

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Rule making related to commercial explosive contractors and blasters licensing

The State Fire Marshal hereby amends Chapter 235, “Commercial Explosive Licensing,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code section 101A.5.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code chapter 101A.

Purpose and Summary

The purposes of amending Chapter 235 are to add definitions, update the application process, add continuing education requirements, and comply with 2020 Iowa Acts, House File 2627, which makes changes to Iowa Code chapter 272C.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 18, 2020, as **ARC 5280C**. No public comments were received. Minor changes from the Notice were made for internal consistency.

Adoption of Rule Making

This rule making was adopted by the State Fire Marshal on December 23, 2020.

Fiscal Impact

This rule making has no fiscal impact to the State of Iowa.

Jobs Impact

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

Waivers

Pursuant to the provisions of rule 661—10.222(17A), the Department does not have authority to waive requirements established by statute. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the provisions of rule 661—10.222(17A).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee’s meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on February 17, 2021.

The following rule-making actions are adopted:

ITEM 1. Amend **661—Chapter 235**, title, as follows:
LICENSING FOR COMMERCIAL EXPLOSIVE LICENSING CONTRACTORS AND BLASTERS

ITEM 2. Amend rule 661—235.1(101A) as follows:

661—235.1(101A) Licensing program established. A commercial explosive licensing program is hereby established in the state fire marshal division. The program shall issue licenses to commercial explosive firms and to individual blasters as provided in this chapter.

235.1(1) The commercial explosive licensing program is located at the following address:

Commercial Explosive Licensing Program

State Fire Marshal Division

Iowa Department of Public Safety

Attn: SFM Licensing Administration

215 East 7th Street

Des Moines, Iowa 50319

~~The program may be contacted by mail or in person at this address.~~

235.1(2) The program may be contacted by telephone at (515)725-6145, by fax at (515)725-6172, or by electronic mail at fminfo@dps.state.ia.us sfmlicense@dps.state.ia.us or by the United States Postal Service.

ITEM 3. Renumber existing rules **661—235.2(101A)** to **661—235.5(101A)** as **661—235.3(101A)** to **661—235.6(101A)**.

ITEM 4. Adopt the following new rule 661—235.2(101A):

661—235.2(101A) Definitions. The following definitions apply to rules 661—235.1(101A) to 661—235.12(101A):

“*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.

“*Blasting agent*” means any material or mixture consisting of a fuel and oxidizer, intended for blasting but not otherwise classified as an explosive, in which none of the finished products as mixed and packaged for use or shipment can be detonated by means of a number eight test blasting cap when unconfined.

“*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.

“*Commercial license*” or “*license*” means a license issued by the state fire marshal pursuant to this chapter.

“*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.

“*Explosive*” means any chemical compound, mixture or device, the primary or common purpose of which is to function by explosion with substantially instantaneous release of gas and heat, unless such compound, mixture, or device is otherwise specifically classified by the United States Department of Transportation. The term “explosive” includes all materials which are classified as a class 1, division 1.1, 1.2, 1.3, or 1.4 explosive by the United States Department of Transportation, under 49 CFR Section 173.50, and all materials classified as explosive materials under 18 U.S.C. §841, and includes but is not limited to dynamite, black powder, pellet powders, initiating explosives, blasting caps, electric blasting caps, safety fuse, fuse lighters, fuse igniters, squibs, cordeau detonative fuse, instantaneous fuse, igniter cord, igniters, smokeless propellant, cartridges for propellant-actuated power devices, cartridges for industrial guns, and overpressure devices but does not include “consumer fireworks,” “display fireworks,” or “novelties” as those terms are defined in Iowa Code section 727.2 or ammunition or small arms primers manufactured for use in shotguns, rifles, and pistols. Commercial explosives are those explosives which are intended to be used in commercial or industrial operations.

“*Explosive materials*” means explosives or blasting agents.

“*Import*” or “*importation*” means transfer into the state of Iowa.

“*Licensee*” means a person holding a commercial license issued by the state fire marshal pursuant to this chapter.

“*Magazine*” means any building or structure, other than an explosives manufacturing building, approved for the storage of explosive materials.

“*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.

“*Overpressure device*” means any device constructed of a container or improvised container which is filled with a mixture of chemicals or sublimating materials or gases that generate an expanding gas, which is designed or constructed to cause the container to break, fracture, or rupture in a violent manner capable of causing death, serious injury, or property damage.

“*Person*” means any individual, corporation, partnership, or association.

“*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.

ITEM 5. Amend renumbered rules 661—235.3(101A) to 661—235.6(101A) as follows:

661—235.3(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 ~~business 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 ~~individual commercial explosive~~ blaster license issued pursuant to this chapter. ~~An individual~~ A commercial explosive blaster license shall not be 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 require a blaster license, nor does the manufacture, importation, distribution, sale, or commercial use of fireworks require a commercial explosive license.

661—235.4(101A,272C) License application process.

235.4(1) *Application for commercial explosive contractor or commercial explosive blaster license.* Anyone wishing to obtain an application for a commercial explosive ~~business contractor~~ license or an individual a commercial explosive blaster license may obtain a copy of the required application by contacting the ~~commercial explosive licensing program as specified in rule 661—235.1(101A)~~ state fire marshal or visiting the state fire marshal'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.

NOTE: The website for the commercial explosive licensing program is: dps.iowa.gov/divisions/state-fire-marshal/licensing/commercial-explosives.

235.4(2) *Submission of application and required information.* A completed application for a license shall be submitted to the commercial explosive licensing program at the address specified in subrule 235.1(1) or on the state fire marshal's website. All information requested on the application shall be provided prior to the processing of the application. An application shall not be considered complete unless all required information is submitted, including required attachments and fees, and shall not be processed until it is complete.

235.4(3) *License fee.* Each license application shall be accompanied by a \$60 fee for each license for which application is being made, paid electronically or by check or money order made payable to the Iowa Department of Public Safety State Fire Marshal Division. Draft, check, or money order shall be addressed to the state fire marshal as established in subrule 235.1(1). If the application is being submitted later than January 31 of a given year, then the fee for each license shall be \$5 per month prorated for each month remaining in the calendar year period of issue, including the month in which the application is submitted.

The state fire marshal shall 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.

235.4(4) *License duration.* Each license issued ~~Licensure~~ shall normally be for three years and shall expire on December 31 of the third year ~~in which~~ after it is issued, except that a license issued in December of any year shall expire on December 31 of the following year after two years have passed from the date on which the license was issued.

235.4(5) *Criminal history.* An applicant shall be subject to a national criminal history check through the Federal Bureau of Investigation. Each applicant for a commercial explosive contractor or blaster shall submit fingerprints and the applicable fee at the time of application for a new or renewal license. The results of a criminal history check conducted pursuant to this subrule shall be considered a confidential record under Iowa Code chapter 22.

235.4(6) *Attachments.* Required attachments to the application for license include, but are not limited to, the following:

a. Documentation that the applicant has met the applicable licensure requirements.
b. Documentation of qualifying licensure in another issuing jurisdiction by providing the following:

- (1) Proof of residency in this state.
- (2) Proof all conditions are met as established in rule 661—235.7(272C).
 1. Copy of a license from other issuing jurisdiction.
 2. Evidence the applicant met issuing jurisdiction's educational requirements, and if applicable, work experience.
 3. Evidence the applicant passed the issuing jurisdiction's required examination, if applicable.
 4. Evidence the applicant has not had a license revoked or voluntarily surrendered, had discipline imposed, or been under investigation by another issuing jurisdiction.
 5. Evidence the applicant does not have a complaint, allegation, or investigation pending before any regulatory entity related to unprofessional conduct.

235.4(7) *Veterans, military service members, and certain survivor beneficiaries.* 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 shall apply for licensure following 661—Chapter 278.

661—235.5(101A) Issuance of commercial explosive business contractor license. A commercial explosive business contractor license shall be issued only if all of the following conditions have been satisfied:

235.5(1) All items required on the application have been completed, and any items the state fire marshal deems necessary to verify have been verified and found to be true.

~~**235.5(2)** For purposes of this rule, “responsible person” means an individual who has the power to direct the management and policies of the applicant pertaining to explosive materials. Generally, “responsible person” includes partners, sole proprietors, site managers, corporate officers, directors and majority shareholders.~~

~~**235.5(3)**~~ **235.5(2)** No responsible person or manager of the business applicant for which 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 business contractor licensee may:

- a. ~~Has~~ Have been convicted of a ~~felony~~ or any offense involving explosives or firearms;
- b. ~~Has~~ Have been previously disqualified from being licensed to handle explosives in this or any other state. The state fire marshal may grant a license to a person previously disqualified if the state fire marshal is satisfied that the condition or conditions that led to the disqualification have been corrected;
- c. ~~Is~~ Be an unlawful user of or ~~is~~ be addicted to controlled substances;
- d. ~~Has~~ 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 which impairs a person’s capacity to function normally and safely, both toward themselves and others.

~~**235.5(4)**~~ **235.5(3)** The business applicant has at least one responsible person or employee licensed as ~~an individual~~ a commercial explosive blaster.

661—235.6(101A) Issuance of individual a commercial explosive blaster license. ~~An individual~~ A commercial explosive blaster license shall be issued only if all of the following conditions have been satisfied:

235.6(1) The applicant is an employee of a licensed commercial explosive business contractor.

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

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

c. If the state fire marshal finds that ~~an individual~~ a commercial explosive blaster is disqualified from holding a license, the state fire marshal shall revoke the license.

235.6(2) All items required on the application have been completed and any items the state fire marshal deems necessary to verify have been verified and found to be true.

235.6(3) The applicant is not or has not been:

- a. Convicted of a ~~felony~~ or any offense involving explosives or firearms;
- b. Previously disqualified from being licensed to handle explosives in this or any other state. The state fire marshal may grant a license to a person previously disqualified if the state fire marshal 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 which impairs a person's capacity to function normally and safely toward themselves or others.

235.6(4) The applicant has satisfactorily completed training approved by the state fire marshal for the handling and use of explosives. The training may be provided by the employer or by a reputable third party knowledgeable about the storage, handling, and use of explosives. The state fire marshal 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 ~~business~~ contractor licensee.

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

235.6(5) An applicant for a renewal license has completed continuing education from a nationally recognized institution in professional explosives storage, handling, and use.

~~235.6(5)~~ **235.6(6)** The applicant is 21 years of age or older.

ITEM 6. Renumber existing rule **661—235.6(101A)** as **661—235.8(101A)**.

ITEM 7. Adopt the following new rule 661—235.7(272C):

661—235.7(272C) Licensure of persons licensed in other jurisdictions.

235.7(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.

235.7(2) Notwithstanding any other provision of law, a commercial explosive contractor license or commercial blaster license shall 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 state fire marshal shall determine if the cause for the action was corrected and the matter resolved. If the state fire marshal determines that the matter has not been resolved by the jurisdiction imposing discipline, the state fire marshal 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 state fire marshal 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.

235.7(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 state fire marshal.

235.7(4) This rule does not apply to any of the following:

a. The ability of the state fire marshal to require the submission of fingerprints or completion of a criminal history check.

b. The ability of the state fire marshal to require a person to take and pass an examination specific to the laws of this state prior to issuing a license. If the state fire marshal requires an application to take and pass an examination specific to the laws of this state, the state fire marshal shall 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.

235.7(5) Except as provided in subrule 235.7(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 state fire marshal 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 state fire marshal.

235.7(6) A person applying for a license in this state under the requirements of this subrule shall submit the request in writing to the state fire marshal as established in subrule 235.1(1) providing proof of residency in this state and documentation to verify all conditions are met under this subrule.

ITEM 8. Renumber existing rules **661—235.7(101A,252J)** to **661—235.9(101A,272D)** as **661—235.10(101A,252J)** to **661—235.12(101A,272D)**.

ITEM 9. Amend renumbered rule 661—235.8(101A) as follows:

661—235.8(101A) Inventory and records. Each licensed commercial explosive business shall maintain records as referenced in the National Fire Protection Association (NFA) chapter 495 "Explosive Material Code" as adopted by reference in rule 661—231.1(101A).

~~**235.8(1)** Each licensed commercial explosive business shall maintain records to show amounts of explosive material on hand at the beginning and end of each working day and quantities dispensed and to whom. The business shall conduct physical inventories at least once annually. Anytime a shortage appears that is in excess of limits established by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives, the shortage shall be reported within 24 hours to the chief of police or sheriff having jurisdiction, who in turn shall cause a federal Form 4712 (Department of Treasury, Internal Revenue Service) to be completed, a copy of which shall be sent to the commercial explosive licensing program, as specified in rule 661—235.1(101A). Inventory records shall be retained for five years after the date for which the activity is recorded and shall be made available upon request of the fire marshal.~~

~~**235.8(2)** Each licensed individual blaster shall maintain a daily record of all explosive materials received and fired or otherwise disposed of by the individual blaster. Such records are the property of the business license holder, who shall retain them for five years and make them available to the fire marshal upon request.~~

~~**235.8(3)** Any loss, theft, or unlawful removal of explosive materials shall be reported within 24 hours to the Bureau of Alcohol, Tobacco, Firearms and Explosives, to the fire marshal and to the local law enforcement agency having jurisdiction.~~

~~**235.8(4)** Any accident involving explosive materials that causes an injury to a person which requires medical attention or that causes damage to property beyond the limits of the property on which the blasting is being conducted or to property for which the responsible person has not provided a written waiver to the blasting operation shall be reported promptly to the fire marshal.~~

ITEM 10. Adopt the following new rule 661—235.9(100C):

661—235.9(100C) 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 state fire marshal. Complaints should be addressed as follows:

State Fire Marshal Division
Iowa Department of Public Safety
Attn: SFM Licensing Administration
215 East 7th Street
Des Moines, Iowa 50319

Complaints may be submitted by electronic mail to sfmlicense@dps.state.ia.us or by the United States Postal Service.

Complaints should be as specific as possible and shall clearly identify the contractor or blaster against whom the complaint is filed. Complaints shall be submitted in writing to the state fire marshal. A complaint may be submitted anonymously, but if the name and contact information of the complainant are provided, the complainant will be notified of the disposition of the complaint.

ITEM 11. Amend renumbered rules 661—235.10(101A,252J) to 661—235.12(101A,272D) as follows:

661—235.10(101A,252J) Grounds for suspension, revocation, or denial of commercial explosive licenses; appeals.

235.10(1) The state fire marshal may refuse to issue a ~~commercial contractor~~ or ~~individual~~ blaster license for the manufacture, importation, distribution, sale, and commercial use of explosives 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 not of good moral character and sound judgment. “Not of good moral character and sound judgment” means 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 which 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, this chapter, or 661—Chapter 231.

f. Receipt of a certificate of noncompliance from the child support recovery unit of the Iowa department of 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 which 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.

235.10(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 pursuant to 661—Chapter 10, except that wherever “commissioner of public safety” or “department of public safety” appears, “state fire marshal” shall be substituted. 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 shall be subject to the provisions of rule ~~661—235.7(101A,252J)~~ 661—235.10(101A,252J). Procedures specified in 661—Chapter 10 for contesting department actions shall not apply in these cases.

235.10(3) The state fire marshal shall notify the employing commercial explosive business contractor licensee of the denial, suspension, or revocation of an individual a commercial explosive blaster license.

235.10(4) Disqualifications for criminal convictions limited.

a. Notwithstanding any other provision of law to the contrary, a person’s conviction of a crime may be grounds for the denial, revocation, or suspension of a license only if an unreasonable risk to public safety exists because the offense directly relates to the duties and responsibilities of the profession and the state fire marshal does not grant an exception pursuant to paragraph 235.10(4) “d.”

b. The state fire marshal shall provide a list of the specific convictions that may disqualify an applicant from receiving a license. Any such offense shall be an offense that directly relates to the duties and responsibilities of the profession.

c. The state fire marshal shall not deny an application for a license on the basis of an arrest that was not followed by a conviction or based on a finding that an applicant lacks good character, suffers from moral turpitude, or on other similar basis.

d. The state fire marshal shall grant an exception to an applicant who would otherwise be denied a license due to a criminal conviction if the following factors establish by clear and convincing evidence that the applicant is rehabilitated and an appropriate candidate for licensure:

(1) The nature and seriousness of the crime for which the applicant was convicted.

(2) The amount of time that has passed since the commission of the crime. There is a rebuttable presumption that an applicant is rehabilitated and an appropriate candidate for licensure five years after the date of the applicant’s release from incarceration, provided that the applicant was not convicted of sexual abuse in violation of Iowa Code section 709.4, a sexually violent offense as defined in Iowa Code section 229A.2, dependent adult abuse in violation of Iowa Code section 235B.20, a forcible felony as defined in Iowa Code section 702.11, or domestic abuse assault in violation of Iowa Code section 708.2A, and the applicant has not been convicted of another crime after release from incarceration.

(3) The circumstances relative to the offense, including any aggravating and mitigating circumstances or social conditions surrounding the commission of the offense.

(4) The age of the applicant at the time the offense was committed.

(5) Any treatment undertaken by the applicant.

(6) Whether a certification of employability has been issued to the applicant pursuant to Iowa Code section 906.19.

(7) Any letters of reference submitted on behalf of the applicant.

(8) All other relevant evidence of rehabilitation and present fitness of the applicant.

e. An applicant may petition the state fire marshal in writing as specified in 661—subrule 275.1(4) for a determination as to whether the applicant’s criminal record will prevent the applicant from receiving a license. The state fire marshal shall issue such a determination within 30 days of receiving the petition. The state fire marshal shall determine whether an applicant’s criminal record will prevent the applicant from receiving a license and while determining whether to deny an applicant’s application on the basis of an applicant’s criminal conviction. The state fire marshal may charge a fee to recoup the costs of such a determination, provided that such fee shall not exceed \$25.

f. When the state fire marshal denies an applicant a license solely or partly because of the applicant’s prior conviction of a crime, the state fire marshal shall notify the applicant in writing of all of the following:

- (1) The grounds for the denial or disqualification.
- (2) That the applicant has the right to a hearing to challenge the state fire marshal's decision.
- (3) The earliest date the applicant may submit a new application.
- (4) That evidence of rehabilitation of the applicant may be considered upon reapplication.

g. A determination by the state fire marshal that an applicant's criminal conviction is specifically listed as a disqualifying conviction and the offense directly relates to the duties and responsibilities of the applicant's profession must be documented in written findings for each factor specified in paragraph 235.10(4) "d" sufficient for a review by a court.

h. In any administrative or civil hearing authorized by this rule or Iowa Code chapter 17A, the state fire marshal shall carry the burden of proof on the question of whether the applicant's criminal offense directly relates to the duties and responsibilities of the profession for which the license is sought.

i. The state fire marshal may require an applicant with a criminal record to submit the applicant's complete criminal record detailing an applicant's offenses with an application. The state fire marshal may also require an applicant with a criminal record to submit a personal statement regarding whether each offense directly relates to the duties and performance of the applicant's occupation. For the purposes of this subrule, "complete criminal record" includes the complaint and judgment of conviction for each offense of which the applicant has been convicted.

661—235.11(101A,252J) Child support collection procedures. The following procedures shall apply to actions taken by the state fire marshal on a certificate of noncompliance received from the Iowa department of human services pursuant to Iowa Code chapter 252J:

235.11(1) The notice required by Iowa Code section 252J.8 shall be served upon the applicant or licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee or applicant may accept service personally or through authorized counsel.

235.11(2) The effective date of revocation or suspension of a license or denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service upon the licensee or applicant.

235.11(3) Licensees and applicants for licensure shall keep the state fire marshal informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the state fire marshal with copies, within 7 seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

235.11(4) All fees for applications, license renewal or reinstatement must be paid by the licensee or applicant before a license will be issued, renewed, or reinstated after the state fire marshal has denied the issuance or renewal of a license or has suspended or revoked a license pursuant to Iowa Code chapter 252J.

235.11(5) In the event a licensee or applicant files a timely district court action following service of a notice pursuant to Iowa Code sections 252J.8 and 252J.9, the state fire marshal shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the state fire marshal to proceed. For the purpose of determining the effective date of revocation, suspension or denial of the issuance or renewal of a license, the state fire marshal shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

NOTE: The procedures established in this rule implement the requirements of Iowa Code chapter 252J. The provisions of Iowa Code chapter 252J establish mandatory requirements for an agency which administers a licensure program, such as the one established in this chapter, and provide that actions brought under these provisions are not subject to contested case procedures established in Iowa Code chapter 17A but must be appealed directly to district court.

661—235.12(101A,272D) Suspension or revocation for nonpayment of debts owed state or local government. The following procedures shall apply to actions taken by the state fire marshal on a certificate of noncompliance received from the Iowa department of revenue pursuant to Iowa Code chapter 272D.

235.12(1) The notice required by Iowa Code section 272D.3 shall be served upon the licensee by regular mail.

235.12(2) The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code section 272D.3, shall be 20 days following service of the notice upon the licensee.

235.12(3) Licensees shall keep the state fire marshal informed of all court actions and centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the state fire marshal with copies, within 7 seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

235.12(4) All applicable fees for an application or reinstatement must be paid by the licensee before a license will be issued, renewed, or reinstated after the state fire marshal has denied the issuance or renewal of a license or has suspended or revoked a license pursuant to Iowa Code chapter 272D.

235.12(5) In the event the licensee files a timely district court action following service of a notice pursuant to Iowa Code section 272D.8, the state fire marshal shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the state fire marshal to proceed. For the purpose of determining the effective date of revocation or suspension of the license, the state fire marshal shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

235.12(6) Suspensions or revocations imposed pursuant to this rule may not be appealed administratively to the state fire marshal or within the department of public safety.

NOTE: The procedures established in ~~rule 661—235.9(101A,272D)~~ this rule implement the requirements of Iowa Code chapter 272D. The provisions of Iowa Code chapter 272D establish mandatory requirements for an agency which administers a licensing program and provide that actions brought under these provisions are not subject to contested case procedures established in Iowa Code chapter 17A, but must be appealed directly to district court.

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