

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.

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