



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF AGENCY APPROVAL OF A PROPOSED RULE AND FILING WITH THE LEGISLATIVE RULE-
MAKING REVIEW COMMITTEE**

AGENCY: Fire Marshal TITLE-SERIES: 103-04
RULE TYPE: Legislative Amendment to Existing Rule: Yes Repeal of existing rule: No
RULE NAME: 103-04 Regulation of Fireworks and Related Explosive Materials

PRIMARY CONTACT

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CITE STATUTORY AUTHORITY: 15A-11-8

EXPLANATION OF THE STATUTORY AUTHORITY FOR THE LEGISLATIVE RULE, INCLUDING A DETAILED SUMMARY OF THE EFFECT OF EACH PROVISION OF THE LEGISLATIVE RULE WITH CITATION TO THE SPECIFIC STATUTORY PROVISION WHICH EMPOWERS THE AGENCY TO ENACT SUCH RULE PROVISION:

The rule updates the sunset provision, and updates the referenced editions of the NFPA 495, NFPA 1123, and NFPA 1126

IS THIS FILING SOLELY FOR THE SUNSET PROVISION REQUIREMENTS IN W. VA. CODE §29A-3-19(e)? No

IF YES, DO YOU CERTIFY THAT THE ONLY CHANGES TO THE RULE ARE THE FILING DATE, EFFECTIVE DATE AND AN EXTENSION OF THE SUNSET DATE? No

DATE eFiled FOR NOTICE OF HEARING OR PUBLIC COMMENT PERIOD: 6/25/2021

DATE OF PUBLIC HEARING(S) OR PUBLIC COMMENT PERIOD ENDED: 7/27/2021

COMMENTS RECEIVED: No

(IF YES, PLEASE UPLOAD IN THE COMMENTS RECEIVED FIELD COMMENTS RECEIVED AND RESPONSES TO COMMENTS)

PUBLIC HEARING: No

(IF YES, PLEASE UPLOAD IN THE PUBLIC HEARING FIELD PERSONS WHO APPEARED AT THE HEARING(S) AND TRANSCRIPTS)

RELEVANT FEDERAL STATUTES OR REGULATIONS: No

WHAT OTHER NOTICE, INCLUDING ADVERTISING, DID YOU GIVE OF THE HEARING?

No

SUMMARY OF THE CONTENT OF THE LEGISLATIVE RULE, AND A DETAILED DESCRIPTION OF THE RULE'S PURPOSE AND ALL PROPOSED CHANGES TO THE RULE:

Updates the sunset provision and updates editions of the NFPA 495, NFPA 1123, and NFPA 1126.

STATEMENT OF CIRCUMSTANCES WHICH REQUIRE THE RULE:

Sunset date expiration and updating editions to be the most current.

SUMMARIZE IN A CLEAR AND CONCISE MANNER THE OVERALL ECONOMIC IMPACT OF THE PROPOSED LEGISLATIVE RULE:

A. ECONOMIC IMPACT ON REVENUES OF STATE GOVERNMENT:

N/A

B. ECONOMIC IMPACT ON SPECIAL REVENUE ACCOUNTS:

N/A

C. ECONOMIC IMPACT OF THE LEGISLATIVE RULE ON THE STATE OR ITS RESIDENTS:

N/A

D. FISCAL NOTE DETAIL:

Effect of Proposal	Fiscal Year		
	2021 Increase/Decrease (use "-")	2022 Increase/Decrease (use "-")	Fiscal Year (Upon Full Implementation)
1. Estimated Total Cost	0	0	0
Personal Services	0	0	
Current Expenses	0	0	0
Repairs and Alterations	0	0	0
Assets	0	0	0
Other	0	0	0
2. Estimated Total Revenues	0	0	0

E. EXPLANATION OF ABOVE ESTIMATES (INCLUDING LONG-RANGE EFFECT):

N/A

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

Stacy L Nowicki-Eldridge -- By my signature, I certify that I am the person authorized to file legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.

TITLE 103
LEGISLATIVE RULE
WEST VIRGINIA FIRE MARSHAL

SERIES 4
REGULATION OF FIREWORKS AND RELATED EXPLOSIVE MATERIALS

§103-4.1. General.

1.1. Scope. -- This legislative rule governs the manufacture, transportation, storage, sale, and display of fireworks in this state in accordance with W. Va. Code § 29-3E-1 *et seq.*

1.2. Authority. -- W. Va. Code §§ 29-3E-4(b)(4), 29-3E-5(a)(5), 29-3E-6(b)(4) and 29-3E-8(a).

1.3. Filing Date. -- ~~May 31, 2017~~

1.4. Effective Date. -- ~~May 31, 2017~~

1.5. Sunset Provision -- This rule shall terminate and have no further force or effect on ~~May 31, 2022~~.

§103-4.2. Application and Enforcement.

2.1. Application. This legislative rule applies to the West Virginia State Fire Marshal and all persons, materials and transactions governed or otherwise defined under coverage of Fireworks Safety, W. Va. Code §29-3E-1 *et seq.*

2.2. Enforcement. The enforcement of this legislative rule is vested with the West Virginia State Fire Marshal.

2.2.a. The West Virginia State Police, deputy sheriffs, municipal police officers and other law enforcement officers shall assist in the enforcement of this rule.

§103-4.3. Definitions.

3.1. “Approved” means acceptable to the authority having jurisdiction.

3.2. “Authority Having Jurisdiction” or “AHJ” means an organization, office, or individual responsible for enforcing the requirements of a code or standard, or for approving equipment, materials, an installation, or a procedure. For the purpose of this rule, unless otherwise referenced, the AHJ is designated as the State Fire Marshal.

3.3. “Agricultural and wildlife fireworks” means fireworks devices distributed to farmers, ranchers and growers through a wildlife management program administered by the United States Department of the Interior or the Division of Natural Resources of this state.

3.4. “Amusement park” means any person or organization which holds a permit for the operation of an amusement ride or amusement attraction under article ten, chapter twenty-one of this code;

3.5. “APA Standard 87-1” means the APA Standard 87-1 published by the American Pyrotechnics Association, as amended, and incorporated by reference into Title 49 of the Code of Federal Regulations;

3.6. “Articles pyrotechnic” means pyrotechnic devices for professional use that are similar to consumer fireworks in chemical composition and construction but not intended for consumer use, that meet the weight limits for consumer fireworks but are not labeled as such, and that are classified as UN0431 or UN0432 under 49 C.F.R. §172.101 (2014).

3.7. “Consumer Fireworks Retail Sales” or “CFRS” means any location where consumer fireworks are sold at retail to the general public.

3.8. “Consumer Fireworks Retail Sales Area” or “CFRS Area” means the portion of a consumer fireworks retail sales facility or store, including the immediately adjacent aisles, where consumer fireworks are located for the purpose of retail display and sale to the public.

3.9. “Consumer Fireworks Retail Sales Facility” or “CFRS Facility” means a permanent or temporary building or structure, CFRS stand, tent, canopy, or membrane structure that is used primarily for the retail display and sale of consumer fireworks to the public.

3.10. “Consumer Fireworks Retail Sales Stand” or “CFRS Stand” means a location that has a floor area not greater than 800 ft² (74 m²), other than tents, canopies, or membrane structures, that is used primarily for the retail display and sale of consumer fireworks to the public. CFRS Stands can include, but are not limited to, small buildings, plywood or sheet metal structures, manufactured buildings, semitrailers, trailers, shipping containers, or similar structures or facilities.

3.11. “Consumer Fireworks Storage Building” means a building in which finished consumer fireworks are received, stored, and shipped but in which no manufacturing is performed.

3.12. “Consumer fireworks” means small fireworks devices that are designed to produce visible effects by combustion that are required to comply with the construction, chemical composition and labeling regulations promulgated by the United States Consumer Product Safety Commission under 16 C.F.R. Parts 1500 and 1507 (2014), and that are listed in APA Standard 87-1. Consumer fireworks do not include sparkling devices, novelties, toy caps or model rockets. Consumer fireworks are normally classified as Explosives, 1.4G and described as Fireworks, UN 0336 by the U.S. Department of Transportation (U.S. DOT) (see Annex C). Some small devices designed to produce audible effects are included, such as whistling devices, ground devices containing 0.8 gr (50 mg) or less of explosive composition (salute powder), and aerial devices containing 2 gr (130 mg) or less of explosive composition (salute powder) per explosive unit. Consumer fireworks that comply with the construction, chemical composition, and labeling regulations of the U.S. DOT for fireworks, 49 CFR 172, and the U.S. Consumer Product Safety Commission (CPSC) as set forth in CPSC 16 CFR 1500 and 1507, are not considered to be explosive materials for purposes of this rule.

3.13. “Consumer fireworks certificate” means a certificate issued under section five, article three-e, chapter twenty-nine of the code of West Virginia.

3.14. “Display fireworks” means large fireworks to be used solely by professional pyro-technicians licensed by the State Fire Marshal and designed primarily to produce visible or audible effects by combustion, deflagration or detonation and includes, but is not limited to, salutes containing more than two grains (one hundred thirty milligrams) of explosive materials, aerial shells containing more than forty grams of pyrotechnic compositions and other display pieces that exceed the limits of explosive materials for classification as consumer fireworks and are classified as Explosives, 1.3G by the U.S. Department of Transportation (U.S. DOT), and/or fireworks UN0333, UN0334, or UN0335 under 49 C.F.R. §172.101 (2014).

3.15. “Distributor” means a person who sells fireworks to wholesalers and retailers for resale in this state.

3.16. “Distribution Facility” means a place where consumer fireworks are received, stored, picked, packaged and packed into shipping cartons, and shipped to other distribution facilities, manufacturing facilities, or CFRS facilities or stores.

3.17. “Division 1.3 explosive” means that term as defined in 49 C.F.R. §173.50 (2014).

3.18. “Division 1.4 explosive” means that term as defined in 49 C.F.R. §173.50 (2014).

3.19. “DOT-Approved Packaging” means packaging for fireworks complying with the regulations of the U.S. Department of Transportation (DOT), Title 49, Part 178. DOT-approved packaging for consumer fireworks typically consists of sealed fiberboard cartons that have been tested and certified to meet the performance requirements specified in Part 178 of 49 CFR. Cartons are required to be marked and labeled in compliance with DOT regulations to indicate that fireworks are contained in the packaging.

3.20. “Explosive composition” means a chemical or mixture of chemicals that produces an audible effect by deflagration or detonation when ignited.

3.21. “Explosive material” means explosives, blasting agents and detonators.

3.22. “Fire Marshal” means the State Fire Marshal or his/her designee.

3.23. “Firecracker” or “salute” is a device that consists of a small paper wrapped or cardboard tube containing not more than fifty (50) milligrams of pyrotechnic composition and that produces, upon ignition, noise, accompanied by a flash of light.

3.24. “Firework” or “Fireworks” means any composition or device designed for the purpose of producing a visible or audible effect by combustion, deflagration, or detonation. Fireworks consist of consumer fireworks, display fireworks and special fireworks. The following items are excluded from the definition of fireworks: Model rockets; Sparkling devices; Novelties; Toy pistol caps; Emergency signal flares; Matches; Fixed ammunition for firearms; Ammunition components intended for use in firearms, muzzle loading cannons, or small arms; Shells, cartridges, and primers for use in firearms, muzzle loading cannons, or small arms; Indoor pyrotechnics special effects material; or M-80s, cherry bombs, silver salutes, and any device banned by the federal government.

3.25. “Indoor pyrotechnics special effects material” means a chemical material that is clearly labeled by the manufacturer as suitable for indoor use (as provided in NFPA 1126).

3.26. “Inhabited Building” or “Inhabited Structure” means any building or structure regularly used in whole or part as a place of human habitation.

3.27. “License” means an authority granted to a person by the State Fire Marshal to perform certain tasks or work in an area regulated by the State Fire Marshal.

3.28. “Manager” means an individual accountable for supervising operations, tasks, staff and areas of a Consumer Fireworks Retail Sales location.

3.29. “Manufacturer” means a person engaged in the manufacture of fireworks. A person may produce or transport a firework that is a new explosive and that is either a division 1.3 explosive or division 1.4 explosive if the person first meets the requirements of 49 C.F.R. §173.56(2)(j) (2014).

3.30. “Model rocket” means that term as defined in National Fire Protection Association Standard 1122, “Code for Model Rocketry”.

3.31. “New explosive” means that term as defined in 49 C.F.R. §173.56 (2014).

3.32. “NFPA 495” means National Fire Protection Association Standard 495, “Explosive Materials Code (~~2013~~ 2018 Edition).

3.33. “NFPA 1123” means National Fire Protection Association Standard 1123, “Code for Fireworks Display” (~~2014~~ 2018 Edition).

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

3.35. “NFPA 1126” means National Fire Protection Association Standard 1126, “Standard for the Use of Pyrotechnics Before a Proximate Audience” (~~2011~~ 2021 Edition).

3.36. “Novelties” means that term as defined under APA standard 87-1, section 3.2; but shall not include toy pistols, toy caps, toy canes, toy guns or other similar devices.

3.37. “Organization” means an association, a partnership, a limited partnership, a limited liability company, a corporation or any other group or combination acting as a unit.

3.37. “Packaged Fireworks Merchandise” means a consumer fireworks device or group of consumer fireworks devices that has been packaged within an unperforated container or packaging material by the manufacturer, distributor, or seller for retail display and sale as a unit. Packaged fireworks merchandise is generally fireworks items or groups of fireworks items that have been packaged by the manufacturer or distributor before they are offered for sale to the consumer. The packaging arrangement completely encapsulates the fireworks item or items within paperboard, cardboard, plastic wrap, or similar materials or combinations of materials. Such encapsulation ensures that a person must puncture, tear, unseal, or break open the package or otherwise damage or destroy the packaging materials in order to gain access to, and directly handle, each individual fireworks item to expose its fuse.

3.38. “Party popper” means a small plastic or paper item containing not more than sixteen (16) milligrams of explosive composition that is friction sensitive. A string protruding from the device is pulled to ignite it, expelling paper streamers and producing a small report.

3.39. “Permanent” as applied to buildings or structures: a building or structure affixed to a foundation on a site and having fixed utility connections, that is intended to remain on the site for more than 180 consecutive calendar days.

3.40. “Permit” means a document issued by the State Fire Marshal giving temporary approval to conduct an activity regulated by the State Fire Marshal.

3.41. “Person” means an individual or the responsible person for an association, an organization, a partnership, a limited partnership, a limited liability company, a corporation or any other group or combination acting as a unit.

3.42. “Public display of fireworks” means a public entertainment feature that is advertised to the general public or is on public property that includes the display or discharge of fireworks.

3.43. “Pyrotechnic composition” means a mixture of chemicals that produces a visible or audible effect by combustion rather than deflagration or detonation. Pyrotechnic compositions will not explode upon ignition unless severely confined.

3.44. “Registration” means a lawfully issued certificate of registration by the State Fire Marshal.

3.45. “Responding fire department” means the paid fire department or volunteer fire department that renders fire protection services to a political subdivision.

3.46. “Retail Sales” means the retail display and sale of merchandise to the public within a mercantile occupancy.

3.47. “Retailer” means a person who purchases fireworks for resale to consumers.

3.48. “Sparkling devices” means “ground or handheld sparkling devices” as that phrase is defined under APA 87-1, sections 3.1.1 and 3.5.

3.49. “Special effects” means a combination of chemical elements or chemical compounds capable of burning independently of the oxygen of the atmosphere and designed and intended to produce an audible, visual, mechanical or thermal effect as an integral part of a motion picture, radio, television, theatrical or opera production or live entertainment.

3.50. “Special fireworks” means fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation, including firecrackers containing more than one hundred thirty (130) milligrams of explosive composition, aerial shells containing more than forty (40) grams of pyrotechnic composition, and other exhibition display items that exceed the limits for classification as consumer fireworks.

3.51. “Store” means a building classified as a mercantile occupancy that contains a variety of merchandise and that is not used primarily for the retail sales of consumer fireworks.

3.52. “Storage Facility” means any building, structure, magazine, igloo, barn, trailer, semitrailer or other mobile property in which consumer fireworks, display fireworks, special fireworks, or other pyrotechnics are stored, but in which no processing or manufacturing is performed.

3.53. “Temporary” as applied to buildings or structures: a building or structure not meeting the definition for permanent structure. As applied to electrical power and wiring: electrical service in use or in place for a period of 90 consecutive calendar days or less. Examples of temporary structures without limitation include tents, shanties, or other forms of temporary shelter, housing or storage.

3.54. “Toy caps” means that term as defined under APA 87-1, section 3.3.

3.55. “Wholesaler” means any person, including any dealer, distributor, or jobber, who sells consumer fireworks to a retailer or any other person solely for resale in this state. It shall also include any person who sells articles of pyrotechnics, display fireworks, and special effects to a person licensed by the State Fire Marshal to possess and use those devices.

§103-4.4. Adoption of Standards.

4.1. National standards. For the enforcement of this rule the NFPA codes and standards as cited in this rule are hereby incorporated by reference and shall have the same force and effect as if set out in verbatim in this rule. Those are including, but not limited to, the following:

4.1.a. NFPA 495 Explosive Materials Code (~~2013~~ 2018 Ed.).

4.1.b. NFPA 1123 Code for Fireworks Display (~~2014~~ 2018 Ed.).

4.1.c. NFPA 1124 Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles (2006 Ed.).

4.1.d. NFPA 1126 Standard for the Use of Pyrotechnics Before a Proximate Audience (~~2014~~ 2021 Ed.).

4.1.e. APA Standard 87-1.

4.2. State standards. W. Va. Legislative Rule 87 C.S.R. 1 *et seq.* "Fire Code"

§103-4.5. Consumer Fireworks Certification; Exemptions.

5.1. *Consumer fireworks certificate required.*

5.1.a. A retailer may not sell consumer fireworks unless the retailer is certified under this Rule.

5.1.b. To be certified to sell consumer fireworks a retailer shall:

5.1.b.1. Submit an application to the State Fire Marshal;

5.1.b.2 Submit with the application a copy of his or her current business registration certificate;

5.1.b.3 Pay a fee of \$500.00 for each temporary retail sales location and \$1000.00 for each permanent retail sales location to the State Fire Marshal;

5.1.b.4 Provide the State Fire Marshal proof that the retailer maintains at all times public liability and product liability insurance with minimum coverage limits of \$1 million dollars to cover losses, damages or injuries that might result from selling consumer fireworks;

5.1.b.5. Provide other incidental information as the State Fire Marshal may require in the application process;

5.1.b.6. Submit at least one (1) certificate with the CFRS application to the State Fire Marshal and all other certificates shall be maintained on site and produced upon request;

5.1.b.7. The sales site must comply with all applicable local zoning and land use rules.

5.1.c. A consumer fireworks certificate is valid from no earlier than April 1st and expires no later than March 31st of the next calendar year.

5.1.d. A consumer fireworks certificate is not transferable.

5.1.e. A retailer shall post the certificate in a conspicuous place at the location of the business.

5.1.f. A separate certificate is required for each location of the business.

5.1.g. A certificate holder may also sell sparkling devices and novelties at the same location without additionally obtaining a sparkling devices and novelties registration.

5.1.h. A retailer who sells consumer fireworks shall comply with the regulations provided in NFPA 1124.

5.1.i. A retailer who sells consumer fireworks shall comply with applicable regulations provided in NFPA 1124 and NFPA 495 as applicable.

5.1.i.1. All consumer fireworks and pyrotechnic products not on display for retail sale shall be stored in accordance with NFPA 1124.

5.1.i.2. Any outdoor storage used to store consumer fireworks or pyrotechnic products shall obtain a valid permit from the State Fire Marshal.

5.1.j. A retailer shall sell the consumer fireworks only from a permanent building or structure that meets the specifications in NFPA 1124 or a temporary facility or structure that meets the specifications of NFPA 1124.7.3.5.

5.1.k. Smoking shall not be permitted at any CFRS Building, Facility, Store, Stand, Area or within 50 feet thereof.

5.1.k.1. Conspicuous signs indicating "FIREWORKS – NO SMOKING" shall be posted at frequent intervals inside the location, outside the location and within the vicinity to provide adequate notice of the prohibition to the public.

5.1.l. A retailer shall not be authorized within any concourse of any mall.

5.1.m. Retail displays of items which are exclusively novelties must be segregated from displays of items which are exclusively consumer fireworks. Items which are a combination of novelties and consumer fireworks shall be classified and regulated as consumer fireworks and treated as such for all purposes..

5.1.n. Any fees collected pursuant to this section shall be deposited in the State Fire Marshal Fees Fund established by the provisions of section twelve-b, article three, chapter twenty-nine of this code.

5.1.o. Notwithstanding any provision of the law or this rule to the contrary, no retailer may offer consumer fireworks for sale before June 1, 2016.

5.2. Requirements for Temporary Retail Sales Location.

5.2.a. A retailer may sell consumer fireworks from a temporary structure under the following conditions:

5.2.a.1. A temporary structure may not be larger than 2,500 ft² (232 m²) square feet.

5.2.a.2. CFRS stands greater than 800 ft² (74 m²) in total area must meet the requirements for a permanent structure.

5.2.a.3. CFRS stands shall not be authorized within any structure, whether new or existing, whether occupied or unoccupied.

5.2.a.4. CFRS stands shall not include vehicles, such as vans, buses, recreational vehicles, motor homes, travel trailers, trucks, and automobiles.

5.2.a.5. All tent fabric shall meet the flame propagation performance criteria of Test Method 2, as required in NFPA 701, Standard Methods of Fire Tests for Flame Propagation of Textiles and Films.

5.2.a.6. All temporary retail sales locations must meet the following safety distances:

7.4.7.2 Temporary Facilities. Temporary CFRS facilities shall be located as specified in Table 7.4.7.2.

Table 7.4.7.2 Temporary CFRS Facilities — Minimum Separation Distances

	Buildings		Combustibles ^a		Tents ^b		Vehicle Parking		Stands ^c		Storage of Consumer Fireworks	
	ft	m	ft	m	ft	m	ft	m	ft	m	ft	m
Tents^b	20	6.1	20	6.1	20	6.1	10	3.05	20	6.1	20	6.1
Stands^c	20	6.1	10	3.05	20	6.1	10	3.05	5 ^d	1.5 ^d	20	6.1

^a The required clearances to combustibles shall also comply with 7.4.6.1.

^b *Tents* refers to temporary retail sales of consumer fireworks in tents, canopies, and membrane structures.

^c *Stands* refers to temporary CFRS stands.

^d Where stands are separated from each other by less than 20 ft (6.1 m), the aggregate area of such stands shall not exceed 800 ft² (74 m²).

5.2.a.7. Fireworks tents/stands shall be located at least fifteen feet (15') away from any federal/state/county/city highway or street.

5.2.b. Consumer Fireworks Certificates issued to a temporary retail sales location shall be valid for a period of no more than ninety (90) consecutive days.

5.2.b.1. A temporary retail sales location may not obtain more than two (2) consumer fireworks certificates in a year as defined by this rule.

5.2.b.2. There may be only one (1) temporary structure for each consumer fireworks certificate granted under this rule.

5.3. *Requirements for Permanent Retail Sales Location.*

5.3.a. A retailer may sell consumer fireworks from a permanent structure if the structure meets the requirements of any of the following subdivisions:

5.3.a.1. For the purpose of applying the requirements of this rule, permanent CFRS facilities and stores constructed prior to the effective date of this rule and in which the retail sales of consumer fireworks have not been conducted either seasonally or year-round within one year prior to the effective date of this code shall be considered to be new.

5.3.a.2. An automatic sprinkler system designed for an Ordinary Hazard, Group 2 occupancy and installed in accordance with NFPA 13, Standard for the Installation of Sprinkler Systems, shall be

provided throughout permanent CFRS facilities and stores in which CFRS are conducted in the following buildings:

5.3.a.2.i. New buildings greater than 6000 ft² (557.2 m²) in area;

5.3.a.2.ii. Existing buildings greater than 7500 ft² (694 m²) in area.

5.3.a.3. Portable generators shall be prohibited from use inside all CFRS facilities and stores.

5.3.a.4. Unless exempt from the requirements of NFPA 1124, all Consumer Fireworks Retail Sales (CFRS) Facilities and Stores shall have a complete electrical inspection of all electrical service, wiring, supply/loads and all other electrical devices and appliances. The inspection shall be performed by a West Virginia licensed and West Virginia certified commercial electrical inspector. A copy of the electrical inspection report shall be submitted to the State Fire Marshal with the certificate application.

5.3.a.5. An approved electrically supervised fire alarm system is required in all Permanent Consumer Fireworks Retail Facilities with a sales area, including storage area(s) within the same building, totaling 3000 ft² or greater.

5.3.a.6. The sales site must comply with all applicable local zoning and land use rules.

5.3.a.7. The retailer holds a valid business registration certificate and all other legal requirements of a doing business in this State.

5.3.a.8 For purposes of this subdivision, a retailer includes a resident wholesaler who supplied consumer fireworks prior to the effective date of this rule.

5.4. *Delegation of Authority.*

5.4.a. The State Fire Marshal shall inspect all temporary and permanent structures in which fireworks are sold. The State Fire Marshal may delegate this responsibility to a local fire department with jurisdiction over the structure, subject to the policies and procedures of the State Fire Marshal.

5.4.b. This rule does not affect the authority of the governing body of a municipality to prohibit or regulate the use of consumer fireworks within its boundaries.

§103-4-6. Storage of Fireworks and Related Explosive Materials.

6.1. All new and existing storage facilities for consumer fireworks, display fireworks, special fireworks, or other pyrotechnic material shall meet the following requirements:

6.1.a. Each storage facility shall obtain a permit from the State Fire Marshal prior to any use or storage takes place. To receive a permit the applicant shall:

6.1.a.1. Submit an application providing all forms and documentation to the satisfaction of the State Fire Marshal;

6.1.a.2. Pay the required fee of \$100.00 per storage facility;

6.1.a.3. Provide copies of all applicable and required licenses and permits.

6.1.b. A permit issued under this Section is not transferrable.

6.1.c. permit issued under this Section shall be valid for a period of no more than one (1) year.

6.1.d. A storage facility shall meet all requirements set forth in NFPA 1124.

6.1.e. Smoking shall not be permitted in the storage facility or within 50 feet of the storage facility. Conspicuous signs indicating "FIREWORKS – NO SMOKING" shall be posted at frequent intervals throughout the storage facility.

6.1.f. Each fire department providing emergency services to any storage facility shall be notified by the permit holder in writing of the existence of the storage facility. The notice shall include information as to the type of explosives and explosive hazards that are stored at the storage facility.

6.1.g. The land surrounding each storage facility shall be kept clear of combustibles for a distance of at least 25 feet on all sides

6.1.h. Each storage facility shall be securely locked in accordance with NFPA 1124.

6.1.i. All electrical wiring and fixtures shall meet the requirements of the National Electrical Code, Class II, Group E, Division I locations;

6.1.j. All Heating, Ventilation and Air Conditioning shall meet the requirements of the State Fire Code. No open flame heating units are permitted.

6.2. Any fees collected pursuant to this section shall be deposited in the State Fire Marshal Fees Fund established by the provisions of section twelve-b, article three, chapter twenty-nine of this code and §103C.S.R.2 – 3 *et seq.*

§103-4-7. Public Fireworks Display Permit.

7.1. Any municipality, county, fair association, amusement park or other organization shall have a permit to present a public display of fireworks from the State Fire Marshal.

7.2. To receive a permit, a municipality, county, fair association, amusement park, or other organization shall:

7.2.a. Submit an application providing all required forms and documentation to the satisfaction of the State Fire Marshal;

7.2.b. Pay the required fee not to exceed \$50.00;

7.2.c. Provide the State Fire Marshal proof that the applicant maintains at all times public liability and product liability insurance with minimum coverage limits of \$1 million dollars to cover losses, damages or injuries that might result from the public display of fireworks;

7.2.d. Provide proof that the event will be conducted by a competent pyrotechnician(s) licensed pursuant to Section 8 of this Rule by the State Fire Marshal;

7.2.e. Provide verification of the source and/or manufacturer of the fireworks or pyrotechnics to be used during the event to ensure the supplier is properly credentialed in the State of West Virginia;

7.2.f. Provide verification that the municipality, county, fair association, amusement park and other organizations have given written notice to the local police and fire authorities at least five days prior to the display for which the permit is sought.

7.2.g. Provide verification that display shall be operated by a competent operator licensed or certified as to competency by the State Fire Marshal and shall be of such composition, character, and so located, discharged or fired so as to be safe in the opinion of the chief of the fire department serving the community or area where such display is being held.

7.3. A permit issued under this section is not transferable.

7.4. The permittee shall require a bond from the licensee in a sum not less than \$1,000 conditioned on compliance with the provisions of this Rule and the rules of the State Fire Marshal except where the licensee is an insured government entity.

7.5. All fireworks or pyrotechnic devices delivered or stored prior to the day of the display shall be stored in an Outdoor Magazine: Type 1, 2, 4 or 5, only as defined by NFPA 1124.

7.5.a. Any such magazine shall have a valid permit from the State Fire Marshal pursuant to Section 6 of this Rule.

7.6. Any fees collected pursuant to this section shall be deposited in the State Fire Marshal Fees Fund established by the provisions of section twelve-b, article three, chapter twenty-nine of this code and §103C.S.R.2 – 3 *et seq.*

§103-4-8. Pyrotechnic Licensing, Examinations Required.

8.1. Any person engaged in the business of conducting a public display of fireworks or pyrotechnics shall have a license issued from the State Fire Marshal.

8.2. To receive a pyrotechnic license, a person shall:

8.2.a. Submit an application providing all required forms and documentation to the satisfaction of the State Fire Marshal;

8.2.b. Pay the required fee of \$20.00;

8.2.c. Demonstrate through training, skill and experience a minimum proficiency in the field to the satisfaction of the State Fire Marshal;

8.2.d. For new licensure, the applicant must successfully complete and pass an examination administered by the State Fire Marshal;

8.2.e. Provide copies of all required licenses and permits; and

8.2.f. Provide the results of a criminal background examination by the West Virginia State Police Criminal Investigation Bureau and the Federal Bureau of Investigation. If the applicant has been fingerprinted within the previous thirty-six (36) months, then the State Fire Marshal may accept the previous fingerprints or require new fingerprints. The cost of fingerprinting and fingerprint analysis shall be paid by the applicant.

8.2.f.1. *Provided*, in lieu of the requirements of a criminal background check as provided herein, the State Fire Marshal may accept a valid “Employee Possessor/Responsible Person” clearance as issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives where applicable.

8.3. Applicants which do not meet the minimum requirements based on knowledge, training, skill, experience, or examination, but who are desirous of assisting a licensed Pyrotechnician, may request a Pyrotechnician In-Training License.

8.3.a. The State Fire Marshal shall not require a Pyrotechnician In-Training to produce documentation of training, skill or experience, but shall require:

8.3.a.1. An application providing all required information to the satisfaction of the State Fire Marshal;

8.3.a.2. A fee of \$20.00;

8.3.a.3. Provide an affidavit to the State Fire Marshal which verifies that they have not been convicted of any criminal act, or are the subject of any legal proceeding, which would bar or prohibit the applicant from possessing explosive or pyrotechnic material.

8.3.b. All persons employing or utilizing a Pyrotechnician In-Training shall produce, upon request of the State Fire Marshal, an official listing of all Pyrotechnicians In-Training employed or utilized.

8.3.c. A Licensed Pyrotechnician shall not supervise more than five (5) Pyrotechnicians In-Training at any one time.

8.4. A license issued under this Section is not transferrable.

8.5. A pyrotechnic license shall be valid for a period of no more than one (1) year.

8.6. Any person licensed under this Section shall adhere to the provisions of NFPA 495, 1123, 1124 and 1126 where applicable.

8.7. Any fees collected pursuant to this section shall be deposited in the State Fire Marshal Fees Fund established by the provisions of section twelve-b, article three, chapter twenty-nine of this code and §103C.S.R.2 – 3 *et seq.*

§103-4.9. Registration of Manufactures, Wholesalers and Distributors.

9.1. Any person engaged in the manufacturing of fireworks and/or explosive materials in this state must be properly registered with the State Fire Marshal.

9.1.a. To be registered as a manufacturer, a person shall:

9.1.a.1. Submit an application providing all required forms and documentation to the satisfaction of the State Fire Marshal;

9.1.a.2. Pay the required fee as set forth in §103 C.S.R. 2 *et seq.*;

9.1.a.3. Provide copies of all required licenses and permits;

9.1.a.4. Provide the State Fire Marshal proof that the applicant maintains at all times public liability and product liability insurance with minimum coverage limits to cover losses, damages or injuries that might result from the manufacturing of explosive materials; and

9.1.a.5. Provide a site plan, a description of the manufacturing process, and any other documentation or information as requested, to provide the State Fire Marshal with sufficient details to allow a meaningful review process.

9.1.b. A manufacturer's registration issued under this Section is not transferrable.

9.1.c. A manufacturer's registration shall be valid for a period of no more than one (1) year.

9.1.d. Manufacturers shall adhere to the provisions of NFPA 495, 1123, 1124 and 1126 where applicable.

9.1.e. Manufacturers solely engaged in the manufacture of explosive and/or pyrotechnic materials as contemplated by NFPA 1123, 1124, or 1126, are designated as "limited, site specific" for the purpose of enforcement.

9.1.f. Smoking shall not be permitted in the facility or within 50 feet of the storage facility. Conspicuous signs indicating "FIREWORKS – NO SMOKING" shall be posted at frequent intervals throughout the facility.

9.1.g. Any fees collected pursuant to this section shall be deposited in the State Fire Marshal Fees Fund established by the provisions of section twelve-b, article three, chapter twenty-nine of this code.

9.2. Any person engaged in the wholesaling or distribution of fireworks and/or explosive materials in this state must be properly registered with the State Fire Marshal.

9.2.a. To be registered as a wholesaler or distributor, a person shall:

9.2.a.1. Submit an application providing all required forms and documentation to the satisfaction of the State Fire Marshal;

9.2.a.2. Pay the required fee of \$500.00;

9.2.a.3. Provide copies of all required licenses and permits; and

9.2.a.4. Provide the State Fire Marshal proof that the applicant maintains at all times public liability and product liability insurance with minimum coverage limits to cover losses, damages or injuries that might result from the wholesale distribution of explosive materials; and

9.2.b. Any wholesaler or distributor may sell at wholesale in this state such fireworks as are not herein prohibited to a resident certified retailer or an out-of-state retailer in accordance with regulation of the United States DOT covering the transportation of explosives and other dangerous articles.

9.2.c. A wholesaler or distributor registration issued under this Section is not transferrable.

9.2.d. A wholesaler or distributor registration shall be valid for a period of no more than one (1) year.

9.2.e. A wholesaler or distributor shall adhere to the provisions of NFPA 495, 1123, 1124 and 1126 where applicable.

9.2.f. All sales shall be recorded and shall include the name, address, city, state and zip code, business license number and tax department number of each purchase.

9.2.g. A daily inventory of fireworks shall be maintained for each location in this state.

9.2.h. All vehicles transporting fireworks from a distribution facility in this state shall be placarded in accordance with U.S. DOT requirements. Each vehicle used to transport fireworks shall meet the requirements of NFPA 1124.

9.2.i. Smoking shall not be permitted in the facility or within 50 feet of the storage facility. Conspicuous signs indicating "FIREWORKS – NO SMOKING" shall be posted at frequent intervals throughout the facility.

9.2.j. A fire alarm system with complete smoke detection shall be installed throughout the storage facility in accordance with the State Fire Code (87 C.S.R. 1);

9.2.k. Each fire department providing emergency services to any storage facility shall be notified in writing of the existence of the storage facility. The notice shall include information as to the type of explosives and explosive hazards that are stored at the storage facility. Pre-fire planning shall be completed by the fire department prior to operating the facility;

9.2.l. All electrical wiring and fixtures shall meet the requirements of the National Electrical Code, Class II, Group E, Division I locations;

9.2.m. All Heating, Ventilation and Air Conditioning shall meet the requirements of this rule. No open flame heating units are permitted.

9.2.n. Any fees collected pursuant to this section shall be deposited in the State Fire Marshal Fees Fund established by the provisions of section twelve-b, article three, chapter twenty-nine of this code and §103C.S.R.2 – 3 *et seq.*

§103-4-10. Sparkling devices and novelties registration.

10.1. A person may not sell sparkling devices or novelties without being registered with the State Fire Marshal.

10.1.a. To be registered with the State Fire Marshal, the person shall:

10.1.a.1. Submit an application to the State Fire Marshal;

10.1.a.2. Pay the required fee of \$15.00 per retail location; and

10.1.a.3. Provide verification that the retailer holds a valid business registration certificate and meets all other legal requirements of doing business in this State.

10.1.b. A registration is valid for the calendar year or any fraction thereof and expires on December 31 of each year.

10.1.c. A registration is not transferable.

10.1.d. A person shall post the registration in a conspicuous place at the location of the business.

10.1.e. A separate registration is required for each location.

10.1.f. The fee assessed by this section shall be retained by the State Fire Marshal and expended to offset costs incurred in performing the duties imposed by the provisions of this Rule.

§103-4-11. Prohibited Conduct.

11.1. A person may not intentionally ignite, discharge or use consumer fireworks on public or private property without the express permission of the owner to do so.

11.2. A person may not intentionally ignite or discharge any consumer fireworks or sparkling devices within or throw the same from a motor vehicle or building.

11.3. A person may not intentionally ignite or discharge any consumer fireworks or sparkling devices into or at a motor vehicle or building, or at any person or group of people.

11.4. A person may not intentionally ignite or discharge any consumer fireworks or sparkling device while the person:

11.4.a. Is under the influence of alcohol;

11.4.b. Is under the influence of any controlled substance;

11.4.c. Is under the influence of any other drug; or

11.4.d. Is under the combined influence of alcohol and any controlled substance or any other drug.

11.5. A person who is less than eighteen years of age may not purchase, nor offer for sale, consumer fireworks.

11.6. The provisions of this section shall be effective June 1, 2016.

11.7. No retailer may knowingly sell or offer for sale fireworks to any person who:

11.7.a. Is under the influence of alcohol;

11.7.b. Is under the influence of any controlled substance;

11.7.c. Is under the influence of any other drug;

11.7.d. Is under the combined influence of alcohol and any controlled substance or any other drug;

or

11.7.e. Is less than eighteen (18) years of age.

11.8. No fireworks retailer/operator/employee shall be under the influence of alcohol or any other drug or combined influence of alcohol and controlled substance or any other drug while engaged in the selling of fireworks.

§103-4-12. Exemptions.

12.1. This Rule does not prohibit any of the following:

12.1.a. The use of fireworks by railroads or other transportation agencies for signaling purposes or illumination;

12.1.b. The use of agricultural and wildlife fireworks;

12.1.c. The sale or use of blank cartridges for a theatrical performance, use by military organizations or signal or ceremonial purposes in athletics or sports; or

12.1.d. The possession, sale or disposal of fireworks incidental to the public display of fireworks by wholesalers or other persons who have a permit to possess, store and sell explosives from the Bureau of Alcohol, Tobacco, Firearms, and Explosives of the United States Department of Justice and the State Fire Marshal.

§103-4-13. Penalties.

13.1. Any person who violates any provision of this Rule shall be guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than \$100.00 nor more than \$500.00 pursuant to the provisions of W. Va. Code § 29-3E-12.

13.2. The State Fire Marshal shall seize, take, remove and dispose of at public auction or destroy, or cause to be seized, taken or removed and disposed of at public auction, or destroyed at the expense of the owner, all stocks of fireworks or combustibles offered for sale, stored or held in violation of this article or an emergency or legislative rule promulgated hereunder.

13.3. In addition to any criminal penalties and/or seizures provided herein, any person who violates a provision of this Rule may be precluded from being granted any permit, registration, certification or licensure as issued by the State Fire Marshal or State Fire Commission for a period of up to five (5) years as determined by the State Fire Marshal pursuant to W.Va. Code § 29-3E-8(a)(5) and (8).

§103-4-14. Severability.

14.1. The sections of this rule are severable. Should any section be declared by judicial opinion unconstitutional or in any manner contrary to the laws of the State of West Virginia, that particular section shall be invalid and all other sections shall remain in full force and effect.