

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 100.1(4)(b) and 2017 Iowa Acts, Senate File 489, section 11, the State Fire Marshal hereby adopts new Chapter 265, "Consumer Fireworks Sales Licensing and Safety Standards," Iowa Administrative Code.

2017 Iowa Acts, Senate File 489, relating to the purchase, use, and regulation of consumer and display fireworks, was enacted by the Iowa General Assembly during its regular session this year. The legislation requires the State Fire Marshal to promulgate administrative rules for the regulation of the storage, transportation, handling, and use of consumer fireworks and for the sale of consumer fireworks and the licensing of consumer fireworks retailers and registration of wholesalers. The legislation also authorizes the licensing fees that are collected to be used to pay for the costs of administration and enforcement of the legislation and also establishes a Local Fire Protection and Emergency Medical Service Providers Grant Program to provide fireworks safety education and to purchase equipment related to the sale and use of consumer fireworks.

Pursuant to Iowa Code section 17A.4(3), the State Fire Marshal finds that notice and public participation are unnecessary because 2017 Iowa Acts, Senate File 489, provides that the legislation is effective upon enactment and because 2017 Iowa Acts, Senate File 489, also requires the State Fire Marshal to adopt emergency rules to implement the provisions of the legislation.

Pursuant to Iowa Code section 17A.5(2)(b)(1)(a) and (b), the State Fire Marshal also finds that the normal effective date of these rules, 35 days after publication, should be waived and the rules made effective immediately upon filing, because the legislation so provides and because the rules confer a benefit or remove a restriction on the public or some segment thereof. Specifically, 2017 Iowa Acts, Senate File 489, provides that retail sales of consumer fireworks are authorized

beginning June 1, 2017, for retail sales from a permanent building, and beginning June 13, 2017, for retail sales from a temporary structure.

This amendment is also proposed under Notice of Intended Action and is published herein as **ARC _____**. The notice provides for a public hearing and other opportunities for public comments.

It is expected that there will be a positive fiscal impact on jobs and the economy, as there will be new opportunities for persons to be employed in the sale of fireworks. There will be a positive impact on the state economy from these new jobs and new business opportunities resulting from the sale of consumer fireworks.

The fiscal impact for the licensing and inspections is expected to be less than \$100,000, which includes the costs of administering the licensing program and the costs associated with inspections and with enforcement of the laws and regulations.

Pursuant to the provisions of rule 661—10.222(17A), the State Fire Marshal does not have authority to waive requirements established by statute.

The State Fire Marshal adopted these rules on May 26, 2017.

These rules are intended to implement 2017 Iowa Acts, Senate File 489, sections 3 and 4.

These rules became effective on May 31, 2017.

The following amendment is adopted.

Adopt the following **new** 661—Chapter 265:

CHAPTER 265

CONSUMER FIREWORKS SALES LICENSING AND SAFETY STANDARDS

Division I

SAFETY STANDARDS

661—265.1(87GA,SF289) 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—265.2 to 265.9 Reserved.

Division II

Consumer Fireworks Sales—Restrictions

661—265.10(87GA,SF489) 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. A person, firm, partnership or corporation shall not sell or transfer consumer fireworks, as described in APA 87-1, chapter 3, to a person who is less than 18 years of age.

265.10(2) Exceptions for persons under 18.

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) Prohibited sales—persons under the influence of alcohol or drugs. A person shall not knowingly sell consumer fireworks to any person who is obviously under the influence of alcohol or drugs.

265.10(4) Safety requirements—storage and retail sales.

a. A retailer or community group selling consumer fireworks as described in APA 87-1, chapter 3, shall meet all of the requirements of NFPA 1124, published in the Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles, 2006 edition.

b. All persons who, as part of the retail sales of consumer fireworks, handle or sell said fireworks, shall receive safety training that complies with the requirements of NFPA 1124.

265.10(5) 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 the 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.

661—265.11 to 265.19 Reserved.

Division III

Consumer Fireworks Retailer Licensing

661—265.20(87GA,SF289) 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 which 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.

661—265.21(87GA,SF489) Consumer fireworks retail sales license. Compliance with the following is required in order for a license to be granted by the state fire marshal for the retail sales of consumer fireworks.

265.21(1) Plan approval.

a. 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 meet all of the requirements of NFPA 1124.

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

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 compliance with the requirements of NFPA 1124. If the plans are incomplete or noncompliant, the retailer or community group will receive notification of corrections that need to be made before approval can be granted.

e. A plan review by the state building code commissioner or the local building code official is required for new permanent buildings and for existing buildings which are changing occupancies. Existing buildings for which the current occupancy is retail are not required to have the plan review by a state or local building code office.

NOTE: Regarding the incorporation of the reference to NFPA 102, 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.

265.21(2) *Annual inspection.*

a. An inspection is required each year before a license can be issued by each of the location(s) and for any building or structure where the retail sales of consumer fireworks are conducted.

b. 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. A list of approved inspectors and the inspectors' contact information are available on the state fire marshal Web site www.dps.state.ia.us/fm/licensing/consumerfireworks.shtml.

d. An approved inspector may charge a reasonable fee for the annual inspection of the location. The inspection fee, if any, for each inspection must be paid directly to the inspector or the government entity of the inspector. The licensing fee schedule in this chapter does not include any inspection fees.

e. Each location, including the building(s) or structure(s) where the retail sales of consumer fireworks will be conducted or are conducted, must pass the inspection. The inspection is pass/fail, and all items on the inspection form must be scored as pass for the license to be issued. If one or more item(s) are marked as fail, the inspection will be scored as a fail. The inspector is permitted to discuss the inspection with the retailer or community group or the retailer's or community

group's representative to explain any items that were marked as fail, and how to correct those issues.

f. Upon passing the inspection and receiving payment of the inspection fee, the inspector shall submit the completed inspection form to the state fire marshal's office. The inspector may submit, but is not required to submit, the completed inspection form if the inspection fee has not been paid.

265.21(3) Application. 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 and instructions may be found on the state fire marshal Web site: www.dps.state.ia.us/fm/licensing/consumerfireworks.shtml.

265.21(4) Requirements for application. 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 fireworks.
- e.* Proof of commercial general liability insurance with minimum per occurrence coverage of at least \$1 million and aggregate coverage of at least \$2 million.
- f.* The fee for the license for each location.

265.21(5) License issued—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.

a. 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 e-mail or can be downloaded from the state fire marshal's Web site www.dps.state.ia.us/fm/licensing/consumerfireworks.shtml.

b. The license must be clearly displayed at the location where the retail sales of consumer fireworks for which the license was issued is conducted.

c. If one or more of the requirements are not met, or if the correct license fee is not paid, the license shall not be issued.

265.21(6) Unauthorized use of license. Only the retailer or the community group which is issued the license may use that location for the retail sales of consumer fireworks. The license may not be transferred to any other location, or to any other retailer, community group, person, group of people, business, or other for-profit or nonprofit entity. 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.

661—265.22(87GA,SF489) License fee schedule. The following license fees shall be paid before issuance of a license for the retail sale of consumer fireworks.

265.22(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.

265.22(2) *Temporary building—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.

265.22(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.

265.22(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.

265.22(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.

265.22(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.

661—265.23 No refund of fees. If the application and required information are accepted and the license is issued, no refund of the license fee will be given if the retailer or community group is unable to engage in the retail sale of consumer fireworks for any reason, including but not limited to local laws and ordinances or the revocation of the license by the state fire marshal.

661—265.24 Plan review and inspection—guidelines. The review of plans submitted to the state fire marshal’s office for approval for licensing shall be done as soon as reasonably possible. When the plans have been approved, the inspection can be scheduled. An inspection shall be conducted as promptly as is reasonably possible so as not to create undue delay in the licensing process.

265.24(1) Plan review—timelines. The expected timeline for plan review by the state fire marshal’s office is three days from the date the plan is received. If the plan requires corrections, the expected timeline is three days from the date the corrected plan is received.

265.24(2) Inspection—timelines. The expected timeline for completion of an inspection of the location is three days from the date that plan approval is granted. If, after inspection, corrections are required, the expected timeline for completion of the inspection is three days from the date the inspector receives notification that the corrections have been made.

265.24(3) State fire marshal—waiver of timelines. If the expected timelines for plan review and inspection cannot be met, the state fire marshal shall have the discretion to authorize the issuance of a license for the retail sales of consumer fireworks that is conditioned on plan approval and an inspection passed after issuance of the license and if, in the discretion of the state fire marshal, that the retailer or community group is able to meet the requirements of NFPA 1124.

661—265.25 to 265.29 Reserved.

Division IV

Consumer Fireworks Wholesaler Registration

661—265.30(87GA,SF489) 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 2017 Iowa Acts, Senate File 489, section 3.

“*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.

661--265.31(87GA,SF489) 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 Web site at www.dps.state.ia.us/fm/licensing/consumerfireworks.shtml.

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

661—265.32(87GA,SF489) 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.

661—265.33(87GA,SF489) Insurance—required. 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—265.34 to 265.39 Reserved.

Division V

Violations—License Revocation

661—265.40(87GA,SF489) 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 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 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.

661—265.41(87GA,SF489) 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.

661—265.42(87GA,SF489) 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.

661—265.43(87GA,SF489) 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.

661—265.44 to 265-49 Reserved.

Division VI

Fire Protection and Emergency Medical Services Grant Program

661—265.50(87GA,SF489) 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 2017 Iowa Acts, Senate File 489, section 3. 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 2017 Iowa Acts, Senate File 489, sections 3 and 4.

661—265.51(87GA,SF489) 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 2017 Iowa Acts, Senate File 489, sections 3 and 4.

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

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

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

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 is at www.dps.state.ia.us/fm/licensing/consumerfireworks.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 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.

661—265.52 to 265.59 Reserved.

These rules are intended to implement 2017 Iowa Acts, Senate File 489, sections 3, 4, and 11.

Emergency Rule-Making Document Filed by Agency