

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 307.12, 307A.2 and 322.13, the Iowa Department of Transportation (Department) hereby gives Notice of Intended Action to amend Chapter 425, “Motor Vehicle and Travel Trailer Dealers, Manufacturers, Distributors and Wholesalers,” Iowa Administrative Code.

The Department is proposing amendments to Chapter 425 to align the chapter with the following Iowa Code changes:

- 2014 Iowa Acts, chapter 1123, sections 27 and 28, amended Iowa Code sections 321.57 and 321.60, which allow a motor vehicle dealer to operate or move upon the highways a vehicle owned by the dealer for either private or business purposes without registering the vehicle if the vehicle is in the dealer’s inventory and is continuously offered for sale at retail, provided the vehicle is equipped with a special dealer plate issued by the Department. These changes allow the dealer to use an unregistered vehicle in the dealer’s inventory to carry a load or tow a trailer, provided the dealer obtains a special dealer plate specifically issued for hauling a load or towing a trailer. Iowa Code section 321.60 sets the fee for a special haul or tow dealer plate at \$750, valid for a two-year period.

- 2015 Iowa Acts, chapter 123, section 38, amended Iowa Code section 322.5(2), which specifies additional places at which a motor vehicle dealer may display, offer for sale, or negotiate sales for new motor vehicles. Before this amendment, Iowa Code section 322.5(2) provided that, in addition to selling motor vehicles at the dealer’s principal place of business and permanent car lots, the dealer could, under a temporary permit from the Department, display only (but not offer to sell or negotiate the sale of) motor vehicles at fairs, vehicle shows and vehicle exhibitions anywhere in the state (even if not in the dealer’s community), and could display, offer for sale, and negotiate the sale of motor vehicles at fair events, vehicle shows, and vehicle exhibitions that were held within the dealer’s community. (“Community” is defined in Iowa Code section 322A.1 and means the dealer’s area of responsibility as defined in its franchise agreement with the manufacturer.) “Fair events” only included county and district fairs provided for in Iowa Code chapter 174 and did not include the state fair, which is separately identified in Iowa Code chapter 173. The amendment to Iowa Code section 322.5(2) expanded sales opportunities to also allow motor vehicle dealers to display, offer for sale, and negotiate the sale of new motor vehicles at the state fair under a temporary permit issued by the Department, again provided the fair is within the motor vehicle dealer’s community.

- 2016 Iowa Acts, chapter 1083, section 3, amended Iowa Code section 322.2, which defined “engaged in the business” of selling motor vehicles as “doing any of the following acts for the purpose of the sale of motor vehicles at retail: acquiring, selling, exchanging, holding, offering, displaying, brokering, accepting on consignment, conducting a retail auction, or acting as an agent for the purpose of doing any of those acts.” This change expanded the definition to also include “advertising as being engaged in any of those acts.” The definition of being engaged in the business of selling motor vehicles is significant because only persons who are engaged in the business of selling motor vehicles are required to obtain and maintain a motor vehicle dealer’s license to do so.

- 2016 Iowa Acts, chapter 1083, section 7, amended Iowa Code section 322.4. This change increased the minimum bond amount which must be carried by a motor vehicle dealer from \$50,000 to \$75,000.

The following further explains the amendments proposed in this rule making:

Item 1 updates the responsible office name from the office of vehicle services to the office of vehicle and motor carrier services to reflect the consolidation of these two offices into one office. This change is also reflected in Items 4, 5, 6, 7, 10 and 12. This item also updates the Department’s website address.

Item 2 updates the definition of “Engage in this state in the business” to match the definition set forth in Iowa Code section 322.2 described above.

Item 3 changes the word “forms” to “form” to clarify that a single application form is needed to apply for a license as a motor vehicle dealer or travel trailer dealer.

Item 4 increases the minimum bond amount a motor vehicle dealer must carry from \$50,000 to \$75,000 to match the amount required in amended Iowa Code section 322.4, as described above. This item also makes a minor clarification in the notifications the Department must give the bond company, by changing the requirement from notifying the bond company of any conviction of the dealer for a violation of dealer laws to notifying the bond company of any conviction of the dealer related to the operations of the dealership. This change reflects that convictions that affect a dealer’s license and bond may be under laws that are outside Iowa Code chapter 322.

Items 8 and 11 make changes to the rules concerning permits for motor vehicle dealers to display, offer to sell, and negotiate the sale of new motor vehicles at fairs, vehicle shows and vehicle exhibitions by adding a permit option for the state fair. These changes comply with Iowa Code section 322.5(2) as described above. Other amendments include the addition of the definition of “community” to mean as defined under Iowa Code section 322A.1; addition of the definition of “state fair” to mean the state fair as discussed in Iowa Code chapter 173; and insertion of the term “state fair” in conjunction with fairs, vehicle shows, and vehicle exhibitions wherever applicable. The terms “show” and “exhibition” are also changed to “vehicle show” and “vehicle exhibition” consistently throughout to improve clarity and consistency within the rule and with Iowa Code section 322.5.

Item 9 adds the word “vehicle” before “exhibition” for the same reasons as described in the paragraph above.

Items 13 and 14 make changes to comply with Iowa Code sections 321.57 and 321.60, which provide for issuance of a dealer license plate to be displayed on inventory vehicles used to haul a load and tow a trailer as described above. Item 14 also clarifies that a dealer who obtains a “HAUL & TOW” plate and uses it to demonstrate the load capabilities of motor trucks and truck tractors to prospective purchasers does not also need to obtain a demonstration permit from the Department to do so.

The proposed amendments made throughout this chapter are intended to align the rules with the Iowa Code and conform the rules to Departmental practices.

These rules do not provide for waivers. Any person who believes that the person’s circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tracy George, Rules Administrator, Iowa Department of Transportation, Strategic Communications and Policy, 800 Lincoln Way, Ames, Iowa 50010; email: tracy.george@iowadot.us.
5. Be received by the Department’s rules administrator no later than January 9, 2018.

A meeting to hear requested oral presentations is scheduled for Thursday, January 11, 2018, at 10 a.m. at the Iowa Department of Transportation’s Motor Vehicle Division offices located at 6310 SE Convenience Boulevard, Ankeny, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

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

These amendments are intended to implement Iowa Code sections 321.57, 321.60, 322.2, 322.4 and 322.5.

The following amendments are proposed.

ITEM 1. Amend subrule 425.1(2) as follows:

425.1(2) The office of vehicle and motor carrier services administers this chapter. The mailing address is: Office of Vehicle and Motor Carrier Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278.

a. Applications required by the chapter shall be submitted to the office of vehicle and motor carrier services.

b. Information about dealer plates and the licensing of motor vehicles and travel trailer dealers, manufacturers, distributors and wholesalers is available from the office of vehicle and motor carrier services or on the department's ~~Web site~~ website at ~~http://www.iowadot.gov/mvd~~ www.iowadot.gov.

ITEM 2. Amend rule 761—**425.3(322)**, definition of “Engage in this state in the business,” as follows:

“*Engage in this state in the business*” or similar wording means doing any of the following acts for the purpose of selling motor vehicles or travel trailers at retail: to acquire, sell, exchange, hold, offer, display, broker, accept on consignment or conduct a retail auction, advertise as being engaged in any of those acts, or to act as an agent for the purpose of doing any of ~~these~~ those acts. A person selling at retail more than six motor vehicles or six travel trailers during a 12-month period may be presumed to be engaged in the business. See rule 761—425.20(322) for provisions regarding fleet sales and retail auction sales.

ITEM 3. Amend subrule 425.10(1) as follows:

425.10(1) *Application ~~forms~~ form*. To apply for a license as a motor vehicle or travel trailer dealer, the applicant shall complete an application on ~~forms~~ a form prescribed by the department.

ITEM 4. Amend subrule 425.10(2) as follows:

425.10(2) *Surety bond*.

a. The applicant shall obtain a surety bond in the following amounts and file the original with the office of vehicle and motor carrier services:

- (1) For a motor vehicle dealer's license, ~~\$50,000~~ \$75,000.
- (2) No change.

b. The surety bond shall provide for notice to the office of vehicle and motor carrier services at least 30 days before cancellation.

c. The office of vehicle and motor carrier services shall notify the bonding company of any conviction of the dealer for a violation of ~~dealer~~ laws related to the operations of the dealership.

d. If the bond is canceled, the office of vehicle and motor carrier services shall notify the dealer by first-class mail that the dealer's license shall be revoked on the same date that the bond is canceled unless the bond is reinstated or a new bond is filed.

e. If an applicant whose dealer's license was revoked pursuant to paragraph “d” establishes that the applicant obtained a reinstated or new bond meeting the requirements of subrule 425.10(2) that was effective on or before the date of cancellation, but due to mistake or inadvertence failed to file the original bond with the office of vehicle and motor carrier services, the applicant may file the original of the reinstated or new bond. Upon filing, the department will rescind the revocation of the dealer's license.

ITEM 5. Amend paragraph **425.10(3)“a”** as follows:

a. An applicant who intends to sell new motor vehicles or travel trailers shall submit to the office of vehicle and motor carrier services a copy of a signed franchise agreement with the manufacturer or distributor of each make the applicant intends to sell.

ITEM 6. Amend subrule 425.10(6) as follows:

425.10(6) *Zoning*. The applicant shall provide to the office of vehicle and motor carrier services written evidence, issued by the office responsible for the enforcement of zoning ordinances in the city or county where the applicant's business is located, which states that the applicant's principal place of business and any extensions comply with all applicable zoning provisions or are a legal nonconforming use.

ITEM 7. Amend rule 761—425.18(322) as follows:

761—425.18(322) Supplemental statement of changes. A motor vehicle dealer shall file a written statement with the office of vehicle and motor carrier services at least ten days before any change of name, location, hours, or method or plan of doing business. A license is not valid until the changes listed in the statement have been approved by the office of vehicle and motor carrier services.

This rule is intended to implement Iowa Code sections 322.1 to 322.15.

ITEM 8. Amend rule 761—425.26(322) as follows:

761—425.26(322) Fairs State fair, fairs, shows and exhibitions.

425.26(1) Definitions. As used in this rule:

“Community” means an area of responsibility as defined in Iowa Code section 322A.1.

“Display” means having new motor vehicles or new travel trailers available for public viewing at fairs, vehicle shows or vehicle exhibitions. The dealer may also post, display or provide product information through literature or other descriptive media. However, the product information shall not include prices, except for the manufacturer’s sticker price. “Display” does not mean offering new vehicles for sale or negotiating sales of new vehicles.

“Fair” means a county fair or a scheduled gathering for a predetermined period of time at a specific location for the exhibition, display or sale of various wares, products, equipment, produce or livestock, but not solely new vehicles, and sponsored by a person other than a single dealer.

“Offer” new vehicles *“for sale,”* *“negotiate sales”* of new vehicles, or similar wording, means doing any of the following at the state fair or a fair, vehicle show or vehicle exhibition: posting prices in addition to the manufacturer’s sticker price, discussing prices or trade-ins, arranging for payments or financing, and initiating contracts.

“State fair” means the fair as discussed in Iowa Code chapter 173.

“Vehicle exhibition” means a scheduled event conducted at a specific location where various types, makes or models of new vehicles are displayed either at the same time or consecutively in time, and sponsored by a person other than a single dealer.

“Vehicle show” means a scheduled event conducted for a predetermined period of time at a specific location for the purpose of displaying at the same time various types, makes or models of new vehicles, which may be in conjunction with other events or displays, and sponsored by a person other than a single dealer.

425.26(2) Permits for ~~motor vehicle~~ dealers of new motor vehicles.

a. A “display only” fair, vehicle show or vehicle exhibition permit allows a motor vehicle dealer to display new motor vehicles at a specified fair, vehicle show or vehicle exhibition in any Iowa county. The permit is valid on Sundays.

b. A “full” fair, state fair, vehicle show or vehicle exhibition permit allows a motor vehicle dealer to display and offer new motor vehicles for sale and negotiate sales of new motor vehicles at the state fair, or a specified fair, vehicle show or vehicle exhibition that is held in the same county as within the motor vehicle dealer’s principal place of business community. EXCEPTION: A motor vehicle dealer who is licensed to sell motor homes may be issued a permit to offer for sale Class “A” and Class “C” motor homes at a specified fair, vehicle show or vehicle exhibition in any Iowa county. A “full” fair, show or exhibition permit is not valid on Sundays.

c. The following restrictions are applicable to both types of permits:

(1) Permits will be issued to motor vehicle dealers only for the state fair, fairs, vehicle shows or vehicle exhibitions where more than one motor vehicle dealer may participate.

(2) No change.

425.26(3) Reserved.

425.26(4) Permits for ~~travel trailer~~ dealers of new travel trailers. A fair, vehicle show or vehicle exhibition permit allows a travel trailer dealer to display and offer new travel trailers for sale and negotiate sales of new travel trailers at a specified fair, vehicle show, or vehicle exhibition in any Iowa county.

a. to c. No change.

425.26(5) Permit application. A motor vehicle or travel trailer dealer shall apply for a ~~fair, show or exhibition~~ permit on an application form prescribed by the department. The application shall include the dealer's name, address and license number and the following information about the ~~fair, show or exhibition~~ event: name, location, sponsor(s) and duration, including the opening and closing dates.

425.26(6) Display of permit. The motor vehicle or travel trailer dealer shall display the permit at the ~~fair, show or exhibition~~ in close proximity to the vehicles being exhibited.

~~425.26(7) Variance.~~ Rescinded IAB 11/7/07, effective 12/12/07.

~~425.26(8) Display without permit.~~ Rescinded IAB 7/10/02, effective 8/14/02.

This rule is intended to implement Iowa Code ~~subsections~~ sections 322.5(2) and 322C.3(9).

ITEM 9. Amend rule 761—425.31(322) as follows:

761—425.31(322) Firefighting and rescue show permit.

425.31(1) Application for a firefighting and rescue show permit shall be made on a form prescribed by the department. The application shall include the name, address and license number of the applicant, the type of vehicles being displayed, and the following information about the vehicle show or vehicle exhibition: name, location, sponsor(s), and duration, including the opening and closing dates.

425.31(2) No change.

425.31(3) The permit holder shall display the permit in a prominent place at the location of the vehicle show or vehicle exhibition.

This rule is intended to implement Iowa Code ~~subsection~~ section 322.5(5).

ITEM 10. Amend subrule 425.50(2) as follows:

425.50(2) Licensing requirements.

~~a.~~ Rescinded IAB 11/3/99, effective 12/8/99.

~~b.~~ a. New motor homes delivered to Iowa dealers must contain the systems and meet the standards specified in Iowa Code ~~paragraph~~ section 321.1(36C) "d."

~~e.~~ b. A licensee shall ensure that any new retail outlet is properly licensed as a dealer before any vehicles are delivered to the outlet.

~~d.~~ c. A licensee shall notify the office of vehicle and motor carrier services in writing at least ten days prior to any:

(1) and (2) No change.

~~(3)~~ Rescinded IAB 11/3/99, effective 12/8/99.

(4) ~~(3)~~ Change in the trade name of a travel trailer manufactured for delivery in this state.

~~e.~~ d. A licensee shall notify the office of vehicle and motor carrier services in writing at least ten days before any new make of vehicle is offered for sale at retail in this state.

ITEM 11. Amend subrule 425.62(2) as follows:

425.62(2) The department may deny a dealer's application for the state fair or a fair, vehicle show or vehicle exhibition permit for a period not to exceed six months if the dealer fails to comply with the applicable provisions of rule 761—425.26(322) or Iowa Code ~~subsection~~ section 322.5(2) or 322C.3(9).

ITEM 12. Amend subrule 425.62(4) as follows:

425.62(4) The department shall send notice by certified mail to a person whose certificate, license or permit is to be revoked, suspended, canceled or denied. The notice shall be mailed to the person's mailing address as shown on departmental records or, if the person is currently licensed, to the principal place of business, and shall become effective 20 days from the date mailed. A person who is aggrieved by a decision of the department and who is entitled to a hearing may contest the decision in accordance with 761—Chapter 13. The request shall be submitted in writing to the director of the office of vehicle and motor carrier services at the address in subrule 425.1(2). The request shall be deemed timely submitted if it is delivered or postmarked on or before the effective date specified in the notice of revocation, suspension, cancellation or denial.

ITEM 13. Amend subrule 425.70(3) as follows:

425.70(3) Use of dealer plates.

a. No change.

~~b. Motor vehicles used by dealers, manufacturers or distributors to transport other vehicles shall be registered, except when being transported from the place of manufacturing, assembling or distribution to a dealer's place of business.~~

~~c. b.~~ Saddle-mounted vehicles being transported shall display dealer plates.

~~d. c.~~ Dealer plates may be displayed on a trailer carrying a load, provided the ~~truck or truck tractor~~ motor vehicle towing the trailer is properly registered under Iowa Code section 321.109, 321.120, or 321.122, ~~except as provided~~ or is displaying a dealer plate described in paragraph 425.70(3) "e," or a demonstration permit has been issued as described in rule 761—425.72(321).

~~e. d.~~ Dealer plates may be used by a dealer licensed as a wholesaler for a new motor vehicle model when operating a new motor vehicle of that model if the motor vehicle is owned by the wholesaler and is operated solely for the purpose of demonstration, show or exhibition.

e. A dealer plate issued under Iowa Code section 321.60 for the purpose of hauling a load or towing a trailer shall be marked "HAUL & TOW." Dealer "HAUL & TOW" plates may only be displayed on vehicles in the dealer's inventory that are continuously offered for sale at retail.

ITEM 14. Adopt the following **new** subrule 425.72(6):

425.72(6) A dealer plate issued under Iowa Code section 321.60 for the purpose of hauling a load or towing a trailer may be used in lieu of a demonstration permit.