RA 26-402

SECRETARY OF STATE[721]

Regulatory Analysis

Notice of Intended Action to be published: 721—Chapter 40
"Corporations"

Iowa Code section(s) or chapter(s) authorizing rulemaking: 9.4, 9.12, 17A, 486A.1201, 488.206, 504.111, 548.103, 548.110, and 548.117

State or federal law(s) implemented by the rulemaking: Iowa Code chapters 9, 17A, 486A, 488, 489, 490, 491, 496C, 499, 501, 501A, 504, and 548

Public Hearing

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

December 1, 2026 11 a.m. to 12 noon	Via videoconference call: meet.google.com/bgd-sijt-agq

Public Comment

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

Carl Dietz
Office of the Secretary of State
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: carl.dietz@sos.iowa.gov

Purpose and Summary

This proposed rulemaking is intended to do the following:

1. In rule 721—40.2(486A,488,489,490,496C,499,501,501A,504):

- Add new subrule 40.2(7), which states that the words "a", "an", and "the" are ignored for distinguishability;
- Renumber subrule 40.2(7) as 40.2(8);
- Revise paragraphs "a" and "c" in renumbered subrule 40.2(8) to qualify regarding LLCs and update language;

2. Remove subrule 40.5(8) because it is redundant;
3. Renumber rule 721—40.8(488,489,490,504) as 721—40.9(488,489,490,504); and
4. Add new rule 721—40.8(488,489,490,497,498,496C,497,499,501,501A,504), which specifies that if an entity already owes a biennial report, it cannot change form until it has filed that biennial report.

Analysis of Impact

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

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

There are no costs anticipated as a result of this proposed rulemaking.

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

This rulemaking does not create or alter benefits.

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 of the proposed rulemaking.

- **Qualitative description of impact:**

There is no qualitative impact of the proposed rulemaking.

3. **Costs to the State:**

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

No costs to the Secretary of State or any other agency are anticipated.

- **Anticipated effect on State revenues:**

No effect on State revenues is anticipated.

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

There is no cost difference between adoption of the proposed rulemaking and inaction.

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

No less costly methods or less intrusive methods exist.

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

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

No alternative methods were considered.

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

No alternative methods were considered.

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.

Text of Proposed Rulemaking

ITEM 1. Rescind 721—Chapter 40 and adopt the following **new** chapter in lieu thereof:

DIVISION IV
CORPORATIONS

CHAPTER 40
CORPORATIONS

721—40.1(9,490,504) Filing of documents. Documents pertaining to profit corporations, nonprofit corporations, limited liability companies, limited partnerships, and cooperative associations shall be delivered for filing to the office of Secretary of State, Lucas State Office Building, Des Moines, Iowa 50319.

40.1(1) A copy of a signature, however made, is acceptable with regard to documents delivered to the secretary of state for filing pursuant to Iowa Code chapter 490.

40.1(2) A document pertaining to a profit corporation, a nonprofit corporation, a limited liability company, a limited partnership, or a cooperative association delivered to the secretary of state for filing must be captioned to describe the record's purpose and be in a medium permitted by the secretary of state.

40.1(3) A document submitted for same-day preclearance service as provided in Iowa Code chapter 9 may be delivered by fax or in person. Preclearance service speed is not guaranteed on a document delivered by any other method.

40.1(4) Where the secretary of state prescribes and furnishes a form for the filing of a document pertaining to a profit corporation, a nonprofit corporation, a limited liability company, a limited partnership, or a cooperative association, the secretary requires the use of that form as permitted by Iowa law.

40.1(5) A document pertaining to a profit corporation, a nonprofit corporation, a limited liability company, a limited partnership, or a cooperative association delivered to the secretary of state for filing may be delivered by fax to 515.242.5953.

40.1(6) A document delivered by fax may be delivered at any time of day. The date and time of receipt printed on the document by the fax machine constitutes the date and time endorsement required by Iowa Code section 490.125(2).

40.1(7) A document delivered by fax shall be printed on paper measuring 8½″ by 11″, unless a copy of a larger document, reduced to 8½″ by 11″ paper, is acceptable to the filing party. The document received by the secretary of state via fax shall constitute the copy that is filed and returned to the corporation pursuant to Iowa Code section 490.125(2).

40.1(8) A document delivered by fax shall be accompanied by a cover sheet that provides the name, address, and telephone number of the filing party, and instructions as to the manner by which the filing fee will be paid. The filing fee may be billed to an account maintained by the filing party pursuant to rule 721—2.3(9,631). The filing fee may be paid by any other means authorized by the secretary of state.

40.1(9) A document delivered by fax for filing may be rejected if the print quality of the document is deemed by agency personnel to be unacceptable for scanning purposes. The secretary of state will notify the filing party by telephone, email, or regular mail of the rejection of a document pursuant to this subrule. The secretary of state will accept for filing the original copy of the document, effective on the date of the transmission by fax, if the original document is received in the office of the secretary of state within ten days of date of the notification of the rejection.

This rule is intended to implement Iowa Code chapters 9 and 490.

721—40.2(486A,488,489,490,496C,499,501,501A,504) Names distinguishable upon corporate records.

40.2(1) Except as provided in these rules, a name is considered distinguishable upon the records of the secretary of state if it contains one or more different letters or numerals, or if it contains a different sequence of letters or numerals. A single space used to divide a sequence of letters or numerals into separate words is considered to be a letter for the purpose of this subrule. Differences between singular and plural forms of words are distinguishable. Differences between numerals, Roman numerals, and words representing numerals are distinguishable. The following characters are

considered as letters for the purpose of this subrule: $ (dollar sign); + (plus sign); % (percent sign); ¢ (cent sign).

40.2(2) The following words and abbreviations, when positioned as the last word or abbreviation in the business entity name, are not considered in determining whether a name is distinguishable upon the records of the secretary of state:

a. Corporation.
b. Company.
c. Incorporated.
d. Limited.
e. Benefit Corporation.
f. Cooperative.
g. Limited Partnership.
h. Limited Liability Partnership.
i. Registered Limited Liability Partnership.
j. Limited Liability Limited Partnership.
k. Professional Corporation.
l. Limited Company.
m. Limited Liability Company.
n. Professional Limited Liability Company.
o. Any abbreviation of any of the above.

40.2(3) The presence or absence of the words "protected series" or the abbreviation "PS" in the name of a protected series, when such words or abbreviation is meant to comply with Iowa Code section 489.14202(2)*"b,"* is not considered in determining whether the name of a protected series is distinguishable upon the records of the secretary of state.

40.2(4) Differences in punctuation and special characters are not considered in determining whether a name is distinguishable upon the records of the secretary of state. Punctuation and special characters include but are not limited to:

’ (apostrophe)	[(left bracket)
] (right bracket)	: (colon)
, (comma)	— (dash)
- (hyphen)	! (exclamation point)
((left parenthesis)	) (right parenthesis)
. (period)	? (question mark)
’ (single quote mark)	” (double quote mark)
; (semicolon)	/ (slash)
* (asterisk)	@ (at sign)
\ (back slash)	{ (left brace)
} (right brace)	^ (caret)
= (equal sign)	> (greater than sign)
< (less than sign)	# (number sign)
~ (tilde)	_ (underline)

40.2(5) Differences in capitalization are not considered in determining whether a name is distinguishable upon the records of the secretary of state.

40.2(6) Differences between an ampersand (&) and the word "and" are not considered in determining whether a name is distinguishable upon the records of the secretary of state.

40.2(7) The articles "a", "an", and "the", when positioned as the first word in the business entity name, are not considered in determining whether a name is distinguishable upon the records of the secretary of state.

40.2(8) In determining whether a name is distinguishable upon the records of the secretary of state, names found in the following records will not be considered:

a. Fictitious names, except as specified by Iowa Code section 489.112(2)*"f."*

b. Assumed names of nonprofit corporations.

c. Names of corporations (profit or nonprofit) when articles of dissolution delivered by those corporations have been filed.

d. Names of corporations (profit or nonprofit) whose certificates of authority or certificates of registration have been revoked.

e. Expired or terminated assumed names.

f. Expired name reservations.

g. Expired name registrations.

This rule is intended to implement Iowa Code sections 486A.1002, 488.108, 489.112, 490.401, 496C.5, 499.4, 501.104, 501A.301, and 504.401.

721—40.3(489,491,496C,499,501,501A,504) Payment and refund of fees.

40.3(1) The office of secretary of state requires payment of all fees in full at the time of filing of any corporate document or request for copies.

40.3(2) Filing under any of the business entity chapters may be effected only upon the receipt of the correct filing fee. Failure to include the filing fee or partial payment of the filing fee will result in the return of the filing to the sender with instructions to include the correct filing fee.

40.3(3) In the event that a filing fee overpayment is made, the amount in excess of the correct filing fee shall be returned to the filing party. No adjustment is required if the amount of overpayment is one dollar or less.

40.3(4) This subrule implements the pilot project authorized by 2000 Iowa Acts, House File 2545, section 32, for fees required by Iowa Code section 490.122(1)*"a"* and *"v."*

a. The secretary of state may refund payment of the corporate filing fees required pursuant to the provisions of Iowa Code section 490.122(1)*"a"* and *"v,"* if, within five business days from the time the corporate filing is received and date stamped, the entity has not been entered on the records of the secretary of state.

b. To receive a refund under this subrule, the business entity must make a written request with the business services division of the secretary of state's office. The written request must specify the reason(s) for the refund and provide evidence of entitlement to the refund.

c. The filing fee shall not be refunded if the corporate filing fails to satisfy all of the filing requirements of Iowa Code chapter 490.

d. The decision of the secretary of state not to issue a refund under this subrule is final and not subject to review pursuant to the provisions of the Iowa administrative procedure Act.

40.3(5) This subrule implements the pilot project authorized by 2000 Iowa Acts, House File 2545, section 32, for fees required by Iowa Code section 504.113(1)*"a"* and *"s."*

a. The secretary of state may refund payment of the corporate filing fees required pursuant to the provisions of Iowa Code section 504.113(1)*"a"* and *"s,"* if, within five business days from the time the corporate filing is received and date stamped, the entity has not been entered on the records of the secretary of state.

b. To receive a refund under this subrule, the corporate entity must make a written request with the business services division of the secretary of state's office. The written request must specify the reason(s) for the refund and provide evidence of entitlement to the refund.

c. The filing fee shall not be refunded if the corporate filing fails to satisfy all of the filing requirements of Iowa Code chapter 504.

d. The decision of the secretary of state not to issue a refund under this subrule is final and not subject to review pursuant to the provisions of the Iowa administrative procedure Act.

721—40.4(486A,488,489,490,499,501,501A,504) Document to county recorder. Any corporate document that is required by law to be filed in the office of the county recorder will be forwarded

directly to the office of the county recorder in the county where the corporation's registered office is located.

721—40.5(548) Registration and protection of marks.

40.5(1) *Classification.* The following general classes of goods and services are established, but do not limit or extend the applicant's or registrant's rights, and a single application for registration of a mark may include any or all goods upon which, or services with which, the mark is actually being used comprised in a single class, but in no event shall a single application include goods or services upon which the mark is being used that fall within different classes of goods or services.

GOODS

Class	Title
1	Raw or partly prepared materials
2	Receptacles
3	Baggage, animal equipments, portfolio, and pocketbooks
4	Abrasives and polishing materials
5	Adhesives
6	Chemicals and chemical compositions
7	Cordage
8	Smokers' articles, not including tobacco products
9	Explosives, firearms, equipments, and projectiles
10	Fertilizers
11	Inks and inking materials
12	Construction materials
13	Hardware, plumbing, and steam-fitting supplies
14	Metals and metal castings and forgings
15	Oils and greases
16	Paints and painters' materials
17	Tobacco products
18	Medicines and pharmaceutical preparations
19	Vehicles
20	Linoleum and oiled cloth
21	Electrical apparatus, machines, and supplies
22	Games, toys, and sporting goods
23	Cutlery, machinery, and tools, and parts thereof
24	Laundry appliances and machines
25	Locks and safes
26	Measuring and scientific appliances
27	Clocks, watches, and other horological instruments
28	Jewelry and precious-metal ware
29	Brooms, brushes, and dusters
30	Crockery, earthenware, and porcelain
31	Filters and refrigerators
32	Furniture and upholstery
33	Glassware
34	Heating, lighting, and ventilating apparatus
35	Belting, hose, machinery packing, and nonmetallic tires
36	Musical instruments and supplies

37	Paper and stationery
38	Prints and publications
39	Clothing
40	Fancy goods, furnishings, and notions
41	Canes, parasols, and umbrellas
42	Knitted, netted, and textile fabrics, and substitutes thereof
43	Thread and yarn
44	Dental, medical, and surgical appliances
45	Soft drinks and carbonated waters
46	Foods and ingredients of foods
47	Wines
48	Malt beverages and liquors
49	Distilled alcoholic liquors
50	Cosmetics and toilet preparations
51	Detergents and soaps
52	Digital products and software applications
53	Goods not otherwise classified

SERVICES

Class	Title
100	Services not otherwise classified
101	Advertising and business
102	Insurance and financial
103	Construction, maintenance, and repair
104	Communication
105	Transportation and storage
106	Material treatment, recycling, and waste disposal
107	Education and entertainment
108	Software as a service
109	Medical
110	Hair and cosmetic
111	Restaurant and bar
112	Real estate sales and property management
113	Retail sales

40.5(2) *Assistance in applications.* The secretary of state cannot give legal advice as to the nature and extent of the protection afforded by law nor advise as to the registrability of a specific mark except as questions may arise in connection with pending applications.

40.5(3) *Incomplete or defective applications.* An application will not be filed unless the application and accompanying facsimiles or specimens are in proper form, comply with the statutory requirements and are accompanied by the fee established by rule. Specimens that are metal need not be submitted, a facsimile being preferable in order to avoid filing problems. Documents not filed will be returned with a statement of the reasons therefor.

40.5(4) *Registration dates.* The registration date is the date the registration application is stamped received by the office of the secretary of state, if, after the application has been examined, it is allowed for registration.

40.5(5) *Form of application.* The application shall be on a current form supplied by the secretary of state, be completed in the English language and plainly written or typed. If the mark or any part thereof is not in the English language, it must be accompanied by a sworn translation.

40.5(6) *Withdrawal of application.* Prior to actual registration of the mark, the applicant, by written request, may withdraw the application.

40.5(7) *Plurality of goods in single application.* A single application may recite a plurality of goods, or a plurality of services, comprised in a single class, provided the particular identification of each of the goods or services be stated and the mark is used or has been actually used on or in connection with all of the goods or in connection with all of the services specified.

40.5(8) *Conflicts.* Whenever application is made for registration of a mark that so resembles a mark registered in this state or a mark or trade name previously used in this state by another and not abandoned, so as to be likely, when applied to the goods or services of the applicant, to cause confusion or mistake or to deceive, a conflict shall be declared to exist and registration denied.

40.5(9) *Conflicts between applications.* Conflicts between pending applications will be resolved on the basis of the claimed date of first use. The secretary of state may require affidavits and other proof of first use.

40.5(10) *Record change on automatic transfer.* In the event of mergers or consolidations of corporations, a certified copy of such documents may be accepted to transfer ownership of marks.

If the name of the owner of record of a mark is changed, and request for a change of the records is made, then written proof of such change can be made by sworn affidavit showing the manner or mode by which the change of ownership was made.

40.5(11) *Change of address.* If the registered owner of a mark changes the address set forth on the registration, then written notice of such change of address must be given to the secretary of state. Such notice must clearly identify the mark or marks involved and must request that the change of address be noted on the records of the registration on file.

40.5(12) *Fees.* Fees for mark applications, assignments, and cancellations are established as follows:

Application for registration of mark:	$10
Application for renewal of registered mark:	$10
Assignment of registration of mark:	$5
Cancellation of registration of mark:	$5

721—40.6(504) Revised nonprofit corporation Act fees. The following are the fees for Iowa Code section 504.113.

40.6(1) The secretary shall collect the following fee when the documents described below are delivered to the secretary's office for filing.

Articles of incorporation	$20
Application for use of indistinguishable name	$5
Application for reserved name	$10
Notice of transfer of reserved name	$10
Application for registered name	$2 per month or part thereof
Application for renewal of registered name	$20
Corporation's statement of change of registered agent or registered office or both	No Fee
Agent's statement of change of registered office for each affected corporation	No Fee
Agent's statement of resignation	No Fee
Amendment of articles of incorporation	$10
Restatement of articles of incorporation with amendments	$20
Articles of merger	$20
Articles of dissolution	$5

Articles of revocation of dissolution	$5
Certificate of administrative dissolution	No Fee
Application for reinstatement following administrative dissolution	$5
Certificate of reinstatement	No Fee
Certificate of judicial dissolution	No Fee
Application for certificate of authority	$25
Application for amended certificate of authority	$25
Application for certificate of withdrawal	$5
Certificate of revocation of authority to transact business	No Fee
Biennial report	No Fee
Articles of correction	$5
Application for certificate of existence or authorization	$5
Any other document required or permitted by the Act	$5

40.6(2) The secretary of state shall collect a fee of $5 each time process is served on the secretary under Iowa Code chapter 504.

40.6(3) The secretary of state shall collect the following fees for copying and certifying the copy of any filed document relating to a domestic or foreign corporation:

a. $1 per page for copying.

b. $5 per page for the certificate.

721—40.7(488,489,490) Biennial report fees. The secretary of state shall collect the following fees at the time the documents described in this rule are delivered to the secretary for filing.

40.7(1) A limited partnership or foreign limited partnership authorized to transact business in this state shall deliver to the secretary of state for filing a biennial report that meets the requirements of Iowa Code section 488.210.

a. The fee for filing and indexing a biennial report filed on paper or in a paper-based format is $45. This fee may be provided in the form of credit card, cash, personal check, cashier's check, money order, or secretary of state charge account.

b. The fee for an electronic filing through the secretary of state website is $30. This fee must be paid by credit card or secretary of state charge account.

40.7(2) A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state for filing a biennial report that meets the requirements of Iowa Code section 489.209.

a. The fee for filing and indexing a biennial report filed on paper or in a paper-based format is $45. This fee may be provided in the form of credit card, cash, personal check, cashier's check, money order, or secretary of state charge account.

b. The fee for an electronic filing through the secretary of state website is $30. This fee must be paid by credit card or secretary of state charge account.

721—40.8(488,489,490,497,498,496C,497,499,501,501A,504) Merger or conversion when biennial report due. If a business entity has a biennial report due to be delivered to the secretary of state, the secretary of state shall not file a merger or conversion document for that entity until the biennial report has been filed.

721—40.9(488,489,490,504) Online filing requirements. The following requirements apply to the electronic filing of documents and the certification of electronic documents. This rule applies to documents filed in conjunction with the filing requirements in Iowa Code chapters 488, 489, 490, and 504.

40.9(1) Registered agents who file documents electronically must provide an email address to the secretary of state.

a. If a registered agent does not have an email address, the agent shall provide the email address of another individual or entity designated to receive electronic correspondence on behalf of the registered agent.

b. The registered agent shall notify the secretary of state within 60 days that the email address provided in compliance with this rule has been changed or discontinued.

c. An email address disclosed in compliance with this rule shall not be viewed as a public record under Iowa Code chapter 22 and shall not be disclosed by the secretary of state.

d. The secretary of state may use email for official correspondence with an entity, except when law requires delivery by United States mail.

40.9(2) For filings requiring an online account, an applicant must follow the terms and conditions on the secretary of state's website for each electronic filing.

40.9(3) All correspondence related to an electronic filing shall be handled electronically in accordance with the requirements set forth in the uniform electronic transactions Act, Iowa Code chapter 554D.

40.9(4) Documents filed electronically shall be accompanied by the appropriate fee. This fee must be paid by credit card or secretary of state charge account.

These rules are intended to implement Iowa Code chapters 490, 491, 499, 504, and 548.