

COLORADO DEPARTMENT OF REGULATORY AGENCIES  
OFFICE OF POLICY AND RESEARCH

# COLORADO REGULATION OF FIREWORKS

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## 1995 SUNSET REVIEW



***Joint Legislative Sunrise/Sunset Review Committee  
1995-1996 Members***

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Chair***

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Senator Bob Martinez  
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June 30, 1995

The Honorable Richard Mutzebaugh, Chair  
Joint Legislative Sunrise/Sunset Review Committee  
State Capitol Building  
Denver, Colorado 80203

Dear Senator Mutzebaugh:

The Colorado Department of Regulatory Agencies has completed the evaluation of the **regulation of fireworks**. We are pleased to submit this written report, which will be the basis for my office's oral testimony before the Joint Legislative Sunrise/Sunset Review Committee. The report is submitted pursuant to Section 24-34-104 (8)(a), of the Colorado Revised Statutes, which states in part:

*"The Department of Regulatory Agencies shall conduct an analysis of the performance of each division, board or agency or each function scheduled for termination under this section..."*

*The Department of Regulatory Agencies shall submit a report and such supporting materials as may be requested, to the Sunrise and Sunset Review Committee created by joint rule of the Senate and House of Representatives, no later than July 1 of the year preceding the date established for termination..."*

The report discusses the question of whether there is a need for the regulation provided under article 28 of title 12, C.R.S. The report also discusses the effectiveness of the division and staff in carrying out the intention of the statutes and makes recommendations for statutory and administrative changes in the event this regulatory program is continued by the General Assembly.

Sincerely,

Joseph A. Garcia  
Executive Director

# Table of Contents

<i>EXECUTIVE SUMMARY</i> .....	<b>1</b>
<i>BACKGROUND</i> .....	<b>3</b>
FEDERAL REGULATION .....	3
STATE REGULATION OF FIREWORKS .....	6
FIREWORKS SAFETY .....	8
<i>SUMMARY OF STATUTE</i> .....	<b>12</b>
1991 SIGNIFICANT CHANGES IN LAW .....	12
REVIEW OF RULES AND REGULATIONS .....	16
<i>PROGRAM DESCRIPTION AND ADMINISTRATION</i> .....	<b>18</b>
REGULATORY EFFORTS OF THE DIVISION OF FIRE SAFETY .....	18
<i>RECOMMENDATIONS</i> .....	<b>25</b>
EFFECTIVENESS OF THE FIREWORKS LICENSURE PROGRAM .....	25
AGE LIMITATIONS .....	28
DEFINITION OF PERMISSIBLE FIREWORKS .....	29
EXEMPTION FOR EXPORTER .....	31
AMEND DEFINITIONS .....	32
DELETE REDUNDANCY AND UNNECESSARY LANGUAGE IN THE LAW .....	33
ADMINISTRATIVE FINING AUTHORITY .....	34
AUTHORITY TO ISSUE LETTERS OF ADMONITION .....	35
PENALTIES FOR UNLICENSED ACTIVITIES .....	35
CRIMINAL HISTORY CHECKS .....	36
DISCIPLINARY ACTIONS .....	37
PERMITTING REQUIREMENTS .....	38
REGULATION BY GOVERNING BODIES .....	39
LICENSING FEES .....	40
FIREWORKS OPERATOR CERTIFICATIONS .....	40
<i>APPENDICES</i> .....	<b>42</b>

SUNSET STATUTORY EVALUATION CRITERIA.....	43
FIREWORKS STATUTE.....	44
QUESTIONNAIRE - REGULATION OF FIREWORKS .....	50
FIREWORKS LICENSURE QUESTIONNAIRE .....	51
1993 FIREWORKS ACTIVITY .....	52
WHOLESALE/RETAILER QUESTIONNAIRE.....	54

## *EXECUTIVE SUMMARY*

The regulation of fireworks was moved from the Secretary of State's Office to the Colorado Department of Public Safety in July, 1991. The Director of the Department of Public Safety was given the authority to promulgate regulations to govern the licensing of fireworks retailers, display retailers, wholesalers, and exporters. The Division of Fire Safety was designated as the agency responsible for carrying out the laws which regulate licensed fireworks dealers.

The Department of Regulatory Agencies has conducted the 1995 sunset review of the Fireworks Licensing Program. This report concludes that certain problems exist in the enforcement of state regulation. The law is not very effective in stemming the flow of illegal fireworks into the state, controlling the sale of illegal fireworks or preventing the sale and use of fireworks by juveniles. Enforcement activities must be curtailed because there are not enough funds to effectively administer the program. Local authorities currently have a large responsibility in regulating fireworks. This sunset report recommends allowing the provisions of article 28, title 12 to terminate.

Adoption of this recommendation includes leaving in statute age limitations for fireworks use, purchase and possession and restrictions regarding the type of fireworks permissible for use.

If the General Assembly decides to continue the fireworks licensure program, several recommendations are proposed to improve the regulatory enforcement and administration of the program.

The report makes the following key findings and recommendations:

1. The Division should be given greater flexibility in imposing penalties by authorizing it to impose fines.
2. The authority to issue letters of admonition is recommended to provide the Division with some form of disciplinary action to respond to violations that are not serious enough to justify suspension or revocation.
3. The confusion over which governmental authority has jurisdiction over local fireworks displays is the basis for the recommendation to authorize local governments to determine the safety of fireworks display presentations.
4. Currently, only municipalities may further regulate the sale, use and possession of fireworks. To ensure that counties and fire protection districts may adopt additional regulations regarding the sale, use and possession of fireworks, they are also granted the power to adopt regulations which exceed state law.

## BACKGROUND

The manufacturing of fireworks in the United States dates to the pre-Revolutionary War era.<sup>1</sup> At that time, black powder -- the original gunpowder -- was used extensively not only in firing muskets and cannons but in rockets and firecrackers. In fact, black powder still is an important component of modern fireworks. In the early part of this century, huge explosive devices were available to the ordinary consumer, and each Independence Day celebration resulted in a large number of serious injuries and deaths. In 1903, for example, 466 fireworks-related deaths were reported.<sup>2</sup> Between 1900 and 1920, 4,290 deaths and over 120,000 injuries were attributed to fireworks.<sup>3</sup> Governmental authorities began to experience increasing pressure from the public to control fireworks usage.

### Federal Regulation

Federal control of fireworks has focused primarily on interstate transportation. The principal federal statute relating to state fireworks law enforcement forbids the transportation of fireworks into any state for use or disposition in violation of that state's law. The federal law is enforced by the Federal Bureau of Investigation (FBI) and carries a maximum fine of \$1,000 or one year imprisonment, or both. Fireworks manufacturing plants are regulated by the Occupational Safety and Health Administration (OSHA) and the U.S. Treasury Department's Bureau of Alcohol, Tobacco, and Firearms (ATF). The Consumer Products Safety Commission (CPSC) enforces its own ban on certain type of fireworks.

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<sup>1</sup>John A. Conkling, "American Fireworks Manufacturing: An Industry in Transition," Fire Journal, September 1986, p. 41.

<sup>2</sup>Public Safety Memo No. 43, National Safety Council, 1949

<sup>3</sup>Gaps in Fireworks Control, Publication 175, National Society for the Prevention of Blindness, 1976.

**The Department of Transportation (DOT)** regulates the conditions under which various hazardous materials (including explosives, and therefore fireworks) can be transported. For these purposes, DOT has classified explosive materials into three categories: Class A, B, and C. Class A explosives primarily are materials with a detonating hazard, including military explosives, black powder in bulk, blasting caps and dynamite. Fireworks fall into one of the remaining two classes, depending on the size and quantity of their pyrotechnic composition.

Class B explosives function by rapid combustion and are considered a flammable hazard by DOT. Firecrackers with more than two grains of powder and the larger fireworks intended for licensed public displays are found in the Class B explosives category.

Class C explosives are devices containing Class A or Class B explosives as components, but in restricted quantities. Such devices are considered a minimum hazard by DOT and include common fireworks designed primarily to produce visible effects by combustion. However, some small devices (not exceeding 2 grains of powder) designed to produce audible effects are also included.

**1976 Consumer Production Safety Commission Safety Standards.** From 1974 to 1976, CPSC conducted hearings regarding a proposed federal ban of firecrackers and certain other fireworks devices. During these hearings, extensive testimony was provided regarding a total ban on fireworks. A major point of dissension during these hearings was whether the nature and degree of the hazard of firecrackers and certain types of fireworks warranted a total ban.

During the hearings, proponents of a total ban argued that common fireworks devices cause substantial personal injuries and property damage. They also argued that fireworks cause noise and air pollution. They presented data showing that state fireworks control laws have little effect on reducing accident rates and property damage because consumers purchase fireworks from mail order catalogs or from bordering states with more lenient control laws. For these reasons, they argued for a nationwide ban on the sale of fireworks.

Opponents of bans on the sale of fireworks testified that injury information does not demonstrate that common fireworks are extremely dangerous if they are properly labeled and used. They also contended that a ban on fireworks would only lead to bootlegging, resulting in the increased availability of more dangerous types of fireworks devices. Problems of enforcement and considerations of religious freedom were mentioned, especially regarding Chinese Americans.

In December 1976, CPSC adopted a set of standards for fireworks that would be used by the general public. The standards included such topics as labeling, quantity of powder permissible in firecrackers, prohibited chemicals, fuse requirements, and fireworks performance. The new regulations, the result of a five-year study and two years of hearings, were intended to improve product quality and lower the frequency and severity of fireworks-related injuries.

However, according to the National Fire Protection Association, fireworks injuries have risen since the CPSC assumed jurisdiction over Class C fireworks. In developing standards for Class C fireworks - which had previously been banned in numerous states - CPSC indirectly supported fireworks manufacturers and other interested parties in pressuring states to relax their ban on public sale and use of all fireworks. According to CPSC statistics the number of fireworks injuries reported to hospital emergency rooms doubled from 5,000 in 1974 to an average of 10,000 per year for 1985, 1986 and 1987.

## **State Regulation of Fireworks**

Regulation of fireworks traditionally has been under the jurisdiction of state and local authorities. Throughout the late 1920s and 1930s, many states enacted legislation that prohibited the use of fireworks by the general public. This trend continued into the 1940s and 1950s, when several states adopted the Model Fireworks Law devised by the National Fire Protection Agency (NFPA) and the Fire Marshals Association of North America. This model law prohibits the sale and use of all fireworks except those to be used in licensed public displays and toy paper caps and the devices for using them. By 1966, 20 states had completely banned backyard fireworks, and 7 others had enacted laws limiting consumer pyrotechnics to sparklers and novelty items such as "snakes."<sup>4</sup>

Fireworks laws in the fifty states range from banning all fireworks sales to the public to leaving the matter entirely to local decision. Most states divide fireworks into three groups: novelties, common fireworks, and special fireworks. Novelties include trick noisemakers, snakes, glow worms, smoke devices, sparklers, party poppers, booby traps, snappers, trick matches, cigarette loads, and automobile burglar alarms. Common fireworks include cylindrical fountains, cone fountains, illuminating torches, wheels, flitter sparklers, and ground spinners. Special fireworks are generally firecrackers with over 100 mg of explosive, aerial shells containing over 40 mg of pyrotechnic mixture, and large versions of some of the common fireworks.

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<sup>4</sup>John A. Conkling, "The Federal Class C Fireworks Regulations Ten Years Later: A Difference of Opinion--Thumbs Up," Fire Journal, September 1986, p.59.

The following is a summary of state regulations as of May 1, 1995.

***States which allow some or all types of consumer fireworks as approved by enforcing authority, or as specified in law.***

Alabama	New Hampshire
Alaska	New Mexico
Arkansas	North Carolina
California	North Dakota
Colorado	Oklahoma
Florida	Oregon
Idaho	South Carolina
Indiana	South Dakota
Kansas	Tennessee
Kentucky	Texas
Louisiana	Utah
Michigan	Virginia
Mississippi	Washington
Missouri	West Virginia
Montana	Wisconsin
Nebraska	Wyoming

***States having no fireworks laws, except at the county level***

Hawaii	Nevada
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***States which allow only sparklers and/or other novelties***

Illinois	Maryland
Iowa	Ohio
Maine	Pennsylvania

***States which ban all consumer fireworks***

(including those which are allowed by CPSC regulations)

Arizona	Minnesota
Connecticut	New Jersey
Delaware	New York
Georgia	Rhode Island
Massachusetts	Vermont

**Source: U.S. Consumer Product Safety Commission  
Fact Sheet #12 - Fireworks**

## Fireworks Safety

Fireworks' accidents occur in many forms, including incidences in manufacturing plants, during licensed public displays, or in local backyards. The following table depicts national fireworks-related injury rates from 1985 to 1994.

### ESTIMATED FIREWORKS-RELATED INJURIES By Year 1985-1994

Year	Total Annual Estimated Injuries	Estimated Injuries June 23-July 23	Special Period % of Total
1994	12,600	9,100	72
1993	12,600	9,400	75
1992	12,900	9,400	73
1991	11,200	8,100	72
1990	12,200	8,000	66
1989	12,200	6,300	65
1988	12,900	7,100	70
1987	11,300	5,500	61
1986	15,900	8,900	71
1985	13,000	6,900	67

**Source: National Electronic Injury Surveillance System -  
U.S. Consumer Product Safety Commission.**

The basic philosophy of the National Fire Protection Association (NFPA) is reflected in the Model State Fireworks Law which was adopted in 1937. During that first year Iowa and New Jersey adopted the law and witnessed a decrease in the number of reported fireworks accidents from 927 in 1936 to 36 in 1937.<sup>5</sup> Nationally, the American Medical Association resumed its tracing system in 1937 after a 21-year hiatus and found that deaths due to fireworks had dropped to 14 per year in 1937-1941, a ten-fold drop from the death tolls of the early decades. In summary, the law restricts the use of all fireworks (except toy paper or plastic caps) to authorized pyrotechnic displays.

The model law was completely revised in 1981, incorporating Department of Transportation (DOT) definitions and CPSC construction, chemical composition, and labeling regulations in its definition of "common fireworks." Even though snakes, smoke devices, and trick noisemakers are not classified as common fireworks by DOT, the model law includes such devices as "novelties and trick noisemakers" in its catalogue of banned fireworks.

The tables on the following two pages summarize estimated fire losses due to fireworks for the period from 1982 through 1992 as reported to U.S. Fire Departments. However, most fireworks-related injuries do not involve fires that are reported to fire departments. In 1992, for example, an estimated 103 civilians were injured in reported fires caused by fireworks, but fireworks-related injuries reported to hospital emergency rooms alone totaled 12,900 the same year. Other fireworks-related injuries, such as those treated in doctors' offices or at home, are not documented in any national database, but they would account for a higher total. The July/August 1994 issue of the NFPA Journal reports the ill-advised private use of fireworks continues to be the main factor in fires that caused an annual toll of tens of millions of dollars in property damage, as well as some deaths.

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<sup>5</sup>"Fireworks: Spectacular but Dangerous". National Fire Protection Association, 1989.

**FIRES AND  
LOSSES  
ASSOCIATED  
WITH FIREWORKS  
1982-1992**

1991	0	0	0	0	0
1992	0	0	0	1	1

(National estimates  
for fires reported to  
U.S. Fire  
Departments)

Year	Residential Structures	Nonresidential Structures	Vehicles	Outdoors and Other	Total
1982	1,700	1,000	500	24,600	27,800
1983	1,400	800	500	25,300	28,000
1984	2,500	1,200	1,000	34,700	39,400
1985	2,700	1,500	900	46,600	51,600
1986	2,400	1,200	1,000	30,500	35,100
1987	2,000	1,100	800	33,200	37,100
1988	2,400	1,400	900	47,400	52,100
1989	1,800	900	800	29,800	33,400
1990	1,700	800	800	30,000	33,300
1991	1,600	900	800	24,700	28,000
1992	1,400	900	700	22,500	25,500

**CIVILIAN DEATHS**

Year	Residential Structures	Nonresidential Structures	Vehicles	Outdoors and Others	Total
1982	0	0	0	0	0
1983	0	0	0	0	0
1984	3	0	0	0	3
1985	8	0	3	4	15
1986	4	0	0	0	4
1987	4	3	0	0	7
1988	20	0	0	0	20
1989	4	0	0	0	4
1990	3	0	0	0	3

**CIVILIAN INJURIES**

Year	Residential Structures	Nonresidential Structures	Vehicles	Outdoors and Others	Total
1982	10	23	2	63	99
1983	45	3	0	28	76
1984	38	10	8	31	87
1985	73	10	29	32	144
1986	55	46	2	22	126
1987	55	10	0	28	93
1988	39	16	16	28	99
1989	49	4	19	34	107
1990	46	6	3	57	112
1991	54	13	10	30	107
1992	42	11	8	42	103

**DIRECT PROPERTY DAMAGE (in millions)**

Year	Residential Structures	Nonresidential Structures	Vehicles	Outdoors and Others	Total
1982	9.0	1.6	0.4	0.4	11.4
1983	6.5	5.2	0.5	0.4	12.6
1984	18.9	5.6	1.9	0.5	26.9
1985	22.5	7.4	1.2	5.5	36.5
1986	24.2	29.1	1.6	0.7	55.7
1987	17.1	7.1	0.8	0.3	25.3
1988	22.4	14.4	1.3	0.9	38.9
1989	56.5	2.7	1.1	1.7	62.1
1990	22.1	3.8	1.5	0.6	28.1
1991	14.1	3.3	1.5	0.2	19.1
1992	13.6	15.9	1.4	2.6	33.4

**SUMMARY OF STATUTE****1991  
Significant  
Changes in  
Law**

During the 1991 legislative session, the Colorado General Assembly passed Senate Bill 91-51 which completely rewrote the statutes governing fireworks and the fireworks industry. One of the changes was the transfer of the licensing function from the Secretary of State to the Department of Public Safety. The responsibility for administering the fireworks' regulatory program was subsequently assigned to the Division of Fire Safety. This transfer included an appropriation of \$66,874.00 and 1.0 FTE for implementation of the program by the Department of Public Safety.

SB 91-51 also made significant changes to Article 28 of Title 12.

1. Any person selling fireworks must display a warning sign stating that it is illegal for any person under 16 years of age to purchase fireworks.
2. Two additional categories of licenses were established.
  - a. Retailer of fireworks
  - b. Exporter of fireworks
3. Granted to the Director of the Department of Public Safety the authority to promulgate rules and regulations to implement provisions of the law.
4. Made it unlawful to bring any fireworks, even permissible or legal fireworks, into the state unless licensed as a display retailer, wholesaler, or exporter of fireworks by the Department of Public Safety.
5. Made it unlawful for a person to sell at retail any fireworks, including legal fireworks, that were not purchased from a wholesaler licensed in Colorado by the Department of Public Safety.
6. Made it unlawful to conduct a fireworks display unless the fireworks have been purchased from a display retailer licensed by the Department of Public Safety.
7. Empowered local authorities to seize all fireworks, including legal fireworks, held in violation of the law.

8. Violation of the law is punishable by a fine of up to \$750.00 and/or imprisonment for up to six months.
9. Established grounds for denial, suspension, revocation, or refusal to renew a license, including: violation of any provision of the Article; conviction for violation of the Article; or any material misstatement, misrepresentation, or fraud in obtaining a license.
10. Defined and clarified legal or permissible fireworks.

SB 91-51 made several substantive improvements to the existing regulatory scheme. One of the more important changes was the provision that required retailers to be licensed. A retailer is defined as any person who sells, delivers, consigns, or furnishes permissible fireworks to another person not for resale. This language was intended to bring fireworks stands into the regulatory net.

SB 91-51 also made it unlawful for any person to bring fireworks, even permissible fireworks, into Colorado. In other words, all fireworks must be purchased from Colorado retailers. For example, if a person purchases a box of sparklers in Wyoming and brings them into Colorado for a family vacation over the Fourth of July, the fireworks law is being violated. It is not clear what public protection is afforded such restrictions. Neither is it clear how these provisions can be enforced since there is no requirement that a consumer keep a receipt showing that fireworks were purchased from an approved sales outlet.

The new fireworks legislation also made it unlawful to: conduct a fireworks display unless the fireworks were purchased from a display retailer licensed in Colorado; purchase fireworks by mail or receive fireworks by any other carrier; or for any retailer to sell or offer to sell any fireworks that were not purchased from a wholesaler licensed by the Department of Public Safety.

### **Summary of the Statute**

Section 101 of the statute defines terms used in the article. Important terms include the following.

1. Fireworks are defined as any article, device or substance designed to explode for the primary purpose of visual or auditory sensation. Included under this definition are such items as cylindrical fountains, cone fountains, ground spinners, illuminating torches, sparklers, and snake or glow worms.

The following items are not included in the statutory definition of fireworks:

- a) educational rockets and toy propellant devices;
  - b) certain toy caps;
  - c) highway flares and emergency signal devices; and
  - d) fireworks used in testing or research by a licensed explosives laboratory.
2. Fireworks items such as firecrackers, bottle rockets, Roman Candles and similar devices are illegal in Colorado.

Section 102 of the Article makes it illegal to sell, use, or possess with intent to sell or use any fireworks except those provided by the Article. In addition, anyone under sixteen years of age is not allowed to purchase any fireworks.

Local governments are empowered to grant permits to conduct supervised public displays of fireworks by Section 103. However, permits are not required for fireworks displays at the Colorado State Fair, at any authorized county or district fair, or at any display by any governing body or local authority as defined in §12-28-101(5)(6), C.R.S.

Section 104 of the Article creates a fireworks licensing cash fund. The fee for a retailer of fireworks license is set not to exceed \$25.00 and the fee for a display retailer, wholesaler or exporter of fireworks is not to exceed \$750.00. This section grants the Director of the Department of Public Safety the authority to promulgate rules and regulations. It establishes the four licenses for fireworks sales: retailer, display retailer, exporter, and wholesaler.

Section 105 makes it unlawful to bring any fireworks, even permissible ones into the state unless licensed as retailer, display retailer, wholesaler or exporter. It further requires that fireworks sold at retail must have been purchased from a wholesaler licensed in Colorado. Licensed retailers must keep invoices of all fireworks purchased from wholesalers or display retailers for inspection by local authorities.

Section 106 allows any licensed exporter to sell any fireworks if the fireworks are shipped directly out-of-state by common carrier, by the exporter's vehicles, or by the purchaser's vehicle if the purchaser is an out-of-state fireworks wholesaler or retailer and the purchaser's vehicle is licensed in a state other than Colorado. The seller must obtain and keep a signed receipt showing the buyer's name, address, wholesale or retail license number, or tax identification number, and the vehicle license number and state of issue.

Municipalities are empowered by Section 107 to impose additional regulations and prohibitions on the sale, use, and possession of fireworks within their jurisdictions. The Article prohibits, however, the authorization by municipalities of the sale or use or possession of fireworks that are prohibited by the state law.

Section 108 requires that all storage of fireworks be in accordance with building and fire codes.

Fireworks offered for sale, stored, or held in violation of the Article may be seized by any law enforcement authorities or fire chiefs according to Section 109 of the Article.

Section 110 provides penalties for violation of the provisions of the statute. Violation is a class 3 misdemeanor and conviction results in revocation of the license or permit. Conviction also results in a fine of not more than \$750.00 or by imprisonment for up to 6 months, or both.

The Director of the Department of Public Safety is empowered by Section 111 to deny, suspend, revoke or refuse to renew any license under the provisions of the Article for the following reasons:

- violation of the Article;
- conviction of any felony subject to §24-5-101, C.R.S.; or
- misstatement, misrepresentation, or fraud in obtaining a license.

Revocation or suspension proceedings follow the provisions of the State Administrative Procedures Act, Article 4 of Title 24, C.R.S.

## **Review of Rules and Regulations**

The Department of Public Safety has promulgated several rules to augment the statutory authority to regulate persons dealing with fireworks. These rules address several broad areas including: scope of the law, permissible fireworks, issuing of licenses, fireworks permits, display of fireworks, and pyrotechnic operator certification. Since many important provisions governing the sale and use of fireworks in the State of Colorado are specified and further clarified in the rules and regulations, and since these rules and regulations have the force of law, it is often necessary to consult both the Statute and its related rules to fully understand Colorado's requirements.

Rule One of the regulations deals with the scope of the law and defines terms relevant to the law. Rule Two discusses the sale of fireworks to juveniles and the possession or discharge of fireworks by juveniles. Rule Three specifies the type of fireworks that may be sold to, possessed by, and/or used by the public.

Rule Four discusses the specific classes of fireworks licenses and the application process for obtaining one. It details license restrictions and protection and exhibition of licenses. Record keeping of all transactions regarding fireworks and accident reporting regarding fireworks is delineated in Rule Four. In addition, the procedure for the denial, suspension or revocation of a license is described.

Rules Five, Six, Seven and Eight set out the licensing provisions, record of transactions, permitted activities and requirements for the retailer, display retailer, wholesaler, and exporter of fireworks respectively.

Rule Nine addresses the permit requirements for storage of fireworks and fireworks displays.

The procedures that must be followed regarding the display of fireworks is enumerated in Rule X. Such issues as application deadlines; validity of permits; required fee; conduct of fireworks display; and reports of accidents, fires and injuries are specifically discussed.

Rule XI reviews the requirements for certification as a fireworks display operator, specifically application and examination procedures.

Rule XII discusses the pyrotechnic operation certification process relating to submittal of application and taking of an examination. The General Knowledge Fireworks Examination is designed to test whether an operator has a minimum understanding of safety requirements and State regulations.

Rule XIII lists the established fees for licenses, certifications, and permits issued by the Department of Public Safety.

***PROGRAM DESCRIPTION AND ADMINISTRATION*****Regulatory  
Efforts of the  
Division of  
Fire Safety****Licensing**

As previously stated, the regulation of fireworks was transferred from the Secretary of State to the Department of Public Safety in 1991. The responsibility for administering the fireworks regulatory program was subsequently assigned to the Division of Fire Safety. The Director of the Department of Public Safety promulgates rules to regulate the possession, sale, and use of fireworks.

C.R.S. 12-28-104 provides that upon application for a license to sell fireworks from the Department of Public Safety, payment of a fee established in statute, and fulfillment of minimum qualifications, a license to sell fireworks will be issued. Licenses may be issued for retailer, display retailer, exporter, or wholesaler of fireworks. The regulations establish minimum requirements and standards for the certification of fireworks display operators and pyrotechnic special effects operators and for permits to conduct fireworks displays and pyrotechnic special effect performances. Applications must be filed at least thirty days before the start of activities for which the license is required. Each license issued is valid through September 1 of the year following the date on which the license was issued. Except, a retailer of fireworks license is valid only for the calendar year in which it is issued.

Applicants for all types of licenses must provide the same information. Essentially, each applicant must provide information about the business concerning use of a fictitious name, if applicable, and a certified copy of the Certificate of Incorporation or Certificate of Good Standing if the business is a corporation. All applicants must provide name, business and residence address, and phone numbers of three references who reside in the city, town, or county where the applicant intends to do business. All applicants for a fireworks license are subject to a background investigation, including criminal history, reference checks and review of fireworks records. All license holders must retain a record of all transactions involving fireworks for two years following the year in which the transactions occurred.

The license fee is currently \$25.00 for a retailer of fireworks and \$750.00 for display retailer, wholesaler, and exporter of fireworks. The fireworks licensing program is cash funded. Since most administrative and enforcement activity occurs around the Fourth of July, the staff of the Division of Fire Safety is assigned to the program based on need.

The chart below lists the number of various fireworks licenses issued for fiscal years 1992-93, 1993-94 and 1994-95 and the revenues for those respective years.

<b>FIREWORKS PROGRAM ACTIVITY</b>	<b>FISCAL YEAR 92-93</b>	<b>FISCAL YEAR 93-94</b>	<b>FISCAL YEAR 94-95</b>
Wholesaler of Fireworks Licenses Issued	12	18	17
Exporter of Fireworks Licenses Issued	6	6	4
Display Retailer of Fireworks License Issued	6	4	7
Retailer of Fireworks Licenses Issued	339	404	405
Fireworks Display Operator Certification Issued	102	20	23
Pyrotechnic Special Effects Operator Certification	31	10	6
Revenues Received for Licenses Issued	\$31,876.78	\$40,448.32	\$36,785.00

### **Complaints and Investigation Procedure**

One of the responsibilities of the Division of Fire Safety is the handling of complaints against licensed fireworks dealers. The Division screens the complaint to make sure that the Division has jurisdiction to respond and that the complaint at least arguably rises to the level of being a violation of the law.

The Division does not keep formal records regarding complaints. As the complaints are received, the Division responds to them on a case-by-case basis. However, when the Division does receive complaints from licensed retailers about unlicensed retailers, due to lack of jurisdiction, there is little the Division can do about these complaints except to turn them over to local law enforcement officials. In those cases where local law enforcement officials lack the resources or otherwise choose not to enforce the law, there is no action taken. The Division also receives complaints about licensed retailers selling illegal fireworks and selling fireworks to juveniles. Despite the fact that Colorado law prohibits the sale of fireworks to juveniles and the possession and use of fireworks by unsupervised juveniles, unsupervised juveniles are responsible for the majority of fireworks-related fires, fireworks-related fire injuries, deaths and property losses.

Complaints are also received concerning individuals and corporations from both within and outside the state who sell fireworks to licensed retailers. While the statute makes it illegal for a retailer to purchase fireworks from an unlicensed vendor, detection of this offense is virtually impossible without someone willing to sign a complaint. Requiring that the retailer present invoices from a licensed wholesaler is of little benefit if the retailer purchased the same fireworks items from both licensed and unlicensed sources.

The fireworks complaints reported to the Division of Fire Safety are only a small composite of the number of complaints responded to by sheriff's departments and local law enforcement agencies.

Complaints received by the local fire departments and fire protection districts far exceed the number of complaints received by the Division of Fire Safety. The magnitude of complaints regarding fireworks is illustrated in the Fireworks Licensure Questionnaire (see Appendix) which was sent statewide to fire departments and fire protection districts.

The table below illustrates the type and number of complaints received by the Division.

#### **Complaints to Division of Fire Safety**

<i>TYPE OF COMPLAINT</i>	<i>1992</i>	<i>1993</i>	<i>1994</i>
UNLICENSED ACTIVITY	No record	1	5
SELLING ILLEGAL FIREWORKS	No record	8	11
SALE TO MINORS	No record	9	16
OTHER	No record	5	3

#### **Enforcement**

Regulation of the fireworks industry is unique because almost all of the activity focuses within a window of about six weeks around the Fourth of July.

A goal of the fireworks licensing program is to enforce compliance with the provisions of the Act and the rules and regulations. To determine the magnitude of the fireworks problem in Colorado, the Division of Fire Safety initiated an information gathering project in the Summer of 1992. The Division requested that all fire and sheriffs departments in the state complete and submit a report for all fireworks-related incidents. A total of 22 fire departments and 4 sheriffs departments submitted reports which represented only 5.3 % of the fire departments and 6.5 % of the sheriffs departments in Colorado. However, the agencies responding protect about 46.9% of the state's resident population. The information gathered during the 1992 survey assisted the Division of Fire Safety in recognizing the significant problems facing the regulation and enforcement of the fireworks licensure program.

The following statistics summarize the data submitted by the participating agencies and provide an insight into the issues concerning fireworks safety in Colorado:

- \* In 1992, there were 192 reported fireworks-related incidents, one death, eight injuries resulting in a reported \$320,808 in property loss;
- \* The majority of the reported fireworks incidents were related to brush, weed, trash and other types of fires;
- \* Juveniles (under 16 years of age) were involved in the majority of fireworks-related incidents;
- \* Where illegal fireworks devices were involved in incidents, over 75% were bottle rockets;

The table below summarizes the inspection activity of the Division from 1992 through 1994:

<b>Year</b>	<b>Complaints</b>	<b>Inspections</b>	<b>Violations Noted from Inspections</b>
1992	No record	61	63
1993	23	15*	8
1994	35	15+	10
* Includes inspections of 13 retailers and 2 wholesaler/exporters. Three inspections of retailers and 1 inspection of a wholesaler were in response to complaints. All other inspections were random.			
+ All inspections were of retail locations, five were in response to complaints.			

### **Inspections**

The Division of Fire Safety conducts inspections of retail, display retail, export and wholesale fireworks outlets. During the inspection process, the investigators examine the types of fireworks warehoused, whether the building meets fire codes and the invoice records of the licensees. A number of the inspections are in response to specific complaints received from the public, but the majority are conducted as a routine check of compliance with Colorado law and the fireworks regulation of the Colorado Department of Public Safety.

The Division recounts that violations cited during an inspection are generally related to the following problems:

- \* invoices not available for inspection
- \* no license on premises
- \* license not posted
- \* warning signs not posted
- \* product from unlicensed wholesaler
- \* permit not available
- \* sale of fireworks to juveniles

### **Disciplinary Actions**

The Division may take disciplinary action against a license of a fireworks dealer by denying, suspending, revoking or refusing to new a license. Since the regulation of fireworks was transferred to the Department of Public Safety on July 16, 1991, there have been 4 license suspensions and no revocations. The issues have been adjudicated in criminal court by local prosecution. Basically, the Division of Fire Safety's authority under the Colorado Fireworks Act is administrative. The Division does not have the authority to issue cease and desist orders, letters of admonition, or administrative fines. In addition, the Division has no authority to discipline unlicensed activity or to seize fireworks for sale in violation of the article.

The only action that can be taken by the Division is against license holders. Even if the Division of Fire Safety had the authority to issue criminal citations for fireworks violations, it lacks the resources to do so. The program is cash-funded and does not generate enough revenue necessary to support enforcement and disciplinary activities.

<i>Year</i>	<i>Warnings</i>	<i>Suspensions</i>	<i>Revocations</i>	<i>Refusal to renew</i>	<i>License denial</i>
1992	23	3 (sale of fireworks to juveniles)	0	n/a	0
1993	5	1*	0	1⌘	4◆
1994	6	0	0	1☆	2❖

\* summary suspension for sale of fireworks to juveniles.

⌘ the applicant had license suspended in the previous year.

◆ all cases involved criminal history.

☆ applicant's check for a license did not clear the previous year and never resubmitted funds to cover the cost of the license.

❖ one case involved a criminal history and the other case was a violation of building and fire codes. License was withheld at request of local government.

## RECOMMENDATIONS

### **Effectiveness of the Fireworks Licensure Program**

This report concludes that certain problems exist in both the enforcement of state regulation and in the theory behind state licensing. Specifically, although illegal fireworks are sold by licensees, only four licenses have been suspended and no licenses have been revoked. The law is not very effective in stemming the flow of illegal fireworks into the state, controlling the sales of illegal fireworks within the state, regulating the persons engaging in fireworks trade, or preventing the sale and use of fireworks by juveniles.

Having a law governing the sale and use of fireworks is an anomaly within the state statutes. Since there is no statewide fire code, the Legislature has given municipalities and fire districts the authority to adopt and enforce a fire code modeled on the Uniform Fire Code. The many issues determined at the local level include: exiting requirements from buildings, electrical hazards, overcrowding, storage of flammable liquids, explosives, and building construction. All these issues are critical to the health, safety, and welfare of the citizens of Colorado, yet they are regulated at the local level while fireworks are regulated at the state level.

Another significant problem of the enforcement operation of the statewide fireworks regulatory program is the lack of adequate resources to inspect warehouses. Currently, local governments have the lead in the physical inspection of these businesses to determine compliance with fire, zoning, and other safety requirements, and the role played by local authorities seems more effective than the level of oversight by the state.

Other problems confronted by the Division of Fire Safety in administering this regulatory program include mail order sales, local governmental control of fireworks use and the sale of fireworks in border states. Section 12-28-107, C.R.S. addresses the problem of local control by permitting municipalities to further restrict the sale, use or possession of fireworks but not allowing counties or fire districts to further restrict the sale, use or possession of fireworks. Many fire protection districts and at least one county believe that the Fireworks Act does not supersede other statutes which grant fire protection districts [§32-1-1002(1)(d), C.R.S.], county improvement districts, [§30-20-512(1)(n)(II), C.R.S.] and counties [§30-15-401.5(1), C.R.S.] the authority to adopt fire codes, which may prohibit the sale, use and possession of fireworks.<sup>6</sup> They maintain that these statutes granting specific authority must be read in conjunction with Article 28 of Title 12, C.R.S.

The situation regarding Adams County is an example of ambiguity in the statute. Adams County allows the sale and use of fireworks in unincorporated areas and has amended Article 78 of the Uniform Fire Code to be consistent with Colorado Fireworks Act. The effect of this is that fire protection districts in Adams County cannot use the argument that the fire code permits them to further regulate the sale, use and possession of fireworks. In Adams County, the cities of Thornton, Northglenn, Federal Heights and Brighton do not allow the sale, use and possession of fireworks. The effect of these inconsistent practices and apparent ambiguities in statute is that fireworks vendors can make sales in unincorporated areas just outside the boundaries of a municipality which prohibits the sale, use and possession of fireworks.

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<sup>6</sup>Article 78 of the Uniform Fire Code, which is the fire code adopted by most local governments, prohibits the sale, use and possession of fireworks except those types of fireworks used in supervised displays.

A recent Colorado Court of Appeals decision (Starr Fireworks, Inc. v. A North Dakota Corporation v. West Adams County Fire Department and Fairmount Fire Protection District, No. 93CA1065, May 18, 1995) concluded that the intent of the fireworks statute is to allow fire protection districts regulatory authority over the sale, use, and possession of fireworks within their respective jurisdictions.

Another problem is mail order sales of fireworks. The retail purchase of fireworks via mail or parcel service is illegal in Colorado. At least one out-of-state wholesaler markets their mail order catalog sales of both permissible and illegal fireworks items to Colorado residents. The Division of Fire Safety sent this company a registered letter demanding that they comply with Colorado law and has asked the Bureau of Alcohol, Tobacco and Firearms to intervene. Yet it is believed that they continue to market their products in Colorado even after receipt of the letter.

Another major violation of the statute involves the sale of fireworks in border states. It is commonly known that Colorado residents can drive to Wyoming and purchase any type of fireworks items and transport them into Colorado. Transporting fireworks into Colorado by anyone not licensed as a display retailer, exporter or wholesaler is illegal, but the sheer magnitude of the problem defies enforcement.

If the requirement to hold a valid state license were eliminated, the regulatory burden would fall on local government. As this report has pointed out, local government already has a large responsibility in regulating fireworks. The local authorities could take the place of the traditional licensing and inspection program and refer those substantial problems which arise to the appropriate civil and criminal authorities.

***Recommendation 1: The General Assembly should allow the fireworks licensure regulatory program to sunset on July 1, 1996.***

## **Age Limitations**

***Recommendation 1a: If the Committee agrees to Sunset the Fireworks Regulatory Program, one means of preserving fireworks regulation in the absence of The Division of Fire Safety's regulatory program would be to continue to impose age limitations and restrict the type of fireworks allowed for use in Colorado.***

***To continue the age limitations in state law, the existing language in §12-28-102, C.R.S. - Unlawful Use or Sale of Fireworks - would read as follows:***

***(1) It shall be unlawful for any person to knowingly furnish to any person who is under sixteen years of age, by gift, sale, or any other means, any fireworks, including those defined as permissible fireworks.***

***(2) It shall be unlawful for any person who is under sixteen years of age to purchase any fireworks, including those defined as permissible fireworks.***

The U.S. Consumer Product Safety Commission estimates that in 1993 about 12,600 people were treated in hospital emergency rooms for injuries associated with fireworks. Over half the injuries were burns, and many of the injuries involve the head and face. More than fifty percent of the victims were 15 years of age and under. In Colorado, the Division of Fire Safety estimates that unsupervised persons under the age of 18 are responsible for the majority of fireworks-related fires, fireworks-related fire injuries and deaths, and resultant property losses.

**Definition of  
Permissible  
Fireworks**

**Recommendation 1b: Retain and revise definition of  
"Permissible Fireworks".**

To continue the types of fireworks that are permissible in Colorado, the existing language in §12-28-101, C.R.S. - Definitions - would read as follows:

***It shall be unlawful for any person to possess or discharge any fireworks, other than permissible fireworks, anywhere in this state, EXCEPT FIREWORKS DISPLAYS PURSUANT TO A PERMIT ISSUED BY A GOVERNING BODY.***

***"permissible fireworks" means the following items designed primarily to produce visual or audible effects by combustion, including certain devices designed to produce audible or visual effects; except that no device or component shall, upon functioning, LEAVE THE GROUND OR project or disburse any metal, glass, PLASTIC or brittle fragments:***

***(a) Cylindrical fountains, total pyrotechnic composition not to exceed seventy-five grams each in weight. The inside diameter shall not exceed three-quarters of one inch.***

***(b) Cone fountains, total pyrotechnic composition not to exceed fifty grams each in weight;***

***(c) Wheels, total pyrotechnic composition not to exceed sixty grams for each driver unit or two hundred forty grams for each complete wheel. The inside tube diameter of driver units shall not exceed one-half of one inch.***

***(d) Ground spinner, a small device containing not more than twenty grams of pyrotechnic composition venting out of an orifice usually in the side of the tube, similar in operation to a wheel, but intended to be placed flat on the ground;***

**(e) Illuminating torches and colored fire in any form, total pyrotechnic composition not to exceed one hundred grams each in weight;**

**(f) Dipped sticks and sparklers, the total pyrotechnic composition of which does not exceed one hundred grams, of which the composition of any chlorate or perchlorate shall not exceed five grams;**

**(g) Explosive auto alarms, as described in Title 49, code of federal regulations, part 173.100;**

**(h) Toy propellant devices and toy smoke devices, as described in Title 49, code of federal regulations, part 173.100;**

**(i) Cigarette loads, as described in Title 49, code of federal regulations, part 173.100;**

**(j) Trick matches consisting of book matches, strike-anywhere matches, or strike-on-box matches, as described in Title 49, code of federal regulations, part 173.100;**

**(k) Trick noise makers, as described in Title 49, code of federal regulations, part 173.100;**

**(l) Snake or glow worm, pressed pellets of pyrotechnic composition that produce a large snake-like ash upon burning;**

**(m) Novelties consisting of two or more devices enumerated in this subsection (8);**

**(n) Fireworks which are used exclusively for testing or research by a licensed explosives laboratory.**

To help prevent accidents, deaths, blindings, amputations and severe burns, it is necessary to continue to prohibit the use of the most dangerous types of fireworks to consumers.

## **Exemption for Exporter**

### **Recommendation 1c: - Amend statute to exempt exporters.**

The existing law provides for an exporters' license for those who sell fireworks outside the State of Colorado. If the current law sunsets, there will be no requirement for exporters to obtain a license. However, in the context of sunsetting the fireworks program and in order to maintain some state control over fireworks use and discharge, OPR recommends that the new law read:

***It shall be unlawful for any person to possess or discharge any fireworks, other than permissible fireworks, anywhere in this state, except fireworks displays pursuant to a permit issued by a governing body.***

As the law currently reads, it is legal for exporters to sell non-permissible fireworks to vendors outside the State of Colorado. The recommended new language would in effect prohibit exporters from doing business because the recommended language above only allows for the possession of permissible fireworks in Colorado. To alleviate the potential of putting the exporters out of business, it is recommended that an exemption be placed in the law to allow exporters to continue to sell fireworks, whether permissible or nonpermissible to vendors outside the state of Colorado. The exemption would read as follows:

***Anyone engaged in the practice of exporting fireworks as defined shall be exempt from penalties resulting from possession of fireworks other than those defined as permissible fireworks.***

The practice of exporting fireworks should read as follows:

***"Exporter" means any person including a manufacturer, who sells, delivers, consigns, gives or otherwise furnishes fireworks for export outside of the state of Colorado.***

If the General Assembly decides to continue the fireworks licensure program pursuant to §12-28-101, C.R.S. et seq., the following statutory and rule recommendations are proposed to clarify the statute and improve the regulatory performance of the program.

**Amend  
Definitions**

***Recommendation 2: Amend the definition section to read as follows:***

***"adult supervision" means that a person over the age of eighteen years is in the immediate vicinity and in such position to oversee the activities and to remedy any unsafe acts.***

This definition clarifies §12-28-101 (6), C.R.S., which permits persons under sixteen years of age to possess and discharge permissible fireworks under adult supervision.

***"illegal fireworks" means any fireworks item intended for retail sale to the public that is not included in the definition of permissible fireworks or does not have an appropriate warning label affixed pursuant to 12-28-104 (7) C.R.S.***

Local law enforcement officers currently write citations for violations regarding "illegal fireworks". The term "illegal fireworks" appears in the citation, however there is no statutory definition of the term.

***"permissible fireworks" means the following items designed primarily to produce visible or audible effects by combustion, including certain devices designed to produce audible or visual effects; except that no device or component shell, upon functioning, LEAVE THE GROUND OR project or disburse any metal, glass, PLASTIC or brittle fragments. ALL OTHER FIREWORKS SHALL BE ILLEGAL FIREWORKS.***

Fireworks that leave the ground pose an increased opportunity for fire and injury. By limiting the permissible fireworks in this way, there is an increased benefit to the public's health and safety.

**Delete  
Redundancy  
and  
Unnecessary  
Language in  
the Law**

***Recommendation 3: Delete obsolete and redundant language.***

***Delete §12-28-102(3), C.R.S. which states that statutory or home-rule municipalities may enact any ordinance prohibiting any person under sixteen years of age from purchasing fireworks.***

Section 12-28-102(2), C.R.S. already states that no one under sixteen years of age may purchase any fireworks, including those defined as permissible fireworks, therefore C.R.S. 12-28-102 (3) is redundant and unnecessary.

***Delete §12-28-113, C.R.S. which addresses the licensing transition from the Secretary of State's Office for purposes of continuing the program until July 15, 1991 when the Department of Public Safety assumes administration and enforcement authority for the fireworks program.***

***Delete §12-28-104(9), C.R.S. that also addresses licensure by the Secretary of State.***

The program has been administered by the Department of Public Safety since 1991. The transition period is complete. Therefore, this language is no longer needed in the statute.

**Administrative  
Fining  
Authority**

**Recommendation 4: Grant provisions for administrative fining authority.**

The authority to issue fines should read as follows:

***In addition to any other penalty which may be imposed pursuant to this section, any person violating any provision of this article or any rule or regulation promulgated pursuant to this article may be fined upon a finding of a violation by the Division:***

***(a) In the first administrative proceeding against a licensee, a fine of not less than fifty dollars nor more than five hundred dollars for each violation proven;***

***(b) In any subsequent administrative proceeding against a licensee determining that a violation of this article has occurred, a fine of not less than two hundred fifty dollars or more than two thousand five hundred dollars for each violation proven.***

***(c) All fines collected pursuant to this section shall be credited to the general fund.***

This definition is intended to give the Division greater flexibility in imposing penalties by allowing fines to be imposed in appropriate cases as an alternative, or in addition to suspension or revocation of licenses. A fine imposes a penalty without affecting the licensee's ability to stay in business. It would greatly assist the Division in enforcing the Fireworks Licensing Statute if the power to levy fines against violators were granted. Numerous licensing boards exercise the fining power under Colorado law. This ability assists in tailoring the punishment to the violation, as a small fine can be levied for a minor violation without requiring action against the license itself.

### **Authority to Issue Letters of Admonition**

#### ***Recommendation 5: Grant authority to issue Letters of Admonition.***

The current statute offers little choice other than revocation or suspension for a violation of the statute. The Division should be allowed to issue letters of admonition without hearing. There may be situations that warrant some action by the Division but are not serious enough to justify revocation or suspension. An official letter of admonition is often an effective tool to address the problem.

### **Penalties for Unlicensed Activities**

#### ***Recommendation 6: Establish penalties for unlicensed activities.***

The Division currently can only discipline licensees violating the fireworks law. They should have the authority to fine unlicensed persons engaged in selling fireworks in the State of Colorado. The purpose of the licensing program is to provide minimum standards that offer protection to the health, safety, and welfare of the public. Persons operating without a license often do not adhere to the same standards that licensees do. As discussed previously in this report, unlicensed activity is a problem throughout the state. This recommendation will enable the Division to take action against "unlicensed activity".

**Criminal  
History  
Checks**

***Recommendation 7: Grant the Executive Director of the Department of Public Safety the power to conduct criminal history checks on applicants for licensure.***

The U.S. Attorney General permits access to the Federal system (FBI/NCIC) for licensing and employment purposes only when there is a state or federal law that specifically permits it. The Department of Public Safety feels that to adequately protect the public, they need quick access to criminal history checks on applicants.

The fireworks season is a short focused season and there is not always time to perform a thorough administrative search on an applicant. Section 12-28-111, C.R.S. authorizes the Director to deny, suspend, revoke or refuse to renew a license for a conviction of a felony. Access to the FBI/NCIC will assist the Department in determining whether an applicant has been convicted of a felony.

## **Disciplinary Actions**

**Recommendation 8: Amend the statute to include a new section entitled *Disciplinary Actions - Grounds for Discipline*.**

Section 12-28-111, C.R.S. authorizes the Director of the Department of Public Safety to deny, suspend, revoke or refuse to new a license. However, there is no single section currently in the fireworks licensing program that specifically addresses grounds for disciplinary action. This section needs to be added so that all matters relating to disciplinary actions are distinct and explicit. The new section would read as follows:

***(1) The Director has the power issue a letter or admonition or deny, suspend, revoke, or refuse to renew any license issued or applied for under the provisions of this article for any of the following reasons:***

***(a) Violations of any of the provisions of this article;***

***(b) A conviction, plea of nolo contendere, or deferred sentence of any felony, but subject to the provisions of §24-5-101, C.R.S.***

***(c) Has procured or attempted to procure a license by fraud, deceit, misrepresentation, misleading omission, or material misstatement of fact;***

***(d) Has had a license to sell fireworks suspended or revoked in any jurisdiction. A certified copy of the order of suspension or revocation shall be prima facie evidence of such suspension or revocation;*(e) *Has falsified records; or***

***(f) Engaged in false or misleading advertisements.***

***(2) Such revocation or suspension proceedings shall be brought by the Colorado Director of the Department of Public Safety pursuant to the provisions of the "State Administrative Procedure Act", article 4 of title 24, C.R.S.***

**Permitting  
Requirements**

***Recommendation 9: Permit local authorities jurisdiction to determine compliance with the National Fire Protection Agency's Code of Outdoor Display of Fireworks regulations.***

The issue prompting this recommendation is the confusion over what authority has jurisdiction over fireworks displays performed by local governments and the Colorado State Fair. The controlling sections of §12-28-103, C.R.S. read as follows with recommended amendments:

***(3) No permit shall be required for the display of fireworks at the State Fair Grounds by the Board of Commissioners of the Colorado State Fair Authority, at any duly authorized county or district fair, or at any display by any governing body or local authority.***

***(4) The discharge of fireworks pursuant to a permit provided for in subsection (2) of this section, as otherwise provided in subsection (3) of this section, shall be lawful in Colorado, if the display is performed in accordance with the requirement of the National Fire Protection Association as stated in NFPA-1123, Code of the Outdoor Display of Fireworks AS DETERMINED BY THE LOCAL AUTHORITY.***

***(5) NO PERMIT TO CONDUCT A FIREWORKS DISPLAY SHALL BE GRANTED TO ANY PERSON WHO IS NOT CERTIFIED AS A FIREWORKS DISPLAY OPERATOR BY THE DEPARTMENT OF PUBLIC SAFETY***

***(6) THE LOCAL AUTHORITY HAVING JURISDICTION OVER THE AREA WHERE A FIREWORKS DISPLAY IS TO BE CONDUCTED MAY CONDUCT ANY INSPECTIONS AS MAY BE REQUIRED TO SECURE COMPLIANCE WITH THE REQUIREMENTS OF SUBSECTION (4) AND TO ASSURE THE SAFE CONDUCT OF THE FIREWORKS DISPLAY.***

***(7) IT SHALL BE UNLAWFUL FOR ANY PERSON TO CONDUCT ANY FIREWORKS DISPLAY WHO IS NOT CERTIFIED AS A FIREWORKS DISPLAY OPERATOR BY THE DEPARTMENT OF PUBLIC SAFETY.***

The rules and regulations pursuant to §12-28-104(7), C.R.S. are silent on the issue of who is to enforce the above subsection (4). In the past, the Division of Fire Safety has received complaints that the fireworks display at the State Fair is conducted in an unsafe manner and not in compliance with NFPA-1123. In these cases, the Division has passed the complaint on to the Pueblo Fire Department with the assumption that they were enforcing the provision. Recently, the Division has learned otherwise. A fireworks display operator (knowledgeable in NFPA-1123) took his complaint to the City of Pueblo and the Pueblo Fire Department and was told, in writing, that they do not have jurisdiction to enforce the provisions of §12-28-103(4), C.R.S. The Pueblo Fire Department and the fireworks display operator assert that the Executive Director of the Colorado Department of Public Safety is the Authority having jurisdiction to enforce this provision

NFPA-1123 establishes minimum standards to insure protection of both workers and the general public during a fireworks display. Local authorities need jurisdiction in the statute to enforce compliance with the law.

### **Regulation by Governing Bodies**

***Recommendation 10: Expand the power of local governments to further restrict the sale, use or possession of fireworks.***

The following amended statute would grant the power to impose further regulations and prohibitions upon the sale, use and possession of fireworks to governing bodies throughout the state.

***12-28-107. Regulation by GOVERNING BODIES. This article shall not be construed to prohibit the imposition by ordinance OR RESOLUTION of further regulations and prohibitions upon the KEEPING, STORAGE, USE, MANUFACTURE, SALE, HANDLING OR OTHER DISPOSITION, OR possession of fireworks including permissible fireworks BY ANY GOVERNING BODY THE AREA WITHIN THEIR JURISDICTION, but no such GOVERNING BODY shall permit or authorize the KEEPING, STORAGE, USE, MANUFACTURE, SALE, HANDLING OR OTHER DISPOSITION, OR possession of any fireworks in violation of this article.***

The power of local governments (other than municipalities) to prohibit the sale and use of fireworks is unclear as the statute is currently worded. Section 12-28-107, C.R.S. permits municipalities to further restrict the sale, use or possession of fireworks. The statute does not grant counties or fire protection districts the same privilege. At least one Colorado wholesaler has maintained that counties and fire protection districts have no such power. Some counties and fire protection districts assert that they can prohibit such activities by virtue of adopting and enforcing the Uniform Fire Code. They argue that without such power they could do nothing to prohibit the use of fireworks even during high fire periods.

## Licensing Fees

### ***Recommendation 11: Set licensing fee by rulemaking.***

Colorado law requires that all costs of administration and enforcement by the Department of Public Safety be offset by licensing fees, and maximum licensing fees for fireworks licensees are established by statute. As mentioned before in the report, enforcement activities must be curtailed because there are not enough funds to effectively administer the program. It is recommended that the exact amount of the licensure fee be removed from the statute and allow the rulemaking procedure to set the amount necessary to provide enough revenue to efficiently enforce and administer the fireworks law.

## Fireworks Operator Certifications

### ***Recommendation 12: Grant the Director the power to conduct examinations.***

The language would read as follows:

***"§12-28-104(7.5), C.R.S. - The director of the department of public safety may conduct examinations to persons applying for certification as an operator of pyrotechnic displays and an operator of fireworks displays."***

The certification procedures for Fireworks Display Operators and Pyrotechnic Operators are currently found in Chapters XI and XII respectively of the Fireworks Regulations. However, there are no provisions in the statute that grant the Director the authority to give certification examinations. In this section, the rules exceed the statutory authority. Nevertheless, the certification of fireworks display operators and pyrotechnic operators is necessary for the enforcement of the program to protect the public adequately. The statute should grant the Director the authority to administer the examinations necessary to obtain these certifications.

*APPENDICES*

## Sunset Statutory Evaluation Criteria

- (I) Whether regulation by the agency is necessary to protect the public health, safety and welfare; whether the conditions which led to the initial regulation have changed; and whether other conditions have arisen which would warrant more, less or the same degree of regulation;
- (II) If regulation is necessary, whether the existing statutes and regulations establish the least restrictive form of regulation consistent with the public interest, considering other available regulatory mechanisms and whether agency rules enhance the public interest and are within the scope of legislative intent;
- (III) Whether the agency operates in the public interest and whether its operation is impeded or enhanced by existing statutes, rules, procedures and practices of the Department of Regulatory Agencies and any other circumstances, including budgetary, resource and personnel matters;
- (IV) Whether an analysis of agency operations indicates that the agency performs its statutory duties efficiently and effectively;
- (V) Whether the composition of the agency's board or commission adequately represents the public interest and whether the agency encourages public participation in its decisions rather than participation only by the people it regulates;
- (VI) The economic impact of regulation and, if national economic information is available, whether the agency stimulates or restricts competition;
- (VII) Whether complaint, investigation and disciplinary procedures adequately protect the public and whether final dispositions of complaints are in the public interest or self-serving to the profession;
- (VIII) Whether the scope of practice of the regulated occupation contributes to the optimum utilization of personnel and whether entry requirements encourage affirmative action;
- (IX) Whether administrative and statutory changes are necessary to improve agency operations to enhance public interest.

## Fireworks Statute

**12-28-101. Definitions.** As used in this article, unless the context otherwise requires:

(1) "Display retailer" means any person, including a manufacturer, who is licensed as a display retailer under the provisions of section 12-28-104 and who sells, delivers, consigns, gives, or otherwise furnishes fireworks to any person authorized by section 12-28-103 to discharge fireworks in Colorado.

(2) "Exporter" means any person, including a manufacturer, licensed as an exporter under the provisions of section 12-28-104 and who sells, delivers, consigns, gives, or otherwise furnishes fireworks for export outside of the state of Colorado.

(3) (a) "Fireworks" means any article, device, or substance prepared for the primary purpose of producing a visual or auditory sensation by combustion, explosion, deflagration, or detonation which meets the description of fireworks as set forth in the United States Department of Transportation Hazardous Materials Regulations, Title 49, Code of Federal Regulations, Parts 173.88 and 173.100.

(b) "Fireworks" does not include:

(I) Toy caps which do not contain more than twenty-five hundredths of a grain of explosive compound per cap;

(II) Highway flares, railroad fusees, ship distress signals, smoke candles, and other emergency signal devices;

(III) Educational rockets and toy propellant device type engines used in such rockets when such rockets are of nonmetallic construction and utilize replaceable engines or model cartridges containing less than two ounces of propellant and when such engines or model cartridges are designed to be ignited by electrical means;

(IV) Fireworks which are used in testing or research by a licensed explosives laboratory.

(4) "Fund" means the fireworks licensing cash fund created in section 12-28-104 (6) (b).

(5) "Governing body" means:

(a) The city council, town council, board of trustees, or other governing body of any city or town, as to the area within the corporate limits of such city or town;

(b) The board of directors of any fire protection district organized pursuant to part 1 of article 1 of title 32, C.R.S., as to the area within the boundaries of such fire protection district; and

(c) The board of county commissioners as to the area within a county outside the corporate limits of any city or town or the boundaries of any fire protection district.

(6) "Local authority" means the duly authorized fire department, police department, or sheriff's department of a local jurisdiction.

(7) "Manufacturer" means any person who manufactures, makes, constructs, or produces fireworks.

(8) "Permissible fireworks" means the following items designed primarily to produce visual or audible effects by combustion, including certain devices designed to produce audible or visual effects; except that no device or component shall, upon functioning, project or disburse any metal, glass, or brittle plastic fragments:

(a) Cylindrical fountains, total pyrotechnic composition not to exceed seventy-five grams each in weight. The inside diameter shall not exceed three-quarters of one inch.

(b) Cone fountains, total pyrotechnic composition not to exceed fifty grams each in weight;

(c) Wheels, total pyrotechnic composition not to exceed sixty grams for each driver unit or two hundred forty grams for each complete wheel. The inside tube diameter of driver units shall not exceed one-half of one inch.

(d) Ground spinner, a small device containing not more than twenty grams of pyrotechnic composition venting out of an orifice usually in the side of the tube, similar in operation to a wheel, but intended to be placed flat on the ground;

(e) Illuminating torches and colored fire in any form, total pyrotechnic composition not to exceed one hundred grams each in weight;

(f) Dipped sticks and sparklers, the total pyrotechnic composition of which does not exceed one hundred grams, of which the composition of any chlorate or perchlorate shall not exceed five grams;

(g) Explosive auto alarms, as described in Title 49, code of federal regulations, part 173.100;

(h) Toy propellant devices and toy smoke devices, as described in Title 49, code of federal regulations, part 173.100;

(i) Cigarette loads, as described in Title 49, code of federal regulations, part 173.100;

(j) Trick matches consisting of book matches, strike-anywhere matches, or strike-on-box matches, as described in Title 49, code of federal regulations, part 173.100;

(k) Trick noise makers, as described in Title 49, code of federal regulations, part 173.100;

(l) Snake or glow worm, pressed pellets of pyrotechnic composition that produce a large snake-like ash upon burning;

(m) Novelties consisting of two or more devices enumerated in this subsection (8);

(n) Fireworks which are used exclusively for testing or research by a licensed explosives laboratory.

(9) "Person" includes an individual, partnership, firm, company, association, corporation, or governmental entity.

(10) "Retailer" means any person who sells, delivers, consigns, or furnishes permissible fireworks to another person not for resale.

(11) "Storage" means the possession of fireworks for safe custody, where the safekeeping is the principal object of deposit, and not the consumption or sale.

(12) "Wholesaler" means any person, including a manufacturer, who is licensed as a wholesaler under section 12-28-104 and who sells, delivers, consigns, gives, or otherwise furnishes permissible fireworks to a retailer for resale in Colorado.

**12-28-102. Unlawful use or sale of fireworks - exceptions.** (1) Except as provided for in subsection (6) of this section, it shall be unlawful for any person to knowingly furnish to any person who is under sixteen years of age, by gift, sale, or any other means, any fireworks, including those defined as permissible fireworks in section 12-28-101 (8).

(2) Except as provided for in subsection (6) of this section, it shall be unlawful for any person who is under sixteen years of age to purchase any fireworks, including those defined as permissible fireworks in section 12-28-101 (8).

(3) Nothing in this section shall be construed to prohibit any statutory or home-rule municipality from enacting any ordinance which prohibits a person under sixteen years of age from purchasing any fireworks, including those defined as permissible fireworks in section 12-28-101 (8).

(4) Any person who sells or offers to sell any fireworks, including those defined as permissible fireworks in section 12-28-101 (8), shall display a warning sign, as specified in this subsection (4). Said warning sign shall be displayed in a prominent place on the premises at all times, shall have a minimum height of eight and one-half inches and a minimum width of eleven inches, and shall read as follows:

**WARNING IT IS ILLEGAL FOR ANY PERSON UNDER SIXTEEN YEARS OF AGE TO PURCHASE ANY FIREWORKS. VIOLATORS MAY BE PUNISHED BY A FINE OF UP TO \$750.00, BY IMPRISONMENT FOR UP TO SIX MONTHS, OR BY BOTH SUCH FINE AND IMPRISONMENT.**

(5) Except as provided in this section and in section 12-28-103, it shall be unlawful for any person to possess or discharge any fireworks, other than permissible fireworks, anywhere in this state.

(6) At all times that it is lawful for any person over the age of sixteen years to possess and discharge permissible fireworks, it shall also be lawful for a person under the age of sixteen years to possess and discharge permissible fireworks, if such person is under adult supervision.

(7) (a) Except as provided in this section, it shall be unlawful for any person who is not licensed as a retailer under this article, in retail transactions with the public, to offer for sale, expose for sale, sell, or have in such person's possession with the intent to offer for sale any permissible fireworks.

(b) This subsection (7) shall take effect July 15, 1991.

(8) (a) Except as provided in this section, it shall be unlawful for any person who is not licensed as a display retailer, wholesaler, or exporter under this article, in transactions other than retail transactions with the public, to offer for sale, expose for sale, sell, or have in such person's possession with the intent to offer for sale any fireworks including permissible fireworks.

(b) This subsection (8) shall take effect July 15, 1991.

(9) Nothing in this article shall prevent or regulate:

(a) The use of fireworks by railroads or other transportation agencies for signal purposes or illumination;

(b) The sale or use of blank cartridges for a show or theater, for signal or ceremonial purposes in athletics or sports, or for use by military organizations;

(c) The sale, purchase, possession, or use of fireworks distributed by the division of wildlife for agricultural purposes under conditions approved by said division; or

(d) The sale, delivery, consignment, gift, or furnishing of fireworks among display retailers, wholesalers, or exporters licensed under this article.

**12-28-103. Permits - exceptions to permit requirements.** (1) Any governing body has the power to grant nontransferable and nonassignable permits within the area under its jurisdiction for the storage of fireworks or for the facilities used for the retail sales of fireworks, including permissible fireworks, by any person and to adopt reasonable rules and regulations for the granting of such permits.

(2) Any governing body has the power to grant nontransferable and nonassignable permits within the area under its jurisdiction for displays of fireworks by any person, fair association, amusement park, or other organizations or groups and to adopt reasonable rules and regulations for the granting of such permits.

(3) No permit shall be required for the display of fireworks at the state fair grounds by the board of commissioners of the Colorado state fair authority, at any duly authorized county or district fair, or at any display by any governing body or local authority.

(4) The discharge of fireworks pursuant to a permit provided for in subsection (2) of this section, or as otherwise provided in subsection (3) of this section, shall be lawful in Colorado, if the display is performed in accordance with the requirements of the national fire protection association as stated in NFPA-1123, code for the outdoor display of fireworks.

**12-28-104. Licensing - creation of fireworks licensing cash fund.** (1) No person shall sell, offer for sale, expose for sale, or possess with intent to sell permissible fireworks for retail until that person first obtains a retailer of fireworks license from the director of the department of public safety and the permit, if any, required by section 12-28-103 (1). Such retailer's license shall be good only for the calendar year in which it is issued, shall apply to only one retail location, and shall at all times be displayed at the place of business of such licensed retailer.

(2) No person shall sell, deliver, consign, give, or furnish fireworks to any person authorized by section 12-28-103 to discharge fireworks in Colorado until that person first obtains a display retailer of fireworks license from the director of the department of public safety and the permit, if any, required by section 12-28-103 (1).

(3) No person shall sell, deliver, consign, give, or furnish permissible fireworks to a retailer for resale in Colorado until that person first obtains a wholesaler of fireworks license from the director of the department of public safety and the permit, if any, required by section 12-28-103 (1).

(4) No person shall sell, deliver, consign, give, or furnish fireworks for export outside of Colorado until that person first obtains an exporter of fireworks license from the director of the department of public safety and the permit, if any, required by section 12-28-103 (1).

(5) Applications for each display, retail, wholesale, and export license shall be filed with the director of the department of public safety at least thirty days before the start of activities for which the license is required. Each such license shall be valid through September 1 of the year following the date on which the license was issued.

(6) (a) All fees pursuant to this article shall be collected by the director of the department of public safety.

(b) All fees collected pursuant to paragraph (a) of this subsection (6) shall be transmitted to the state treasurer who shall credit the same to the fireworks licensing cash fund which fund is hereby created in the state treasury. The general assembly shall appropriate the moneys in the fund to the department of public safety for payment of salaries and expenses necessary for the administration of this article.

(c) The director of the department of public safety shall set fees pursuant to this article at such rates as are necessary to provide for the direct and indirect costs and expenses of the department of public safety in the administration of this article; except that the fee for a retailer of fireworks license shall not exceed twenty-five dollars and the fee for a display retailer of fireworks license, a wholesaler of fireworks license, or an exporter of fireworks license shall not exceed seven hundred fifty dollars. Such rates shall be reviewed annually by the director of the department of public safety and the director shall report annually to the general assembly on the propriety of such rates.

(7) The director of the department of public safety shall promulgate rules and regulations to implement the provisions of this article. Such rules and regulations may include requirements which are reasonably necessary for the safety of workers and the public and the protection of property. The procedure for the promulgation of such rules and regulations shall be in accordance with the provisions of section 24-4-103, C.R.S.

(8) Any person aggrieved by a decision or order of the director of the department of public safety may seek judicial review pursuant to the provisions of section 24-4-106, C.R.S.

(9) Any licenses issued prior to July 15, 1991, by the secretary of state shall remain valid through September 1, 1991.

(10) This section shall take effect July 15, 1991.

**12-28-105. Importation of fireworks - duties of licensees - retention of invoices for inspection.** (1) It shall be unlawful for any person not licensed as a display retailer, wholesaler, or exporter under the provisions of section 12-28-104 to bring any fireworks including permissible fireworks into this state. Retail purchasers shall not purchase fireworks by mail order or receive any fireworks in Colorado by mail, parcel service, or other carrier. All fireworks sales and deliveries to retail purchasers in Colorado shall be made in Colorado and shall be conducted only by persons licensed pursuant to this article.

(2) It shall be unlawful for any retailer to sell, offer for sale, expose for sale, or possess with intent to sell any permissible fireworks in this state which have not been purchased from a wholesaler licensed under the provisions of section 12-28-104.

(3) It shall be unlawful for any person to conduct any fireworks display using fireworks which have not been purchased from a display retailer licensed under the provisions of section 12-28-104.

(4) Any retailer licensed under the provisions of section 12-28-104 (1), and any person who discharges fireworks pursuant to section 12-28-103 (2) or (3), shall keep available, for inspection by local authorities, a copy of each invoice for fireworks purchased as long as any fireworks included on such invoice are held in such person's possession. Such invoice shall show the license number of the wholesaler or display retailer from whom such fireworks were purchased.

(5) This section shall take effect July 15, 1991.

**12-28-106. Exportation of fireworks.** (1) It shall be unlawful to export fireworks, other than permissible fireworks, from the state of Colorado, unless such fireworks are transported in accordance with the regulations of the United States department of transportation regulating the transportation of explosives, fireworks, and other dangerous articles by motor, rail, air, and water and the exporter obtains a signed bill of lading from each person transporting such fireworks, which shall show the quantity and types of fireworks transported and the recipient's full legal name and address.

(2) The exporter may transport such fireworks by common carrier or by the exporter's vehicle; except that the sale of such fireworks for transport in the purchaser's vehicle is unlawful unless:

(a) The exporter requires the purchaser to display a valid motor vehicle driver's license issued by a state other than the state of Colorado and records the number and state of issue of such driver's license on the bill of lading pertaining to such sale, and further requires the purchaser to display a valid motor vehicle registration showing that the purchaser owns a motor vehicle licensed in a state other than the state of Colorado, which license plate number and state of issue shall be recorded on the bill of lading pertaining to such sale; or

(b) The exporter requires the purchaser to display a valid motor vehicle driver's license issued by the state of Colorado and records the number and state of issue of such driver's license on the bill of lading pertaining to such sale, and further requires the purchaser to furnish a valid wholesale or retail license number or resale license number issued by the governing body of a state or local authority located outside of the state of Colorado, which number and state of issue shall be recorded on the bill of lading pertaining to such sale.

(3) The bills of lading required by this section shall be retained by the exporter for a period of three years from the date of such sale.

**12-28-107. Regulation by municipalities.** This article shall not be construed to prohibit the imposition by municipal ordinance of further regulations and prohibitions upon the sale, use, and possession of fireworks, including permissible fireworks, within the corporate limits of any city or town, but no such city or town shall permit or authorize the sale, use, or possession of any fireworks in violation of this article.

**12-28-108. Storage of fireworks.** All storage of fireworks shall be in accordance with the building and fire codes adopted by the governing body.

**12-28-109. Seizure of fireworks.** The local authorities shall seize, take, and remove, at the expense of the owner, all stocks of fireworks, including permissible fireworks, offered or exposed for sale, stored, or held in violation of this article.

**12-28-110. Violations - penalty.** Any person who violates any provision of this article commits a class 3 misdemeanor and shall be punished as provided in section 18-1-106, C.R.S.

**12-28-111. Denial, suspension, or revocation of or refusal to renew license.** (1) The director of the department of public safety may deny, suspend, revoke, or refuse to renew any license issued or applied for under the provisions of this article for any of the following reasons:

- (a) Violations of any of the provisions of this article;
- (b) A conviction of any felony, but subject to the provisions of section 24-5-101, C.R.S.;
- (c) A conviction pursuant to section 12-28-110;
- (d) Any material misstatement, misrepresentation, or fraud in obtaining a license.

(2) Such revocation or suspension proceedings shall be brought by the Colorado director of the department of public safety pursuant to the provisions of the "State Administrative Procedure Act", article 4 of title 24, C.R.S.

**12-28-112. Repeal of article.** This article is repealed, effective July 1, 1996. Prior to such repeal the licensing functions of the executive director of the department of public safety shall be reviewed as provided for in section 24-34-104, C.R.S.

**12-28-113. Licensing transition - secretary of state to license until July 15, 1991.** (Repealed)

## Questionnaire - Regulation of Fireworks

April 25, 1995

Chief  
Fire Department  
Address  
Address

Dear Chief :

As a policy analyst for the Colorado Department of Regulatory Agencies, Office of Policy & Research, I am responsible for performing a Sunset Review on the State Fireworks Regulation Program which is administered by the Department of Public Safety, Division of Fire Safety. A Sunset Review involves careful evaluation of a regulatory body to determine whether there is a need for continued regulation and whether statutory changes are needed to better protect consumers from harm.

To effectively evaluate the regulatory program I would like input from the fire districts and departments in Colorado. Since much of the enforcement of fireworks violations are done at the local level, your input is imperative. Please feel free to respond candidly to the questions.

I would greatly appreciate it if you would return the questionnaire to me as soon as possible. Your comments will assist with the evaluation of the Fireworks Program.

A self-addressed stamped envelope is enclosed for your convenience.

Sincerely,

Sue Sherry Henry  
Policy Analyst

## Fireworks Licensure Questionnaire

Over three hundred questionnaires were sent to fire chiefs throughout Colorado. Almost every fire protection district or fire department was surveyed regarding their local fireworks program. 107 survey responses were recorded, including 48 fire departments and 53 fire protection districts. The remaining few were volunteer fire departments. This represents a response rate of 36%, however most major fire departments and fire protection districts throughout Colorado responded. In addition to answering the questions posed in the survey, several of the respondents wrote comments on their impressions of the state regulatory program and the fireworks problem in their district. The purpose of the survey was to elicit such comments as well as to provide information from the fire protection community on its view of state and local regulation. Please note that the totals of responses in each category may not equal 107 since some respondents left some questions blank and some selected more than one choice.

**Fire Department/District Name** \_\_\_\_\_

**1. Has your department/district adopted the Uniform Fire Code?**

Yes - 73

No - 34

**2. Who is responsible for complaint enforcement regarding fireworks?**

Sheriff - 31

Fire Marshall - 16

Department Public Safety - 1

Fire Prevention Officer - 1

No one - 1

Local Law Enforcement - 35

Fire Chief - 12

Fire Department - 28

**3. Do you regulate the sale, possession, and use of fireworks above and beyond state law?**

Yes - 36

No - 70

Many of the respondents who answered yes either prohibit all fireworks except display fireworks or require permits.

**4. Does your department/district have an existing program responsible for dealing with violations of unlawful fireworks activity? Please explain.**

Yes - 29

Issue summons/citations - 25

Refer to DA's office - 4

Seize fireworks - 3

Refer to law enforcement - 12

No - 49

**5. What is the extent of illegal fireworks activity in your jurisdiction?**

Nonexistent - 12

Mild - 61

Somewhat troublesome - 25

Major problem - 7

Unknown - 1

**6. Please check all that apply to your district regarding complaints or illegal activity concerning the sale and use of fireworks.**

Unlicensed sales - 11

Illegal sales by licensed retailers - 12

Sales to juveniles - 22

Use of fireworks by juveniles - 97

Fires - 76

Noise pollution - 40

Injuries - 27

**7. For 1993 and 1994, please list the number of complaints regarding fireworks activity and the type of complaint.**

**1994 Fireworks Activity**

<u>Type of complaint</u>	<u>Total from respondents</u>
Usage	62
Illegal fireworks possession	189
Fires	101
Illegal use	536
Noise	31
Illegal juvenile use	8
Unlicensed activity	8

An additional 420 complaints were recorded but not specified.

Several fire departments do not retain records regarding the number of complaints.

**1993 Fireworks Activity**

<u>Type of complaint</u>	<u>Total from respondents</u>
Illegal usage	209
Illegal juvenile use	7
Fires	230
Noise	27
Illegal possession	224

**8. If the state fireworks regulatory program is sunsetted, then the sale and enforcement of fireworks would be at the local level. Would you support legislation that grants authority to local governments for the enforcement of the sale, use, and possession of fireworks?**

Supports continued state regulation - 32

Supports regulation at the local level - 53

### **DISCUSSION OF SURVEY RESULTS**

The survey results clearly show a split in the opinions of the fire departments and protection districts. Almost two-thirds of the respondents support regulation at the local level (53) while one-third advocate continued state regulation. However, a memorandum dated June 15, 1995 received by OPR from the Fireworks Committee of the Board of Fire Marshals of Colorado recommends the continuation of the state fireworks licensing program. The main consideration the Committee had in making the recommendation relates to the fact that, although not a very effective system, Colorado's licensing program allows local jurisdictions, in addition to the state, the use of enforcement powers they would not have at their disposal should this program sunset.

A majority of the local law enforcement agencies and fire departments are responsible for complaint enforcement and illegal use of fireworks. Almost two-thirds responded that the extent of illegal fireworks activity was mild. The greatest problems regarding fireworks activity as noted by the fire chiefs was use of fireworks by juveniles, fires, and noise pollution.

## Wholesaler/Retailer Questionnaire

The following responses to the questionnaire have been gathered through informal telephone interviews with various licensed retailers throughout Colorado and licensed wholesalers operating from out-of-state. A total of 13 wholesalers and 30 retailers were surveyed.

Seventy-one percent of the wholesalers (10) surveyed expressed support for state regulation of fireworks and only two supported local regulation. A majority of the wholesalers indicated that the \$750 fee was adequate but they were willing to see a the fee raised in order to increase enforcement of the regulatory program.

The licensed retailers surveyed showed a substantial split when asked whether fireworks regulation should be at the state or local level. Those retailers who preferred state control (37%) generally stated that counties would probably ban the use, sale and possession of fireworks. Fifty-seven percent of the retailers preferred local control and 6% were uncommitted. In response to question 2, when asked what public purpose is served by requiring retailers to purchase fireworks from only Colorado licensed wholesalers, 55% replied that they could be assured that the fireworks were legal. Twenty-five percent answered that there was no purpose for this regulation.

**1. Should licensing of wholesalers/display retailers/exporters/retailers be continued at the state level, or can it be delegated to local jurisdictions?**

**Wholesalers Response:**

State - 10

Local - 2

No regulation - 2

**Retailers Response:**

State - 11

Local - 17

Either - 2

**2. What public purpose is served by requiring retailers to purchase fireworks from only Colorado licensed wholesalers?**

**Wholesalers Response:**

Stop bootlegging - 1

Tighter control of what is being sold - 5

Licensees must comply with regulations - 1

No purpose - 1

**Retailers Response:**

Know the fireworks are legal - 11  
Easier to control -1  
Convenience - 1  
Support Colorado companies - 2  
No purpose - 5

3. **Despite regulatory efforts, the use of illegal fireworks in Colorado continues to be a problem. What recommendations do you have to address this problem?**

**Wholesalers Response:**

Remove bottle rockets from the marketplace  
Make legal fireworks readily available to consumers  
Focus regulatory efforts on unlicensed activity  
Increase the types of fireworks that are permissible  
Offer educational programs to consumers

**Retailers Response:**

Have a list of safe fireworks  
More community involvement  
Enforce existing laws  
Allow more variety of fireworks  
Ban fireworks totally  
Publicize that the state will seize illegal fireworks

4. **Input from the Department of Public Safety indicates that current fee collections do not support enforcement activities. What would be a reasonable fee for a license?**

**Wholesalers Response:**

\$750 is to high - 3  
\$750 is fine - 3  
\$500 is appropriate - 2  
\$1000 maximum -1  
\$1500 maximum - 1

**Retailers Response:**

No fee - 1  
\$25 maximum - 12  
\$50 maximum - 6  
\$75-100 maximum - 4