

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
BUREAU OF FIRE SERVICES

FIREWORKS SAFETY ACT

EMERGENCY RULES

Filed with the Secretary of State on March 9, 2012

These rules take effect upon filing with the Secretary of State and shall remain in effect for 6 months.

(By authority conferred on the Department of Licensing and Regulatory Affairs by sections 20(1) and 20(2) of 2011 PA 256, being MCL 28.470(1) and MCL 28.470(2))

FINDING OF EMERGENCY

These rules are promulgated by the Department of Licensing and Regulatory Affairs (LARA) to establish emergency rules to administer the Michigan Fireworks Safety Act (Act), 2011 PA 256, MCL 28.451 to 28.471, which took effect January 1, 2012. The Act prohibits a person from selling consumer fireworks without obtaining from LARA an annual consumer fireworks certificate, prescribes requirements for the sale of consumer fireworks from a retail location, prohibits a person from selling low-impact fireworks without registering online, requires LARA to create an online registry, prescribes certificate application fees, imposes a fireworks safety fee on retail transactions for the sale of consumer fireworks and low-impact fireworks, and requires LARA or a law enforcement agency to investigate alleged violations and provide for the seizure of fireworks. The Act further prescribes requirements for permitting display fireworks and articles pyrotechnic.

In addition, Sections 20(1) and 20(2) of the Act require LARA to promulgate administrative rules to administer the Act, including, but not limited to, rules creating uniform applications and other forms for dissemination to and use by local units of government, establishing procedures for the collection of application fees and fireworks safety fees, providing for enforcement of regulatory duties, providing for the enforcement of age limitations, and rules conforming to the codes developed by the National Fire Protection Association, as specified in the Act.

To date, no administrative rules have been promulgated under the authority granted in the Act. Specifically, there are no current administrative rules to provide for the transition to permit the transportation, storage, and retail sales of Division 1.4, Class C explosives, which previously had been outlawed in the State until the enactment of the Act. Furthermore, as of the effective date of the Act, an entity wishing to sell fireworks in the state must submit an application to LARA no later than April 1, 2012. Not more than 30 days after an application is submitted, LARA is required to issue or deny issuance of a

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consumer fireworks certificate. If issuance is denied, LARA is required to advise the applicant the reason for the denial. There are no administrative rules currently in place that will provide for the implementation of these requirements in the Act or the other requirements specified in the Act.

The sale of fireworks is mostly a seasonal business, which will likely peak around the 4th of July holiday. The lack of administrative rules to implement the Act will have a detrimental effect on businesses that rely on the sale of fireworks, particularly the types of fireworks that previously had been prohibited. With the introduction of new types of legal fireworks in the State, administrative rules are needed to enable LARA, through its Bureau of Fire Services, to implement the Act in order to provide a safe environment for Michigan citizens and visitors to the State.

If the complete process specified in the Administrative Procedures Act for the promulgation of rules were followed, the process would not be completed in time for LARA to comply with the Act's requirements on processing applications according to the timelines specified in the Act. Furthermore, the administrative rules would not be promulgated prior to the peak fireworks season, thus causing uncertainty and financial hardship to businesses that have already committed to the purchase of this merchandise and expect to sell their fireworks during the peak season.

LARA, therefore, finds that the preservation of the public health, safety, and welfare requires the promulgation of emergency rules without following the notice and participation procedure required by sections 41, 42, and 48 of 1969 PA 306, as amended, being MCL 24.241, MCL 24.242, and MCL 24.248 of the Michigan Compiled Laws.

Rule 1. Scope.

These rules apply to all new and existing Permanent Buildings or Structures and Temporary Facilities at which consumer and low-impact fireworks are sold.

Rule 2. Definitions.

- (1) "Act" means the Michigan Fireworks Safety Act, 2011 PA 256, MCL 28.451 to 28.471.
- (2) "Bureau" means the Department of Licensing and Regulatory Affairs' Bureau of Fire Services.
- (3) "NFPA" means the code established by the National Fire Protection Association headquartered at 1 Batterymarch Park, Quincy, Massachusetts.
- (4) "National Holidays" as identified in Section 7(2) of the Act, means national holidays as defined in 5 U.S.C. 6103 (1998).
- (5) "Permanent Building or Structure" is defined in the Act and includes both of the following:
 - a) Stores.
 - b) Consumers Fireworks Retail Sales Area (CFRS) facilities, as defined by NFPA 1124 (2006 edition).

- (6) “Temporary Facilities” means a building or structure not meeting the definition for a Permanent Building or Structure, at which consumer and low-impact fireworks are sold, including the following:
- a) Consumer fireworks retail stands.
 - b) Tents.
 - c) Canopies.
 - d) Membrane structures.

Rule 3. Adoption by reference.

- (1) Retailers, wholesalers, and manufacturers shall be subject to the following codes and standards that are adopted by reference in these rules, except as specifically amended herein: NFPA 1 (2006 edition), NFPA 101 (2009 edition), NFPA 1123 (2010 edition), NFPA 1124 (2006 edition), NFPA 1126 (2011 edition) and the American Pyrotechnics Association Standard 87.1(2001 edition).
- (2) Copies of the adopted code for the NFPA are available for inspection and distribution from the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts, 02269-9101. The cost of each standard at the time of adoption of these rules is indicated after the title. NFPA 1 “Uniform Fire Code™” (2006 edition), \$72.00/each; NFPA 101 “Life Safety Code” (2009 edition), \$89.50/each; NFPA 1123 “Code for Fireworks Display” (2020 edition), \$39.00/each; NFPA 1124 “Code for Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles” (2006 edition, \$43.00/each; NFPA 1126 “Standard for the Use of Pyrotechnics Before Proximate Audience” (2011 edition), \$33.50/each.
- (3) Copies of the adopted standard for the American Pyrotechnics Association Standard 87.1, 2001 edition, are available at no cost on the Bureau’s website at <http://www.michigan.gov/bfs>.
- (4) Copies of the adopted standards are available for inspection at the offices of the Bureau of Fire Services, 4th Floor, 525 West Allegan, P.O. Box 30700, Lansing, Michigan, 48909. Copies of the adopted provisions may be purchased from the Bureau at the same cost as from the national source of this rule plus \$30.00 for shipping and handling as of the time of the adoption of these rules.

Rule 4. Applications. The Bureau shall create uniform applications and other forms for dissemination to and use by applicants and local units of government under this act and published in electronic format at <http://www.michigan.gov/bfs>.

Rule 5. Affidavit of compliance. An affidavit of compliance with Section 4(8)(b) of the Act shall be submitted by any applicant applying for a consumer fireworks certificate. The affidavit shall state that the individual applicant requesting the certificate has not been convicted of a felony involving theft, fraud, or arson.

Rule 6. Collection of applications and fees. The Bureau shall create procedures for the collection of applications and fireworks safety fees in accordance with the Act and the

Michigan Department of Treasury and LARA tax and finance procedures, including the following:

- (a) Pursuant to Sections 8 and 9 of the Act, a person who sells consumer fireworks and low-impact fireworks at retail locations shall collect the 6% fireworks safety fee when the gross retail income is \$1.04 or more, which is determined before any taxes are applied. This fee shall be in addition to the 6% Michigan State Sales Tax. A person who fails to collect and remit the Fireworks Safety Fee shall be guilty of a misdemeanor punishable by a fine of not more than \$10,000. A person who is found guilty under Section 8 of the Act shall not be eligible to obtain a consumer fireworks certificate for 1 year after conviction.
- (b) Pursuant to Section 10 of the Act, the remittance of the fireworks safety fee shall be filed with LARA on forms prescribed by LARA beginning March 31, 2012, and on each March 31, July 15, September 30, and December 31 thereafter. If the filing date falls on a weekend, the return shall be filed the next business day.
- (c) Fireworks safety fees and requisite filing forms must be postmarked by the filing date and mailed to: Department of Licensing and Regulatory Affairs, Bureau of Fire Services, P.O. Box 30642, 7150 Harris Drive, Lansing, MI 48909. Checks or money orders are to be payable to the State of Michigan.

Rule 7. Inspection. The Bureau shall establish an inspection process to confirm that the retail location meets the requirements of the Act and the national codes and standards as adopted by reference in Rule 3 for the retail sale of consumer fireworks. The State Fire Marshal or the State Fire Marshal's designee may enter and inspect the retail locations issued a consumer fireworks certificate at any reasonable time.

Rule 8. Plans. (1) Plans for all Permanent Buildings and Structures and Temporary Facilities shall be submitted at the time of filing the certificate application to the Bureau at the Department of Licensing and Regulatory Affairs, Bureau of Fire Services, P.O. Box 30642, 7150 Harris Drive, Lansing, MI 48909, pursuant to requirements of Section 5(1)(a) of the Act and shall include the following as applicable:

- (a) Minimum distances from the following: (i) Public ways; (ii) Buildings; (iii) other CFRS facilities; (iv) Motor vehicle fuel-dispensing station dispensers; (v) Retail propane-dispensing station dispensers; (vi) Flammable and combustible liquid aboveground tank storage; (vii) Flammable gas and flammable liquefied gas bulk aboveground storage and dispensing areas within 300 ft. (91.5 m) of the facility used for the retail sales of consumer fireworks.
- (b) Vehicle access and parking areas.
- (c) Location and type of portable extinguishers.
- (d) Floor plan and layout of storage and displays including aisles, proposed flame break locations and construction, and proposed shelving materials.
- (e) Means of egress.
- (f) Construction details for structures and fire-rated construction for required walls.

- (g) The maximum expected quantity of pyrotechnic material on display and maximum expected quantity of pyrotechnic material stored on site.
- (2) A copy of the plans required by this rule shall be provided to the local fire department for use in pre-incident review and planning.

Rule 9. Verification of compliance. (1) The issuance of the consumer fireworks certificate by the Bureau does not itself authorize the sale of fireworks at the certified retail location.

- (2) Consumer fireworks shall not be sold at a retail location until the Bureau verifies compliance with Section 5 of the Act, NFPA 1124, and these rules.
- (3) Verification can be accomplished by either of the following:
 - (a) A site inspection of the retail location by the Bureau. The Bureau shall be the “Authority Having Jurisdiction” to enforce the applicable NFPA codes. A person shall request an inspection for compliance in accordance with this rule by writing to the Bureau of Fire Services P.O. Box 30700 Lansing, MI 48909.
 - (b) Submission of a notarized affidavit signed by the person filing the certificate applicant stating that the certified retail location will be in compliance with Section 5 of the Act, NFPA 1124, and these rules, and that plans have been submitted in accordance with Rule 8, prior to selling consumer and low-impact fireworks. The affidavit should be submitted for each retail location simultaneously with the application for a consumer fireworks certificate.

Rule 10. Violations. If the Bureau during the physical site inspection determines violations exist, the person holding the certificate for the retail location shall be responsible for a civil fine in accordance with Sec 5(2) of the Act and Rule 11. The Bureau may seize fireworks pursuant to Section 14(2) of the Act for failure to pay any fine within the time written on the violation notice.

Rule 11. Sanctions. (1) The Bureau may issue violation citations and assess civil infraction fines and penalties for any violations of the Act and applicable rules, including those observed in the presence of Bureau personnel while in the performance of their duties.

- (2) The Bureau may enforce violation citations and civil infraction fines and penalties pursuant to LARA’s obligation to administer the requirements of the Act.
- (3) Where Bureau personnel determine a violation of the Act or applicable rules exists, such violations shall be stated on a violation citation form prescribed by the Bureau and the form shall be submitted to the State Fire Marshal.

Rule 12. Persons subject to penalty. A person applying for a consumer fireworks certificate under the Act may be subject to any and all penalties as prescribed by the Act. The Bureau may forward information regarding violations of the Act subject to potential

criminal sanctions to the prosecutor for the jurisdiction in which the alleged violation of the Act has occurred.

Rule 13. Proof of Insurance. Proof of insurance as required by Section 5(3) of the Act shall be in writing, be current, and available for inspection upon request at each retail location.

Rule 14. Technical review of certificate denials.

- (1) A person denied a certificate for a retail location may file an appeal in writing with the State Fire Marshal within 28 days of the issuance of the denial.
- (2) An appeal of a certificate denial shall be based on the following technical review procedure:
 - (a) The State Fire Marshal, or the State Fire Marshal's designee, shall conduct a technical review of the certificate denial and decide the matter based on the interested parties' written submissions and documents, Bureau records, applicable rules, and the State Fire Marshal's technical expertise.
 - (b) The State Fire Marshal is not authorized to conduct a hearing.
 - (c) The State Fire Marshal shall issue a technical review decision setting forth the State Fire Marshal's material findings of fact, conclusions of law, and remedial orders, if any.
- (3) The technical review decision of the State Fire Marshal shall be deemed to be final department action for purposes of judicial review under chapter 4 of the Administrative Procedures Act, 1969 PA 306, MCL 24.271 to 24.287.

Rule 15. Appeal of violation citation and/or civil infraction penalty or fine.

- (1) Any party wishing to appeal the violation citation and/or any penalty or fine assessed for such violation shall file within 28 days of issuance of the violation citation an appeal with the State Fire Marshal.
- (2) An appeal of the violation citation does not automatically stay a party's obligation to take action necessary to remedy the violation.
- (3) The State Fire Marshal, or the State Fire Marshal's designee, shall conduct a review of the violation citation appeal and decide the matter based on the written submissions or documents filed by interested parties, Bureau records, applicable rules, and technical expertise.
- (4) The State Fire Marshal is not authorized to hold any hearing.
- (5) At the conclusion of the review, the State Fire Marshal, or the State Fire Marshal's designee, shall issue a review decision setting forth the material findings of fact, conclusions of law, and remedial orders, if any. The review decision of the State Fire Marshal, or the State Fire Marshal's designee, shall contain notice of the right of interested parties to file an appeal to the State Fire Safety Board within 28 days of issuance.

Rule 16. Waiver of hearing; acknowledgment of violation.

- (1) A party issued a certificate for a retail location cited for a violation of the Act or applicable rules may waive the right to appeal and acknowledge the violation or violations specified in the citation.
- (2) The waiver of the right to appeal and acknowledgement of the violation shall be on the reverse side of the citation form and as prescribed by the State Fire Marshal. The waiver and acknowledgment form shall provide that the certificate holder may explain, on a separate sheet of paper, any mitigating circumstances which the certificate holder believes should be considered in disposing of the violation.

Rule 17. Appeal of State Fire Marshal's review decision to State Fire Safety Board.

- (1) An interested party to the review proceeding may file an appeal of the State Fire Marshal's final review decision under Rule 15 to the State Fire Safety Board within 28 days of the issuance of the final review decision.
- (2) The State Fire Safety Board shall conduct a technical review of the State Fire Marshal's final review decision and decide the matter based solely on the administrative record created by the State Fire Marshal.
- (3) The State Fire Safety Board is not authorized to conduct a contested hearing.
- (4) The State Fire Safety Board shall issue a decision setting forth its material findings of fact, conclusions of law, and remedial orders, if any.
- (5) The decision of the State Fire Safety Board shall contain notice of the right of interested parties to file an appeal to the Michigan Administrative Hearings System (MAHS) within 28 days of issuance of the Board's decision.

Rule 18. Appeal. An appeal from the State Fire Safety Board decision will be a contested case before a MAHS Administrative Law Judge governed by chapter 4 of 1969 PA 306, MCL 24.271 to 24.287, and the Act.

Rule 19. Proposed decision of administrative law judge.

- (1) Within 10 days of the conclusion of a hearing or within 5 days of the receipt of the transcript, if any, or such additional time as allowed by the administrative law judge, each party may file with the administrative law judge a proposed order, including proposed findings of fact and conclusions of law, with such supporting argument and reasoning as are necessary to support the proposed order.
- (2) Within 20 days of the conclusion of a hearing or within 15 days of the receipt of the transcript, if any, the administrative law judge shall serve upon parties by certified mail or personal service a proposed decision which shall include the following:
 - (a) A statement of the reasons for the proposed decision.
 - (b) Issues of fact and law necessary for the proposed decision.

- (3) The decision of the administrative law judge shall be based upon consideration of the whole record and shall be made on the basis of a preponderance of reliable and probative evidence.
- (4) Unless a party, within 10 days of the receipt of the proposed decision, files exceptions to the proposed decision with supporting reasons, the proposed decision shall become a final decision of the Director of the Department of LARA. Exceptions shall refer to the specific issues of fact and law, or excepted terms of the proposed decision. If the testimony was transcribed, reference shall be made to specific pages of the transcript, and shall suggest modified issues of fact and law, and terms of the proposed decision.
- (5) An administrative law judge's proposed decision under this rule shall not be operative while that decision is being referred to the director.

Rule 20. Transmission of record.

- (1) If exceptions and objections are filed, the administrative law judge shall transmit the record of the proceeding to the Director of LARA.
- (2) The record shall include the following:
 - (a) Notices, pleadings, motions, and intermediate rulings.
 - (b) Questions and offers of proof, objections, and rulings thereon.
 - (c) Evidence presented.
 - (d) Matters officially noticed, except matters so obvious that a statement of them would not serve a useful purpose.
 - (e) Proposed findings of fact and conclusions of law and exceptions and objection thereto.
 - (f) Any proposed decision, opinion, order, or report by the administrative law judge.

Rule 21. Decision of director.

- (1) Upon receipt of the record transmitted under these rules, the Director of LARA or the Director's designee shall, within a reasonable time, render a decision.
- (2) The decision may affirm, modify, or set aside, in whole or in part, the findings, conclusions, and the rule or order contained in the proposed decision of the administrative law judge, and shall include a statement of reasons for each conclusion of law, supporting authority, or reasoned opinion.
- (3) The Director shall serve or cause to be served, a copy of the decision upon all parties and the hearing officer.
- (4) The Director's decision shall be deemed to be final department action for purposes of judicial review under chapter 4 of the Administrative Procedures Act, 1969 PA 306, MCL 24.271 to 24.287.

MICHIGAN DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

Steven H. Hilfinger
Director
Department of Licensing and Regulatory Affairs

Pursuant to Section 48(1) of 1969 PA 306, as amended, MCL 24.248(1), I hereby concur in the finding of the Department of Licensing and Regulatory Affairs that the circumstances creating an emergency have occurred and the promulgation of the above rules is required for the preservation of the public health, safety, and welfare.

Rick Snyder, Governor

Date

March 6, 2012