

OFFICE OF LEGISLATIVE LEGAL SERVICES

COLORADO GENERAL ASSEMBLY



DIRECTOR
Sharon L. Eubanks

DEPUTY DIRECTOR
Julie A. Pelegrin

REVISOR OF STATUTES
Jennifer G. Gilroy

ASSISTANT DIRECTOR
Duane H. Gall

PUBLICATIONS COORDINATOR
Kathy Zambrano

**COLORADO STATE CAPITOL
200 EAST COLFAX AVENUE SUITE 091
DENVER, COLORADO 80203-1716**

**TEL: 303-866-2045 FAX: 303-866-4157
EMAIL: OLLS.GA@STATE.CO.US**

MANAGING SENIOR ATTORNEYS
Jeremiah B. Barry Jason Gelender
Christine B. Chase Robert S. Lackner
Michael J. Dohr Thomas Morris
Gregg W. Fraser

SENIOR ATTORNEYS
Jennifer A. Berman Jery Payne
Brita Darling Jane M. Ritter
Edward A. DeCecco Richard Sweetman
Kristen J. Forrestal Esther van Mourik
Nicole H. Myers

SENIOR ATTORNEY FOR ANNOTATIONS
Michele D. Brown

STAFF ATTORNEYS
Conrad Imel Yelana Love
Kip Kolkmeier Megan Waples

MEMORANDUM

TO: Committee on Legal Services

FROM: Kip Kolkmeier, Office of Legislative Legal Services

DATE: December 5, 2017

SUBJECT: Rules of the Executive Director of the Department of Public Safety, concerning persons dealing with fireworks, 8 CCR 1507-12 (LLS Docket No. 170158; SOS Tracking No. 2016-00658).¹

Summary of Problem Identified and Recommendation

Section 24-4-103 (12.5)(a)(IV), C.R.S., requires that a rule incorporating material by reference must state where a copy of the incorporated material is available for a reasonable charge from the agency adopting the rule and where a copy is available from the agency originally issuing the material. But Rule 2.4 of the Executive Director of the Department of Public Safety fails to include the required information. **Because Rule 2.4 omits information required by section 24-4-103 (12.5)(a)(IV), C.R.S., we recommend that Rule 2.4 of the rules of the Executive Director of the Department of Public Safety concerning persons dealing with fireworks not be extended.**

¹ Under § 24-4-103, C.R.S., the Office of Legislative Legal Services reviews rules to determine whether they are within the promulgating agency's rule-making authority. Under § 24-4-103 (8)(c)(I), C.R.S., the rules discussed in this memorandum will expire on May 15, 2018, unless the General Assembly acts by bill to postpone such expiration.

Analysis

Rule 2.4 does not state where a copy of the incorporated material is available for a reasonable charge, nor does it state where copies are available from the agency originally issuing the material. Therefore, Rule 2.4 fails to comply with the statute.

Section 24-33.5-2004 (7), C.R.S., requires the Executive Director to promulgate rules regulating persons dealing with fireworks:

24-33.5-2004. Licensing - application - fee - fireworks licensing cash fund - creation - rules. (7) The executive director of the department of public safety shall promulgate rules to implement the provisions of this part 20. The rules may include requirements for the certification of fireworks display operators and pyrotechnic operators, and any other requirements that are reasonably necessary for the safety of workers and the public and the protection of property. **The procedure for the promulgation of the rules shall be in accordance with the provisions of section 24-4-103. (Emphasis added)**

Section 24-4-103 (12.5)(a)(IV), C.R.S., requires a rule incorporating material by reference to state where a copy of the incorporated material is available for a reasonable charge from the agency adopting the rule and where a copy is available from the original issuer of the material:

24-4-103. Rule-making - procedure - definitions - statutory citation correction - repeal. (12.5) (a) A rule may incorporate by reference all or any part of a code, standard, guideline, or rule that has been adopted by an agency of the United States, this state, or another state, or adopted or published by a nationally recognized organization or association, if:

(IV) The rule states where copies of the code, standard, guideline, or rule are available for a reasonable charge from the agency adopting the rule and where copies are available from the agency of the United States, this state, another state, or the organization or association originally issuing the code, standard, guideline, or rule; and

The Executive Director promulgated Rule 2.4, which includes subsections labeled 2.5, 2.6, and 2.7, and which states:

2.4 CODES AND STANDARDS

The following codes and the standards referenced therein are adopted and promulgated as minimum standards for persons dealing with fireworks in accordance with C.R.S. 24-4-103 (12.5):

- 2.4.1 49 C.F.R. Part 173 as of January 30th, 2015; U.S. Department of Transportation.
- 2.4.2 International Building Code - 2015 Edition, First Printing: May 2014 (Copyright 2014 by International Code Council, Inc. Washington, D.C.).
- 2.4.3 International Fire Code - 2015 Edition, First Printing: May 2014 (Copyright 2014 by International Code Council, Inc. - Washington, D.C.), including Appendices B and C.
- 2.4.4 International Mechanical Code - 2015 Edition, First Printing: May 2014 (Copyright 2014 by International Code Council, Inc. - Washington, D.C.).
- 2.4.7 NFPA1124, Code for the Manufacture, Transportation, and Storage, and Retail Sales of Fireworks and Pyrotechnic Articles - 2013 Edition, Final Printing: August 2014 (Copyright 2014 by National Fire Protection Association – Quincy, MA).
- 2.4.8 NFPA1123, Code for Fireworks Display - 2014 Edition, Final Printing: August 2013 (Copyright 2013 by National Fire Protection Association – Quincy, MA).
- 2.4.9 NFPA1126, Code for the Use of Pyrotechnics Before a Proximate Audience - 2011 Edition, Final Printing: December 2009 (Copyright 2010 by National Fire Protection Association – Quincy, MA).
- 2.5 The Division shall maintain copies of the complete texts of the adopted codes, which are available for public inspection during regular business hours. Interested parties may inspect the referenced incorporated materials by contacting the Fire & Life safety Section Chief at the Division, 700 Kipling St, Suite 4100, Denver, CO 80215. Telephone number: (303) 239-4100.
- 2.6 In the event that a new edition of the code is adopted, the code current at the time of permit application shall remain in effect throughout the work authorized by the permit.
- 2.7 This Rule does not include later amendments or editions of the incorporated material.

Because Rule 2.4 fails to comply with section 24-4-103 (12.5)(a)(IV), C.R.S., it should not be extended.

Recommendation

We therefore recommend that Rule 2.4 of the rules of the Executive Director of the Department of Public Safety concerning persons dealing with fireworks not be

extended because Rule 2.4 omits information required by section 24-4-103 (12.5)(a)(IV), C.R.S.