

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

Proposing rulemaking related to consumer fireworks sales licensing and safety standards and providing an opportunity for public comment

The State Fire Marshal hereby proposes to rescind Chapter 265, “Consumer Fireworks Sales Licensing and Safety Standards,” and adopt a new Chapter 265, “Consumer Fireworks Retail Seller Licensing and Wholesaler Registration,” Iowa Administrative Code.

Legal Authority for Rulemaking

This rulemaking is proposed under the authority provided in Iowa Code sections 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 Implemented

This rulemaking implements, in whole or in part, Iowa Code sections 10A.519 and 10A.520 as implemented by 2023 Iowa Acts, Senate File 514, and chapter 17A.

Purpose and Summary

This rulemaking proposes repromulgation of Chapter 265. The proposed rules implement Iowa Code sections 10A.519 and 10A.520 as implemented by 2023 Iowa Acts, Senate File 514 (formerly Iowa Code sections 100.19 and 100.19A), in accordance with the goals and directives of Executive Order 10 (January 10, 2023). 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.

Public comment was received requesting retention of language from former subrule 265.25(2). That language had been removed by the Department of Inspections, Appeals, and Licensing as a nonsubstantive deletion. As stakeholders have identified that they find the language particularly useful, the Department has added it back into the proposed rulemaking at subrule 265.6(2).

Fiscal Impact

This rulemaking does not have a fiscal impact to the State of Iowa in an amount requiring a fiscal impact statement pursuant to Iowa Code section 17A.4(4).

Jobs Impact

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

Waivers

Any person who believes that the application of the discretionary provisions of this rulemaking would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

Public Comment

Any interested person may submit written comments concerning this proposed rulemaking. Written comments in response to this rulemaking must be received by the Department no later than 4:30 p.m. on February 14, 2024. Comments should be directed to:

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

Public Hearing

Public hearings at which persons may present their views orally or in writing will be held as follows:

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|---------------------------------------|---|
| February 13, 2024 10 to 10:20 a.m. | 6200 Park Avenue Des Moines, Iowa Video call link: meet.google.com/zuu-vunu-dcc Or dial: +1 774.338.0928 PIN: 195 434 437# More phone numbers: tel.meet/zuu-vunu-dcc?pin=9691567757424 |
| February 14, 2024 10 to 10:20 a.m. | 6200 Park Avenue Des Moines, Iowa Video call link: meet.google.com/zuu-vunu-dcc Or dial: +1 774.338.0928 PIN: 195 434 437# More phone numbers: tel.meet/zuu-vunu-dcc?pin=9691567757424 |

Persons who wish to make oral comments at a public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rulemaking.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department and advise of specific needs.

Review by Administrative Rules Review Committee

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

The following rulemaking action is proposed:

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(10A) 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(10A) 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(10A) 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(10A) 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(10A) 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(10A) 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) *Plans not required.* In the discretion of the department, 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 department 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 that are currently classified as a retail occupancy and in which second-class consumer fireworks are the only fireworks that are offered for sale.

265.6(3) *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(3)“b”(1) prior to engaging in the sale of consumer fireworks the following year.

661—265.7(10A) Unauthorized use of license. Only the retailer or the community group that 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(10A) 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(10A) 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(10A) 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(10A) 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 that 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.