

PUBLIC SAFETY DEPARTMENT[661]

Regulatory Analysis

Notice of Intended Action to be published: Iowa Administrative Code 661—Chapter 265
“Consumer Fireworks Retail Seller Licensing and Wholesaler Registration”

Iowa Code section(s) or chapter(s) authorizing rulemaking: 10A.519 and 10A.520 as transferred by 2023 Iowa Acts, Senate File 514 (formerly Iowa Code sections 100.19(2), 100.19(4), 100.19(6), 100.19(8) and 100.19A(2))

State or federal law(s) implemented by the rulemaking: Iowa Code sections 10A.519 and 10A.520, as implemented by 2023 Iowa Acts, Senate File 514, and chapter 17A

Public Hearing

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

November 21, 2023
10 a.m.

6200 Park Avenue
Des Moines, Iowa

Public Comment

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

Ashleigh Hackel
Iowa Department of Inspections, Appeals, and Licensing
6200 Park Avenue
Des Moines, Iowa 50321
Phone: 515.250.3746
Email: ashleigh.hackel@dia.iowa.gov

Purpose and Summary

This rulemaking proposes repromulgation of Chapter 265, “Consumer Fireworks Retail Seller Licensing and Wholesaler Registration.” The proposed rules implement Iowa Code sections 10A.519 and 10A.520 as transferred by 2023 Iowa Acts, Senate File 514 (formerly Iowa Code sections 100.19 and 100.19A). The rules explain the safety standards that govern the sale of consumer fireworks, the circumstances under which consumer fireworks may be sold in the state, the application process and associated fees for a consumer fireworks retail sales license, and the requirements for wholesaler registration. The rules explain the Consumer Fireworks Fee Fund and the uses of the funds collected. The rules establish and explain the Local Fire Protection and Emergency Medical Service Providers Grant Program.

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 to the public. Applicants and licensees bear the cost of fees for licensure or registration. Applicants bear the costs associated with submission of an application and the required accompanying documentation; such costs include site plans and liability insurance. Licensees whose licenses are revoked may incur costs related to appeals of the Department’s decision.

Costs to the Department include staff time spent ensuring compliance with the requirements of Iowa Code sections 10A.519 and 10A.520, which are incorporated into this rulemaking. The costs to the Department from this rulemaking do not exceed any costs incurred due to Iowa Code sections 10A.519 and 10A.520. Costs to the Department are covered by the Consumer Fireworks Fee Fund established in Iowa Code section 10A.519(7). Licensing and registration fees go to the Fund and are appropriated to the Department to be used to fulfill the responsibilities of the Department for administration and enforcement of Iowa Code sections 10A.519 and 10A.520.

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

The general public and consumer fireworks retail sales licensees and wholesaler registrants benefit from these rules. The rulemaking ensures licensees and registrants are meeting required safety standards. The rulemaking ensures the safety of the public by providing standards that must be met for licensure or registration.

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:

Applicants and licensees bear the cost of fees for licensure or registration, which are statutorily prescribed. Applicants bear the costs associated with submission of an application and the required accompanying documentation; such costs include site plans and liability insurance. Licensees whose licenses are revoked may incur costs related to appeals of the Department's decision.

Costs to the Department include staff time spent ensuring compliance with the requirements of Iowa Code sections 10A.519 and 10A.520, which are currently incorporated into this rulemaking. The costs to the Department from this rulemaking do not exceed any costs incurred due to statutory requirements. Costs to the Department are covered by the Consumer Fireworks Fee Fund established in Iowa Code section 10A.519(7). Licensing and registration fees go to the Fund and are appropriated to the Department to be used to fulfill the responsibilities of the Department for the administration and enforcement of Iowa Code sections 10A.519 and 10A.520.

The Department has one staff member at 1.0 full-time equivalent (FTE) position who, among other duties, is responsible for the review of each license application. The staff member verifies that applications are complete and that applicants meet statutory requirements for the site. The staff member also processes payments of fees required for licensure, issues licenses, and researches any complaints. The number of licenses issued each cycle varies because some sites are not renewed and new sites are added. The license term is annual, April 1 through March 31. The average number of retail seller license applications processed per year is approximately 600 and the average fees collected per year total \$270,000. The number of wholesaler registration applications processed per year is 13 and the fees collected per year total \$13,000. Most complaints relate to alleged sales of non-consumer-grade fireworks or unlicensed sites. These complaints are typically resolved through investigation or the submission of an application for licensure. Less than 1 percent of applications per year end in denial, revocation, or suspension.

- Qualitative description of impact:

Implementing the requirements of Iowa Code sections 10A.519 and 10A.520 ensures safety for licensees and the general public, particularly through review of site plans and inspection of sites open to sell consumer fireworks.

3. Costs to the State:

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

Costs to the Department include staff time spent ensuring compliance with the requirements of Iowa Code sections 10A.519 and 10A.520, which are currently incorporated into this rulemaking. The costs to the Department from this rulemaking do not exceed any costs incurred due to statutory requirements. Costs to the Department are covered by the Consumer Fireworks Fee Fund established in Iowa Code section 10A.519(7). Licensing and registration fees go to the Fund and are appropriated to the Department to be used to fulfill the responsibilities of the Department for the administration and enforcement of Iowa Code sections 10A.519 and 10A.520.

The Department has one staff member at 1.0 FTE position who, among other duties, is responsible for the review of each license application. The staff member verifies that applications are complete and that applicants meet statutory requirements for the site. The staff member also processes payments of fees required for licensure, issues licenses, and researches any complaints. The number of licenses issued each cycle varies because some sites are not renewed and new sites are added. The license term is annual, April 1 through March 31. The average number of retail seller license applications processed per year is approximately 600 and the average fees collected per year are \$270,000. The number of wholesaler registration applications processed per year is 13 and the fees collected per year are \$13,000. Most complaints relate to alleged sales of non-consumer-grade fireworks or unlicensed sites. These complaints are typically resolved through investigation or the submission of an application for licensure. Less than 1 percent of applications per year end in denial, revocation, or suspension.

The Department utilizes three paid contract staff for site plan reviews and partners with local authorities having jurisdiction to complete site inspections. Local authorities having jurisdiction are compensated for each site inspection completed.

- Anticipated effect on state revenues:

This rulemaking has no anticipated impact on state revenues. Fees collected are deposited in the Consumer Fireworks Fee Fund pursuant to Iowa Code section 10A.519(7). Moneys in the Fund are appropriated to the Department to be used to fulfill the responsibilities of the Department for the administration and enforcement of Iowa Code sections 10A.519 and 10A.520.

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

This rulemaking implements statutory requirements set forth in Iowa Code sections 10A.519 and 10A.520. The rulemaking does not add costs to the Department or public in excess of what is required by Iowa Code sections 10A.519 and 10A.520.

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

There are no less restrictive alternatives or less costly methods because the rules implement requirements found in Iowa Code sections 10A.519 and 10A.520.

6. Alternative methods considered by the agency:

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

There are no alternative methods that were considered by the agency because this rulemaking implements statutory requirements.

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

There are no alternative methods that were considered by the agency because this rulemaking implements statutory requirements.

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 rulemaking is meant to ensure public safety and the appropriate qualifications for licensees and registrants, many of whom are operating small businesses. To exempt small businesses from adhering to this rulemaking would jeopardize any member of the public who sought services from a small business. The risk to the public is greater than the potential harm or cost to small business.

Text of Proposed Rulemaking

ITEM 1. Rescind 661—Chapter 265 and adopt the following **new** chapter in lieu thereof:

CHAPTER 265

CONSUMER FIREWORKS RETAIL SELLER LICENSING AND WHOLESALER REGISTRATION

661—265.1(100) Definitions. The following definitions apply:

“*APA 87-1*” means the same as defined in Iowa Code section 10A.519(1)“*a.*”

“*Commercial fireworks*” means large firework devices that are explosive materials intended for use in firework displays and designed to produce visible or audible effects by combustion, deflagration, or detonation, as set forth in 27 CFR 555 and 49 CFR 172 in effect on January 1, 2001, and APA Standard 87-1, Standard for the Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics.

“*Community group*” means the same as defined in Iowa Code section 10A.519(1)“*b.*”

“*Consumer fireworks*” means the same as defined in Iowa Code section 10A.520(1) “a.”

“*Display fireworks*” means the same as defined in Iowa Code section 727.2(1) “b.”

“*First-class consumer fireworks*” means the same as defined in Iowa Code section 10A.519(1) “c.”

“*NFPA 1124*” means the National Fire Protection Association (NFPA) Standard 1124, published in the Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles, 2006 edition.

“*Retailer*” means the same as defined in Iowa Code section 10A.519(1) “d.”

“*Second-class consumer fireworks*” means the same as defined in Iowa Code section 10A.519(1) “e.”

“*Serious violation*” means any of the following activities occurring at a licensed retail location selling consumer fireworks:

1. Commission of a criminal offense, punishable by one year or more incarceration.
2. Selling consumer fireworks to a minor.
3. Selling commercial fireworks.

“*Wholesaler*” means the same as defined in Iowa Code section 10A.520(1) “b.”

661—265.2(100) Sale of consumer fireworks—safety standards. Any retailer or community group offering for sale at retail any first-class or second-class consumer fireworks, as described in American Pyrotechnics Association (APA) Standard 87-1, as published in December 2001, shall do so in accordance with the National Fire Protection Association (NFPA) Standard 1124, published in the Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles, 2006 edition (hereinafter referred to as “APA 87-1” and “NFPA 1124,” respectively).

661—265.3(100) Sales allowed. A retailer or community group that is issued a license pursuant to this chapter is authorized to sell consumer fireworks as defined in this chapter. However, sales are permitted only as follows.

265.3(1) Prohibited sale or transfer to persons under 18 years of age.

a. A retailer or community group shall not transfer consumer fireworks, as described in APA 87-1, chapter 3, to a person who is under 18 years of age.

b. A person, firm, partnership or corporation shall not sell consumer fireworks to a person who is less than 18 years of age.

265.3(2) Exceptions for persons under 18 years of age.

a. A retailer selling or offering for sale consumer fireworks as described in APA 87-1, chapter 3, shall supervise any employees who are less than 18 years of age who are involved in the sale, handling, or transport of consumer fireworks in the course of their employment for the retailer.

b. A community group selling or offering for sale consumer fireworks as described in APA 87-1, chapter 3, shall ensure that any persons who are less than 18 years of age who are involved in the sale, handling, or transport of consumer fireworks by the community group, whether the persons less than 18 years of age are paid or unpaid, shall do so under the direct supervision of an adult member of the community group.

265.3(3) Dates of sale. A retailer or community group may sell consumer fireworks in accordance with Iowa Code section 10A.519(4) “c.”

661—265.4(100) License fees—consumer fireworks seller licenses.

265.4(1) Fee schedule. The fee schedule for consumer fireworks seller licenses is as provided in Iowa Code section 10A.519(3). License fees shall be paid before issuance of a license.

265.4(2) Administrative license fee. A nonrefundable administrative fee of \$100 is required with every application for a consumer fireworks retail sales license. The \$100 fee will be applied to the license fee if the license is issued.

265.4(3) Changing license class or amount. If a retailer or consumer group is issued a license for the retail sale of one class or amount of consumer fireworks, and changes to a class or amount that requires a higher license fee, the retailer or consumer group shall pay only the difference in the two fees. The license for the lower class will be invalid after the issuance of the new license.

265.4(4) No refund after issuance. Payment is final when the license is issued, and the fee will not be refunded.

661—265.5(100) Application and issuance of license.

265.5(1) Application form and instructions. The application for a license for retail sales of consumer fireworks shall be made to the department as described on the department’s website. A license is required for each location where the retail sales of consumer fireworks are conducted.

265.5(2) Application requirements. Applications and the accompanying plans must include all required information and must be prepared in accordance with the application instructions. An application will not be processed until all required information is received in the form required by the instructions.

265.5(3) Proof of insurance. Applicants must provide proof of and maintain commercial general liability insurance with minimum per occurrence coverage of at least one million dollars and aggregate coverage of at least two million dollars.

265.5(4) Issuance and display of license. If all of the requirements are met and the correct license fee is paid, the department will issue the license. The license must be clearly displayed at the location where the retail sales of consumer fireworks for which the license was issued are conducted.

661—265.6(100) Fireworks site plan review, approval, and inspection.

265.6(1) Plan approval. The retailer or community group shall submit to the department the proposed plan(s), including any required site plan(s) for the location(s) and for any building(s) or structure(s), whether permanent or temporary, that will be used for the sale and storage of fireworks. Requirements and exceptions for site plan submittal and approval are outlined on the department's website.

NOTE: Regarding the incorporation of the reference to NFPA 102, 1995 edition, Standard for Grandstands, Folding and Telescopic Seating, Tents, and Membrane Structures into NFPA 1124 concerning tents and membrane structures, Sections 7.3.5 and 7.4.8.1.2 of NFPA 1124 should be read together with Section A.7.4.8.1.2 in the Explanatory Material in Annex A to NFPA 1124 and used for the purposes of (1) determining the requirements for the means of egress in tents and membrane structures except as modified by Section 7.3.14 of NFPA 1124 for special requirements for the retail sales of consumer fireworks, and (2) to prohibit the use, discharge, or ignition of fireworks within the tent or membrane structure. The other provisions of NFPA 1124, including the sections relating to the retail sales of consumer fireworks in tents or membrane structures, remain applicable.

265.6(2) Inspections.

a. Every location and any building or structure where the retail sales of consumer fireworks are conducted or where consumer fireworks are stored is subject to an inspection at any time while engaged in the retail sale of consumer fireworks.

b. Prior to the sale of consumer fireworks, each retail location shall satisfy one of the following requirements:

(1) A site inspection of the retail location by the department or the department's designee.

(2) Attestation at the time of the application by the person submitting the application that the retail location will comply with NFPA 1124 and these rules.

c. If a retail location license is revoked, the location shall be inspected in accordance with subparagraph 265.6(2) "b"(1) prior to engaging in the sale of consumer fireworks the following year.

661—265.7(100) Unauthorized use of license. Only the retailer or the community group which is issued the license may use that license for the retail sales of consumer fireworks. Each license will be issued for a specific location. The license may not be transferred to or used at any other location.

265.7(1) If the retailer or community group to which the license is issued changes the location where the retail sale of consumer fireworks will be sold, the retailer or community group shall submit a new application and all required information for the new site and pay the applicable license fee. The application must be reviewed and approved in order for a new license to be issued.

265.7(2) The licensed retailer or community group or the authorized representative of the licensed retailer or community group must be personally present at all times when consumer fireworks are being sold.

265.7(3) No unlicensed retailer, community group, person, group of people, business, or other for-profit or nonprofit entity may use the license issued to another retailer or community group for the retail sales of consumer fireworks, unless the licensed retailer or community group or the authorized representative of the licensed retailer or community group is personally present at all times when consumer fireworks are being sold.

661—265.8(100) Revocation of license. If the department or department's designee determines during a physical site inspection that a serious violation has occurred, the license for that retail location may be immediately revoked. Vendors will be given the opportunity to remedy violations that are not deemed serious violations.

661—265.9(100) Consumer fireworks wholesalers—registration—safety—insurance.

265.9(1) Annual registration. Each wholesaler shall register with the department annually by completing and submitting the annual registration form and paying the fee as required by Iowa Code section 10A.520(3).

265.9(2) Safety regulations—storage and transfer. Each wholesaler shall comply with all of the requirements of NFPA 1124 for the storage and transfer of consumer fireworks.

265.9(3) Insurance required. While operating as a wholesaler, each wholesaler shall maintain commercial general liability insurance with minimum per-occurrence coverage of at least \$1 million and aggregate coverage of at least \$2 million.

661—265.10(100) Consumer fireworks fee fund. All fees received from the licenses issued for the retail sale of consumer fireworks and the annual registration fees received from wholesalers of consumer fireworks will be deposited into the consumer fireworks fee fund pursuant to Iowa Code section 10A.519. The department will use the fees deposited into this fund to fulfill the responsibilities of the department for the administration and enforcement of Iowa Code sections 10A.519 and 10A.520.

661—265.11(100) Local fire protection and emergency medical service providers grant program. The local fire protection and emergency medical service providers grant program is established by Iowa Code section 10A.519(7). The grant program is funded with only those moneys from the consumer fireworks fee fund which are not needed by the department to fulfill the responsibilities of the department for the administration and enforcement of Iowa Code sections 10A.519 and 10A.520.

265.11(1) Definitions. The following definitions apply.

“*Emergency medical services*” means the same as defined in Iowa Code section 147A.1(5).

“*Fire protection service*” means volunteer or paid fire departments.

265.11(2) Authorized applicants. Any local fire protection service provider or local emergency medical service provider in the state of Iowa may apply for grant funds from the local fire protection and emergency medical service providers grant program.

265.11(3) Authorized purposes of grant funds. The grant funds in the local fire protection and emergency medical service providers grant program may be used for the following in order of priority:

- a. To establish or provide fireworks safety education programming to members of the public.
- b. To purchase necessary enforcement, protection, or emergency response equipment related to the sale and use of consumer fireworks in this state.
- c. To purchase necessary enforcement, protection, or emergency response equipment.

265.11(4) Application. An application for grant funds should be made to the department. The application form may be found on the department’s website. Applications must be received on or before June 30 of each year. The application will include all of the following:

a. The application shall be signed by a person who is an official, owner, or another person who has authorization to sign on behalf of the fire protection service or the emergency medical service provider entity.

b. The specifics of the proposed use of the grant funds.

(1) If the application is for equipment, the applicant should include a detailed description of the equipment, the company or entity from which the purchase will be made, the cost, and a justification as to how this equipment purchase fits the purposes of the grant program.

(2) If the application is for safety education programming, the application should include a detailed description of the programming, the specific people who will be providing the programming, and a description of the materials to be purchased and used.

c. The amount of grant funds requested.

265.11(5) Approval of application. The director of the department will review the application and determine whether to make the award of grant funds. The director of the department has the sole discretion in determining whether or not to award funds from the grant program to the applicant and the amount of funds awarded to each applicant. Factors to be considered in making an award of grant funds include, but are not limited to:

a. The amount of grant funds available.

b. The number of applicants for grant funds.

c. The proposed use of the grant funds and whether the use is consistent with the approved program purposes.

d. Whether the applicant has previously been approved for grant funds from this program.

e. The applicant's use of any previous grant funds received from the program.

265.11(6) *Award of tangible property.* Should the department determine that the purpose of the grant program is better served by awarding tangible property, such as equipment, rather than funds, the department has the authority to award tangible property purchased with grant funds rather than disperse grant funds to the applicants.

265.11(7) *Report required.* All grant recipients shall file a report with the department that lists the amount of grant funds received and the purpose(s) for which the grant funds were spent. The department may conduct an inspection or audit to determine compliance with the rules and purposes of the grant program, in addition to any other authorized audits.

These rules are intended to implement Iowa Code sections 10A.519 and 10A.520.