

# **DEPARTMENT OF PUBLIC SAFETY**

## **Division of Fire Prevention and Control**

### **8 CCR 1507- 12, Section 2.4**

#### **PERSONS DEALING WITH FIREWORKS**

##### **Statement of Justification for Emergency Rule:**

Based on the findings and recommendations of the committee on legal services, the Colorado legislature put forward House Bill 18-1253 (the “2018 Rule Review Bill”) which declines to extend Section 2.4 of 8 CCR 1507-12, Persons Dealing with Fireworks. Once the bill is enacted into law, Section 2.4 will be repealed on May 15, 2018. 8 CCR 1507-12 (“the Fireworks Rules”) establishes minimum requirements and standards for licenses to sell, store, or use fireworks in the interest of the life, health and safety of employees and the general public, as well as the protection of property. Section 2.4 (“Codes and Standards”) of the Fireworks Rules, specifically, incorporates by reference specific codes setting the minimum standards for persons dealing with fireworks in Colorado, including the minimum standards for shipments and packaging of hazardous materials, the International Building Code, the International Fire Code, the International Mechanical Code, and three codes published by the National Fire Protection Association regarding the manufacture, transportation, storage, and retail sale of fireworks, fireworks displays, and use of pyrotechnics before a proximate audience.

The codes incorporated by reference in Section 2.4 of the Fireworks Rules are critical to safeguarding public safety in Colorado. Removal of these nationally recognized codes and standards from the Fireworks Rules would create significant inefficiencies for the Division of Fire Prevention and Control (the “Division”), confusion for fireworks distributors and retailers, and risks for Colorado residents and visitors as we approach fireworks season. Section 2.4 is a critical component of the Fireworks Rules, without which the Fireworks Rules cannot meet their stated purpose.

The decision not to extend Section 2.4 was based on the committee’s conclusion that the language of Section 2.4, as currently enacted, fails to meet the requirements of C.R.S. 24-4-103 (12.5), which addresses the ‘incorporation by reference’ into the CCR of “all or any part of a code, standard, guideline, or rule that has been adopted by an agency of the United States, this state, or another state, or adopted or published by a nationally recognized organization or association.” C.R.S. 24-4-103 (12.5) stipulates five conditions for ‘incorporation by reference’ and Section 2.4 of the Fireworks Rules, as currently enacted, meets all but one of those conditions, including C.R.S. 24-4-103 (12.5)(V) because it states that the “Division shall maintain copies of the complete texts of the adopted codes, which are available for inspection during regular business hours” and provides the Division’s address where interested parties may inspect the incorporated materials. However, Section 2.4 fails to meet the requirement of C.R.S. 24-4-103 (12.5)(IV) because it does not state that the Division will provide copies of the codes at a

reasonable charge and it does not specifically state where copies are available from the entities originally issuing the codes.

The Department of Public Safety (the “Department”) has already begun the permanent rulemaking process to address this deficiency in Section 2.4 of the Fireworks Rules and has a public hearing scheduled for April 16, 2018. However, due to the time required for stakeholder involvement in the rulemaking process, the permanent rules will not come into effect until after Section 2.4 is repealed by the 2018 Rule Review Bill. Therefore, it is necessary to adopt this emergency rule to fill the gap created between the time Section 2.4 is repealed on May 15, 2018 and the time the new permanent Fireworks Rules go into effect (scheduled for June of 2018).

As discussed above, the adoption of the codes incorporated by reference in the Fireworks Rules are necessary to the preservation of public health, safety, and welfare, therefore the absence of those codes from the CCR, even for a short period of time, would be contrary to the public interest of the State. The pending revocation of the Fireworks Rules by House Bill 18-1253 imperatively requires that the Department immediately adopt this emergency rule in order to ensure that Section 2.4 of the Fireworks Rules remains in effect without a gap. For these purposes, the Department finds, in accordance with C.R.S. 24-4-103(6), that immediate adoption of this emergency rule is imperatively necessary for the preservation of public health, safety, and welfare, and the delay required to comply with the requirements of the permanent rulemaking process would be contrary to the public interest. After adoption of this emergency rule, the Department will continue with the permanent rulemaking process as scheduled.