Regulatory Analysis

Notice of Intended Action to be published: 661—Chapters 231 and 235
"Manufacturing, Storage, Handling, Use of Explosive Materials,
and Licensing for Commercial Explosive Contractors and Blasters"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 10A.511(3), 101A.5 and 272C.12

State or federal law(s) implemented by the rulemaking: Iowa Code sections 10A.511 and 272C.12 and chapters 101A and 17A and Executive Order 10

Public Hearing

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

November 25, 2024 9 a.m.	Geode Conference Room 6200 Park Avenue Des Moines, Iowa

Information on virtual participation will be available on the Department of Inspections, Appeals, and Licensing's website prior to the hearing.

Public Comment

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

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Purpose and Summary

This proposed rulemaking repromulgates Chapter 231 and implements Iowa Code sections 10A.511 and 101A.5 in accordance with the goals and directives of Executive Order 10 (January 10, 2023). Iowa Code section 10A.511(3) provides that the director of the Department shall promulgate fire safety rules in consultation with the state fire marshal. The rules are to promote and enforce fire safety, fire protection, and the elimination of fire hazards relating to the use, occupancy, and construction of buildings, establishments, or structures. Rules shall be in substantial compliance, except as otherwise specifically provided in Iowa Code chapter 10A, with the standards of the National Fire Protection Association (NFPA) relating to fire safety as published in the national fire codes.

Iowa Code section 101A.5 provides that the director shall adopt rules pursuant to Iowa Code chapter 17A pertaining to the manufacture, transportation, storage, possession, and use of explosives materials. Rules must be compatible with but not limited to the NFPA's pamphlet number 495 and federal rules pertaining to commerce, possession, storage, and use of explosive materials. The director will also require reports from licensees and permittees as are necessary to discharge the director's duties and will prescribe the form and content of license and permit applications. The director is required to conduct any inspections necessary to enforce the provisions of Iowa Code chapter 101A.

This rulemaking implements the aforementioned Iowa Code sections by adopting the current edition of the NFPA 495, including amendments. The rulemaking also combines Chapter 231 with Chapter 235 to streamline the Iowa Administrative Code.

Analysis of Impact

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

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

Individuals engaged in the manufacturing, storage, handling or use of explosive materials may bear costs associated with this rulemaking. Individuals, corporations, partnerships, associations, or licensees may incur costs for the retention of records as required by the rules.

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

The proposed rulemaking benefits the general public as well as individuals specifically engaged in the manufacture, storage, handling, or use of explosive materials, as the rulemaking proposes reasonable standards and procedures related to explosive materials and ensures the safe handling of such materials.

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:**

The 2023 edition of NFPA 495 adds provisions for storing smokeless propellants and provides guidance on manufacturing and testing as well as guidance for installing watertight and dust-tight equipment near explosives. Individuals, corporations, partnerships, or associations intending to manufacture, transport, store, possess, or use commercial explosives incur costs in the day-to-day operations and may incur costs for record retention of commercial explosives. These costs are difficult to quantify. These costs are statutorily required by Iowa Code section 101A.5.

- **Qualitative description of impact:**

Implementing the requirements of Iowa Code chapter 101A ensures the safety for individuals, corporations, partnerships, and associations using commercial explosives and the general public where commercial explosives are used. The proposed rulemaking updates the adopted edition of NFPA 495 from the 2001 edition to the current 2023 edition.

3. **Costs to the State:**

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

Costs to the Department include staff time needed to ensure compliance with the requirements of Iowa Code chapter 101A and these rules. The Department has 10 full-time equivalent (FTE) positions that, among other duties, are responsible for the inspection of commercial explosives magazines not already inspected by the Mine Safety and Health Administration (MSHA) and Federal Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF). These FTEs verify magazines are compliant with NFPA 495 code standards for the safe storage of commercial explosives.

- **Anticipated effect on state revenues:**

There are no fees collected for the inspection of commercial explosives magazines and this rulemaking is not anticipated to have any effect on state revenues.

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

There are no specific financial costs to implement or enforce this rulemaking outside of any costs associated with the Department's statutory duties identified in Iowa Code chapters 10A and 101A. This proposed rulemaking does not increase costs to the Department or the regulated industry beyond the statutory requirements. The benefits include clear and consistent implementation of applicable Iowa Code sections and reasonable standards and procedures related to the manufacture, storage, handling, or use of explosive materials that benefit the general public and regulated industry.

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

Less costly or less intrusive methods have not been identified. The rules implement requirements found in Iowa Code chapters 10A and 101A. Updating the adopted NFPA to the current edition has not been found to increase costs in any appreciable manner.

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

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

See the response to Section 5 above.

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

See the response to Section 5 above.

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 adopts reasonable standards and procedures for the manufacture, handling, transportation, and use of commercial explosives in the interest of general public safety and the safety of the regulated industry. Such substantive safety regulations would not be appropriate for disparate enforcement based on business size. Notwithstanding, if a small business identifies a portion of the adopted requirements that is overly burdensome and the goals of which can be accomplished in a manner that would reduce the impact to the small business, the Department's established waiver process could be utilized.

Text of Proposed Rulemaking

ITEM 1. Rescind 661—Chapter 231 and adopt the following **new** chapter in lieu thereof:

CHAPTER 231
MANUFACTURING, STORAGE, HANDLING, USE OF EXPLOSIVE MATERIALS, AND LICENSING FOR COMMERCIAL EXPLOSIVE CONTRACTORS AND BLASTERS

NOTE: Any person who purchases, possesses, transports, stores, or uses explosive materials must comply with all applicable federal laws and regulations as well as with Iowa Code chapter 101A and this chapter.

661—231.1(101A) Explosive materials. NFPA 495, "Explosive Materials Code," 2023 edition, is hereby adopted by reference as the rules governing the manufacture, transportation, storage, and use of explosive materials in the state of Iowa, with the following amendments:

Delete the phrase "authority having jurisdiction" wherever it occurs and insert in lieu thereof the phrase "director."

Delete the phrases "issuing authority" and "permit-issuing authority" wherever they occur and insert in lieu thereof the phrase "director."

Amend Section 1.5 to read as follows:

1.5 Equivalency.

Nothing in this code is intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, effectiveness, durability, and safety over those prescribed by this code. Any request for approval to use systems, methods, or devices other than those specified in this chapter shall be submitted to the director as a request for a waiver of a rule.

Delete Sections 4.7 through 4.7.4.

Amend Sections 4.2, 4.2.1, 4.2.2, 4.2.3, 4.3 through 4.3.2, 4.4 through 4.4.5, 4.5, 4.5.1, 4.5.2, 4.5.3, 4.6 through 4.6.3, 4.8.1, 4.8.3, and 4.8.4, by deleting the words "permit" and "permits" wherever they occur and inserting in lieu thereof, respectively, the words "license."

Add the following new section:

9.4.6.3 A fire department that has received information pursuant to this section may re-disseminate the information to the state fire marshal, another fire department that is responding to a fire or other incident at the location at which the explosives are stored, or to a law enforcement agency. Information received by a fire department pursuant to this section shall not be redisseminated except as provided in this section.

Amend Section 9.6.3.7 Type 3 magazines containing explosive materials shall be within line-of-sight vision of a blaster or, if not within line-of-sight vision of a blaster, shall be secured if in a vehicle or in a secure building, facility, or area.

661—231.2(101A) Definitions. Definitions set forth in Iowa Code section 101A.1 are incorporated herein by reference. For purposes of these rules, the following definitions also apply:

"Actual possession" means when a person is in immediate possession or control of explosive materials (e.g., an employee who physically handles explosive materials as part of the production process; or an employee, such as a blaster, who actually uses explosive materials).

"Applicant" means an individual employed by a commercial explosive contractor or person associated with a commercial explosive contractor who meets the definition of "employee possessor" or "responsible person" as defined in this chapter.

"Commercial explosive blaster" or *"blaster"* means any individual who conducts blasting or is in charge of or responsible for loading or detonation of any explosive material.

"Commercial explosive contractor" or *"contractor"* means any business whose employees are engaged in the manufacture, importation, distribution, sale, or commercial use of explosives in the course of their employment.

"Constructive possession" means when an employee lacks direct physical control over explosive materials but exercises dominion and control over the explosive materials, either directly or indirectly through others (e.g., an employee at a construction site who keeps keys for magazines in which explosive materials are stored, or who directs the use of explosive materials by other employees; or an employee transporting explosive materials from a licensee to a purchaser).

"Employee possessor" means an individual who has actual or constructive possession of explosive materials during the course of the individual's employment.

"Offense directly relates" refers to either of the following:

1. The actions taken in furtherance of an offense are actions customarily performed within the scope of practice of a licensed profession.

2. The circumstances under which an offense was committed are circumstances customary to a licensed profession.

"Responsible person" means an individual who has the power to direct the management and policies of the commercial explosive contractor pertaining to explosive materials. For example, responsible persons generally include sole proprietors and explosives facility site managers. In the case of a corporation, association, or similar organization, responsible persons generally include

corporate directors and officers, as well as stockholders who have the power to direct management and policies.

661—231.3(101A) Licenses required. Except as specifically exempted by another provision of state or federal law, any business whose employees are engaged in the manufacture, importation, distribution, sale, or commercial use of explosives in the course of their employment shall be required to hold a current commercial explosive contractor license issued pursuant to this chapter. Any individual, except as specifically exempted by another provision of law, who conducts blasting or is in charge of or responsible for loading or detonation of any explosive material shall be required to hold a current commercial explosive blaster license issued pursuant to this chapter. A commercial explosive blaster license is not required to authorize a person solely to transport explosives from one location to another, to assist a licensed blaster, to train under a licensed blaster, or to engage in the manufacture of explosives.

NOTE: Iowa Code section 101A.1 excludes "fireworks" from the definition of "explosive." Consequently, working with fireworks does not necessitate a blaster license, nor does the manufacture, importation, distribution, sale, or commercial use of fireworks necessitate a commercial explosive license.

661—231.4(101A,272C) License application process.

231.4(1) *Application for commercial explosive contractor or commercial explosive blaster license.* Applications for a commercial explosive contractor license or a commercial explosive blaster license are available on the department's website. The application shall be filed no later than 30 days prior to the date of beginning work in this state or on which an existing license expires.

231.4(2) *Submission of application and required information.* A completed application for a license shall be submitted to the department at the address specified on the department's website. An application will not be considered complete unless all required information is submitted, including required attachments and fees, and will not be processed until it is complete.

231.4(3) *License fee.* Each license application shall be accompanied by a license fee as set forth in Iowa Code section 101A.2(2). The department will waive any fee charged to an applicant for a license if the applicant's household income does not exceed 200 percent of the federal poverty income guidelines and the applicant is applying for the license for the first time in this state.

231.4(4) *License duration.* Licensure will normally be for three years and expire on December 31 of the third year after it is issued, except that a license issued in December of any year expires on December 31 after two years have passed from the date on which the license was issued.

231.4(5) *Criminal history.* An applicant is subject to a national criminal history check pursuant to Iowa Code section 101A.2(3).

231.4(6) *Veterans and military service members.* Any individual while serving honorably on federal active duty, state active duty, or national guard duty, as defined in Iowa Code section 29A.1, applying for licensure as a commercial explosive contractor or blaster should apply for licensure in accordance with 481—Chapter 7.

661—231.5(101A) Issuance of commercial explosive contractor license. A commercial explosive contractor license will be issued if all of the following conditions have been satisfied:

231.5(1) All items required on the application have been completed, and any items the department deems necessary to verify have been appropriately verified.

231.5(2) No applicant for whom commercial explosive licensure is sought nor any person who will have, at any time, possession of explosives in the course of employment with the prospective contractor licensee may:

a. Have been convicted of any offense involving explosives or firearms;

b. Have been previously disqualified from being licensed to handle explosives in this or any other state. The department may grant a license to a person previously disqualified if the department is satisfied that the condition or conditions that led to the disqualification have been corrected;

c. Be an unlawful user of or be addicted to controlled substances;

d. Have been adjudged mentally incompetent at any time by any court, been committed by any court to any mental institution, received inpatient treatment for any mental illness in the past three years, or received treatment by a health care professional for a serious mental illness or disorder that impairs a person's capacity to function normally and safely, both toward themselves and others.

231.5(3) The applicant has at least one responsible person or employee licensed as a commercial explosive blaster.

661—231.6(101A) Issuance of a commercial explosive blaster license. A commercial explosive blaster license will be issued if all of the following conditions have been satisfied:

231.6(1) The applicant is an employee of a licensed commercial explosive contractor.

a. If, after a commercial explosive blaster license is issued, such employment ceases, the employing contractor and the commercial explosive blaster shall each notify the department within three business days of the final day of employment that the employment has ceased, and the commercial explosive blaster license shall be suspended until the commercial explosive blaster is again employed with a licensed commercial explosive contractor.

b. Upon reemployment, the employer shall notify the department that the commercial explosive blaster is again employed with a licensed commercial explosive contractor, and the department will reinstate the commercial explosive blaster license as soon as practical, provided that the commercial explosive blaster is not disqualified from holding a license pursuant to any provision of this chapter.

c. If the department finds that a commercial explosive blaster is disqualified from holding a license, the department shall revoke the license.

231.6(2) All items required on the application have been completed and any items the department deems necessary to verify have been verified and found to be true.

231.6(3) The applicant is not or has not been:

a. Convicted of any offense involving explosives or firearms;

b. Previously disqualified from being licensed to handle explosives in this or any other state. The department may grant a license to a person previously disqualified if the department is satisfied that the condition or conditions that led to the disqualification have been corrected;

c. An unlawful user of or addicted to controlled substances;

d. Adjudged mentally incompetent at any time by any court or committed by any court to any mental institution; or

e. A recipient of inpatient treatment for any mental illness in the past three years or a recipient of treatment by a health care professional for a serious mental illness or disorder that impairs a person's capacity to function normally and safely toward themselves or others.

231.6(4) The applicant has satisfactorily completed training approved by the department for the handling and use of explosives as described on the department's website. The training may be provided by the employer or by a reputable third party knowledgeable about the storage, handling, and use of explosives. The department may accept related job experience of 640 hours or more in lieu of training if the experience is documented by a sworn affidavit provided by the employing commercial explosive contractor licensee.

EXCEPTION: The department may issue a commercial explosive blaster license to a person licensed or certified as a blaster in another state, provided that the department finds that the requirements for licensing or certification in the other state are comparable to those provided for in this rule.

231.6(5) An applicant for a renewal license has completed continuing education from a nationally recognized institution in professional explosives storage, handling, and use.

231.6(6) The applicant is 21 years of age or older.

661—231.7(272C) Licensure of persons licensed in other jurisdictions.

231.7(1) For the purposes of this rule, "issuing jurisdiction" means the duly constituted authority in another state that has issued a professional license, certificate, or registration to a person.

231.7(2) Notwithstanding any other provision of law, a commercial explosive contractor license or commercial blaster license will be issued without an examination to a person who establishes residency in this state or to a person who is married to an active duty member of the military forces of the United States and who is accompanying the member on an official permanent change of station to a military installation located in this state if all of the following conditions are met:

a. The person is currently licensed by at least one other issuing jurisdiction as a commercial explosive contractor or commercial blaster with a substantially similar scope of practice and the license is in good standing in all issuing jurisdictions in which the person holds a license.

b. The person has been licensed by another issuing jurisdiction for at least one year.

c. When the person was licensed by the issuing jurisdiction, the issuing jurisdiction imposed minimum educational requirements and, if applicable, work experience, and the issuing jurisdiction verifies that the person met those requirements in order to be licensed in that issuing jurisdiction.

d. The person previously passed an examination required by the other issuing jurisdiction for licensure, if applicable.

e. The person has not had a license revoked and has not voluntarily surrendered a license in any other issuing jurisdiction or country while under investigation for unprofessional conduct.

f. The person has not had discipline imposed by any other regulating entity in this state or another issuing jurisdiction or country. If another jurisdiction has taken disciplinary action against the person, the department shall determine if the cause for the action was corrected and the matter resolved. If the department determines that the matter has not been resolved by the jurisdiction imposing discipline, the department shall not issue or deny a license to the person until the matter is resolved.

g. The person does not have a complaint, allegation, or investigation pending before any regulating entity in another issuing jurisdiction or country that relates to unprofessional conduct. If the person has any complaints, allegations, or investigations pending, the department shall not issue or deny a license to the person until the complaint, allegation, or investigation is resolved.

h. The person pays all applicable fees.

i. The person does not have a criminal history that would prevent the person from holding the commercial explosive contractor license or commercial blaster license applied for in this state.

231.7(3) A person licensed pursuant to this rule is subject to the laws regulating the person's practice in this state and is subject to the jurisdiction of the department marshal.

231.7(4) This rule does not apply to any of the following:

a. The ability of the department to require the submission of fingerprints or completion of a criminal history check.

b. The ability of the department to require a person to take and pass an examination specific to the laws of this state prior to issuing a license. If the department requires an applicant to take and pass an examination specific to the laws of this state, the department will issue an applicant a temporary license that is valid for a period of three months and may be renewed once for an additional period of three months.

231.7(5) Except as provided in subrule 231.7(2), a person applying for a license in this state who relocates to this state from another state that did not require a license to practice as a commercial explosive contractor or commercial blaster may be considered to have met any education, training, or work experience requirements imposed by the department in this state if the person has three or more years of related work experience with a substantially similar scope of practice within the four years preceding the date of application as determined by the department.

231.7(6) A person applying for a license in this state under the requirements of this subrule shall submit the request in writing to the department providing proof of residency in this state and documentation to verify all conditions are met under this subrule.

661—231.8(101A) Inventory and records. Each licensed commercial explosive business shall maintain records as referenced in the National Fire Protection Association (NFA) chapter 495, "Explosive Materials Code," as adopted by reference in subrule 231.1.

661—231.9(101A) Complaints. Complaints regarding the performance of any licensed contractor or blaster, failure of a licensed contractor or blaster to meet any of the requirements established in Iowa Code chapter 101A or this chapter or any other provision of law, or operation as a commercial explosive contractor or commercial blaster without licensure may be filed with the department. Complaints should be as specific as possible and clearly identify the contractor or blaster against whom the complaint is filed. Complaints should be submitted in writing to the department as indicated on the department's website. A complaint may be submitted anonymously, but if the name and contact information of the complainant are provided, the complainant may be notified of the disposition of the complaint.

661—231.10(101A,252J) Grounds for suspension, revocation, or denial of commercial explosive licenses; appeals.

231.10(1) The department may refuse to issue a contractor or blaster license sought pursuant to Iowa Code section 101A.2 or may suspend or revoke such a license for any of the following reasons:

a. Finding that the applicant or licensee is disqualified by any provision of federal or Iowa law from possessing explosives, firearms, or offensive weapons.

b. Finding that the applicant or licensee lacks sufficient knowledge of the use, handling, and storage of explosive materials to protect the public safety.

c. Finding that the applicant or licensee falsified information in the current or any previous license application.

d. Finding that the applicant or licensee has been adjudged mentally incompetent at any time by any court, been committed by any court to any mental institution, received inpatient treatment for any mental illness in the past three years, or received treatment by a health care professional for a serious mental illness or disorder that impairs a person's capacity to function normally and safely, both toward themselves and others.

e. Proof that the licensee or applicant has violated any provision of Iowa Code chapter 101A or this chapter.

f. Receipt of a certificate of noncompliance from the child support recovery unit of the Iowa department of health and human services, pursuant to the procedures set forth in Iowa Code chapter 252J.

g. Receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue, pursuant to Iowa Code chapter 272D.

h. Conviction of a felony offense, if the offense directly relates to the profession or occupation of the applicant, in the courts of this state or another state, territory or country. Conviction as used in this subrule includes a conviction of an offense that if committed in this state would be a felony without regard to its designation elsewhere and includes a finding or verdict of guilt made or returned in a criminal proceeding even if the adjudication of guilt is withheld or not entered. A certified copy of the final order or judgment of conviction or plea of guilty in this state or in another state constitutes conclusive evidence of the conviction. If an applicant is denied under this provision, the applicant shall be notified of the specific reasons for the denial.

i. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the applicant's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

j. Willful or repeated violations of the provisions of this chapter.

k. Disqualifications pursuant to Iowa Code section 272C.15.

231.10(2) An applicant or licensee whose application is denied or a licensee whose license is suspended or revoked for a reason other than receipt of a certificate of noncompliance from the child

support recovery unit or a certificate of noncompliance from the department of revenue may appeal that action by requesting a contested case hearing, in writing, within 20 days of the department's determination. An appeal is subject to the provisions of 481—Chapters 9 and 10 governing contested cases. Applicants or licensees whose licenses are denied, suspended, or revoked because of receipt by the department of a certificate of noncompliance issued by the child support recovery unit or the department of revenue are subject to the procedures set forth in 481—Chapter 8.

231.10(3) The department will notify the employing commercial explosive contractor licensee of the denial, suspension, or revocation of a commercial explosive blaster license.

These rules are intended to implement Iowa Code chapters 101A and 272C.

ITEM 2. Rescind and reserve **661—Chapter 235**.