Regulatory Analysis

Notice of Intended Action to be published: 701—Chapter 235
"Device Excise Tax"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 453E.2, 453E.5(5), and 423.25
State or federal law(s) implemented by the rulemaking: Iowa Code chapters 453E and 17A

Public Hearing

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

August 12, 2025 9:30 to 10:30 a.m.	Via videoconference call: meet.google.com/ufi-cbwg-cnx

Public Comment

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

Matt Bishop
Department of Revenue
Hoover State Office Building
P.O. Box 10457
Des Moines, Iowa 50306-3457
Phone: 515.452.9205
Email: matt.bishop@iowa.gov

Purpose and Summary

The purpose of the proposed rulemaking is to adopt new Chapter 235. This chapter describes the Department's interpretation of Iowa Code chapter 453E as it applies to the regulation and taxation of devices.

Analysis of Impact

1. **Persons affected by the proposed rulemaking:**

- **Classes of persons that will bear the costs of the proposed rulemaking:**

The proposed rulemaking does not create costs for any classes of person. Any cost is associated with the underlying statutes regulating and taxing devices.

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

Local governments, law enforcement, consumers, retailers, and the public in general will benefit from guidance on the regulation and taxation of devices as it will reduce confusion and provide useful information.

2. **Impact of the proposed rulemaking, economic or otherwise, including the nature and amount of all the different kinds of costs that would be incurred:**

- **Quantitative description of impact:**

There is no economic impact associated with the proposed rulemaking beyond the impact associated with what is contained in statute.

- **Qualitative description of impact:**

The proposed rulemaking will provide clarification on how to comply with the Iowa Code sections on device regulation and taxation. Failing to have rules on the regulation and taxation of devices could cause confusion, additional questions to the Department, potential errors in calculating and remitting device excise taxes, and sales of devices that are in violation of the statutory requirements.

3. **Costs to the State:**

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

There are no costs to the agency to implement the proposed rulemaking beyond those that would otherwise be required to administer the underlying statutes.

- **Anticipated effect on State revenues:**

There is no anticipated effect on State revenues of the proposed rulemaking beyond the effect of the underlying statute. However, the proposed rulemaking provides essential information and clarification that make it more likely that the correct amount of tax will be collected and remitted to the Department.

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

The cost of inaction would be failing to provide guidance on the regulation and taxation of devices. The benefit of the proposed rulemaking is additional clarity and guidance to various entities on how to comply with the underlying statutes and to collect and remit the correct amount of tax, making it more likely that sales of devices will be made in line with the statutory requirements.

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

The proposed rulemaking is not costly or intrusive. Some sections of Iowa Code chapter 453E require the Department to promulgate rules on their administration. The Department considered the option of not promulgating rules in areas where it was not required to do so but determined that the proposed rulemaking will provide useful guidance to the public.

6. **Alternative methods considered by the agency:**

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

Some sections of Iowa Code chapter 453E require the Department to promulgate administrative rules on their administration. The Department considered the option of not promulgating rules in areas where it was not required to do so but determined that the proposed rulemaking will provide useful guidance beyond what is required by statute.

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

The absence of this proposed chapter could cause confusion about the regulation and taxation of devices and potentially lead to sales of these products that do not comply with statutory requirements.

Small Business Impact

If the rulemaking will have a substantial impact on small business, include a discussion of whether it would be feasible and practicable to do any of the following to reduce the impact of the rulemaking on small business:

- Establish less stringent compliance or reporting requirements in the rulemaking for small business.
- Establish less stringent schedules or deadlines in the rulemaking for compliance or reporting requirements for small business.
- Consolidate or simplify the rulemaking's compliance or reporting requirements for small business.
- Establish performance standards to replace design or operational standards in the rulemaking for small business.
- Exempt small business from any or all requirements of the rulemaking.

If legal and feasible, how does the rulemaking use a method discussed above to reduce the substantial impact on small business?

The proposed rulemaking does not have a substantial impact on small business. The proposed rulemaking does not make any special distinctions for small businesses, and it does not impose any requirements on small businesses or other businesses beyond what is required by the underlying statutes.

Text of Proposed Rulemaking

ITEM 1. Adopt the following **new** 701—Chapter 235:

CHAPTER 235
DEVICE EXCISE TAX

701—235.1(453E) Purpose; definitions.

235.1(1) *Purpose.* This chapter sets forth the department of revenue's rules on the administration and regulation of the sale of devices and the imposition, collection, and remittance of excise tax on those devices.

235.1(2) *Definitions.* Unless otherwise indicated in the rule or required by context, all terms and phrases have the same meaning as defined in Iowa Code chapter 453A and section 453E.1. For purposes of this chapter, the following definitions also apply:

"Combustion" means to burn or to heat to the point of creating an aerosol, either directly or indirectly.

"Designed for use" means the primary intended purpose of the object and may be measured at the time of manufacture, distribution, or point of sale.

"GovConnectIowa" means the e-services portal of the department of revenue.

"Inhalation" means to take an aerosol into the body via the nose or mouth, even if the aerosol does not reach or is not absorbed through the lungs.

This rule is intended to implement Iowa Code chapter 453E.

701—235.2(453E) Devices.

235.2(1) *Device.* "Device" is defined in Iowa Code section 453E.1 and provides the factors the department will consider when determining whether a particular product is subject to regulation under Iowa Code chapter 453E and these rules.

235.2(2) *Examples.*

EXAMPLE 1: Retailer A holds a retail tobacco permit. Retailer A sells an object made from glass. The object has a bowl, a water reservoir, a tube, and a mouthpiece. The accompanying instructions direct users to place tobacco in the bowl, heat the bowl, and inhale the resulting aerosol. Because the object is made entirely of glass and is designed for use in inhaling through combustion tobacco, the object is a device.

EXAMPLE 2: Retailer B holds a retail tobacco permit. Retailer B sells an object identical to Example 1, except the object has no instructions and Retailer B describes it as a "sculpture." Retailer B also displays a sign next to the object that says, "DECORATION ONLY. DO NOT USE WITH TOBACCO." Despite the signage and lack of instructions, the object is a device; Retailer B is a supplier of tobacco products, and the object is designed for use as a device.

EXAMPLE 3: Retailer C holds a retail tobacco permit. Retailer C sells an object described as a "hookah." The object has a metal bowl to fill with water, a metal pipe, tubing, and a mouthpiece. The object's accompanying instructions direct users to place lit coals next to shisha (flavored tobacco) in order to heat the shisha without burning the shisha. By heating the shisha, the hookah creates an aerosol. Users can then inhale the aerosol from the shisha. Because the shisha is intended to be inhaled through combustion in the object, the object is a device.

EXAMPLE 4: Retailer D holds a retail tobacco permit. Retailer D sells a small silk flower packaged within a four-inch long glass tube. Purchasers commonly dispose of the silk flower and use the tube for inhaling through combustion tobacco, hemp, other plant materials, or a controlled substance. Therefore the glass tube is a device. The sale is subject to regulation under Iowa Code chapter 453E, and the device excise tax applies to the entire sales price.

EXAMPLE 5: Retailer E does not hold a retail tobacco permit. Retailer E primarily sells scientific supplies and equipment, including a 100-millimeter long glass test tube. The test tube's instructions only concern its scientific use. The descriptive materials accompanying the test tube only depict its scientific use. The test tube's advertising only concerns its scientific use. Retailer E only displays the test tube in a scientific manner. Retailer E otherwise is not a supplier of devices or related items. The test tube is commonly used for legitimate scientific purposes in the scientific community. While some individuals outside of the scientific community may be able to use this test tube as a means for drug consumption, the product is designed for use in scientific applications. The test tube is not a device.

This rule is intended to implement Iowa Code chapter 453E.

701—235.3(453E) Permit applications, approvals, and denials.

235.3(1) *Applications for permits in general.* The application forms for all permits issued under Iowa Code chapter 453E are available from the department. Permit application forms are to be submitted in accordance with paragraph 235.3(1)*"b."*

a. Each permit application, whether for a device retailer or a device delivery seller, must include but is not limited to the following information:

(1) Nature of the applicant's business;

(2) Type of permit requested;

(3) Address of the principal office of the applicant;

(4) Address of the place of business for which the permit is to apply;

(5) Names and addresses of no more than three principal officers, partners, or members if the business is not a sole proprietorship;

(6) Other permits issued under Iowa Code chapter 453A;

(7) Sales and use tax permit number issued under Iowa Code chapter 423;

(8) Signature of the person authorized to complete the application. For applications submitted under Iowa Code chapter 453E and these rules, the applicant's email address included on the electronic application constitutes a valid signature; and

(9) Any other information required on the forms issued by the department for the purpose of administering Iowa Code chapters 453A and 453E and these rules.

b. Electronic submission.

(1) Applicants seeking a device retailer or device delivery sale permit must submit their applications via GovConnectIowa.

(2) Applicants seeking a device retailer or device delivery sale permit must hold a valid, unsuspended or unrevoked retail tobacco permit, pursuant to Iowa Code section 453A.47A, or apply for a retail tobacco permit at the same time of their applications for a device retailer or device delivery sale permit.

(3) Applicants seeking a device retailer or device delivery sale permit must hold a valid, unsuspended or unrevoked sales and use tax permit, pursuant to Iowa Code chapter 423, or apply for a sales and use tax permit at the same time of their applications for a device retailer or device delivery sale permit.

(4) For device retailers and delivery device sellers, the legal name of the applicant must be the same as on the sales and use tax and retail tobacco permits or permit applications.

235.3(2) *Approval of permit application.*

a. Device retailer permit applications.

(1) The power to grant the device retailer permit is within the authority of the city council or board of supervisors of the jurisdiction in which the business is located. Uniform, nondiscriminatory

limits may be placed by the city council or board of supervisors on the issuance of device retailer permits within the respective jurisdiction.

(2) Applying for a permit does not equal approval, so devices cannot be sold during the pendency of the retail application before the local jurisdiction.

b. Device delivery sale permit applications.

(1) The power to grant or deny the device delivery sale permit is within the authority of the department.

(2) The department will not approve a device delivery sale permit until or unless all requisite permits under Iowa Code section 453E.3(1) have been approved by the applicable local jurisdiction and the associated application fee has been submitted to the department.

c. Issuance of device retailer and device delivery sale permits.

(1) Regardless of the entity or jurisdiction that approves device retailer or device delivery sale permit applications under this rule, the department will issue the permit to the device retailer or device delivery seller.

(2) Submission of an application by the business or approval of an application by the state or locality is not sufficient to make device retail or delivery sales of devices. Device retailers and device delivery sellers must have been issued a permit by the department before making retail or delivery sales of devices.

235.3(3) *Denial of device retailer and device delivery sale permit applications.* Rule 701—201.10(423) characterizes the term "substantially delinquent" in paying a tax.

a. The department may deny a permit to any applicant who is, at the time of application, substantially delinquent in paying any tax due that is administered by the department or the interest or penalty on the tax.

b. If the applicant is a partnership, the department may deny the applicant a permit if a partner is substantially delinquent in paying any tax, penalty, or interest regardless of whether the tax is in any way a liability of or associated with the partnership.

c. If an applicant for a permit is a corporation, the department may deny the applicant a permit if any officer, with a substantial legal or equitable interest in the ownership of the corporation, owes any delinquent tax, penalty, or interest of the applicant corporation. Unlike a partnership, the corporation must initially owe the delinquent tax, penalty, or interest and the officer must be personally and secondarily liable for the tax.

d. The director will deny a permit to any applicant who is an individual if the department has received a certificate of noncompliance from child support services in regard to the individual unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

e. The department will not refund permit application fees if the application is denied by the local jurisdiction or the department or if the permit is suspended or revoked.

235.3(4) *Device retailer and device delivery sale permits.*

a. Device retailer permits.

(1) Location. A device retailer permit only authorizes retail sales of devices at the location described in the permit. A device retailer must obtain a separate permit for each place of business owned or operated by the retailer from which retail sales of devices will be made.

(2) Display.

1. Device retailer permits must, at all times, be publicly displayed by the device retailer at the business location named in the permit. "Publicly displayed" means that the permit is easily seen by the public and persons authorized to inspect the business.

2. When requested by any agent of the department or any peace officer, the business proprietor or keeper of the building in which the devices are kept for retail sale, or with the intent to sell at retail, must produce the device retailer permit.

3. Refusal or failure to exhibit the device permit is prima facie evidence that devices are being kept for sale or with the intent to sell the devices in violation of Iowa Code chapter 453E.

b. Device delivery sale permits.

(1) Location. A device delivery sale permit only authorizes delivery sales of devices from the location described in the permit. A device delivery seller must obtain a separate permit for each place of business owned or operated by the delivery seller from which delivery sales of devices will be made.

(2) Display.

1. When requested by any agent of the department or any peace officer, the business proprietor or keeper of the building in which the devices are kept for sale by delivery, or with the intent to sell by delivery, must produce the device delivery sale permit.

2. Refusal or failure to exhibit the device permit is prima facie evidence that devices are being kept for sale or with the intent to sell the devices in violation of Iowa Code chapter 453E.

c. Applicable dates. Approved device retailer and device delivery sale permits will provide the dates during which devices may be sold pursuant to that permit. Retail and delivery sales of devices made before this approval period are unlawful unless authorized under another permit.

(1) The date included on a device retailer or device delivery sale permit application and the date when an application was submitted are not the relevant dates to determine whether a sale is unauthorized under Iowa Code section 453E.3.

(2) Local jurisdictions and the department shall not backdate approved device retailer or device delivery sale permits to coincide with an application or submission date.

235.3(5) *Change of location, ownership, or legal or operating name of a business.*

a. Change of location.

(1) If the holder of a device retailer permit or a device delivery sale permit changes the location of a business requiring a device permit, the existing permit is not valid for the new location.

(2) Change of location within the same jurisdiction. If a permittee changes the location of a retail operation requiring a device retailer permit but remains within the same jurisdiction that granted the original permit, the permittee may exchange the invalid permit (valid only for the location described in the original permit) for a valid permit free of charge and without submitting an additional device retailer permit application.

(3) Change of location to another jurisdiction. If a permittee changes the location of a retail operation requiring a device retailer permit to a location outside of the original jurisdiction that approved the original permit, the permittee must surrender the invalid permit to the original jurisdiction, apply for a new permit in the new jurisdiction, and pay the requisite permit fees.

(4) Examples.

EXAMPLE 1: Tobacco Store sells tobacco products and devices at retail and has obtained the requisite retail permits from the city of Des Moines. The establishment moved to a new location that is one block away but still within the city limits of Des Moines. Tobacco Store's retail permits are valid only for the location described in the permit. Therefore, the original permits are no longer valid. However, since the establishment remains within the jurisdiction that granted the original permits (Des Moines), Tobacco Store can exchange the original, presently invalid permits for valid permits with a new location description without submitting a new application or paying additional fees.

EXAMPLE 2: Same as Example 1, except the new location of Tobacco Store is outside the corporate limits of Des Moines and within an unincorporated area of Polk County. Tobacco Store must surrender the invalid permits to the city of Des Moines, apply for and obtain new retail permits from Polk County, and pay all the requisite permit fees.

b. Changes of ownership, business structure, and business name.

(1) If a place of business with a device retailer or device delivery sale permit changes ownership or legal structure, the old permits cannot be assigned or transferred to the new owners and must be surrendered.

(2) The new owners must submit new permit applications, including paying the requisite permit fees.

c. Change of legal or operating name of a business. If a place of business with a device retailer or device delivery sale permit changes the legal or operating name of the business, the permittee must

surrender the invalid permit to the original jurisdiction, apply for a new permit in the new jurisdiction, and pay the requisite permit fees.

This rule is intended to implement Iowa Code sections 453E.3 and 453E.4.

701—235.4(453E) Permit cancellation, suspension, and revocation.

235.4(1) *No proration or refund of permit fees.* Permit fees for device retailer and device delivery sale permits are not subject to proration or refund in the event the permit is canceled, suspended, or revoked.

235.4(2) *Administrative procedure for permit suspensions and revocations.* Any permit suspension or revocation by the department under Iowa Code chapter 453E and this rule is subject to the requirements of "contested case procedures" and "license and permit denials and revocations" contained in 701—Chapter 7.

235.4(3) *Notice and hearing.* The department may revoke or suspend a retail device or device delivery sale permit pursuant to Iowa Code section 453E.7 after giving the permit holder notice and an opportunity to be heard.

235.4(4) *Delinquency of tax, penalty, or interest.* Rule 701—201.10(423) provides information on the term "substantially delinquent" in paying a tax.

a. The department may revoke the permit of any permit holder who becomes substantially delinquent in paying any tax that is administered by the department or the interest or penalty on the tax.

b. If the permit holder is a corporation, the department may revoke the permit if any officer with a substantial legal or equitable interest in the ownership of the corporation owes any delinquent tax, penalty, or interest of the applicant corporation. In this latter instance, the corporation must initially owe the delinquent tax, penalty, or interest and the officer must be personally and secondarily liable for the tax.

c. If the permit holder is a partnership, a permit cannot be revoked for a partner's substantial delinquency in paying any tax, penalty, or interest that is not a liability of the partnership.

235.4(5) *Revocation by a local jurisdiction.*

a. Any permit revocation by a board of supervisors or city council is subject to the procedure or policy adopted by such board or council.

b. Local authorities must inform the department of any revocation and suspension of device retail permits by the local authority within 30 days of the suspension or revocation. Notification must be made electronically through GovConnectIowa unless the local authority has received permission from the director to use another method.

235.4(6) *Revocation for child support violations.*

a. The department will revoke a permit of a permit holder who is an individual if the department has received a certificate of noncompliance from child support services in regard to the permit holder unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

b. The board of supervisors or the city council that issued a retail permit is required by Iowa Code chapter 252J to revoke the permit of any retailer who is an individual if the board or council has received a certificate of noncompliance from child support services in regard to the retailer unless the unit furnishes the board or council with a withdrawal of the certificate of noncompliance.

235.4(7) *Waiting period.* Once the permit is revoked or suspended under this rule, the permittee cannot obtain another device retailer or device delivery sale permit, nor may a device retailer or device delivery sale permit be issued for the location covered by the revoked or suspended permit, regardless of the identity of the applicant, for a period of at least one year unless the applicant shows good cause to the contrary.

This rule is intended to implement Iowa Code chapter 252J and sections 453A.22 and 453E.7.

701—235.5(453E) Device retailers; age verification; display and entry.

235.5(1) *Age verification.* Before completing the sale of devices, device retailers must verify all purchasers are aged 21 or older, as required in Iowa Code section 453E.3(8)*"a."*

235.5(2) *Display.*

a. Definitions.

"Generally display" includes displaying devices on shelves, counters, or cupboards visible only to those persons allowed entry to the retail establishment.

"Restrict entry" means the retailer actively checks the age of every person entering the establishment to ensure only persons who are at least 21 years of age enter.

b. Age restriction.

(1) All retail locations. Iowa Code chapter 453E provides that device retailers shall not display any devices in any part of a retail location where the devices are or could be visible to anyone younger than 21 years of age; however, the statute does not prescribe a specific method of display that prevents those under the age of 21 from viewing devices.

1. Device retailers cannot allow anyone younger than 21 years of age to view devices inside the retail establishment, including persons younger than 21 years of age who are accompanied by a parent or guardian.

2. Displaying devices in an external display window visible to the general public is prohibited.

3. Using signage such as "21 & OLDER ONLY" without checking the age of every person entering the establishment is not sufficient to restrict entry to the retail location.

(2) Retail locations with age restrictions for entry. If a retail location restricts entry to the entire retail establishment only to those who are at least 21 years of age and devices are not visible to the general public from outside the retail location, devices may be generally displayed within the retail establishment.

(3) Retail locations that do not restrict entry by age. In determining whether a manner of display is in compliance with Iowa Code chapter 453E and the rules herein, the following will be considered:

1. Displaying devices within a retail location openly on shelves, counters, or cupboards visible to anyone in the retail establishment is generally prohibited if the retail establishment does not restrict entry into the establishment to persons 21 years of age and older.

2. Displaying devices in a separate room in the retail location where only persons aged 21 years and older can enter and view the devices is permitted as long as persons under 21 years of age are restricted from entry into the separate room where the devices are displayed.

3. Displaying devices in nonstructural spaces within the retail establishment utilizing a screen, curtain, or similar material that restricts visibility to the device is permissible if only persons aged 21 years and older are permitted by the retailer to enter the nonstructural space and to view the devices.

4. Retailers must also ensure that, even after purchase by an authorized purchaser, devices are not visible to persons under 21 years of age while the devices remain within the retail establishment's premises. Methods for preventing visibility to persons under the age of 21 include the use of opaque wrapping, bags, or boxes in which a purchased device is placed after sale.

c. Examples.

EXAMPLE 1: Device Retailer A places a sign by the entrance of the retail establishment that says, "You must be at least 21 years of age to enter", does not monitor the age of every person who enters the establishment, and only removes persons from the store if they appear to be under 21 years of age. Because A does not restrict entry, A cannot generally display devices so they are visible to anyone inside the establishment.

EXAMPLE 2: Device Retailer B checks the identification of every person entering the establishment to ensure they are at least 21 years of age. Because B restricts entry, B may generally display devices so they are visible to anyone inside the establishment. However, B cannot display devices so they are visible to persons outside the establishment.

EXAMPLE 3: Device Retailer C stores devices on shelves behind an opaque curtain near the register. The devices are not visible while the curtain covers them. C monitors the curtain and only allows persons who verify they are at least 21 years of age to look behind the curtain. When permitted

persons look behind the curtain, the devices are not visible to anyone else in the store. C permissibly prevents persons under 21 years of age from viewing devices in the nonstructural space of the establishment consistent with this rule.

EXAMPLE 4: Device Retailer D stores devices on shelves behind a locked, opaque door. The devices are not visible while the door is shut. C only opens the door when requested by a person who verifies they are at least 21 years of age. However, the devices are generally visible to anyone inside the store when the door is open, and D does not restrict entry or verify that no one younger than 21 years of age is in the establishment before opening the door. Because persons younger than 21 years of age can view the devices when the door is open, D impermissibly allows persons younger than 21 years of age to view devices in violation of this rule.

235.5(3) *Sales through vending machines prohibited.* Devices cannot be sold through a vending machine.

This rule is intended to implement Iowa Code section 453E.3.

701—235.6(453E) Delivery sale requirements.

235.6(1) *Verification of recipient's age.*

a. Prior to finalizing a sale to the purchaser, the device delivery seller must verify that the purchaser is at least 21 years of age in one of the following ways:

(1) Use a commercially available database, or aggregate of databases, that is regularly used by government and businesses for the purpose of age and identity verification.

(2) Obtain a copy of a valid government-issued document that provides the name, address, and date of birth of the purchaser.

b. For each device delivery sale, the device delivery seller must retain proof that it verified the purchaser is at least 21 years of age. The delivery seller must retain this proof for at least five years after the delivery sale.

c. Before completing the delivery of devices, a person making delivery sales must perform all of the following:

(1) Obtain a valid form of identification from the recipient.

(2) Review the provided identification and verify that the identification:

1. Is valid;
2. Identifies the recipient; and
3. Establishes the recipient is 21 years of age or older.

d. The recipient of the device to be delivered must be a person aged 21 or older. Deliveries shall not be left:

(1) In a mail or post office box;

(2) In any unattended area inside or outside of a building, home, office or other location; or

(3) With anyone younger than 21 years of age.

e. No delivery shall be completed if the recipient is unable to provide or the delivery person is unable to verify a valid form of identification indicating the recipient is 21 years of age or older.

235.6(2) *Signature.*

a. A delivery person must obtain the signature of the recipient and verify that the recipient is aged 21 years or older before completing the device delivery.

b. Signatures can be collected via a paper or electronic form.

c. Delivery signature must include the date of delivery and the printed version of the recipient's name, along with the recipient's signature.

d. Device delivery sale permit holders must electronically submit records of delivered devices via GovConnectIowa. Such permit holders must also retain the records of delivered devices and provide these records when requested by the department as required by Iowa Code section 453E.4.

235.6(3) *Labels.*

a. Devices delivered by delivery sale directly to Iowa residents must be conspicuously labeled with the words, "CONTAINS DEVICE: SIGNATURE OF PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY."

b. Required labels must be directly on the package containing the device(s) and must not be placed on any type of wrapping, whether made of plastic or other material, that could be removed from the package containing the device(s).

c. Labels may use alternative language to that identified in paragraph 235.6(3)*"a"* only after approval by the director. Requests for alternative wording must be made to the director in writing and approved before any alternative wording can be used.

This rule is intended to implement Iowa Code section 453E.4.

701—235.7(453E) Attachment of tax.

235.7(1) *Device excise tax.* Retail sales and delivery sales of devices are subject to a device excise tax of 40 percent of the retail sales price of the device. In addition to the device excise tax, retail sales and delivery sales of devices are subject to the state sales tax and applicable local option sales tax.

a. Iowa Code section 453E.5(2)*"b"* provides information on what constitutes "retail sales price" and which elements are considered in its determination.

b. When a device is sold as a part of a bundled transaction, as defined in Iowa Code section 423.2(8), the 40 percent device excise tax applies to the entire retail sales price of the bundled transaction.

c. Examples.

(1) Sale in a jurisdiction with no local option sales tax. If a device has a retail sales price of $10, the sale of the device would be subject to a device excise tax of $4 and the state sales tax of $0.60. Therefore, a customer's total would be $14.60.

(2) Sale in a jurisdiction with a local option sales tax. If a device has a retail sales price of $10, the sale of the device would be subject to a device excise tax of $4 (40 percent of sales price), state sales tax of $0.60 (6 percent of sales price), and local option sales tax of $0.10 (1 percent of sales price). Therefore, a customer's total would be $14.70.

235.7(2) *Collection and remittance.* Device retailers and device delivery sellers must remit the sales, any applicable local option sales, and the device excise tax in the manner described in rule 701—235.8(453E) and 701—Chapter 202.

This rule is intended to implement Iowa Code sections 453E.4 and 453E.5.

701—235.8(453E) Filing returns and reports; payment of tax.

235.8(1) *Device excise tax return filing.*

a. Due date. Every device retailer and device delivery seller, including persons that sell devices at retail or by delivery sale without a device retailer or device delivery sale permit, must file a device excise tax return once per month. This monthly return is due on or before the last day of the month following the end of the month in which the tax was collected. For example, the device excise tax return for devices sold in the month of May must be filed on or before June 30.

b. Electronic filing. Device retailers and delivery sellers required to file a monthly device excise tax return shall file the return electronically through GovConnectIowa. A device retailer or delivery seller who is unable to file a return electronically may request permission from the director to file a paper return. A device retailer or delivery seller requesting such permission shall provide proof of its inability to file electronically.

c. Failure to timely file. Any returns that are not filed electronically through GovConnectIowa, without prior permission to file using another method, are treated as not validly filed returns. Device retailers and delivery sellers that do not timely and validly file returns as described in Iowa Code chapter 453E and this rule will be subject to any applicable penalties and interest.

235.8(2) *Reporting device excise taxes.*

a. A device retailer or delivery seller that has a reporting obligation but sold zero devices in the month must affirmatively indicate on the device excise tax return that the taxpayer has no device excise tax to report. A device retailer or delivery seller does this by making the appropriate indication on the electronic return. A device retailer or delivery seller who fails to do so will be treated as not reporting device excise taxes for that reporting period.

b. Example. Device Retailer A made no sales of devices during the month of June. A must still file a device excise tax return on or before July 31 that indicates it made zero sales during June. If A fails to timely file that return, A is subject to all applicable penalties for the failure to file.

235.8(3) *Device excise tax remittance.*

a. The device excise tax owed by a device retailer or device delivery seller must accompany the device excise tax return for the period in which the tax became due.

b. Device retailers and device delivery sellers filing a monthly device excise tax return electronically shall remit the excise tax electronically unless the person obtains permission from the director to remit taxes by another method before doing so.

c. Remittances transmitted electronically are considered made on the date the remittance is completed in GovConnectIowa.

235.8(4) *Required reporting method.* Any reports required by Iowa Code chapter 453E and these rules shall be filed electronically by device retailers and device delivery sellers through GovConnectIowa unless the person obtains permission from the director to file by another method before doing so. Required reports are due on or before the last day of the month following the end of the month to which the report applies and should be filed simultaneously with the device retailer or device delivery seller's device excise tax return(s).

235.8(5) *Due dates, weekends, and holidays.* Due dates that fall on a Saturday, Sunday, or holiday, as defined in Iowa Code section 421.9A, shall be treated in accordance with Iowa Code section 421.9A.

235.8(6) *Other required information.* Device retailers and device delivery sellers are also required to provide any other information requested by the department for the purpose of administering Iowa Code chapters 453E and these rules.

235.8(7) *Incorporation of Iowa Code chapter 423 and 701—Chapter 202.* Except as otherwise stated in this chapter, the requirements of Iowa Code chapter 423 and 701—Chapter 202 governing sales and use tax returns and remittance of tax apply to all device retailers and device delivery sellers.

This rule is intended to implement Iowa Code sections 453E.3(7), 453E.4, and 453E.5.

701—235.9(453E) Records; invoices.

235.9(1) *Records retention generally.* Every device retailer and device delivery seller shall keep, preserve, and make available to the department any records required by Iowa Code chapter 453E for a period of at least five years.

235.9(2) *Requirements.* Records kept, preserved, or made available pursuant to this rule will be considered inadequate by the department if the requirements of this rule are not met. The director may, in certain circumstances, authorize device retailers, device delivery sellers, and others subject to Iowa Code chapter 453E and these rules to keep records in a manner other than those prescribed in these rules. Any such authorization must be in writing.

235.9(3) *Examples of records.* The following is a nonexhaustive list of records subject to the provisions of this rule.

a. Device retailers.

(1) Records, including invoices, evidencing the purchase by the device retailer of devices.

(2) Detailed inventory records.

(3) Any other records required to be kept in the device delivery seller's capacity as a tobacco retailer.

b. Device delivery sellers.

(1) Records of devices delivered to purchasers that include the following information for each delivery sale:

1. Name of device manufacturer.
2. Quantity of devices delivered.
3. Name and address of recipient.
4. Verification of recipient's age.
5. Copy of recipient's signature.
6. Sales tax paid on the products sold pursuant to Iowa Code chapter 423.
7. Excise tax paid on the products sold pursuant to Iowa Code chapters 453A and 453E.

(2) Detailed inventory records.

(3) Any other records required to be kept in the device delivery seller's capacity as a tobacco retailer.

235.9(4) *Invoice forms.* Whenever an invoice is required to be prepared or kept by Iowa Code chapter 453E or these rules, at minimum, it must contain the following information:

a. Seller's name, address, and permit number.

b. Purchaser's name, address, and permit number (if any).

c. Date of sale.

d. All prices and discounts stated separately.

e. An indication as to whether devices are being sold with or without sales and device excise taxes included.

f. Origination and destination points.

This rule is intended to implement Iowa Code sections 453E.3(7) and 453E.4(4)*"e."*

701—235.10(453E) Federal or state law. Nothing in this chapter shall be construed to affect the provisions of any applicable federal or state law.

This rule is intended to implement Iowa Code section 453E.2(4).