

Response to public comment for 103 CSR 04

Recommendation #1

- Proposed amendment that the rule be expanded to require every certified consumer fireworks retailer operation within the State of West Virginia to designate at least one (1) Certified Fireworks Compliance Officer (CFCO) who has successfully completed a West Virginia Consumer Fireworks Retail Compliance Program administered by the Office of the West Virginia State Fire Marshal
 - o The agency has chosen to decline incorporating or making the change suggested in the public comment.
 - o The rationale for the agency declining to incorporate or make the change suggested in the public comment is that the recommended action needs to be more fully vetted to understand the number of officers that would need to be certified and designated and any costs associated with the same.

Recommendation #2

- Proposed amendment to the rule to clarify that all organized public displays of fireworks require a permit issued by the Office of the State Fire Marshal regardless of whether the fireworks utilized are classified as consumer fireworks, display fireworks, special effects, or another recognized classification.
 - o The agency has chosen to decline incorporating or making the suggested change in the public comment.
 - o The rationale for the agency declining to incorporate or make the change suggested in the public comment is that the suggested change requires further vetting to determine if a statutory amendment is necessary to achieve what is being suggested for the proposed change to the rule.



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Fire Marshals Association of West Virginia Public Comment on Proposed Legislative Rule 103CSR4 Regulation of Fireworks and Related Explosive Materials

Recommendation No. 1

The Fire Marshals Association of West Virginia respectfully recommends that the proposed amendments to Legislative Rule 103CSR4 be expanded to require every certified consumer fireworks retailer operating within the State of West Virginia to designate at least one (1) Certified Fireworks Compliance Officer (CFCO) who has successfully completed a West Virginia Consumer Fireworks Retail Compliance Program administered by the Office of the West Virginia State Fire Marshal (OSFM).

The current legislative rule establishes comprehensive requirements governing the sale, storage, display, and handling of consumer fireworks within West Virginia. However, the rule does not require that any individual employed by or representing a certified consumer fireworks retailer possess formal training or demonstrate competency regarding the applicable provisions of West Virginia Code §29-3E, Legislative Rule 103CSR4, or the adopted National Fire Protection Association (NFPA) standards.

During compliance inspections conducted, our members routinely report encountering situations where operators are unfamiliar with the laws and regulations governing consumer fireworks retail operations. These knowledge gaps frequently result in preventable violations that could be significantly reduced through standardized education and training.

The Fire Marshals Association believes that establishing a Certified Fireworks Compliance Officer (CFCO) requirement would improve regulatory compliance by ensuring each certified retailer has a designated individual who has received standardized training directly from the OSFM. This individual would serve as the retailer's primary regulatory compliance representative and principal point of contact regarding inspections, enforcement actions, compliance assistance, and regulatory updates.

This recommendation is intended to promote education, consistency, and compliance rather than increase regulatory burden. By providing retailers with direct instruction on applicable laws and safety requirements, the program would reduce recurring violations, improve communication between the regulated community and the OSFM, and enhance public safety throughout West Virginia.

Accordingly, the Fire Marshals Association of West Virginia recommends that Legislative Rule 103CSR4 be amended to include provisions substantially similar to the following:

- Every certified consumer fireworks retailer shall designate at least one (1) Certified Fireworks Compliance Officer (CFCO).
- The designated CFCO shall successfully complete a West Virginia Consumer Fireworks Retail Compliance Program, developed and administered by the Office of State Fire Marshal, prior to the issuance of an initial Consumer Fireworks Certificate.
- The West Virginia Consumer Fireworks Retail Compliance Program shall provide instruction on the requirements of West Virginia Code §29-3E, Legislative Rule 103CSR4, applicable NFPA standards, operational requirements for consumer fireworks retail sales, inspection procedures, fire and life safety requirements, prohibited conduct, and other subjects determined necessary by the State Fire Marshal.
- Upon successful completion of the program, the State Fire Marshal shall issue a Certified Fireworks Compliance Officer (CFCO) certificate that shall remain valid for a period of two (2) years.
- Every certified retailer shall maintain at least one (1) individual holding a current and valid CFCO certificate throughout the duration of its Consumer Fireworks Certificate.
- In the event the designated CFCO leaves the retailer's employment or otherwise ceases serving in that capacity, the retailer shall notify the State Fire Marshal and designate a replacement within a reasonable period established by rule.
- The retailer shall identify its designated CFCO, including current contact information, as part of each initial and renewal application for a Consumer Fireworks Certificate.
- The cost of developing, administering, and providing the West Virginia Consumer Fireworks Retail Compliance Program shall be borne by the Office of State Fire Marshal. No fee shall be assessed to retailers or designated CFCO participants for attendance or certification.

The Fire Marshals Association of West Virginia believes this recommendation will improve statewide compliance through education, establish consistency among consumer fireworks retailers, provide a knowledgeable point of contact for regulatory matters, reduce preventable violations, and ultimately enhance the safety of the citizens of West Virginia, the fire service, and those engaged in the retail sale of consumer fireworks.

The Fire Marshals Association of West Virginia respectfully requests that the State Fire Marshal give favorable consideration to this recommendation during the rulemaking process and incorporate the proposed provisions into the final version of Legislative Rule 103CSR4.

For West Virginia's Protection,



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Fire Marshals Association of West Virginia Public Comment on Proposed Legislative Rule 103CSR4 Regulation of Fireworks and Related Explosive Materials

Recommendation No. 2

The Fire Marshals Association of West Virginia (FMAWV) respectfully submits the following comments regarding the proposed amendments to 103CSR4.

Although the current rulemaking primarily extends the legislative rule's sunset provision and adds a definition for Division 1.4G Pro Products, the Association believes this rulemaking presents an appropriate opportunity to clarify an issue that has resulted in differing interpretations regarding the permitting of organized public fireworks displays utilizing consumer fireworks.

The Association respectfully submits that 103CSR4 should expressly clarify that **all organized public displays of fireworks require a permit issued by the Office of the State Fire Marshal, regardless of whether the fireworks utilized are classified as consumer fireworks (1.4G), display fireworks (1.3G), special effects, or another recognized classification.**

This recommendation is not intended to expand the authority granted under West Virginia Code. Rather, it is intended to clarify what the Association believes is already required by Chapter 29-3E and to promote uniform statewide enforcement while preserving the public safety protections established by the Legislature.

Respectful Disagreement with the Current Administrative Interpretation

The Fire Marshals Association of West Virginia respectfully disagrees with the current administrative interpretation of the State Fire Marshal that a permit is not required when an organized public display utilizes only consumer fireworks.

It is the Association's position that West Virginia Code already requires a permit for any organized public display of fireworks, regardless of whether the fireworks being discharged are classified as consumer fireworks or display fireworks.

The Association respectfully submits that this conclusion is supported by the plain language of Chapter 29-3E, the statutory definitions adopted by the Legislature, accepted principles of statutory construction, and the overall public safety purpose of the permitting process.

Plain Language of West Virginia Code

West Virginia Code §29-3E-6(a) provides:

"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."

The Legislature specifically required permits for a **public display of fireworks**.

The statute does **not** require permits only for a public display of **display fireworks**, nor does it create an exemption when a public display utilizes consumer fireworks.

The Legislature deliberately selected the broader statutory term **fireworks**, and the Association respectfully submits that this language should be interpreted according to its ordinary meaning and the definitions adopted within Chapter 29-3E.

Statutory Definitions Support This Interpretation

Chapter 29-3E separately defines:

- Fireworks
- Consumer Fireworks
- Display Fireworks
- Public Display of Fireworks

The Legislature expressly included **consumer fireworks** within the statutory definition of **fireworks**.

Likewise, the statutory definition of a **public display of fireworks** utilizes the defined term **fireworks**, not **display fireworks**.

Accordingly, when these provisions are read together, the Association respectfully submits that organized public displays utilizing consumer fireworks fall within the permitting requirements established by West Virginia Code §29-3E.

Rules of Statutory Construction

Throughout Chapter 29-3E, the Legislature intentionally distinguishes between the terms **fireworks**, **consumer fireworks**, and **display fireworks**. These are separate statutory definitions with separate meanings.

When the Legislature chooses one defined term instead of another, one would generally presume that choice was intentional and should be given effect.

Section 29-3E-6 requires permits for a **public display of fireworks**, not merely a public display of **display fireworks**.

Interpreting the statute to require permits only when display fireworks are utilized effectively substitutes a narrower statutory definition for the broader language chosen by the Legislature.

Had the Legislature intended to exempt organized public displays utilizing consumer fireworks from the permitting process, it could have expressly created such an exemption. No such exemption appears anywhere within Chapter 29-3E, for reasons we believe to be in the interest of public safety.

Public Displays Versus Private Recreational Use

The Association recognizes that the Legislature intended to permit the lawful sale and private recreational use of consumer fireworks.

The Association is **not** advocating for additional regulation of individuals or families who lawfully purchase consumer fireworks for ordinary recreational use.

There is, however, a significant distinction between an individual discharging consumer fireworks in a private backyard setting for family and friends and an organization conducting an organized public fireworks display before hundreds or thousands of spectators.

Many organized public displays utilizing consumer fireworks are not limited to the ignition of a few individual devices. Rather, organizers frequently combine, sequence, or electronically ignite numerous consumer fireworks to create elaborate exhibitions intended to replicate professional fireworks displays.

These events often involve substantial quantities of fireworks discharged before a proximate audience.

As the scale and complexity of these displays increase, so do the associated risks.

The hazards presented by these events are determined not solely by the classification of the fireworks being discharged, but by the overall event itself, including the size of the audience, the firing methods employed, the suitability of the site, surrounding exposures, weather conditions, emergency planning, and the manner in which the display is conducted.

For these reasons, the Association respectfully submits that organized public displays utilizing consumer fireworks present risks fundamentally different from ordinary private recreational use.

National Fireworks Injury Data

The Association further believes the permitting requirement is supported by nationally recognized injury data.

According to the United States Consumer Product Safety Commission (CPSC), fireworks continue to cause thousands of injuries and multiple fatalities annually.

Recent reports document approximately:

- 14,700 emergency department-treated injuries and 11 deaths during 2024.
- 13,000 emergency department-treated injuries and 15 deaths during 2025.

Burn injuries remain the most common injury, with significant numbers involving the hands, face, eyes, and head.

The CPSC has consistently advised that the safest way to enjoy fireworks is by attending professionally managed public displays rather than personally discharging consumer fireworks.

Although these statistics encompass all fireworks incidents rather than only organized public displays, they nevertheless demonstrate that consumer fireworks remain capable of causing serious injury, permanent disability, and death.

Importance of the Statutory Permit Process

Members of the Fire Marshals Association of West Virginia and the public have observed organized public displays utilizing consumer fireworks where conditions raised legitimate fire and life safety concerns.

These observations demonstrate that the hazards associated with organized public fireworks displays are influenced not only by the classification of the fireworks being discharged, but also by the planning, setup, supervision, and execution of the event.

The Association recognizes that many organizations conduct fireworks displays responsibly and with safety as a priority. However, the statutory permitting process exists because not every event is planned or conducted with the same level of expertise or oversight.

The Association respectfully submits that **Chapter 29-3E establishes one permitting process for public displays of fireworks that applies to any public display, regardless of classification of the products.**

Within the permitting process, the local fire chief plays a critical role in this statutory review.

Before a permit may be issued, the local fire chief must review the proposed display and certify that the location is suitable for the display.

This requirement ensures that the official most familiar with local conditions, available fire protection resources, surrounding exposures, and emergency response capabilities has an opportunity to evaluate the proposed event before it occurs.

The Association respectfully submits that this local review represents one of the Legislature's most significant public safety safeguards.

It provides an independent evaluation of whether the proposed display can be safely conducted while ensuring coordination between the event organizer, the local fire department, and the Office of the State Fire Marshal.

The Association further submits that these statutory safeguards apply equally to organized public displays utilizing consumer fireworks and display fireworks because **the Legislature established a permit requirement for the public display of fireworks, NOT a permit for the public display of display fireworks.**

Whether the display utilizes consumer fireworks, display fireworks, or a combination of both, the purpose of the permit review remains the same, to verify that the proposed event can be conducted safely before members of the public are exposed to unnecessary risk.

Interpreting Chapter 29-3E to exempt organized public displays utilizing consumer fireworks effectively removes these statutory safeguards.

Such an interpretation bypasses not only the review by the Office of the State Fire Marshal but also the Legislature's requirement that the local fire chief certify that the location is suitable and that qualified persons will conduct the operation.

Need for Regulatory Clarification

Because differing interpretations currently exist regarding the application of Chapter 29-3E, the Association respectfully submits that clarification within 103CSR4 is appropriate and necessary.

Clarifying the rule would:

- Promote consistent statewide enforcement.
- Provide clear guidance to local officials.
- Provide certainty to event organizers.
- Preserve the statutory role of local fire chiefs.
- Improve fire and life safety.
- Better reflect the plain language and legislative framework established by Chapter 29-3E.

Recommended Rule Language

The Fire Marshals Association of West Virginia respectfully recommends that 103CSR4 be amended by adding language substantially similar to the following:

Any organized public display of fireworks, as defined by West Virginia Code §29-3E, shall require a permit issued by the Office of the State Fire Marshal regardless of whether the fireworks utilized are classified as consumer fireworks, display fireworks, special effects, or any other classification recognized under West Virginia law. Such displays shall comply with all applicable provisions of Chapter 29-3E, including permit requirements, operator qualifications, and all applicable safety requirements.

Conclusion

The Fire Marshals Association of West Virginia respectfully submits that this recommendation does not seek to expand the authority granted by Chapter 29-3E.

Rather, it seeks to clarify what the Association believes is already required by the plain language of the statute.

The Legislature required permits for **public displays of fireworks**. Consumer fireworks are expressly included within the statutory definition of **fireworks**, and Chapter 29-3E establishes a single permitting process for organized public fireworks displays. The statute does not distinguish between consumer fireworks and display fireworks when establishing that permitting process.

The Association respectfully submits that interpreting Chapter 29-3E to exempt organized public displays utilizing consumer fireworks bypasses important statutory safeguards, including review by the Office of the State Fire Marshal and certification by the local fire chief that the proposed location is suitable and that qualified persons will conduct the operation.

Clarifying this requirement within 103CSR4 will promote consistent statewide enforcement, preserve the Legislature's public safety objectives, provide certainty to local officials and event organizers, and ensure that organized public fireworks displays—regardless of the classification of fireworks used—receive the appropriate level of fire and life safety review before members of the public are placed at risk.

For West Virginia's Protection,



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