

661—277.10(100C) Denial, suspension, or revocation of licensure; civil penalties; and appeals. The state fire marshal may deny, suspend or revoke the license of a contractor or technician or may assess a civil penalty to the contractor, if any provision of these rules or any other provision of law related to operation as an alarm system contractor or technician is violated.

277.10(1) Denial. The state fire marshal may deny an application for licensure:

a. If the applicant makes a false statement on the application form or in any other submission of information required for licensure. “False statement” means providing false information or failing to include material information, such as a previous criminal conviction or action taken by another jurisdiction, when requested on the application form or otherwise in the application process.

b. If the applicant fails to meet all of the requirements for licensure established in this chapter.

c. If the applicant is currently barred for cause from acting as an alarm system contractor or technician in another jurisdiction.

d. If an applicant has previously been barred for cause from operating in another jurisdiction as an alarm system contractor or technician and if the basis of that action reflects upon the integrity of the applicant in operating as an alarm system contractor or technician. If an applicant is found to have been previously barred for cause from operating as an alarm system contractor or technician in another jurisdiction and is no longer barred from doing so, the state fire marshal shall evaluate the record of that action with regard to the likelihood that the applicant would operate with integrity as a licensed contractor or technician. If an applicant is denied under this provision, the applicant shall be notified of the specific reasons for the denial.

e. Conviction of a felony offense, if the offense directly relates to the profession or occupation of the licensee, 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.

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

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

277.10(2) Suspension. A suspension of a license may be imposed by the state fire marshal for any violation of these rules or Iowa Code chapter 100C or for a failure to meet any legal requirement to operate as an alarm system contractor or technician in this state. Failure to provide any notice to the state fire marshal as provided in these rules shall be grounds for suspension. An order of suspension shall specify the length of the suspension and shall specify that correction of all conditions which were a basis for the suspension is a condition of reinstatement of the license even after the period of the suspension.

277.10(3) Revocation. A revocation is a termination of a license. A license may be revoked by the state fire marshal for repeated violations or for a violation which creates an imminent danger to the safety or health of individuals protected by an alarm system incorrectly installed by a certified contractor or technician or when information comes to the attention of the state fire marshal which, if known to the state fire marshal when the application was being considered, would have resulted in denial of the license. A new application for licensure from a contractor or technician whose license had previously been revoked shall not be considered for a period of one year after the effective date of the revocation and, in any event, until every condition which was a basis for the revocation has been corrected. The state fire marshal may specify in the revocation order a longer period than one year before a new application for licensure may be considered. When a new application for licensure from a contractor or technician whose license was previously revoked is being considered, the applicant may be denied licensure based upon the same information which was the basis for revocation even after any such period established by the state fire marshal has expired.

277.10(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 277.10(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 another 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 certificate 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 subrule 277.1(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 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 of 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 277.10(4) "d" sufficient for a review by a court.

h. In any administrative or civil hearing authorized by this subrule 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.

277.10(5) *Civil penalties.* The state fire marshal may impose a civil penalty of up to \$500 per day during which a violation has occurred and for every day until the violation is corrected. A civil penalty may be imposed in lieu of or in addition to a suspension or may be imposed in addition to a revocation. A civil penalty shall not be imposed in lieu of a revocation.

277.10(6) *Suspension or revocation for nonpayment of child support.* The following procedures shall apply to actions taken by the department on a certificate of noncompliance received from the Iowa department of human services pursuant to Iowa Code chapter 252J:

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

b. The effective date of revocation or suspension of licensure of a contractor or technician, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service upon the contractor or technician.

c. Contractors or technicians 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 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.

d. All applicable fees for an application or reinstatement must be paid by the contractor or technician 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.

e. In the event a contractor or technician 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 department to proceed. For the purpose of determining the effective date of revocation or suspension of the license, the department 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.

f. Suspensions or revocations imposed pursuant to this subrule may not be appealed administratively within the department of public safety.

NOTE: The procedures established in subrule 277.10(6) implement the requirements of Iowa Code chapter 252J. The provisions of Iowa Code chapter 252J establish mandatory requirements for an agency which administers a licensing 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.

277.10(7) *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:

a. The notice required by Iowa Code section 272D.3 shall be served upon the licensee by regular mail.

b. 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 upon the licensee.

c. 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 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.

d. 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.

e. 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.

f. Suspensions or revocations imposed pursuant to this subrule may not be appealed administratively to the state fire marshal or within the department of public safety.

NOTE: The procedures established in subrule 277.10(7) 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, 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.

277.10(8) Appeals. Any denial, suspension, or revocation of a license, or any civil penalty imposed upon a licensed contractor or technician under this rule, other than one imposed pursuant to subrule 277.10(6) or 277.10(7), may be appealed by the contractor or technician within 14 days of receipt of the notice. Appeals of actions taken by the state fire marshal under this rule shall be to the commissioner of public safety and shall be treated as contested cases, following the procedures established in rules 661—10.301(17A) through 661—10.332(17A).

[ARC 5396C, IAB 1/13/21, effective 2/17/21]