert wind energy to electrical energy or the sales price from the sale of materials used to manufacture, install, or construct property used to convert wind energy to electrical energy is exempt from tax.

For the purposes of this rule, "property used to convert wind energy to electrical energy" means any device which converts wind energy to usable electrical energy including, but not limited to, wind chargers, windmills, wind turbines, pad mount transformers, substations, power lines, and tower equipment.

This rule is intended to implement Iowa Code section 423.3(53).

701—230.8(423) Exempt sales or rentals of core making and mold making equipment, and sand handling equipment. This rule is applicable to the period beginning on or after July 1, 2004.

230.8(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 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 which may be exempt under this rule includes sand storage tanks, conveyors, patterns, mallor controllers, and sand mixers. A nonexclusive list of items which would not be exempted by this rule 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. For the purposes of this rule, core making, mold making, and sand handling equipment also include replacement parts necessary for the operation of the equipment which is used directly and primarily by a foundry in the mold making process. Reference 701—subrule 18.58(1) for definitions of "directly used," "equipment," "machinery," "replacement part" and "supplies."

230.8(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 230.8(1) is exempt from tax.

230.8(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 230.8(1) is exempt from tax. Reference rule 701—26.16(422) for characterizations of the words "installation" and "electronic installation."

This rule is intended to implement Iowa Code section 423.3(82).

701—230.9(423) Chemical compounds used to treat water. Chemical compounds placed in water which 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 which 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 which are used to treat water that is not sold at retail or which are not used directly in processing shall be 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, shall be exempt from tax.

This rule is intended to implement Iowa Code section 423.3(50).

701—230.10(423) Exclusive web search portal business and its exemption. Effective on or after July 1, 2007, 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.

230.10(1) Definitions. For the purpose of this exemption, the following definitions apply:

a. “Affiliate” means an entity that directly or indirectly controls, is controlled with or by, or is under common control with another entity.

b. “Control” means any of the following:

(1) In the case of a United States corporation, the ownership, directly or indirectly, of 50 percent or more of the voting power to elect directors.

(2) In the case of a foreign corporation, if the voting power to elect the directors is less than 50 percent, the maximum amount allowed by applicable law.

(3) In the case of an entity other than a corporation, 50 percent or more ownership interest in the entity, or the power to direct the management of the entity.

c. “Web search portal business” means an entity among whose primary businesses is to provide a search portal to organize information; to access, search, and navigate the internet, including research and development to support capabilities to organize information; and to provide internet access, navigation, and search functionalities.

230.10(2) Criteria to claim exemption. The following govern whether a business qualifies for an exemption from sales and use tax on purchases made or leases executed by a web search portal business:

a. All of the following requirements must be met by a web search portal business for the purpose of this exemption:

(1) The business of the purchaser or lessee shall be as a provider of a web search portal.

(2) The web search portal business shall have a physical location in Iowa that is used for the operations and maintenance of the web search portal site on the internet, including but not limited to research and development to support capabilities to organize information and to provide internet access, navigation, and search.

(3) The web search portal business shall make a minimum investment in an Iowa physical location of \$200 million within the first six years of operation in Iowa beginning with the date the web search portal business initiates site preparation activities. The minimum investment includes the initial investment, including land and subsequent acquisition of additional adjacent land and subsequent investment at the Iowa location.

(4) The web search portal business shall purchase, option, or lease Iowa land not later than December 31, 2008, for any initial investment. However, the December 31, 2008, date shall not affect the future purchases of adjacent land and additional investment in the initial or adjacent land to qualify as part of the minimum investment for purposes of this exemption.

b. Aggregation to meet requirements. A web search portal business that is seeking an exemption from sales and use tax under this exemption may meet the requirements found in subparagraphs 230.10(2) “a”(1) to (4) above, by aggregating various Iowa investments and other requirements with its business affiliates.

c. Failure to meet investment qualifications. If a web search portal business claiming exemption from sales and use tax under this exemption fails to meet at least 80 percent of the minimum investment amount required within the first six years of operation beginning with the initiation of the site preparation activities by the web search portal business, the web search portal business will lose the right to claim this exemption from sales and use tax. Immediately following the loss of the right to claim this exemption from sales and use tax, the web search portal 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.

230.10(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 "b" above;
- 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 "a" to "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.

230.10(4) Limitation of exemption. The purchases or leases of the items listed in subrule 230.10(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.

230.10(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 2007 Iowa Code Supplement section 423.3(92).

701—230.11(423) Web search portal business and its exemption. Effective on or after July 1, 2008, 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.

230.11(1) Definitions. For the purpose of this exemption, the following definitions apply:

"Affiliate" means an entity that directly or indirectly controls, is controlled with or by, or is under common control with another entity.

"Control" means any of the following:

1. In the case of a United States corporation, the ownership, directly or indirectly, of 50 percent or more of the voting power to elect directors.
2. In the case of a foreign corporation, if the voting power to elect the directors is less than 50 percent, the maximum amount allowed by applicable law.
3. In the case of an entity other than a corporation, 50 percent or more ownership interest in the entity, or the power to direct the management of the entity.

"Web search portal business" means an entity whose business among other businesses is to provide a search portal to organize information; to access, search, and navigate the Internet, including research and development to support capabilities to organize information; or to provide Internet access, navigation, or search functionalities.

230.11(2) Criteria to claim exemption. The following governs whether a business qualifies for an exemption from sales and use tax on purchases made or leases executed by a web search portal business:

a. *Requirements.* All of the following requirements must be met by a web search portal business for the purpose of this exemption:

(1) The business, among other businesses, of the purchaser or lessee shall be as a provider of a web search portal.

(2) The web search portal business shall have a physical location in Iowa that is used for the operations and maintenance of the web search portal site on the Internet, including but not limited to research and development to support capabilities to organize information and to provide Internet access, navigation, and search functionality.

(3) The web search portal business shall make a minimum investment in an Iowa physical location of \$200 million within the first six years of operation in Iowa beginning with the date the web search portal business initiates site preparation activities. The minimum investment includes the initial investment, including land and subsequent acquisition of additional adjacent land and subsequent investment at the Iowa location.

(4) The web search portal business shall purchase, option, or lease Iowa land not later than December 31, 2008, for any initial investment. However, the December 31, 2008, date shall not affect the future purchases of adjacent land and additional investment in the initial or adjacent land to qualify as part of the minimum investment for purposes of this exemption.

b. *Aggregation to meet requirements.* A web search portal business that is seeking an exemption from sales and use tax under this exemption may meet the requirements found in subparagraphs 230.11(2)"a"(1) to (4) by aggregating various Iowa investments and other requirements with its business affiliates.

c. *Failure to meet investment qualifications.* If a web search portal business claiming exemption from sales and use tax under this exemption fails to meet at least 80 percent of the minimum investment amount required within the first six years of operation beginning with the initiation of the site preparation activities by the web search portal business, the web search portal business will lose the right to claim this exemption from sales and use tax. Immediately following the loss of the right to claim this exemption from sales and use tax, the web search portal 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.

230.11(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 "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 back-up 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 "a" to "f." This includes the fuel used in the back-up 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.

230.11(4) Limitation of exemption. The purchase or lease of the items listed in subrule 230.11(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.

230.11(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 as amended by 2008 Iowa Acts, House File 2233, section 1.

701—230.12(423) Large data center business exemption. Effective on or after July 1, 2009, 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.

230.12(1) Definitions. For the purpose of this rule, the following definitions apply:

"*Data center*" means a building rehabilitated or constructed to house a group of networked server computers in one physical location in order to centralize the storage, management, and dissemination of data and information pertaining to a particular business, taxonomy, or body of knowledge.

"*Data center business*" means an entity whose business, among other businesses, is to operate a data center.

230.12(2) Criteria to claim exemption. The following govern whether a business qualifies for an exemption from sales and use tax on purchases made or leases executed by a data center business:

a. *Requirements.* All of the following requirements must be met by a data center business for the purpose of this exemption:

(1) The business, among other businesses, of the purchaser or lessee shall be as a provider of a data center.

(2) The data center business shall have a physical location in Iowa that is, in the aggregate, at least 5,000 square feet in size used for the operation and maintenance of the data center.

1. A data center facility includes, but is not limited to, the centralization, storage, management and dissemination of data and information.

2. The physical location shall include the mechanical and electrical systems, redundant or backup power supplies, redundant data communications connections, environmental controls, and fire suppression systems for the data center business. The data center business's physical location may also include a restricted access area employing advanced physical security measures such as video surveillance systems and card-based security or biometric security access systems.

(3) The data center business shall make a minimum investment in an Iowa physical location of \$200 million within the first six years of operation in Iowa beginning with the date the data center business initiates site preparation activities. The minimum investment includes the initial investment, including land and subsequent acquisition of additional adjacent land and subsequent investment at the Iowa location.

(4) The data center business shall comply with the applicable sustainable design and construction standards in Iowa Administrative Code 661—Chapter 310 as established by the state building code commissioner pursuant to Iowa Code section 103A.8B.

b. *Failure to meet investment qualifications.* If a data center business claiming exemption from sales and use tax under this exemption fails to meet at least 80 percent of the minimum investment amount required within the first six years of operation beginning with the initiation of the site preparation activities by the data center business, the data center business will lose the right to claim this exemption from sales and use tax. Immediately following the loss of the right to claim this exemption from sales and use tax, the data center business is required to pay all sales and 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.

230.12(3) Exempt purchases. Sales and leases of the following are exempt from sales and use tax when sold or leased to a qualifying data center business:

a. Computers and equipment that are necessary for the maintenance and operation of the data center 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 data center business;

c. All equipment used for the operation and maintenance of the cooling towers for the cooling system referenced in paragraph "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 data center 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 data center 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 data center business that is used in the backup power generation system and in all items listed in paragraphs "a" to "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 data center business continues operation; and

h. Electricity purchased for use in operating the data center business.

230.12(4) Limitation of exemption. The purchase or lease of the items listed in subrule 230.12(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.

230.12(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 data center business.

This rule is intended to implement Iowa Code section 423.3 as amended by 2009 Iowa Acts, Senate File 478, sections 197 through 202.

[ARC 8602B, IAB 3/10/10, effective 4/14/10]

701—230.13(423) Data center business sales and use tax refunds. Effective on or after July 1, 2009, 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.

230.13(1) Definitions. For the purpose of this rule, the following definitions apply:

“*Data center*” means a building rehabilitated or constructed to house a group of networked server computers in one physical location in order to centralize the storage, management, and dissemination of data and information pertaining to a particular business, taxonomy, or body of knowledge.

“*Data center business*” means an entity whose business, among other businesses, is to operate a data center.

“*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.

230.13(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.

230.13(3) Purchases eligible for refunds. Sales and leases of the following are eligible for a refund of 50 percent of the sales and use tax paid when sold or leased to a qualifying data center business:

a. Computers and equipment that are necessary for the maintenance and operation of the data center 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 data center business;

c. All equipment used for the operation and maintenance of the cooling towers for the cooling system referenced in paragraph “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 data center 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 data center 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 data center business that is used in the backup power generation system and in all items listed in paragraphs "a" to "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 data center business continues operation; and

h. Electricity purchased for use in operating the data center business.

230.13(4) Sustainable design standards. In order to claim the refunds detailed in subrule 230.13(3), paragraphs "a" through "h," data center businesses must comply with the sustainable design and construction standards as required by Iowa Administrative Code 661—Chapter 310 as established by the state building code commissioner pursuant to Iowa Code section 103A.8B.

230.13(5) Failure to meet investment qualifications. If a data center business claiming a refund of sales and use tax under this rule fails to meet at least 80 percent of the minimum investment amount required within the first six years of operation beginning with the initiation of the site preparation activities by the data center business, the data center business will lose the right to claim the refund of sales and use tax. Immediately following the loss of the right to claim the refund of sales and use tax, the data center 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.

230.13(6) Limitation of refunds.

a. *Use in operation or maintenance.* The purchase or lease of the items listed in subrule 230.13(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 5 percent of the sales price of computers and equipment listed in subrule 230.13(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.

230.13(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 filed prior to any refund request and must be approved by the department before a refund claim can be filed. 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(8) or 423.4(9);
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 as amended by 2009 Iowa Acts, Senate File 478, sections 198 through 202.
[ARC 8602B, IAB 3/10/10, effective 4/14/10]

701—230.14(423) Exemption for the sale of computers, machinery, and equipment, including replacement parts, and materials used to construct or self-construct computers, machinery, and equipment used for certain manufacturing purposes if the sale occurs as part of a contract entered into on or after July 1, 2016. Rescinded by 2016 Iowa Acts, House File 2433, section 7, on 3/21/16. See Rescission note at end of chapter.

701—230.15(423) Exemption for the sale of property directly and primarily used in processing by a manufacturer if the sale occurs as part of a contract entered into on or after July 1, 2016. Rescinded by 2016 Iowa Acts, House File 2433, section 7, on 3/21/16. See Rescission note at end of chapter.

701—230.16(423) Exemption for the sale of property directly and primarily used by a manufacturer to maintain integrity or unique environmental conditions if the sale occurs as part of a contract entered into on or after July 1, 2016. Rescinded by 2016 Iowa Acts, House File 2433, section 7, on 3/21/16. See Rescission note at end of chapter.

701—230.17(423) Exemption for the sale of property directly and primarily used in research and development of new products or processes of processing if the sale occurs as part of a contract entered into on or after July 1, 2016. Rescinded by 2016 Iowa Acts, House File 2433, section 7, on 3/21/16. See Rescission note at end of chapter.

701—230.18(423) Exemption for the sale of computers used in processing or storage of data or information by an insurance company, financial institution, or commercial enterprise if the sale occurs as part of a contract entered into on or after July 1, 2016. Rescinded by 2016 Iowa Acts, House File 2433, section 7, on 3/21/16. See Rescission note at end of chapter.

701—230.19(423) Exemption for the sale of property directly and primarily used in recycling or reprocessing of waste products if the sale occurs as part of a contract entered into on or after July 1, 2016. Rescinded by 2016 Iowa Acts, House File 2433, section 7, on 3/21/16. See Rescission note at end of chapter.

701—230.20(423) Exemption for the sale of pollution control equipment used by a manufacturer if the sale occurs as part of a contract entered into on or after July 1, 2016. Rescinded by 2016 Iowa Acts, House File 2433, section 7, on 3/21/16. See Rescission note at end of chapter.

701—230.21(423) Exemption for the sale of fuel or electricity used in exempt property if the sale occurs as part of a contract entered into on or after July 1, 2016. Rescinded by 2016 Iowa Acts, House File 2433, section 7, on 3/21/16. See Rescission note at end of chapter.

701—230.22(423) Exemption for the sale of services for designing or installing new industrial machinery or equipment if the sale occurs as part of a contract entered into on or after July 1, 2016. Rescinded by 2016 Iowa Acts, House File 2433, section 7, on 3/21/16. See Rescission note at end of chapter.

[Filed 11/16/05, Notice 10/12/05—published 12/7/05, effective 1/11/06]

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[Filed 11/12/08, Notice 10/8/08—published 12/3/08, effective 1/7/09]

[Filed ARC 8602B (Notice ARC 8480B, IAB 1/13/10), IAB 3/10/10, effective 4/14/10]
[Filed ARC 2349C (Amended Notice ARC 2239C, IAB 11/11/15; Notice ARC 2178C, IAB 9/30/15),
IAB 1/6/16, effective 2/10/16]^{1,2}

¹ Amendments to 230.5 (ARC 2349C, Item 7) rescinded by 2016 Iowa Acts, House File 2433, section 6, on 3/21/16. Amendments removed and prior language restored IAC Supplement 4/27/16.

² 230.14 to 230.22 (ARC 2349C, Items 8 to 16) rescinded by 2016 Iowa Acts, House File 2433, section 7, on 3/21/16. Rules removed IAC Supplement 4/27/16.

CHAPTER 231 EXEMPTIONS PRIMARILY OF BENEFIT TO CONSUMERS

Rules in this chapter include cross references to provisions in 701—Chapters 15 to 20, 21, 26, 30, 32 and 33 that were applicable prior to July 1, 2004.

701—231.1(423) Newspapers, free newspapers and shoppers' guides.

231.1(1) In general. The sales price from the sales of newspapers, free newspapers, and shoppers' guides is exempt from tax. The sales price from the sales of magazines, newsletters, and other periodicals which are not newspapers is taxable. Cases decided by the United States Supreme Court and the Supreme Court of Iowa prohibit exempting from taxation the sale of any periodical if that exemption from taxation is based solely upon the contents of that periodical. See *Arkansas Writers' Project, Inc. v. Ragland*, 481 U.S. 221, 107 S.Ct. 1722, 95 L.Ed.2d 209 (1987) and *Hearst v. Iowa Department of Revenue & Finance*, 461 N.W.2d 295 (Iowa 1990).

231.1(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. Other frequent characteristics of newspapers are the following:

- a. Newspapers usually contain photographs.
- b. Information printed on newspapers is usually contained in columns on the newspaper pages.
- c. The larger the cross section of the population which 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.”

231.1(3) Characteristics of newspaper publishing 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.

231.1(4) Characteristics which 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 by a paid individual who usually publishes a newspaper. A newsletter is often printed on sheets which are held together at one point only by a staple, rather than folded together.

This rule is intended to implement 2005 Iowa Code subsection 423.3(54).

701—231.2(423) Motor fuel, special fuel, aviation fuels and gasoline.

231.2(1) In general. The sales price from the sale of motor fuel, including ethanol, and special fuel is exempt from sales tax under 2005 Iowa Code section 423.3(55) if (a) the fuel is consumed for highway use, in watercraft, or in aircraft, (b) the Iowa fuel tax has been imposed and paid, and (c) no refund or credit of fuel tax has been made or will be allowed. The sales price from the sale of special fuel for diesel engines used in commercial watercraft on rivers bordering Iowa is exempt from sales tax, even though no fuel tax has been imposed and paid, providing the seller delivers the fuel to the owner's watercraft while it is afloat.

231.2(2) Refunds or credits of motor fuel and special fuel. Claims for refund or credit of fuel taxes under the provisions of Iowa Code chapter 452A must be reduced by any sales or use tax owing the state unless a sales tax exemption is applicable. Generally, refund claims or credits are allowed where fuel is purchased tax-paid and used for purposes other than to propel a motor vehicle or used in watercraft.

231.2(3) Refunds of tax on fuel purchased in Iowa and consumed outside of Iowa. Even though fuel is purchased in Iowa, fuel tax is paid in Iowa, and the fuel tax is subject to refund under the provisions of division III of Iowa Code chapter 452A relating to interstate motor vehicle operations, the refund of

the fuel tax does not subject the purchase of the fuel to sales tax. Subjecting the purchase of the fuel to sales tax has the effect of imposing sales tax when fuel is consumed in interstate commerce while fuel consumed on Iowa highways in intrastate commerce is exempt from sales tax pursuant to 2005 Iowa Code subsection 423.3(55). The effect for sales tax purposes is to impose a greater tax burden on non-Iowa highway fuel consumption than Iowa highway fuel consumption, thereby discriminating against interstate commerce. In addition, the effect of imposing sales tax on interstate excess purchases where intrastate highway use is not subject to the tax constitutes an export duty for purchasing fuel in Iowa and exporting it for use in another state. Such effects are in violation of the commerce clause of the United States Constitution. *Boston Stock Exchange v. State Tax Commission*, 1977, 429 U.S. 319, 97 S.Ct. 599, 50 L.Ed.2d 514 and *Coe v. Errol*, 1886, 116 U.S. 517, 6 S.Ct. 475, 29 L.Ed. 715.

231.2(4) Tax base. The basis for computing the Iowa sales tax will be the retail sales price of the fuel less any Iowa fuel tax included in such price. Federal excise tax should not be removed from the sales price in determining the proper sales tax due. *W. M. Gurley v. Arny Rhoden* supra. Also reference rule 701—15.12(422,423).

This rule is intended to implement Iowa Code subsection 423.3(55).

701—231.3(423) Sales of food and food ingredients. On and after July 1, 2004, the sales price from all sales of food and food ingredients is exempt from tax. For the purposes of this rule, “food and food ingredients” means substances, whether in liquid, concentrated, solid, frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their taste or nutritional value.

231.3(1) Most substances can easily be classified either as food, food ingredients, or nonfood items. 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 which may be purchased with food coupons issued by the United States Department of Agriculture under the regulations in effect on July 1, 1974, remain exempt from tax on and after July 1, 2004. However, since the exemption no longer depends on ability to be purchased with food stamps (reference 701—subrule 20.1(1)), sales of certain substances which can be purchased with food stamps but are neither food nor food ingredients are taxable on and after July 1, 2004.

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” on and after July 1, 2004.

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 eligible 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 which 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 which are packaged for human consumption, and rose hips powder which is used for preparing tea. It is not possible to formulate a comprehensive list of eligible 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 eligible 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 an eligible item.

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. Alcoholic beverages, candy, and soft drinks are examples of snack foods the sales of which are not exempt from tax; see subrule 231.3(2).

e. Others. There are certain eligible food substances which are normally consumed only after being incorporated into foods sold for ingestion or chewing by humans. Sales of substances which are ingredients of items identical to those which 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—231.5(423):

Bread and flour products

Bottled water, unless it is a sweetened bottled water and thus taxable as a soft drink (a change from previous law; reference 701—subparagraph 20.1(3) “*b*”(1))

Cereal and cereal products

Cocoa and cocoa products, unless taxable in the form of candy as in rule 701—231.4(423)

Coffee and coffee substitutes, unless taxable as soft drinks; see paragraph 231.3(2) “*f*”

Dietary substitutes, other than dietary supplements; see paragraphs 231.3(1) “*c*” and 231.3(2) “*a*”

Eggs and egg products

Fish and fish products

Frozen foods

Fruits and fruit products including fruit juices, unless taxable as soft drinks; see paragraph 231.3(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 (a change from previous law; reference 701—subparagraph 20.1(3) “*b*”(2))

Spices, condiments, extracts, and artificial food coloring

Sugar and sugar products and substitutes, unless taxable in the form of candy as in rule 701—231.4(423)

Tea, unless taxable as a soft drink; see paragraph 231.3(2) “*f*”

Vegetables and vegetable products

231.3(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—231.4(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 (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 which are primarily used for medicinal purposes or as health aids and which 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 which 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 231.3(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—231.5(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 which are not sweetened; effervescent, noneffervescent, and mineral water sold in containers; beverages that contain greater than 50 percent of vegetable or fruit juice by volume. This latter is a change from the law as it existed prior to July 1, 2004, which required a volume of only 15 percent for exemption.

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 which 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—231.5(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.

231.3(3) Other substances which 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 which 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 subsection 423.3(56).

701—231.4(423) Sales of candy.

231.4(1) *Definitions.* Sales of candy were excluded from exemption prior to July 1, 2004; however, the definition of “candy” applicable to the exclusion was slightly different from the definition set out in this rule. Reference rule 701—20.1(422,423). This rule and the following definitions apply to sales of candy on or after July 1, 2004.

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 which 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 barbecue or cheddar flavor, or herbs which 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 barbecue-flavored peanuts. The ingredient label for the barbecue-flavored peanuts indicates that the product contains peanuts, sugar and various other ingredients, including barbecue flavoring. Since the barbecue-flavored peanuts contain a combination of sweeteners

and nuts, and flour is not listed on the label and the nuts do not require refrigeration, barbecue-flavored peanuts are “candy.”

EXAMPLE 2: Retailer B sells barbecue potato chips. Potato chips are potatoes, a vegetable, and are not commonly thought of as candy. The barbecue potato chips are “food and food ingredients” and not “candy.” The fact that the ingredient label for the barbecue potato chips indicates that the product contains barbecue seasoning which contains a sweetener does not change the fact that the barbecue 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.”

231.4(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 which are normally sold for use as ingredients in recipes but which can be eaten as candy are taxable on and after July 1, 2004. 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—231.5(423).

231.4(3) Bundled transaction including candy. “Bundled transaction” is defined as the retail sale of two or more products, except real property and services to real property, where (1) the products are otherwise distinct and identifiable and (2) the products are sold for one non-itemized price.

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—231.3(423) are “bundled transactions” when the items are distinct and identifiable and are sold for one non-itemized price. 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 non-itemized 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 which 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 1: Retailer A sells a package that contains 100 total pieces of food and food ingredients. There are ten different types of foods and food ingredients in the package. Eight of the types of food and food ingredients included in the package meet the definition of “candy,” while two of the types included do not meet the definition of “candy.” It is a reasonable presumption that 20 ($2/10$ times 100) of the pieces are not “candy” and 80 ($8/10$ times 100) of the pieces are “candy.” Therefore, since 80 percent of the product is “candy,” the retailer shall treat the entire package as a bundled transaction containing primarily “candy.” Sales tax is due on the sales price of the entire package. See Iowa Code section 423.2(8).

EXAMPLE 2: 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 50 percent or less of the items in the bag are “candy.” Even if the retailer ascertains that 50 percent or less of the items in the bag are “candy,” sales tax is due on the sales price of the entire package. 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 50 percent or less of the products are “candy.” Even if the retailer ascertains that 50 percent or less of the items in the bag are “candy,” sales tax is due on the sales price of the entire package. 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,” but 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 2011 Iowa Code subsection 423.3(57).
[ARC 0281C, IAB 8/22/12, effective 9/26/12; ARC 1664C, IAB 10/15/14, effective 11/19/14]

701—231.5(423) Sales of prepared food. On and after July 1, 2004, sales of “prepared food” are subject to tax as such sales were taxable prior to that date. However, before and after that date, the definitions of “prepared food” differ slightly. Reference rule 701—20.5(423) for a description of the taxation of “prepared food” prior to July 1, 2004.

231.5(1) Prepared food.

- a. On and after July 1, 2004, “prepared food” means any of the following:
 - (1) Food sold in a heated state or heated by the seller, including food sold by a caterer.
 - (2) Two or more food ingredients mixed or combined by the seller for sale as a single item.
 - (3) 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 which 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 which 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.

- b. “Prepared food,” for the purposes of this rule, does not include food that is any of the following:

- (1) Only cut, repackaged, or pasteurized by the seller.
- (2) Eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the United States Food and Drug Administration in Chapter 3, Part 401.11 of its Food Code, so as to prevent food-borne illnesses.
- (3) Bakery items sold by the seller that baked them. The term “bakery items” includes but is not limited to breads, rolls, buns, biscuits, bagels, croissants, pastries, donuts, Danish, cakes, tortes, pies, tarts, muffins, bars, cookies, and tortillas. On and after July 1, 2004, baked goods sold for consumption on the premises by the seller that baked them are sold exempt from tax. This is a change from previous law; reference 701—subrule 20.5(2), Example D.
- (4) Food sold in an unheated state as a single item without eating utensils provided by the seller which is priced by weight or volume.

231.5(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 which 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 which 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 which 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 2005 Iowa Code subsection 423.3(56).

701—231.6(423) Prescription drugs, medical devices, oxygen, and insulin. Sales of prescription drugs and medical devices as defined in subrule 231.6(1) and dispensed for human use or consumption in accordance with subrules 231.6(3) and 231.6(4) shall be exempt from sales tax. Rentals of medical devices as defined in subrule 231.6(1) are also exempt from tax. The sales price from the sales of any oxygen or insulin purchased for human use or consumption (whether or not the oxygen or insulin is prescribed) is exempt from tax.

231.6(1) Definitions.

“*Medical device*” means durable medical equipment or mobility enhancing equipment intended to be prescribed by a practitioner for human use. See rule 701—231.8(423) for definitions of those terms.

“*Prescription drug*” means a drug intended to be dispensed to an ultimate user pursuant to a prescription drug order, formula, or recipe issued in any form of oral, written, electronic, or other means of transmission by a duly licensed practitioner, or oxygen or insulin dispensed for human consumption with or without a prescription drug order or medication order.

“*Ultimate user*” means any 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 phrase does not include any entity created by law, such as a corporation or partnership.

231.6(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.

See rules 701—231.7(423) and 701—231.8(423) for examples of medical devices sold without a prescription but exempt from tax.

231.6(3) Persons authorized to dispense prescription drugs or prescription devices. In order for a prescription drug or device to qualify for an exemption, it must be dispensed by one of the following persons:

a. Any store or other place of business where prescription drugs are compounded, dispensed or sold by a person holding a license to practice pharmacy in Iowa, and where prescription orders for prescription drugs or devices are received or processed in accordance with pharmacy laws.

b. Persons licensed by the state board of medical examiners to practice medicine or surgery in Iowa.

c. Persons licensed by the state board of medical examiners to practice osteopathic medicine or surgery in Iowa.

d. Persons licensed by the state board of podiatry examiners to engage in the practice of podiatry in Iowa.

e. Persons licensed by the state board of dental examiners to practice dentistry in Iowa.

f. Persons licensed by the state board of optometry examiners as therapeutically certified optometrists.

g. Persons licensed by the state board of chiropractic examiners to practice chiropractic in Iowa, when dispensing in accordance with Iowa Code chapter 151.

h. Persons licensed as advanced registered nurse practitioners by the board of nursing when prescribing and dispensing in accordance with Iowa Code subsection 147.107(8).

i. Any other person authorized under Iowa law to dispense prescription drugs or devices in this state.

j. Any person licensed in another state in a health field in which, under Iowa law, licensees in this state may legally prescribe drugs or devices.

231.6(4) Disposition of prescription drugs and devices. Prescription drugs or devices may be dispensed either directly from one of the persons licensed in 231.6(3) who may also prescribe drugs or devices 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 231.6(3) who may also prescribe drugs or devices shall be sufficient evidence that a drug or device is exempt from sales tax. When a person who prescribes a drug or device is also the dispenser, the drug or device will not require a prescription by such person, but the drug or device 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 or device shall be exempt from sales tax.

231.6(5) Others required to collect sales tax. Any person other than those who are allowed to dispense drugs or devices under 231.6(3) shall be required to collect sales tax on any prescription drugs or devices.

231.6(6) Prescription drugs and devices purchased by hospitals for resale. This subrule applies to for-profit hospitals only. Hospitals have purchased prescription drugs or devices for resale to patients and not for use or consumption in providing hospital services only if the following circumstances exist: (a) the drug or device is actually transferred to the patient; (b) the drug or device is transferred in a form or quantity capable of a fixed or definite price value; (c) the hospital and the patient intend the transfer to be a sale; and (d) the sale is evidenced in the patient's bill by a separate charge for the identifiable drug or device. Reference rule 701—18.31(422,423) for a discussion generally of sales for resale by persons performing a service. Also reference rule 701—18.59(422,423) for the exemption applicable to all purchases of goods and services by a nonprofit hospital licensed under Iowa Code chapter 135B.

EXAMPLE A: A hospital purchases a bone saw blade and uses the blade to cut the bone of patient X during hip replacement surgery. This dulls the blade to the point that the blade cannot be used again and is discarded. The hospital bills patient X for "one bone saw blade—\$30." In spite of the separate charge for an identifiable piece of property, the hospital did not purchase the bone saw blade for resale. The blade was used up by the hospital, not transferred to the ownership of X. Since there was no transfer, there was no sale, thus no purchase for resale.

EXAMPLE B: A hospital buys lotion for use in massages given to patients by a nurse's aide. In spite of the fact that one can argue that a transfer of ownership of the lotion from hospital to patient occurred, the lotion was not purchased for resale. No real intent to sell the lotion to patients ever existed; the lotion was not transferred to patients in a quantity capable of a definite price value; and there is no separate charge for the lotion.

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 231.6(1).

This rule is intended to implement 2005 Iowa Code Supplement subsection 423.3(60).

701—231.7(423) Exempt sales of other medical devices which are not prosthetic devices. A prescription is not required for sales of the medical devices listed in subrule 231.7(1) to be exempt from tax if those devices are purchased for human use or consumption.

231.7(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 ableson 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/nelation 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 catherization 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 which 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 which 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 which converts a liquid to a spray or fog.

"Other medical device," for the purposes of this rule, means medical equipment or supplies intended to be dispensed for human use with or without a prescription to an ultimate user.

"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.

231.7(2) Sales of the following other medical devices are 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.

231.7(3) Component parts. Sales of any component parts of the trays, systems, devices, sets, or kits listed above are taxable unless the sale of a component part, standing alone, is otherwise exempt under these rules. For instance, 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, sales of catheter introducers, disposable latex gloves, rayon balls, forceps, and specimen bottles are exempt 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 2005 Iowa Code Supplement subsection 423.3(60).

701—231.8(423) Prosthetic devices, durable medical equipment, and mobility enhancing equipment.

231.8(1) Prosthetic devices. Sales or rental of prosthetic devices shall be exempt from sales tax.

231.8(2) Durable medical equipment and mobility enhancing equipment. Sales or rental of durable medical equipment and mobility enhancing equipment prescribed for human use which meet the provisions of subrules 231.8(3) and 231.8(4) shall be exempt from sales 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 paragraphs "a" through "j" of subrule 231.6(3).

231.8(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
Artificial implants	Karaya seals	brushes
Artificial larynx	Organ implants	Tracheostomy tubes
Artificial limbs	Ostomy belts	Urinary catheters
Artificial noses	Ostomy clamps	Urinary drainage bags
Artificial teeth	Ostomy cleaners	Urinary irrigation tubing
Cardiac pacemakers	and deodorizers	Urinary pouches
Contact lenses	Ostomy pouches	Ostomy stoma caps and paste
Cosmetic gloves	Ostomy stoma caps and paste	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."* Sales or rental of devices which are used exclusively in conjunction with prosthetic, orthotic, or orthopedic devices shall be exempt from tax. *Daw Industries, Inc. v. United States*, 714 F.2d 1140 (Fed. Cir. 1983).

g. *"Medical equipment and supplies."* The scope of the term "medical equipment and supplies" is broader than the terms "prescription drugs" or "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 which are medical equipment or supplies, but are not prescription drugs or medical devices exempt from tax under subrules 231.6(1), 231.8(1), and 231.8(2) and rule 701—231.7(423). Sales of the following items are generally taxable.

Adhesive bandages	Contact lens solution	Hot water bottles
Aneurysm clips	Convolved 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	Disposable diapers	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	

231.8(4) Power devices. Sales or rental of power devices especially designed to operate prosthetic, orthotic or orthopedic devices shall be exempt from tax. This exemption does not include batteries which 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 2005 Iowa Code Supplement subsection 423.3(60).

701—231.9(423) Raffles.

231.9(1) For raffles conducted prior to July 1, 2015. Prior to July 1, 2015, the sales price from the sale of tickets for a raffle conducted at a fair pursuant to Iowa Code section 99B.5 is exempt from sales and use tax.

231.9(2) For raffles conducted on or after July 1, 2015. On or after July 1, 2015, the sales price from the sale of tickets for a raffle licensed and conducted at a fair pursuant to Iowa Code section 99B.24 is exempt from sales and use tax.

This rule is intended to implement 2016 Iowa Code subsection 423.3(62).
 [ARC 2512C, IAB 4/27/16, effective 6/1/16]

701—231.10(423) Exempt sales of prizes. The sales price from sales of tangible personal property which will be given as prizes to players in games of skill, games of chance, raffles, and bingo games as defined in and lawful under Iowa Code chapter 99B is exempt from tax. See department of inspections and appeals' 481—Chapters 100 through 106, Iowa Administrative Code, for a description of the games of skill, games of chance, raffles, and bingo games which are lawful. See rule 481—100.6(99B) for a description of the prizes which may be lawfully awarded. A gift certificate is not tangible personal property. If a person wins a gift certificate as a prize and then redeems the gift certificate for merchandise, tax is payable at the time the gift certificate is redeemed. Reference 701—15.16(422,423).

This rule is intended to implement 2005 Iowa Code subsection 423.3(62).

701—231.11(423) Modular homes. Forty percent of the sales price from the sale of a modular home is exempt from tax. A “modular home” is any structure built in a factory, made to be used as a place for human habitation, which 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.

This rule is intended to implement 2005 Iowa Code subsection 423.3(63).

701—231.12(423) Access to on-line computer service. The sales price from charges paid to a provider for access to an on-line computer service is exempt from tax. An “on-line computer service” is one which provides for or enables multiple users to have computer access to the Internet. Also, the furnishing of any contracted on-line service is exempt from Iowa tax if the information is made available through a computer server. The exemption applies to all contracted on-line services, as long as they provide access to information through a computer server.

This rule is intended to implement 2005 Iowa Code subsection 423.3(64).

701—231.13(423) Sale or rental of information services. The sales price from the service of the sale or rental of information services is exempt from tax. This exemption does not repeal by implication the tax on the performance of the services of investment counseling, service charges of all financial institutions, private employment agencies, test laboratories, detective services, or any other services enumerated by statute. Those services remain taxable; reference 701—Chapter 26 generally.

“Information services” means every business activity, process, or function by which a seller or its agent accumulates, prepares, organizes, or conveys data, facts, knowledge, procedures, and like services to a particular buyer (or its agent) of the information through any tangible or intangible medium. Information accumulated, prepared, or organized for a particular buyer, its agent, a group of buyers, or their agent is an information service even though it may incorporate preexisting components of data or other information.

Information services include, but are not limited to, database files, mailing lists, subscription files, market research, credit reports, surveys, real estate listings, bond rating reports, abstracts of title, bad check lists, broadcasting rating services, wire services, scouting reports, white and yellow page listings, and other similar items of compiled information prepared for a particular customer. The furnishing of artwork (including musical compositions and films), drawings, illustrations, or other graphic material is not the performance of an “information service”; nor does the term include 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.

The following specific examples illustrate the general principles set out above.

EXAMPLE A. John Doe buys a packaged set of preprinted documents and instructions which anyone may purchase and which is entitled “Legal Eagle.” Mr. Doe prepares his own will by reading the instructions, making choices and filling in the blanks on the preprinted documents. Mr. Doe has purchased tangible personal property and not an information service. His purchase is taxable.

EXAMPLE B. A taxpayer buys a book entitled “Doing Your Own Iowa Individual Income Tax,” which is written by an accountant and is available to any buyer. The taxpayer uses the book to prepare her own IA 1040. Since her purchase contains information prepared for general dissemination to the public in the form of a book, that purchase is a taxable sale of tangible personal property and not an exempt sale of an information service.

EXAMPLE C. The seller provides, for a fee, a weekly bulletin listing information on real estate of use to brokers selling homes in a certain Iowa county. The seller secures the information from a multiple listing service without applying any independent thought during the compiling of that information. The bulletin is useful only to those brokers and not to the general public. Since the bulletin is a “real estate listing” and has been prepared for a particular group of customers and not for the general public, its sale

is the sale of an information service rather than the sale of tangible personal property and is thus exempt from tax.

EXAMPLE D. A-1 Corporation sells gourmet meats through the mail. A-1 rents its list of customers to whom it mails its catalog to other retailers that specialize in sales of goods or services to the wealthy. Since the list is a “mailing list” and made available only to a particular group of buyers, its rental is the performance of an exempt information service and not the taxable rental of tangible personal property.

EXAMPLE E. Company E is a tariff bureau which specializes in compiling and preparing tariff schedules. E acquires these schedules from various companies throughout the country. E then provides these schedules to common carriers that subscribe to its service. Its printed tariff schedules are published in bound and loose-leaf form; they may be updated daily. E’s providing the schedules is the performance of an exempt information service because the schedules are compiled for a particular group of customers and they are items of compiled information similar to the files, lists, reports, and other information services named above. E’s services are not subject to tax.

EXAMPLE F. Company F compiles and prints telephone directories. F purchases white and yellow page listings from various telephone companies and uses those listings to make up its directories. F’s purchases of the white and yellow page listings are purchases of an exempt information service. Any sales on F’s part of the directories to the general public would be sales of tangible personal property subject to tax.

EXAMPLE G. Company G purchases the assets of four businesses. The primary asset of each of the businesses is a database containing names, addresses, and other customer information of use to G but not to anyone other than a company similar to G. G transfers the lists to its own computers by way of paper or magnetic tape. G has purchased an exempt information service with its purchases of the four databases.

This rule is intended to implement 2005 Iowa Code subsection 423.3(65).

701—231.14(423) Exclusion from tax for property delivered by certain media. A taxable “sale” of tangible personal property does not occur if the substance of the transaction is delivered to the purchaser digitally, electronically, or by utilizing cable, radio waves, microwaves, satellites, or fiber optics. This exclusion from tax is also applicable to the leasing of tangible personal property, since a lease is classified as a “sale” of tangible personal property for the purposes of Iowa sales and use tax law. The exclusion is not applicable to property delivered by any medium other than those listed above. Sales of items such as artwork, drawings, photographs, music, electronic greeting cards, “canned” software (reference 701—subrule 18.34(1)), entertainment properties (e.g., films, concerts, books, and television and radio programs), and all other digitized products delivered as described above are not taxable, except the exclusion does not repeal by implication the tax on the service of providing pay television. Reference rule 701—26.56(422,423). If an order for a product is placed by way of any of the media described above but the product ordered is delivered by conventional, physical means, e.g., the U.S. Postal Service or common carrier, sale of the product is not excluded from tax under this rule.

The department considers delivery of tangible personal property to a purchaser by way of a “load and leave” transaction to be delivery by the use of conventional physical means. The sales price from the purchase of property delivered through a load and leave transaction is not exempt from tax under this rule. “Load and leave” means delivery to the purchaser by use of a tangible storage media where the tangible storage media is not physically transferred to the purchaser.

This rule is intended to implement 2005 Iowa Code subsection 423.3(66) and Iowa Code chapter 423, subchapter IV.

701—231.15(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.

231.15(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.

231.15(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.

231.15(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.

231.15(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. Reference rule 701—16.22(422,423) for general information on layaway sales. 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.

231.15(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). Reference rule 701—15.6(422,423) for a definition of the word "discount" and a description of which retailers' reductions in price are discounts which reduce the taxable sales price of items and which are not.

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. Reference 701—subrule 15.6(3).

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 15.6(2) for additional information regarding rebates.

e. *Shipping and handling charges.* Shipping charges separately stated and separately contracted for (reference rule 701—15.13(422,423) for explanation) 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.

231.15(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.

231.15(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:

Adult diapers	Formal clothing—sold not rented	Raincoats and hats
Aerobic clothing	Fur coats and stoles	Religious clothing
Antique clothing	Galoshes	Riding pants
Aprons—household	Garters and garter belts	Robes
Athletic socks	Girdles	Rubber thongs—“flip-flops”
Baby bibs	Gloves—cloth, dress and leather	Running shoes without cleats
Baby clothes—generally	Golf clothing—caps, dresses, shirts and skirts	Safety shoes (adaptable for street wear)
Baby diapers	Graduation caps and gowns—sold not rented	Sandals
Baseball caps	Gym suits and uniforms	Shawls
Bathing suits	Hats	Shirts
Belts with buckles attached	Hiking boots	Shoe inserts and laces
Blouses	Hooded (sweat) shirts	Stockings
Boots—general purpose	Hosiery, including support hosiery	Suits
Bow ties	Jackets	Support hose
Bowling shirts	Jeans	Suspenders
Bras	Jerseys for other than athletic wear	Sweatshirts
Bridal apparel—sold not rented	Jogging apparel	Sweatsuits
Camp clothing	Knitted caps or hats	Swim trunks
Caps—sports and others	Lab coats	Tennis dresses
Chefs' uniforms	Leather clothing	Tennis skirts
Children's novelty costumes	Leg warmers	Ties
Choir robes	Leotards and tights	Tights
Clerical garments	Lingerie	Trousers
Coats	Men's formal wear—sold not rented	Tuxedos (except cufflinks)—sold not rented
Corsets	Neckwear, e.g., scarves	Underclothes
Costumes—Halloween, Santa Claus, etc., sold not rented	Nightgowns and nightshirts	Underpants
Coveralls	Overshoes	Undershirts
Cowboy boots	Pajamas	Uniforms—generally
Diapers—cloth and disposable	Pants	Veils
Dresses	Pantyhose	Vests—general, for wear with suits
Dress gloves	Prom dresses	Walking shoes
Dress shoes	Ponchos	Windbreakers
Ear muffs		Work clothes
Employee uniforms other than those primarily designed for athletic activity or protective use		

231.15(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 2005 Iowa Code subsection 423.3(67).

701—231.16(423) State sales tax phase-out on energies. Beginning January 1, 2002, the state sales tax is phased out at the rate of 1 percent per year on 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, apartment units, and condominiums for human occupancy.

Local option taxes are not included in the phase-out of the state sales tax.

This phase-out of tax does not impact franchise fees. Franchise fees will continue to be imposed where applicable.

231.16(1) 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 will fall within the phase-out provisions. A building containing apartment units is not considered to be qualifying property for purposes of this rule. However, if each apartment has a separate meter, it may qualify for the phase-out if classified as qualifying property by the utility. Also excluded from the phase-out provisions are certain nonqualifying properties that 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, apartment units not individually metered, and group homes.

231.16(2) Schedule for phase-out of tax. State sales tax on energies will be phased out at the rate of 1 percent per year based on the following schedule:

a. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2002, through December 31, 2002, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2002, through December 31, 2002, the rate of state tax is 4 percent of the sales price.

b. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2003, through December 31, 2003, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2003, through December 31, 2003, the rate of state tax is 3 percent of the sales price.

c. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2004, through December 31, 2004, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2004, through December 31, 2004, the rate of state tax is 2 percent of the sales price.

d. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2005, through December 31, 2005, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2005, through December 31, 2005, the rate of state tax is 1 percent of the sales price.

e. If the date of the utility billing or meter reading cycle of the residential customer for the sale, furnishing, or service of metered gas and electricity is on or after January 1, 2006, or if the sale, furnishing, or service of fuel for purposes of residential energy and the delivery of the fuel occur on or after January 1, 2006, the rate of state tax is 0 percent of the sales price.

231.16(3) Determination of tax rate. Determination of the rate of state tax to be imposed on a transaction depends on the type of energy that is being purchased.

a. *Electricity or metered natural gas.* If the energy being purchased is either electricity or natural gas, then the rate of tax is governed by either the billing date or meter reading date. For example, ABC natural gas company sends out bills with a billing date of December 31, 2002, to qualifying residential customers. However, the bills to these qualifying customers are not placed in the United States mail until January 2, 2003. Based on the foregoing facts, the state sales tax to be imposed on the bills is 4 percent. Four percent is the tax rate imposed at the time of the billing date on the gas bills sent to the customers.

If a billing for the same usage period needs to be billed more than once due to loss of the original bill or some other error, the billing date of the original bill controls qualification for the phase-out provisions of metered gas or electricity. For example, a utility company issues a billing for metered gas on December 28, 2001, to a customer and the customer loses the billing. The customer calls the utility company on January 10, 2002, to report the lost billing and to request a new billing. The utility company issues a new billing with a billing date of January 12, 2002, to the customer. The original billing date issued to the customer is determinative for the tax rate to be imposed. As a result, a 5 percent state tax rate should be imposed on the billing because the original billing date was prior to January 1, 2002.

b. *Fuel and heating oil.* The proper rate of tax to be imposed for the sale, furnishing or service of fuel including propane is governed by the date of delivery of the fuel to the customer. Consequently, if a farmer purchases propane for home heating by executing an agreement and paying for the propane in October 2002 but the propane is not delivered to the farmer until January 2003, the rate of state sales tax that should be imposed on the transaction is 3 percent.

231.16(4) Qualifying and nonqualifying usage. Customers that have both qualifying and nonqualifying usage on the same meter or fuel tank are subject to a proration formula to obtain the qualifying portion eligible for the phase-out provisions. In these situations, the percentage of qualifying usage must be determined by the purchaser for the purposes of applying the phase-out tax. Nonqualifying usage would be subject to the full state tax rate. Consequently, a proration of the

metered gas, electricity or fuel usage for the qualifying and the nonqualifying usage must be calculated by the purchaser. Reference 701—subrules 15.3(4) and 15.4(5) for guidance on proration of electricity, natural gas and fuels. In addition, the purchaser must furnish an exemption certificate to the supplier with respect to that percentage of metered gas or electricity that is eligible for the phase-out provisions. Reference 701—subrule 15.3(2). The customer may provide a calculation which includes only the usage not subject to phase-out.

The customer must notify the utility provider of the percentage of qualifying and nonqualifying usage and the customer has the burden of proof regarding the percentage. The customer is liable for any mistakes or misrepresentations made regarding the computation or for failure to notify the utility provider in writing of the percentage of qualifying or nonqualifying usage.

Security lights used by customers that are billed as a flat rate tariff will be subject to the phase-out if the customer is classified as a residential customer. However, if a customer uses security lights which are billed as a flat rate tariff and that customer is classified as a commercial customer, the sales price including the usage of the security lights is not subject to the phase-out of state sales tax and is subject to the full state sales tax rate, unless another exemption from state sales tax is applicable.

231.16(5) Reporting over the phase-out period. Sales/use tax returns will be filed on the same basis as they are currently filed. During each phase-out period, the entire sales price from sales should be reported on the return. The appropriate state sales tax rate for the tax period will be applied by claiming the phased-out portion of the tax rate as a deduction on the return.

The sales prices for local option taxes are also to be reported in their entirety and computed by applying the appropriate local option tax rate.

The following are examples regarding how state sales and local option taxes should be reported:

EXAMPLE 1. Reporting of tax by an energy provider:

Sales price for a tax period in 2002	\$100,000
Phase-out (20,000 for the first year, 40,000 for the second year, etc.)	<u>20,000</u>
Taxable sales	80,000
State tax at 5% (to compute state sales tax due)	4,000
Sales price to be reported for local option	100,000
Local option tax rate (assuming a 1% local option tax rate)	<u>× 1%</u>
Local option tax due	1,000
Total tax due (local option and state sales tax)	\$5,000

EXAMPLE 2. Reporting of tax on an individual billing:

Monthly charge during a billing or delivery period in 2002	\$400
State tax rate	<u>× 4%</u>
State tax due	16
Sales price for local option tax	400
Local option tax rate	<u>× 1%</u>
Local option tax due	4
Total tax (local option and state sales tax)	\$20

This rule is intended to implement 2005 Iowa Code section 423.3(68).

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*AMUSEMENT PARKS AND RIDES***CHAPTER 61****ADMINISTRATION OF IOWA CODE CHAPTER 88A**

[Prior to 9/24/86, Labor, Bureau of [530]]

[Prior to 10/21/98, see 347—Ch 61]

875—61.1(88A) Scope. 875—Chapters 61 through 63 do not apply to the following:**61.1(1)** A water park or water park attraction including, but not limited to, a water slide, wave action pool, and lazy river. This subrule does not apply to an amusement ride that propels patrons using a power source other than gravity even though water is present.**61.1(2)** A live-animal ride.**61.1(3)** A vessel inspected pursuant to Iowa Code chapter 462A.**61.1(4)** An amusement structure in which the patrons navigate on their own power and the patrons do not ride, climb, or walk on a mechanical component.**61.1(5)** A device that meets all of the following criteria:

- a. Was designed and built to be operated by a coin, card, or token;
- b. Was designed and built to be operated by the patron rather than an attendant;
- c. Operates on self-contained wiring that was installed by the manufacturer;
- d. Operates on less than 120 volts of electrical power; and
- e. Is within or is part of a structure subject to a state or local building code.

61.1(6) Playground equipment owned, maintained, and operated by any political subdivision of this state.**61.1(7)** A concession booth, amusement device, or amusement ride that meets all of the following:

- a. Is owned and operated by a nonprofit organization or school; and
- b. Is located in a building subject to inspection by the state fire marshal or a local government.

61.1(8) Nonmechanized physical fitness and playground equipment unless a fee is charged to use the equipment.**61.1(9)** Physical fitness equipment that does not meet the definition of “amusement device.”**61.1(10)** A tramway used as a ski lift.**61.1(11)** A scenic railway operating on standard-gauge rails.**61.1(12)** A zip line or climbing wall located at a camp or retreat owned or operated by a nonprofit religious, educational or charitable institution or association.

[ARC 2428C, IAB 3/2/16, effective 4/6/16; see Delay note at end of chapter]

875—61.2(88A) Definitions. The definitions in this rule apply to 875—Chapters 61 through 63.*“Air-supported structure”* means an amusement device that employs a high-strength fabric or film that achieves its strength, shape and stability from internal air pressure provided by a mechanical device such as an air blower or fan.*“Amusement device”* means a climbing wall utilizing an auto-belay system; a bungee jump as defined in 875—Chapter 63; a device allowing a patron to jump on a trampoline while attached to one or more bungee cords; a dry slide; a mechanical bull; a zip line that does not allow the rider to touch the ground at all times; and an air-supported structure.*“ANSI”* means the American National Standards Institute.*“Assistant”* means a paid or volunteer person working under the direct supervision of an attendant or operator.*“ASTM”* means the ASTM Standards on Amusement Rides and Devices published by ASTM International.*“Attendant”* means a paid or volunteer person who controls patron restraints or the operation, starting, stopping, or speed of covered equipment.*“Carnival”* means an enterprise offering amusement or entertainment to the public in, upon, or by means of amusement devices or rides or concession booths.*“Certificate of noncompliance”* means:

1. A certificate of noncompliance issued by the child support recovery unit, department of human services, pursuant to Iowa Code chapter 252J;

2. A certificate of noncompliance issued by the college student aid commission pursuant to Iowa Code chapter 261; or

3. A certificate of noncompliance issued by the centralized collection unit, department of revenue, pursuant to Iowa Code chapter 272D.

“Commissioner” means the labor commissioner or the labor commissioner’s authorized designee.

“Concession booth” means a structure that is powered by electricity and offers amusements to the public at more than one fair or carnival, or at one fair or carnival for more than seven consecutive days. A structure or enclosure offering only goods, food or beverages, rather than amusements, is not a “concession booth.”

“Covered equipment” means an amusement ride, amusement device, concession booth or related electrical equipment that is covered by Iowa Code chapter 88A.

“Fair” means an enterprise principally devoted to the exhibition of products of agriculture or industry in connection with the operation of covered equipment.

“Major breakdown” means stoppage of operation from any cause that results in damage, failure, or breakage in a stress-bearing part of covered equipment.

“Major modification” means any change to the structure of or to an operational characteristic, capacity, classification, or mechanism of covered equipment. “Major modification” includes, but is not limited to, changing the mode of transportation from non-wheeled to a truck or flat-bed mount or changing the mode of assembly or other operational functions from manual to mechanical or hydraulic.

“NFPA” means the National Fire Protection Association.

“Operator” means a person, or the agent of a person, who owns or controls or has the duty to control the operation of covered equipment at a carnival or fair. “Operator” includes an agency of the state or any of its political subdivisions. “Operator” shall include a person who leases covered equipment and controls or has the duty to control its operation at a carnival or fair.

“Related electrical equipment” means a portable generator, blower, or other equipment necessary to the operation of an amusement ride, amusement device, or concession booth.

“Reportable incident” means an event described by one or more of the following:

1. Damage, failure or breakage of a stress-bearing part of an amusement ride or amusement device;
2. Cessation of covered equipment for more than 20 minutes with at least one rider aboard;
3. An occurrence that nearly resulted in personal injury; or
4. An occurrence that caused the operator to cease operations unexpectedly to avoid an injury or illness.

“Rope lay” means the length along the rope in which one strand makes a complete revolution around the rope.

“Walkway” means a public passage through a carnival, fair, or park.

[ARC 2428C, IAB 3/2/16, effective 4/6/16; see Delay note at end of chapter]

875—61.3(88A) Owner and operator requirements. No person shall operate covered equipment at a carnival or fair unless the person holds a current operating permit and the covered equipment has passed an Iowa inspection.

61.3(1) Operating permit. No later than May 1 and at least 14 days before operation begins each calendar year, the operator of covered equipment shall apply to the commissioner for an operating permit. Application shall be made on a form provided by the commissioner. Each of the following shall be submitted with the completed operating permit application:

a. The applicable fee;

b. A certificate of insurance issued by an insurance company authorized to do business in Iowa.

The certificate of insurance shall:

(1) Certify a policy in the minimum amount of \$1 million for bodily injury, death, or property damage in any one occurrence;

- (2) List the specific pieces of equipment that are covered and, if applicable, those that are not covered; and
 - (3) Include "Division of Labor Services—Amusements" as a certificate holder;
 - c. The operator's itinerary identifying the covered equipment to be operated and the dates and locations where each will be operated;
 - d. General design criteria, safety factors, materials utilized, and stress analysis unless the amusement ride or amusement device was granted an Iowa amusement inspection sticker during the previous calendar year;
 - e. Certification of compliance with applicable training and maintenance requirements;
 - f. With an application submitted after May 1, proof that the applicant could not have reasonably complied with the May 1 deadline and proof that the application was filed immediately after need for the permit was known;
 - g. Separately for each bungee jump:
 - (1) A site operating manual;
 - (2) A report which is prepared and sealed by a professional engineer who is licensed in Iowa and which certifies that the design and construction of the equipment and structure are suitable for the intended use and conform to Iowa law, recognized engineering practices, procedures, standards and specifications;
 - (3) Site plan drawings depicting the preparation area, the jump space, the landing area, the recovery area and other features to be included in the approved operating site;
 - (4) Specifications of equipment and structures; and
 - (5) Depictions of the location, specifications, dimensions, and type of air bag, pool or body of water where the jumper will land.

61.3(2) Changes to information submitted with application. The operator shall immediately notify the commissioner of any changes to the operator's itinerary. The operator shall promptly notify the commissioner of other changes to information provided with the operating permit application.

61.3(3) Leases. The requirements of this subrule apply when covered equipment is leased for use at a fair or carnival.

a. The owner shall notify the commissioner within 48 hours of leasing the covered equipment. The notification shall include the name, address, and contact information for the lessee and lessor, a description of the covered equipment, and the dates and location of its intended operation.

b. The lessor shall give the lessee a copy of the manual for the leased covered equipment and shall train the lessee or the lessee's designated representatives on the use of the equipment.

c. The lessee shall obtain an operating permit.

61.3(4) Personal injuries and deaths.

a. The operator shall immediately report by telephone any accident that results in medical care beyond first aid.

b. Within 48 hours after an operator is notified of a claim or report to the operator's insurance provider, the operator shall submit a duplicate copy of the report or claim to the commissioner.

c. The commissioner may require that the scene of an accident be secured and not disturbed to any greater extent than necessary for removal of the deceased or injured person. If covered equipment is removed from service by the commissioner, the covered equipment shall be returned to service only upon the commissioner's authorization.

61.3(5) Major breakdown report. The operator shall report a major breakdown of covered equipment to the commissioner immediately and provide a detailed report in writing within 48 hours. The commissioner may order the covered equipment to be withheld from operation, and in such case, the commissioner shall conduct an immediate investigation. The covered equipment shall be released for repair and operation only after the commissioner's investigation is complete.

61.3(6) Advance notice of major modification. The operator shall notify the commissioner in writing at least ten days prior to a major modification. If requested by the commissioner, the operator shall provide plans, diagrams, and ride analysis documentation consistent with ASTM F2291-15.

61.3(7) Technical data. If requested by the commissioner, the operator shall provide an English language version of the following:

a. Data concerning constant, reversible, or eccentric forces generated by acceleration, deceleration, wind, centrifugal action, or inertia.

b. Stress analysis and other data pertinent to the structural materials, design, structure, factors of safety or performance characteristics.

[ARC 2428C, IAB 3/2/16, effective 4/6/16; see Delay note at end of chapter]

875—61.4(88A) Inspections. Pursuant to Iowa Code chapter 88A, covered equipment must pass an inspection at least annually. Inspections will be performed according to the rules set forth and standards adopted in 875—Chapters 61 to 63.

61.4(1) Inspection types. In addition to the inspections listed below, an inspection may be conducted by the commissioner at any time. The fee schedule for annual inspections set forth in Iowa Code section 88A.4 shall apply to all inspections performed by division of labor services inspectors. No person shall operate covered equipment at a fair or carnival unless the covered equipment has passed an inspection in the current calendar year.

a. *Annual inspection by owner.* At the discretion of the commissioner, the owner of an air-supported structure may be designated by the commissioner to perform the annual inspection of the owner's air-supported structure and blower. An owner designated pursuant to this paragraph shall perform the inspection according to applicable standards. The owner shall submit in the format required by the commissioner an affidavit attesting to the performance of the inspection, correction of code violations, and other required information.

b. *Annual inspection by a division of labor services inspector.* Unless an inspection is waived pursuant to Iowa Code section 88A.13, or the inspection is performed by the owner pursuant to paragraph 61.4(1)“a,” a division of labor services inspector shall inspect covered equipment prior to operation.

c. *Major modification inspection.* After covered equipment has undergone a major modification, the covered equipment must pass an inspection by a division of labor inspector before it is put back into use.

61.4(2) Safety order. If the division of labor services inspector finds a code violation, the inspector will issue a safety order requiring that the condition be corrected. The deadline for correction of the code violation shall be set forth in the safety order. If the inspector finds one or more code violations pertaining to more than one-half of the seating capacity of an amusement ride, the amusement ride shall not be operated until the violations are corrected. If code violations pertain to one-half or less of the seating capacity of an amusement ride, the amusement ride may be shut down at the discretion of the inspector.

61.4(3) Cessation order. If the inspector identifies covered equipment that is hazardous or unsafe, the inspector shall issue a cessation order. The commissioner shall establish that the code violation is corrected before operation of the covered equipment is resumed.

[ARC 2428C, IAB 3/2/16, effective 4/6/16; see Delay note at end of chapter]

875—61.5(88A) Amusement inspection sticker. Covered equipment shall not be operated without a current sticker.

61.5(1) After covered equipment has passed an annual inspection by the division of labor services inspector, the division of labor services inspector shall affix an amusement inspection sticker to a basic part of the covered equipment in such a manner as to be readily accessible by the inspector.

61.5(2) After the commissioner receives satisfactory proof of inspection from an owner designated by the labor commissioner pursuant to paragraph 61.4(1)“a,” the commissioner shall mail the sticker to the owner. The owner shall properly affix the sticker to a basic part of the air-supported structure or blower before operation.

61.5(3) After covered equipment passes a major-modification inspection, a new amusement inspection sticker will be issued.

61.5(4) Before covered equipment is sold, the seller shall remove the amusement inspection sticker. If a current amusement inspection sticker is no longer legible, the operator may request a replacement sticker.
[ARC 2428C, IAB 3/2/16, effective 4/6/16; see Delay note at end of chapter]

875—61.6(88A,252J,261,272D) Termination, denial, suspension, or revocation of an operating permit.

61.6(1) All active operating permits shall terminate automatically on December 31 of the year of issuance.

61.6(2) The commissioner may suspend or revoke an operating permit for any of the following reasons:

- a. Negligence in the operation of covered equipment;
- b. Repeated failure to perform or document proper daily inspections;
- c. Misrepresentation of material information required as a part of the operating permit application package;
- d. Failure to comply with a safety order or cessation order issued by the commissioner;
- e. Operation of covered equipment in disregard of public health, safety and welfare;
- f. Termination of the required insurance coverage;
- g. Failure to pay a liquidated debt owed to the commissioner;
- h. Receipt by the commissioner of a certificate of noncompliance;
- i. Failure of an operator to comply with the proper procedures;
- j. Failure of an operator to provide an adequate number of properly trained and qualified assistants and attendants; or
- k. Submission of a false affidavit of annual inspection by the owner of an air-supported structure.

61.6(3) The commissioner may deny an application for an operating permit if the application packet is inadequate or for any reason set forth as grounds for suspension or revocation of an operating permit.
[ARC 2428C, IAB 3/2/16, effective 4/6/16; see Delay note at end of chapter]

875—61.7(17A,88A,252J,261,272D) Procedures for revocation, suspension, or denial of an operating permit or amusement inspection sticker. The procedures set forth in this rule govern the revocation, suspension or denial of an operating permit or amusement inspection sticker.

61.7(1) If the commissioner initiates revocation, suspension or denial due to the receipt of a certificate of noncompliance, the applicable procedures of Iowa Code chapter 252J, 261, or 272D shall apply.

61.7(2) In the event that immediate action is required due to imminent danger to the public health, safety or welfare, the following procedures shall apply:

- a. The commissioner shall prepare a safety order describing the hazardous condition and shall give the operator, or the operator's representative on site, a copy of the safety order.
- b. The commissioner shall remove the amusement inspection sticker or stickers from covered equipment as necessary to protect the public health, safety or welfare.
- c. The commissioner shall proceed as quickly as feasible to give the operator an opportunity for a hearing as set forth in subrule 61.7(3).

61.7(3) In all other cases, the following procedures shall apply:

- a. The commissioner shall serve a notice by restricted certified mail to the address listed on the operating permit application or by other service as permitted by Iowa Code chapter 17A.
- b. The operator shall have 20 days to file a written notice of contest with the commissioner. If the operator does not file a written notice of contest within 20 days of receipt of the notice, the action stated in the notice shall automatically be effective.
- c. The hearing procedures in 875—Chapter 1 shall govern.
- d. Within five business days of final agency action revoking or suspending an operating permit, the operator shall forfeit the operating permit to the commissioner.

[ARC 2428C, IAB 3/2/16, effective 4/6/16; see Delay note at end of chapter]

875—61.8(88A) Payments. Fees due for inspections and operating permits shall be paid by money order or certified check unless the commissioner has given prior approval for a check written on a business account.

[ARC 2428C, IAB 3/2/16, effective 4/6/16; see Delay note at end of chapter]

These rules are intended to implement Iowa Code chapters 17A, 88A, 252J, 261, and 272D.

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¹ April 6, 2016, effective date of the rescission of former Chapter 61 and the adoption of new Chapter 61 herein [ARC 2428C] delayed 70 days by the Administrative Rules Review Committee at its meeting held March 4, 2016; delay lifted at the meeting held April 8, 2016.

CHAPTER 62
SAFETY RULES FOR AMUSEMENT RIDES, AMUSEMENT DEVICES,
AND CONCESSION BOOTHS
[Prior to 9/24/86, Labor, Bureau of [530]]
[Prior to 10/21/98, see 347—Ch 62]

875—62.1(88A) Scope. Rule 875—62.2(88A) applies to all covered equipment. The remaining rules of this chapter apply to all covered equipment, except a bungee jump covered by 875—Chapter 63.
[ARC 2428C, IAB 3/2/16, effective 4/6/16; see Delay note at end of chapter]

875—62.2(88A) Other codes.

62.2(1) Carnivals, fairs, operators, and covered equipment may be regulated by city or county ordinances. Iowa Code chapter 92 and 875—Chapter 32 concerning child labor apply when an operator has employees who are under the age of 18. Iowa Code chapters 91A and 91D and 875—Chapters 35 and 215 to 218 govern payment of wages to an operator's employees. Nothing in 875—Chapters 61 through 63 shall be viewed as providing an exemption, waiver, or variance from any otherwise applicable regulation or statute.

62.2(2) State fire marshal rules set forth at 661—Chapter 201, General Fire Safety Requirements, are adopted by reference.

62.2(3) The following occupational safety and health standards are adopted by reference:

- a. 29 CFR 1910, Subpart D, Walking-working surfaces;
- b. 29 CFR 1910, Subpart H, Hazardous material;
- c. 29 CFR 1910, Subpart I, Personal protective equipment;
- d. 29 CFR 1910.147, Control of hazardous energy (lockout/tagout);
- e. 29 CFR 1910.151, Medical services and first aid;
- f. 29 CFR 1910, Subpart N, Materials handling and storage;
- g. 29 CFR 1910, Subpart O, Machinery and machine guarding;
- h. 29 CFR 1910, Subpart Q, Welding, cutting and brazing; and
- i. 29 CFR 1910, Subpart S, Electrical.

[ARC 2428C, IAB 3/2/16, effective 4/6/16; see Delay note at end of chapter]

875—62.3(88A) Site requirements.

62.3(1) Design. The grounds of a fair or carnival shall be designed according to the following criteria:

- a. Clearance around covered equipment shall meet or exceed the manufacturer's recommendations.
- b. Clearance around covered equipment shall be at least 6 feet unless a fence that is designed by the manufacturer as an integral part of the equipment is properly installed.
- c. Clearance between covered equipment and a facility for cooking shall be at least 10 feet.
- d. Walkways shall be wide, unobstructed, and open at each end.
- e. Walkways through concession booth backyards and over water lines and electrical lines shall be avoided.
- f. Intermingling of water lines and electrical lines shall be avoided.
- g. Guy wires, braces and ropes used for support:
 - (1) Shall not be placed in walkways or in the entrances or exits for covered equipment; and
 - (2) Shall be clearly marked with streamers or other devices when located adjacent to walkways.
- h. Stakes shall be covered.

62.3(2) Housekeeping. Adequate containers for refuse shall be provided. Accumulations of trash shall be removed promptly.

62.3(3) Lighting. Entrances and exits for covered equipment shall be provided with at least 5 foot-candles of light measured at grade level. No less than 10 foot-candles of lighting shall be provided at all work levels for assembly and disassembly of covered equipment.

62.3(4) Internal combustion engines. Internal combustion engines shall be a minimum of 5 feet from an air-supported structure and shall be guarded or fenced to prevent patron exposure or access. An internal combustion engine operated in an enclosed area shall be provided with fresh-air intake and an exhaust discharge flue.

62.3(5) Tents. A tent enclosed with walls or sides and erected over covered equipment during operation or assembly of the covered equipment shall resist flame propagation after weathering. The operator shall have a certificate or a test report indicating the material meets the flame propagation performance criteria for tents set forth in Standard Methods of Fire Tests for Flame Propagation of Textiles and Films, NFPA 701-2010.

62.3(6) Flammable waste and materials. An operator shall provide identified covered and labeled metal containers for flammable waste. The containers shall be available to staff and attendants but shall not be accessible to patrons.

62.3(7) Storage of hazardous or flammable materials. Storage of more than 50 gallons of fuel, other flammable material, or hazardous gas is not permitted in any area accessible to the public.

62.3(8) Walking surfaces. Entrances and exits for covered equipment shall be adequate, unobstructed, and in accordance with the manufacturer's instructions. Hazards such as protruding nails, splinters, holes, loose boards, debris, obstructions, and projections are prohibited. Stairways, ramps and railings that meet the requirements of 29 CFR 1910.23 shall be provided where patrons enter or exit covered equipment above or below grade.

62.3(9) Fences. Fences or other barriers shall be staked or sandbagged securely to prevent movement. Placement of fences shall be consistent with the recommendations of the manufacturer. If the manufacturer's recommendation regarding fences is not available, fences shall be located to keep patrons at least 6 feet away from moving parts.

62.3(10) Crowd control. Chains, bars, gates or similar devices shall be used to direct and control patrons in a queue line.

62.3(11) Setup. Operators shall follow the manufacturer's instructions to ensure that covered equipment is level and stable. If the manufacturer's instructions are not available, the following shall apply:

- a. Permanent rides shall be placed on poured, reinforced concrete.
- b. Blocking for temporary rides shall meet the following criteria:
 - (1) Blocking shall be wider than it is high.
 - (2) The top level of the blocking shall be wider than the mud sill or landing gear.
 - (3) Blocks shall not be soft, damaged, deteriorated, hollow, porous, or brick.
 - (4) Blocking shall be placed on ground that was leveled by digging rather than by filling.
 - (5) Voids larger than 1/4 inch between blocks are prohibited.
 - (6) Two or more layers of blocks shall be crossed.

[ARC 2428C, IAB 3/2/16, effective 4/6/16; see Delay note at end of chapter]

875—62.4(88A) Design and manufacture of covered equipment. This rule sets forth requirements for the design and manufacture of all covered equipment, except a bungee jump covered by 875—Chapter 63.

62.4(1) Codes adopted by reference. ASTM F2374-10 shall apply to all air-supported structures notwithstanding the definition and use of the phrase "inflatable amusement device" in ASTM F2374-10.

a. *All covered equipment.* Effective July 1, 2016, all covered equipment shall comply with National Electric Code, NFPA 70-2014.

b. *Tramways.* All tramways subject to the rules of this chapter and in use prior to July 1, 2016, shall be designed and tested in accordance with the ANSI B77.1 standard in effect at the time of installation.

c. *New covered equipment.* Effective July 1, 2016, new covered equipment and covered equipment undergoing a major modification shall be designed and tested in accordance with ANSI B77.1-2011 and ANSI B77.1A-2012 and ASTM F1159-15a, F1193-14, F1957-99(2011), F2007-12, F2137-15, F2291-15, F2374-10, F2375-09, F2376-13, F2460-11, F2959-14, and F2960-15, as applicable.

d. Existing covered equipment. Covered equipment manufactured before July 1, 2016, must comply with the applicable design criteria of subrule 62.4(2) through July 1, 2021. After July 1, 2021, covered equipment, except tramways, shall meet the criteria for service-proven equipment set forth in ASTM F2291-15.

62.4(2) Design criteria. Structural materials and construction of covered equipment shall conform to recognized engineering practices, procedures, standards and specifications. The design, materials and construction features shall incorporate a safety factor of 5 or alternative safety factors recommended by the original manufacturer or by a professional engineer with credentials and experience acceptable to the commissioner.

62.4(3) Data plate. A manufacturer's data plate in compliance with ASTM F1193-14, section 10, shall be affixed to covered equipment.

62.4(4) Speed-limiting device. Covered equipment capable of exceeding its maximum safe operating speed shall be provided with a speed-limiting device. Steam engines that require an overspeed throttle setting to initiate the operation are exempt from the requirement of this subrule.

62.4(5) Patron restraint and containment. Covered equipment shall be designed to safely contain and restrain patrons during the intended action. Any surface within reach of a patron shall be smooth, rounded, and free from projections such as bolts, screws, or splinters. Padding shall be installed to prevent or minimize the possibility of injury.

62.4(6) Safety stop devices. Electrical safety stop devices shall cause covered equipment to fail safe in the event of power failure or any malfunction.

62.4(7) Chains. If a chain is used as a safety device or in a stress-bearing application, the chain shall be certified with adequate load-carrying capacity. Twisted wire or stamped chain shall not be used for safety devices or in stress-bearing applications.

62.4(8) Front openings and awnings. Front openings and awnings shall be stabilized with safety latches, safety pins, or other devices.

62.4(9) Shooting galleries. A shooting gallery shall use only equipment, shells, pellets, and bullets designed for shooting galleries. Means shall be provided to prevent turning the weapon away from the intended target.

62.4(10) Flying objects. Where flying objects such as darts, balls, pellets, shot, and bullets are a potential hazard:

a. Ricocheting shall be prevented by absorbent wings or panels; and

b. Absorbing walls, sandbags, or other mechanisms shall be installed along the bottom, back, and sides of the booth to protect passersby.

[ARC 2428C, IAB 3/2/16, effective 4/6/16; see Delay note at end of chapter]

875—62.5(88A) Maintenance of covered equipment. An operator shall conduct periodic inspections, repairs, tests, and maintenance as set forth in this rule, the manufacturer's recommendations, ANSI B77.1-2011 and ANSI B77.1A-2012 and ASTM F770-15, F1159-15a, F1193-14, F2007-12, F2137-15, F2374-10, F2375-09, F2376-13, F2460-11, F2959-14, and F2960-15, as applicable. ASTM F2374-10 shall apply to all air-supported structures notwithstanding the definition and use of the phrase "inflatable amusement device" in ASTM F2374-10. An operator shall make a written record of all inspections, maintenance, tests, and repairs of covered equipment, and the records shall be available to the commissioner.

62.5(1) Pressure equipment. The operator shall inspect and maintain all air and gas compressors, tanks, piping and equipment pursuant to the manufacturer's recommendations.

62.5(2) Wire rope rollers, drums and sheaves. The operator shall periodically inspect and maintain for cleanliness and safety the mechanical devices, such as rollers, drums and sheaves, that brake, control, or come into contact with wire rope. The operator shall immediately replace mechanical devices that have broken or damaged parts, missing pieces, undue roughness or uneven wear.

62.5(3) Mechanical members. The operator shall periodically inspect pinions, frames, sweeps, eccentrics and other mechanical members for wear, cracks and other signs of deterioration. The operator shall make necessary repairs.

62.5(4) Bearings. The operator shall periodically inspect, lubricate, clean and repair bearing surfaces, ball joints and other single or multiple direction mechanical surfaces.

62.5(5) Gears. The operator shall keep gears properly aligned and in good repair.

62.5(6) Nondestructive testing. The operator shall ensure that appropriate nondestructive testing (NDT) is conducted and that documentation is available for review. NDT shall be performed at the following times:

- a. At intervals recommended by the manufacturer;
- b. When required by the commissioner due to a welded repair;
- c. When required by the commissioner due to a visual indication of a potentially hazardous condition; and
- d. When recommended by a bulletin prepared according to ASTM F1193-14.

62.5(7) Electrical wiring. Electrical wiring shall meet the requirements of National Electrical Code, NFPA 70-2014. The operator shall regularly inspect wiring for wear, cracks, or other signs of deterioration and shall replace worn wiring.

62.5(8) Patron restraint. The operator shall inspect retaining, restraining and containing devices daily before use and shall immediately repair or replace worn or damaged areas.

62.5(9) Hydraulic systems. The operator shall inspect each hydraulic system for leaks, damaged pipes, and worn or deteriorated hoses. Material that hinders visible inspection is prohibited. The operator shall make appropriate repairs.

62.5(10) Relief devices. The operator shall periodically exercise pressure relief valves or devices to ensure that they operate properly. The operator shall periodically inspect pressure relief devices to ensure that they are set at appropriate limits.

62.5(11) Wire rope inspection. The operator shall regularly inspect the entire length of each wire rope according to the manufacturer's recommendations. At a minimum, wire rope shall be inspected each time covered equipment is set up.

62.5(12) Wire rope replacement. The operator shall replace a wire rope if:

- a. There are six or more distributed broken wires in one rope lay or three broken wires in one strand in one rope lay;
- b. There is more than one broken wire in one rope lay and one of the following conditions exists:
 - (1) The wire rope is subject to constant pressure during operation, assembly, or disassembly of covered equipment;
 - (2) The wire rope is subject to surge shocks; or
 - (3) The wire rope could cause serious injuries by its failure; or
- c. At least one of the following conditions exists on at least one location on the wire rope:
 - (1) Abrasion, nicking, scrubbing or peening causing loss of more than one-third of the original diameter of the outside wires;
 - (2) Severe corrosion or rust;
 - (3) Severe kinking, crushing, bird-caging or other damage resulting in distortion of the rope structure;
 - (4) Heat damage;
 - (5) For a rope with an original diameter of 3/4 inch or less, a loss in diameter of more than 3/64 inch;
 - (6) For a rope with an original diameter of 7/8 inch to 1 1/8 inch, a loss in diameter of more than 1/16 inch; or
 - (7) For a rope with an original diameter of 1 1/4 inches to 1 1/2 inches, a loss in diameter of more than 3/32 inch.

62.5(13) Wire rope repair. Without lengthening or splicing, the operator shall replace the entire length of a wire rope that is damaged in one location with new rope of equivalent design and capacity. However, if feasible, wire rope that is worn near an attachment point may be repaired by shortening the length of the wire rope, rather than by replacing the entire rope; and wire ropes on tramways may be lengthened or repaired by splicing in accordance with the applicable ANSI code.

62.5(14) Rope-fastening devices. The operator shall inspect couplings, sockets and fittings to ensure that they are in accordance with the instructions and specifications of the designer, engineer or manufacturer.

62.5(15) Wood components. The operator shall inspect footings, splices, uprights, track timbers, ledgers, sills, laps, bracing, flooring and all other wood components of covered equipment for deterioration, cracks, or fractures. The operator shall replace defective wood members with material of equal or greater strength and capacity.

The operator shall remove a sufficient amount of soil around piling or wood members embedded in dirt to check for deterioration. When a wood piling requires replacement, the operator shall install a concrete pier. The top of the pier shall be installed so that the attached wood member is not exposed to dirt or water accumulation.

62.5(16) Welding, cutting, or brazing. Welding, cutting, or brazing shall not be performed where the point of operation is more than 4 feet above grade if patrons are on site. Where the point of operation is less than 4 feet above grade, welding, cutting or brazing may be performed if at least one of the following applies:

- a. Patrons are not on site.
- b. Patrons are separated from the point of operation by a solid barrier.
- c. A fence or similar barrier is erected to keep the public at least 150 feet from an arc welding operation that uses an electrode with a diameter of 3/16 inch or less.
- d. A fence or similar barrier is erected to keep the public at least 35 feet from gas welding, soldering, cutting or brazing of materials 1/2 inch thick or less.
- e. A fence or similar barrier is erected to keep the public at least 50 feet from gas welding, soldering, cutting or brazing of materials more than 1/2 inch thick.

62.5(17) Fasteners. The operator shall inspect nails, bolts, lag bolts and other fasteners for tightness, torque, and deterioration. The operator shall follow the manufacturer's recommendations for torque, replacement intervals, and fastener types.

62.5(18) Brakes and rollback devices. Brakes and rollback devices shall be inspected and maintained according to the manufacturer's recommendations.

[ARC 2428C, IAB 3/2/16, effective 4/6/16; see Delay note at end of chapter]

875—62.6(88A) Operations. Operations shall conform to ANSI B77.1 and ANSI B77.1A-2012 and ASTM F770-15, F1957-99(2011), F2007-12, F2137-15, F2374-10, F2375-09, F2376-13, F2460-11, and F2959-14, as applicable. ASTM F2374-10 shall apply to all air-supported structures notwithstanding the definition and use of the phrase "inflatable amusement device" in ASTM F2374-10.

62.6(1) Attendants and assistants. The operator shall provide a sufficient number of competent, trained workers, who shall be recognizable by their uniforms. Covered equipment shall have continuous, direct supervision while in use by a patron.

- a. Each attendant of a concession booth, except a shooting gallery or dart game, shall be at least 14 years of age. All other attendants shall be at least 18 years of age.
- b. Each assistant shall be at least 16 years of age.
- c. Each attendant and assistant shall be trained according to ANSI B77.1 and ANSI B77.1A-2012 and ASTM F770-15, F2007-12, F2460-11, and F2959-14, as applicable. Training documentation shall be available to the commissioner.
- d. An attendant shall have control of the covered equipment when it is in operation. When the covered equipment is shut down, provision shall be made to prevent unauthorized operation.

e. Under normal operations, the duties of an assistant shall be limited to securing or removing seat restraints; checking height compliance; and loading and unloading patrons. In case of emergency, an assistant who has received appropriate training may terminate operations.

62.6(2) Signal systems. When an attendant does not have a clear view of the point where passengers are loaded or unloaded, signal systems shall be provided and utilized for controlling, starting and stopping covered equipment. Where coded signals are required, the code of signals shall be printed and kept posted at both the attendant's station and the location from which the signals are given. Attendants who use the

signals shall be trained in their use. Signal systems shall be tested each day prior to operation of the covered equipment. Covered equipment that requires a signal system shall not be operated if the system is not performing correctly.

62.6(3) Overspeeding and overloading. An attendant shall not load covered equipment beyond its rated capacity nor operate the covered equipment at a speed other than that prescribed by the design engineer or manufacturer.

62.6(4) Refueling. Fuel tanks for internal combustion engines should be large enough to run without interruption during normal operating hours. Where it is impossible to provide tanks of proper capacity for a complete day's operation, the covered equipment shall be shut down and evacuated during refueling.

62.6(5) Safety stop device. After actuation of a safety stop device, the cause of the actuation shall be determined and corrected before operation of covered equipment is resumed. No person shall operate covered equipment if a safety stop device has been bypassed.

[ARC 2428C, IAB 3/2/16, effective 4/6/16; see Delay note at end of chapter]

875—62.7(88A) Patrons.

62.7(1) Notice to patrons. The operator shall post signs as set forth in Iowa Code section 88A.16.

62.7(2) Patron injury report. Where covered equipment is operated, the operator shall make available an injury report form for use by patrons. The form shall comply with Iowa Code section 88A.15.

62.7(3) Emergency procedure. When lightning, high wind, tornado warning, severe storm warning, fire, violence, riot or civil disturbance creates a direct threat to patrons, the operators, assistants, and attendants shall cease operation of covered equipment and evacuate all patrons. Operation shall not resume until conditions have returned to a normal, safe operating environment.

62.7(4) Medical and first aid. The operator shall make available to patrons the same medical and first-aid provisions that are available to employees pursuant to 29 CFR 1910.151.

62.7(5) Evacuation plan. The operator shall plan for prompt retrieval of patrons from covered equipment that will not operate.

[ARC 2428C, IAB 3/2/16, effective 4/6/16; see Delay note at end of chapter]

These rules are intended to implement Iowa Code chapter 88A.

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¹ April 6, 2016, effective date of the rescission of former Chapter 62 and the adoption of new Chapter 62 herein [ARC 2428C] delayed 70 days by the Administrative Rules Review Committee at its meeting held March 4, 2016; delay lifted at the meeting held April 8, 2016.

CHAPTER 63
SAFETY RULES FOR BUNGEE JUMPS

875—63.1(88A) Definitions.

“*Air bag*” means a device that cradles the body by using an air release breather system to dissipate the energy due to a fall, thereby allowing the jumper to land without an abrupt stop or bounce.

“*Approved operating site*” means the area, including the preparation area, the jump space, the landing area and the recovery area, reflected on the site plan drawings submitted to the commissioner by the operator.

“*Bungee catapulting*” means the action by which a jumper is held on the ground while the bungee cord is stretched causing the jumper to fly up when the jumper is released.

“*Bungee cord*” means the elastic rope to which the jumper is attached.

“*Bungee jump*” means the covered amusement device. “*Bungee jump*” does not mean a device allowing a patron to jump on a trampoline while attached to one or more bungee cords.

“*Bungee jumping*” means the action by which a jumper free falls from a height and the jumper’s descent is limited by attachment to the bungee cord.

“*Bungee jump operation*” means a site at which bungee jumping is conducted.

“*Carabiner*” means a shaped metal or alloy device used to connect sections of the jump rigging, equipment or safety gear.

“*Cord*” means a bungee cord.

“*Dynamic load*” means the load placed on the rigging and attachments by the initial free fall of the jumper and the bouncing movements of the jumper.

“*Equipment*” means each component that is utilized in a bungee jump operation, including devices used to raise, lower, and hold loads.

“*Fence*” means a structure designed and constructed to restrict people, animals and objects from entering the jump area.

“*G-force*” means acceleration felt as weight.

“*Jump area*” means the ground level area of the jump space.

“*Jump direction*” means the direction a jumper jumps when leaving the platform from the jump point. Jump direction is not affected by whether the jumper faces forward, backward or sideways.

“*Jumper*” means the person who, while attached to a bungee cord, falls or jumps from a platform or structure.

“*Jump harness*” means an assembly worn by a jumper and attached to a bungee cord.

“*Jump height*” means the distance from the jump point to the position on the ground where an object dropped from the jump point would impact in the absence of an air bag or other impediment.

“*Jump master*” means the person who is responsible for the bungee jump operation and who takes a jumper through the final stages to the actual jump or release.

“*Jump point*” means the location on the platform from which the jumper leaves the platform.

“*Jump space*” means the cylinder-shaped space with a center line extending downward from the jump point along the line of the jump height. The top of the jump space cylinder is at least 10 feet above the jump point. For jumps over land, the bottom of the jump space cylinder is the air bag. For jumps over water, the bottom of the jump space cylinder is the water surface. The distance from the jump point to the bottom of the jump space must be the maximum system length plus at least 30 feet. The radius of the cylinder must be at least 70 percent of the jump height.

“*Landing area*” means the surface where the jumper lands. If a lifting device moves the jumper so that landing occurs away from the jump area, the area covered by the movement of the lifting device shall be considered part of the landing area.

“*Loaded length*” means the length of the bungee cord when the cord is extended to its fullest designed length.

“*Lowering system*” means manual or mechanical equipment capable of lowering a jumper to the designated landing area.

“Maximum system length” means the maximum extended length of a bungee cord system including all attachments.

“Mechanically powered lowering system” means a system that utilizes a machine, rather than a human or other power source, to lower the jumper to the landing area.

“Platform” means the apparatus that is attached to a structure and from which a jumper falls or jumps.

“Preparation area” means the area where the jumper is registered, weighed, notified of potential risks, and otherwise prepared for the jump.

“Recovery area” means the area next to the landing area where the jumper may recover from the jump before exiting the bungee jump operation site.

“Rigging system” means the bungee cord plus any combination of components that connect the jumper through the bungee cord to an attachment point on the structure, lifting device or platform.

“Rigging system attachment point” means a device on the structure, lifting device or platform to which the rigging system is connected.

“Safety line” means a line used to connect a safety harness or belt to an anchor point.

“Sandbagging” means the practice of loading excess weight to a jumper in order to gain extra momentum on the rebound.

“Site operating manual” means the document containing the procedures and forms for the operation of bungee jumping activities and equipment.

“Structure” means a tower or similar structure used for bungee jumping.

“Tandem jumping” means the practice of having two or more people harnessed together while they jump or fall simultaneously from the same jump platform.

[ARC 2428C, IAB 3/2/16, effective 4/6/16; see Delay note at end of chapter]

875—63.2(88A) Prohibited activities. The following activities are prohibited:

1. Bungee catapulting where an overhead obstruction exists;
2. Sandbagging;
3. Tandem jumping; and
4. Jumping from a bridge, television tower, crane, grain bin, hot air balloon or any height not designed for the purpose of bungee jumping.

[ARC 2428C, IAB 3/2/16, effective 4/6/16; see Delay note at end of chapter]

875—63.3(88A) Site requirements.

63.3(1) Storage. Adequate storage shall be provided to protect equipment from physical, chemical and ultraviolet-ray damage. The storage area shall be secured against unauthorized entry.

63.3(2) Communications.

- a. There shall be a public address system in operation during the hours of business.
- b. A radio communication link shall be established between the platform and the staff responsible for jumper registration, landing, and recovery.
- c. There shall be a means on site to communicate with local emergency responders.
- d. A clearly visible sign shall be placed at the entrance to the operating site setting forth medical restrictions for jumpers, the minimum-age requirement of 18 years of age, and instructions for jumpers.

63.3(3) Wind meter. An anemometer shall be installed in accordance with the manufacturer's recommendations and in a location easily visible to the staff.

63.3(4) Lighting. Adequate lighting shall be provided at a site that operates at any time during the period of one-half hour prior to sunset until one-half hour after sunrise. At a minimum, the lighting system shall be capable of lighting the jump platform, the jump space and the landing area.

63.3(5) Fences. The operator shall use fences in compliance with ASTM 2291-14, Part 14, to limit access to the site.

[ARC 2428C, IAB 3/2/16, effective 4/6/16; see Delay note at end of chapter]

875—63.4(88A) Design.

63.4(1) Platform. A platform shall:

- a. Be capable of supporting at least five times the rated capacity or maximum intended load of the platform. If the jump equipment is attached to the platform as distinct from the structure, the dynamic load factor shall be added to the rated capacity or maximum intended load;
- b. Be attached with devices and to a part of the structure which is able to support at least five times the weight of the platform plus the rated capacity or maximum intended load;
- c. Have a slip-resistant floor surface;
- d. Have safety harness anchor points that are designed and located to facilitate ease of movement on the platform;
- e. Have a permanent enclosure, separate from the jump point, to contain the jumper during preparations such as fitting the jumper with a jump harness;
- f. Be equipped with a gate across the jump point. The gate shall open to the inside of the platform and shall have a safety lock or restraining device to prevent accidental opening;
- g. Be permanently marked with the maximum capacity of the platform and the rated capacity or maximum intended load; and
- h. Be configured to ensure that a jumper shall not come into contact with the supporting structure or tower during the jump.

63.4(2) Lowering system.

- a. The system for lowering the jumper to the landing area shall be capable of supporting at least five times the rated capacity or maximum intended load of the system. The lowering system shall be mechanically powered and shall not be capable of free fall.
- b. There shall be under the control of site personnel and described in the site emergency plan an alternative method for jumper recovery.

63.4(3) Bungee cord specifications.

- a. The bungee cords shall be designed and tested to perform within the prescribed limits of stretch and load as stated in this subrule. The cord shall be made from natural or synthetic rubber or rubber blend. The extended length of the cord shall be consistent each time the same load is applied.
- b. The G-force on a jumper using a waist and chest harness shall not exceed 4.5. The G-force on a jumper using an ankle harness shall not exceed 3.5.
- c. The operator shall ensure that the minimum factor of safety for any cord configuration attached to a jumper is at least 5. The cord configuration's minimum breaking strength divided by the maximum dynamic load possible for a jumper must be equal to or greater than 5.
- d. The design, manufacturing and testing of the bungee cords shall meet the following specifications:
 - (1) In a single-cord system, the binding shall hold the cord threads in the designed positions. The binding shall have the same characteristics as the cord itself. In a multiple-cord system, the cords shall be bound together in a manner that prevents potential entanglement of the jumper. The binding shall not damage or affect the performance of the cords.
 - (2) A bungee cord shall be designed and tested to perform in accordance with this rule.
 - (3) A load-versus-elongation curve shall be used to calculate the maximum G-force and factor of safety of the lot of bungee cords tested. These test results shall be readily available to the commissioner upon request.
 - (4) The end connections shall have a minimum safety factor of five times the maximum dynamic load for the bungee cord configuration. End connections shall be of a size and shape to allow easy attachment to the jumper harnesses and to the rigging. On multiple-cord systems, each cord shall meet its own independent end connection. On multiple-cord systems, end attachment points shall be bound together in a protective sheath that allows the individual ends to move with respect to each other.

- (5) The operator shall ensure that the manufacturer of a bungee cord performs conclusive minimum break strength testing on a representative sample of all manufactured bungee cords. Construction of bungee cord samples shall be consistent with the manufacturer's standard methods, including bungee cord loop end connections that meet the specifications in this rule. The tests shall be performed or supervised by an independent certified testing authority or an independent licensed professional engineer. The testing authority shall determine the ultimate tensile strength of each test specimen and use the lowest

failure value recorded as the ultimate tensile strength value for the corresponding lot of bungee cords. The ultimate tensile strength is reached when the applied load reaches a maximum before failure. Test results shall be readily available to the commissioner upon request.

63.4(4) Jump harness and hardware.

a. The harnesses, webbing, bindings, ropes and hardware shall be capable of supporting at least five times the rated capacity or maximum intended load.

b. A jumper shall be secured to the bungee cord at two separate points on the jumper's body. The jump harness system shall be one of the following:

(1) A full body harness with two different and separate attachment points.

(2) A waist harness used with a shoulder harness.

(3) An ankle harness system with a safety line to a waist harness or a full body harness.

c. Harnesses shall be available to fit the range of patron sizes accepted for jumping.

d. Harnesses shall be specifically designed and manufactured for mountaineering or bungee jumping.

e. The load-supporting slings or webbing shall be flat or tubular mountaineering webbing or its equivalent. Minimum breaking strength shall be 6,000 pounds. Slings or webbings shall be formed by sewing or shall be tied properly with a water knot with taped ends.

f. Carabiners shall be the steel screw, gate type with a minimum breaking strength of 6,000 pounds. The carabiners shall be designed and constructed using the standards for mountaineering gear.

g. The ropes, pulleys and shackles used to raise, lower or hold the jumper shall have a minimum breaking strength of 6,000 pounds. The pulleys shall be compatible with the rope.

h. The rigging system shall be attached to at least two rigging system attachment points. Each rigging system attachment point shall meet or exceed the following:

(1) Each rigging system attachment point shall have a safety factor of 5 and shall be capable of bearing a weight of at least 8,000 pounds.

(2) If a rigging system attachment point is made of wire rope, it shall have swaged ends with the thimble eyes.

(3) If a rigging system attachment point is made of webbing, it shall be manufactured by a company that manufactures the devices for crane and rigging companies.

63.4(5) Landing area, recovery area and jump area.

a. A jump over land requires the use of an air bag certified by the manufacturer to be capable of protecting a body falling from the height of the jump point.

(1) The minimum impact surface area of the air bag shall be as follows:

Jump Height	Minimum Impact Surface Area
0 - 99 feet	20 feet by 25 feet
100 - 149 feet	23 feet by 35 feet
150 - 200 feet	25 feet by 40 feet

(2) The air bag shall be in position before jumper preparation begins on the platform.

(3) Upon completion of a jump, the jumper shall be lowered into the landing area.

(4) The landing area shall be free of spectators at all times.

(5) The jump space shall be free of equipment and people when a jumper is being prepared on the jump platform and until the jumper lands in the landing area.

(6) A place for the jumper to sit and recover shall be provided close to, but outside, the landing area.

b. The following requirements apply where a body of water is used instead of an air bag:

(1) The size of the body of water shall meet the requirements for the minimum impact surface area set forth in this subrule for air bags.

(2) The minimum water depth of the minimum impact surface area shall be 10 feet.

(3) A vessel with at least two staff members shall be positioned nearby to recover jumpers. The recovery vessel's crew shall wear U.S. Coast Guard-approved life jackets. The recovery vessel shall be equipped with U.S. Coast Guard-approved life jackets for jumpers and with rescue equipment.

(4) The jump area shall be free of other vessels, floating or submerged objects, the public, and spectators. When the landing area is in open waters, it shall be defined by the deployment of buoys. Signs of appropriate size stating "BUNGEE JUMPING—KEEP CLEAR" shall be displayed.

c. The following requirements apply where a pool of water is used instead of an air bag:

(1) The pool size shall meet the requirements for the minimum impact surface area set forth in this subrule for air bags.

(2) The minimum water depth shall be 10 feet.

(3) Rescue equipment shall be available.

(4) Only the operators and participants of the bungee jump shall be within the landing area.

(5) The landing area shall be enclosed by a fence of adequate height and design to prevent persons other than operators and jumpers from entering.

(6) The pool shall conform to any applicable requirements enforced by the Iowa department of public health.

[ARC 2428C, IAB 3/2/16, effective 4/6/16; see Delay note at end of chapter]

875—63.5(88A) Maintenance. The operator shall follow the inspection and testing recommendations of the equipment manufacturers. When those recommendations conflict with the testing and inspection provisions of this rule, the provisions affording the higher degree of safety shall be followed. Inspections, findings and corrective action shall be recorded in the site log.

63.5(1) Tests and inspections by the operator.

a. The jump rigging, harness, lowering system and safety gear shall be regularly inspected and tested as set forth in the site operating manual.

b. In accordance with the site operating manual, the ropes, webbing and bindings shall be inspected visually and by feel for signs of wear, fraying or damage.

c. The cord ends shall be inspected as often as the manufacturer specifies or no less than daily for wear, slippage or other abnormalities.

63.5(2) Replacement of rigging and equipment.

a. Hardware that displays surface damage shall be replaced immediately.

b. Hardware that has been subjected to an abnormal loading or impact against hard surfaces shall be replaced immediately.

c. Substandard equipment, rigging or personal protective equipment shall be replaced immediately.

d. Bungee cords shall be replaced when they have been subjected to the maximum number of jumps recommended by the manufacturer, when they exhibit deterioration or damage, or when they do not react according to specifications. Retired bungee cords shall be cut into lengths of not more than 75 inches. The attachment points shall be retired when the cord is retired.

63.5(3) Replacement equipment. Replacement equipment shall be stored in a secure area to prevent tampering or vandalism. Replacement equipment for the following shall always be available on the approved operating site:

a. Bungee cords;

b. Rigging ropes;

c. Binding and ankle straps for jumpers;

d. Jump harnesses; and

e. Lifelines and clips.

63.5(4) Identification of equipment.

a. Each bungee cord shall have its own permanent identification number.

b. The form of identification may not damage or detract from the integrity of the material.

c. The identification shall be clearly visible to the operators during daily operations.

d. The identification of each piece of equipment shall be recorded in the site operating manual.
[ARC 2428C, IAB 3/2/16, effective 4/6/16; see Delay note at end of chapter]

875—63.6(88A) Operations.

63.6(1) Site operating manual. The operator shall ensure that the site has an operating manual that includes the following elements:

- a.* A site plan showing the fencing, the site furniture, the preparation area, the jump space, the jump area, the jump direction, the landing area and the recovery area.
- b.* A site plan showing a profile of the site and defining the jump platform and its supporting structure, the maximum system length of the bungee cord, the jump space and the jump area.
- c.* A complete description of each of the following:
 - (1) The system of operation;
 - (2) The components in the rigging system, including the manufacturer's specification or a laboratory test certificate of each component;
 - (3) All safety and rescue equipment;
 - (4) A job description for the personnel employed on the site and the minimum qualifications for each person;
 - (5) Emergency procedures for all foreseeable scenarios;
 - (6) Standard operating procedures for every person employed in processing the jumper;
 - (7) The procedure for reporting accidents and reportable incidents to the commissioner;
 - (8) Equipment inspection procedures, including inspection record keeping;
 - (9) Maintenance procedures; and
 - (10) The method of verifying and recording each jump master's qualifications.

63.6(2) Emergency provisions and procedures.

- a.* Each approved operating site shall have a written emergency plan. The plan shall be made available to any local emergency service responsible for providing emergency rescue service.
- b.* At least one member of a bungee jump operation staff shall have current first-aid and cardiopulmonary resuscitation certification and shall complete an annual refresher course that includes evaluation of hands-on skills from the American Red Cross or equivalent.
- c.* For a jump over water, the jump master and at least one landing assistant shall have current lifeguarding certification from the American Red Cross or equivalent.
- d.* Emergency lighting shall be available in case of power failure at a site that operates at any time during the period of one-half hour prior to sunset until one-half hour after sunrise. The emergency lighting system shall be capable of lighting the jump platform, the jump space and the landing area. The emergency lighting system shall have its own power source.
- e.* A backup means of communication shall be available in case of a power failure.
- f.* The jump master or operator shall cease jumping operations if wind speed exceeds 25 miles per hour or thunder is audible.

63.6(3) Minimum staff requirements.

- a.* Prior to the opening of a bungee jump operation, the operator shall train site personnel to be familiar with the boundaries of the jump space, the jump area, the site operating manual and the emergency plan.
 - b.* A bungee jump operation shall have at least one jump master, one jump assistant, one landing assistant, and one registration assistant present at all times during which jumping is being conducted.
 - c.* The staff shall be easily identifiable by their clothing.
 - d.* Staff shall be briefed for each day's operations. This briefing shall include assignment of the designated jump master.
 - e.* Each jump shall be directly controlled by a jump master.
- 63.6(4) Jump master.**
- a.* A jump master shall be at least 18 years of age, shall have assisted at least 25 jumpers, and shall have received a minimum of 30 hours of jump training.

b. A jump master shall have a thorough knowledge of the bungee jump site, its equipment, operating manual, procedures, emergency plan and staff duties.

c. A jump master shall:

- (1) With the jump assistant, escort the jumper from the preparation area to the jump point;
- (2) Select the appropriate bungee cord and adjust the rigging for each jump;
- (3) Brief each jumper on the procedures for jumping, landing, lowering and recovery;
- (4) Take the jumper through the final stages before the jump;
- (5) Securely attach to the platform rigging bar or to the rigging the top end of the bungee cords before preparing the jumper;
- (6) Be present at the jump point during each jump;
- (7) Close the platform gate while no jumper is present;
- (8) Direct the operation of the lowering system;
- (9) Train other bungee jump operation staff; and
- (10) Ensure that the procedures set out in the site operating manual are followed.

63.6(5) Jump assistant. The operator or jump master shall designate at least one individual to act as a jump assistant. The jump assistant shall:

- a. With the jump master, escort the jumper from the preparation area to the jump point;
- b. Assist the jump master in preparing the jumper;
- c. Assist in attaching the jumper to the harness and rigging;
- d. Perform check procedures;
- e. Operate the lowering system; and
- f. Assist in controlling the public.

63.6(6) Landing assistant. The operator or jump master shall designate at least one individual to act as a landing assistant. The landing assistant's duties include the following:

- a. Assisting the jumper to the landing pad;
- b. Assisting the jumper to the recovery area;
- c. Overseeing the recovery of the jumper; and
- d. Assisting in controlling the public.

63.6(7) Registration assistant. The operator or jump master shall designate at least one individual to act as a registration assistant at each bungee jump operation site. The registration assistant shall:

- a. Register the jumper;
- b. Inform each jumper that there are medical conditions that could be adversely affected by bungee jumping and that prior to jumping, the jumper should consult with a physician for more specific information regarding the medical risks;
- c. Weigh the jumper and mark the jumper's weight on the jumper;
- d. Control the movement of the jumper to the jump platform; and
- e. Assist in controlling the public.

63.6(8) Jumper restrictions.

- a. The minimum age for jumping is 18 years of age.
- b. A person who is visibly intoxicated or who is otherwise impaired shall not be allowed to jump.

63.6(9) Jumper registration. The operator shall ensure that a jumper provides the following information on the operator's registration form:

- a. The jumper's contact information, including name, address, and telephone number.
- b. The jumper's age and weight.

63.6(10) Equipment replacement.

- a. Jumping shall cease immediately when substandard equipment is identified.
- b. The operator shall obtain from the bungee cord manufacturer a written verification of the maximum number of jumps for which a particular cord may be used. The written verification shall be kept on site and shall be available to the commissioner.

c. The operator shall keep a current, written record of each bungee cord used at the site. The bungee cord records shall be organized by permanent, unique identification number and shall include the number of jumps for each cord by date. The bungee cord records shall be available to the commissioner.

63.6(11) Jump space and jump area.

a. Persons other than a jumper and objects other than the jumper's equipment shall not be in the jump space at any time during jump operations.

b. Persons other than site personnel and objects other than air bags and similar safety devices shall not be in the jump area at any time during jump operations.

c. The jump space and jump area shall be identical to the jump space and jump area that the commissioner approved.

d. The preparation area shall be separate from the jump area.

[ARC 2428C, IAB 3/2/16, effective 4/6/16; see Delay note at end of chapter]

These rules are intended to implement Iowa Code chapter 88A.

[Filed ARC 2428C (Notice ARC 2354C, IAB 1/6/16), IAB 3/2/16, effective 4/6/16]¹

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