

CHAPTER 265
CONSUMER FIREWORKS SALES LICENSING AND SAFETY STANDARDS

DIVISION I
SAFETY STANDARDS

661—265.1(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).

[ARC 3124C, IAB 6/21/17, effective 5/31/17; ARC 3592C, IAB 1/17/18, effective 2/21/18]

661—265.2 to 265.9 Reserved.

DIVISION II
CONSUMER FIREWORKS SALES—RESTRICTIONS

661—265.10(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.

265.10(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.

265.10(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.

265.10(3) Safety requirements—storage and retail sales. A retailer or community group selling consumer fireworks as described in APA 87-1, chapter 3, shall do so in accordance with NFPA 1124, published in the Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles, 2006 edition.

265.10(4) Dates of sale.

a. Permanent building. A retailer or community group may sell consumer fireworks as described in APA 87-1, chapter 3, at a permanent building only between June 1 and July 8 and between December 10 and January 3 each year, all dates inclusive.

b. Temporary structure. A retailer or community group may sell consumer fireworks as described in APA 87-1, chapter 3, at a temporary structure between June 13 and July 8 each year, both dates inclusive.

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661—265.11 to 265.19 Reserved.

DIVISION III
CONSUMER FIREWORKS RETAILER LICENSING

661—265.20(100) Definitions. The following definitions apply to Division III.

“*APA 87-1*” means the American Pyrotechnics Association Standard 87-1, as published in December 2001.

“*Community group*” means a nonprofit entity that is open for membership to the general public and is exempt from federal income taxation pursuant to Section 501(c)(3) of the Internal Revenue Code or a fraternal benefit society, as that term is defined in Iowa Code section 512B.3.

“*First-class consumer fireworks*” means the following consumer fireworks, as described in APA 87-1, chapter 3:

1. Aerial shell kits and reloadable tubes.
2. Chasers.
3. Helicopter and aerial spinners.
4. Firecrackers.
5. Mine and shell devices.
6. Missile-type rockets.
7. Roman candles.
8. Sky rockets and bottle rockets.

9. Multiple tube devices as described in this definition of first-class consumer fireworks that are manufactured in accordance with APA 87-1, section 3.5.

“*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 423.1.

“*Second-class consumer fireworks*” means the following consumer fireworks, as described in APA 87-1, chapter 3:

1. Cone fountains.
2. Cylindrical fountains.
3. Flitter sparklers.
4. Ground and hand-held sparkling devices, including multiple tube ground and hand-held sparkling devices that are manufactured in accordance with APA 87-1, section 3.5.
5. Ground spinners.
6. Illuminating torches.
7. Toy smoke devices that are not classified as novelties pursuant to APA 87-1, section 3.2.
8. Wheels.
9. Wire or dipped sparklers that are not classified as novelties pursuant to APA 87-1, section 3.2.

[ARC 3124C, IAB 6/21/17, effective 5/31/17; ARC 3592C, IAB 1/17/18, effective 2/21/18]

661—265.21(100) License fee schedule. The following license fees shall be paid before issuance of a license for the retail sale of consumer fireworks.

265.21(1) Permanent building—retailer—first-class consumer fireworks. The annual fee is \$1,000 for a retailer at a permanent building who devotes 50 percent or more of the retailer’s retail floor space to the sale or display of first-class consumer fireworks.

265.21(2) Temporary structure—retailer—first-class consumer fireworks. The annual fee is \$500 for a retailer at a temporary structure who devotes 50 percent or more of the retailer’s retail floor space to the sale or display of first-class consumer fireworks.

265.21(3) Retailer—first-class consumer fireworks—less than 50 percent of retail space. The annual fee is \$400 for a retailer who devotes less than 50 percent of the retailer’s retail floor space to the sale or display of first-class consumer fireworks.

265.21(4) Community group—first-class consumer fireworks. The annual fee is \$400 for a community group that offers for sale, exposes for sale, or sells first-class consumer fireworks.

265.21(5) *Retail sale of both first-class consumer fireworks and second-class consumer fireworks.* A license issued for the retail sale of first-class consumer fireworks allows the retailer or community group to sell or offer for sale both first-class consumer fireworks and second-class consumer fireworks at the same location. The license fee shall be based on the percentage of the retail space devoted to the sale of first-class fireworks.

265.21(6) *Retailer or community group—license for second-class fireworks only.* The annual fee is \$100 for a community group that offers for sale, exposes for sale, or sells second-class consumer fireworks but not first-class consumer fireworks. A license issued for the sale of second-class consumer fireworks does not allow the community group to sell or offer or expose for sale any first-class consumer fireworks.

[ARC 3124C, IAB 6/21/17, effective 5/31/17; ARC 3592C, IAB 1/17/18, effective 2/21/18]

661—265.22(100) Fees collected.

265.22(1) *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.

265.22(2) *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.

265.22(3) *No refund after issuance.* Payment is final when the license is issued, and the fee will not be refunded.

[ARC 3592C, IAB 1/17/18, effective 2/21/18]

661—265.23(100) Consumer fireworks retail sales license.

265.23(1) *Application period.* The state fire marshal will begin accepting applications for consumer fireworks retail sales licenses beginning March 1 of each year. The license applications for permanent sites will be processed before the applications for temporary sites. Complete applications will be processed in the order they are submitted.

265.23(2) *Application form and instructions.* The application for a license for retail sales of first-class consumer fireworks or second-class consumer fireworks, or both first-class consumer fireworks and second-class consumer fireworks, shall be made to the state fire marshal. The application form and instructions may be found on the state fire marshal website at www.dps.state.ia.us/fm/building/licensing/consumerfireworksindex.shtml.

265.23(3) *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. If any required information is illegible or incomplete, that application will not be processed and a new application with all of the required information must be submitted. The state fire marshal's office may, in its discretion, allow an applicant to provide missing information without submitting a new application.

[ARC 3124C, IAB 6/21/17, effective 5/31/17; ARC 3592C, IAB 1/17/18, effective 2/21/18]

661—265.24(100) Submittal of application and required information.

265.24(1) The following must be submitted to the state fire marshal's office:

a. The completed application, signed by the owner, officer, director, or another person authorized to sign documents on behalf of the retailer or community group.

b. Document(s) that establish that the applicant is either a community group or retailer.

c. The plan(s) for each retail sales location, including any permanent or temporary building or structure.

d. The 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 storage of consumer fireworks.

e. All plans and drawings must be legible and include all required information and measurements.

f. Proof that the applicant has obtained commercial general liability insurance with minimum per-occurrence coverage of at least \$1 million and aggregate coverage of at least \$2 million.

g. The applicable license fee.

265.24(2) Updating contact information. If any of the contact information for the retailer or community group changes during the period that the license is valid, that information shall be updated and submitted to the state fire marshal's office within five working days of when the information changed.

[ARC 3592C, IAB 1/17/18, effective 2/21/18]

661—265.25(100) Fireworks site plan review and approval.

265.25(1) *Plan approval.*

a. A license is required for each location where the retail sales of consumer fireworks are conducted. The plan(s) for each retail sales location, including any permanent or temporary building or structure, and for each building or structure used for the storage of fireworks must be submitted.

b. Every location where the retail sales of consumer fireworks take place or where consumer fireworks are stored, including any permanent or temporary building(s) or structure(s), must do so in accordance with NFPA 1124.

c. The retailer or community group shall also submit to the state fire marshal's office 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 storage of fireworks.

d. The plan(s) will be reviewed to determine whether it is in accordance with NFPA 1124. If the plan(s) is incomplete or noncompliant, the retailer or community group will receive notification of deficiencies that need to be corrected.

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.

265.25(2) *Plans not required.* In the discretion of the state fire marshal, plans may not be required in the following circumstances:

a. For permanent buildings or temporary structures in which only exempt amounts of first-class or second-class consumer fireworks are offered for sale, pursuant to section 7.3.1, NFPA 1124. The licensee shall make current product inventory information available to the state fire marshal upon request.

b. For permanent buildings that were licensed in the previous year and for which there have been no changes to the site, building or floor plan. If any changes have been made, a new or updated plan shall be submitted.

c. For permanent buildings which are currently classified as a retail occupancy and in which second-class consumer fireworks are the only fireworks are offered for sale.

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661—265.26(100) Plan review and inspection—guidelines.

265.26(1) *Inspections.*

a. Any retailer or community group offering for sale at retail any consumer fireworks, as described in APA 87-1, shall do so in accordance with NFPA 1124. 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. In the discretion of the state fire marshal, prelicense inspections may not be required in the following circumstances:

(1) For permanent buildings or temporary structures in which only exempt amounts of first-class or second-class consumer fireworks are offered for sale, pursuant to section 7.3.1, NFPA 1124. The licensee shall make current product inventory information available to the state fire marshal upon request.

(2) For permanent buildings that were licensed in the previous year and for which there have been no changes to the site, building or floor plan. If any changes have been made, then a new or updated plan shall be submitted.

b. State licensing inspections shall only be conducted by persons approved by the state fire marshal. The inspection form shall be approved by the state fire marshal and will be available only to approved inspectors.

c. Each location, including the building(s) or structure(s) where the retail sales of consumer fireworks will be conducted or are conducted or where consumer fireworks are stored, must pass the state licensing inspection when conducted. Each location, including the building(s) or structure(s) must pass all elements of the inspection as conducted.

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661—265.27(100) Issuance and display of license. The submitted application, any additional documents and information, and the completed inspection form shall be reviewed by the state fire marshal's office.

265.27(1) If all of the requirements are met and the correct license fee is paid, the state fire marshal shall issue the license. The license will be sent by email or can be downloaded from the state fire marshal's website at www.dps.state.ia.us/fm/building/licensing/consumerfireworksindex.shtml. The license shall be effective for the applicable date(s) for the sales of consumer fireworks.

265.27(2) The license must be clearly displayed at the location where the retail sales of consumer fireworks for which the license was issued are conducted.

[ARC 3592C, IAB 1/17/18, effective 2/21/18]

661—265.28(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.

265.28(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.

265.28(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.

265.28(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.

[ARC 3592C, IAB 1/17/18, effective 2/21/18]

661—265.29 Reserved.

DIVISION IV
CONSUMER FIREWORKS WHOLESALER REGISTRATION

661—265.30(100) Definitions. The following definitions apply to Division IV.

"Consumer fireworks" means first-class consumer fireworks and second-class consumer fireworks, as those terms are defined in Iowa Code section 100.19.

"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.

“*Wholesaler*” means a person who engages in the business of selling or distributing consumer fireworks for the purpose of resale in this state.

[ARC 3124C, IAB 6/21/17, effective 5/31/17; ARC 3592C, IAB 1/17/18, effective 2/21/18]

661—265.31(100) Annual registration. Each wholesaler shall register with the state fire marshal annually.

265.31(1) Registration process. Each wholesaler shall complete the annual registration form and submit the form to the state fire marshal’s office. The registration form and instructions may be found on the state fire marshal website at www.dps.state.ia.us/fm/building/licensing/consumerfireworksindex.shtml.

265.31(2) Registration fee. Each wholesaler shall pay an annual registration fee of \$1,000 to the state fire marshal.

[ARC 3124C, IAB 6/21/17, effective 5/31/17; ARC 3592C, IAB 1/17/18, effective 2/21/18]

661—265.32(100) 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.

[ARC 3124C, IAB 6/21/17, effective 5/31/17; ARC 3592C, IAB 1/17/18, effective 2/21/18]

661—265.33(100) 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.

[ARC 3124C, IAB 6/21/17, effective 5/31/17; ARC 3592C, IAB 1/17/18, effective 2/21/18]

661—265.34 to 265.39 Reserved.

DIVISION V
VIOLATIONS—LICENSE REVOCATION

661—265.40(100) Revocation of license. The consumer fireworks retail sales license granted to a retailer or community group shall be revoked upon a finding by the state fire marshal that the licensee intentionally violated any of the rules in Division III of this chapter.

265.40(1) Notice of violation. The state fire marshal, any paid or volunteer member of a fire department, or any law enforcement officer may investigate a complaint of a violation of the rules in Division III of this chapter. After a review of the investigation, the state fire marshal may issue a Notice of Violation and Order to Show Cause to the licensee. The Notice shall contain the date, time and place for the hearing before the division of the state fire marshal.

265.40(2) Hearing. A hearing on the violation shall be held before the division of the state fire marshal.

265.40(3) Findings. If, after a hearing on the Order to Show Cause, the division of the state fire marshal finds that the licensee intentionally violated any of the rules in Division III, the state fire marshal shall revoke the license or licenses of the retailer or community group for the retail sale of consumer fireworks.

[ARC 3124C, IAB 6/21/17, effective 5/31/17; ARC 3592C, IAB 1/17/18, effective 2/21/18]

661—265.41(100) Petition for judicial review. The licensee may file a petition for judicial review of the decision of the division of the state fire marshal in accordance with the terms of the Iowa administrative procedure Act, Iowa Code chapter 17A.

[ARC 3124C, IAB 6/21/17, effective 5/31/17; ARC 3592C, IAB 1/17/18, effective 2/21/18]

661—265.42(100) License revocation effective date. The revocation of the license or licenses for the retail sale of consumer fireworks commences on the thirty-first day after the date of the order of the division of the state fire marshal, if a petition for judicial review has not been filed in the district court. If the licensee has filed a petition for judicial review, the revocation of the license or licenses for the

retail sale of consumer fireworks commences on the thirty-first day following the entry of the order of the district court, if the order affirms the order of the division of the state fire marshal.

[ARC 3124C, IAB 6/21/17, effective 5/31/17; ARC 3592C, IAB 1/17/18, effective 2/21/18]

661—265.43(100) Revocation—denial of new license. A new license shall not be issued to a person whose license has been revoked or to the business in control of the premises on which the violation occurred for a period of one year if there is a finding that the owner of the business had actual knowledge of the violation resulting in the license revocation.

[ARC 3124C, IAB 6/21/17, effective 5/31/17; ARC 3592C, IAB 1/17/18, effective 2/21/18]

661—265.44 to 265.49 Reserved.

DIVISION VI
FIRE PROTECTION AND EMERGENCY MEDICAL SERVICES GRANT PROGRAM

661—265.50(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 shall be deposited into the consumer fireworks fee fund pursuant to Iowa Code section 100.19. The state fire marshal shall use the fees deposited into this fund to fulfill the responsibilities of the state fire marshal for the administration and enforcement of Iowa Code sections 100.19 and 100.19A.

[ARC 3124C, IAB 6/21/17, effective 5/31/17; ARC 3592C, IAB 1/17/18, effective 2/21/18]

661—265.51(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 the state fire marshal. The grant program shall be funded with only those moneys from the consumer fireworks fee fund which are not needed by the state fire marshal to fulfill the responsibilities of the state fire marshal for the administration and enforcement of Iowa Code sections 100.19 and 100.19A.

265.51(1) Definitions. The following definitions apply to Division VI.

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

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

265.51(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.

265.51(3) Authorized purposes of grant funds. The grant funds in the local fire protection and emergency medical service providers grant program may only be used for the following:

- 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.

265.51(4) Application. The application for grant funds shall be made to the state fire marshal. The application form may be found at www.dps.state.ia.us/fm/building/licensing/consumerfireworksindex.shtml. Applications must be received on or before June 30 of each year. The application shall 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 shall 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.

265.51(5) Approval of application. The state fire marshal shall review the application and determine whether to make the award of grant funds. The state fire marshal 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.

265.51(6) Report required. All grant recipients shall file a report with the state fire marshal that lists the amount of grant funds received and the purpose(s) for which the grant funds were spent. The state fire marshal 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.

[ARC 3124C, IAB 6/21/17, effective 5/31/17; ARC 3592C, IAB 1/17/18, effective 2/21/18]

These rules are intended to implement Iowa Code sections 100.19 and 100.19A

[Filed Emergency ARC 3124C, IAB 6/21/17, effective 5/31/17]

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