

FIREWORKS AND SPARKLER ENFORCEMENT

Law Enforcement and Inspections Guide



State of Florida
Division of State Fire Marshal

How To Use This Guide:

This guide is intended to familiarize law enforcement and fire inspection personnel with the various laws, regulations and restrictions pertaining to the sale and use of fireworks and sparklers in the State of Florida.

This guide describes and illustrates both legal and illegal devices, referencing the appropriate statutes and administrative codes that will support your documents used in your enforcement actions.

Law enforcement officers and fire inspectors may use this publication to:

- Assist in determining whether a device is classified as a sparkler or firework.
- Assist in training new law enforcement personnel on the enforcement parameters of Chapter 791, Florida Statutes.
- Provide sellers of sparklers and fireworks with information on existing laws and penalties.

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This guide was authored by personnel from the Division of State Fire Marshal's Bureau of Fire and Arson Investigations, the law enforcement arm of the Division, and the Bureau of Fire Prevention.

Please visit the Division website at: <http://www.fldfs.com/SFM/>

Why Should We Enforce the Laws Regulating the Use of Sparklers and Fireworks? --

One reason, the laws exist to enhance public safety. Only seven states ban all retail sales of consumer fireworks, with Florida being one of these. Such bans have been linked to significantly lower rates of fireworks-related injuries and fires. Deaths, injuries and fires occur too frequently when untrained consumers and children use sparklers and illegal fireworks.

That is why six prominent health and fire safety advocates called for a ban on consumer fireworks use before Independence Day of 2003.

The group consisted of:

- **The American Academy of Ophthalmology**
- **The American Academy of Pediatrics**
- **The American College of Emergency Physicians**
- **The International Fire Marshals Association**
- **The National Association of State Fire Marshals**
- **NFPA (National Fire Protection Association)**

Fireworks can result in severe burns, scars and disfigurement that can last a lifetime. Even sparklers, thought to be safe by many people, can reach temperatures above 1000 degrees F and can burn users and bystanders.

Twelve people died from injuries in fires started by fireworks in 1999, the latest year for which figures are available from NFPA. About half of all fireworks injuries in 2001 occurred among those under age 15, with nearly two-thirds suffered by those under age 20. The highest injury rates were among teens, according to the U.S. Consumer Product Safety Commission. Males account for three-fourths of fireworks injuries.

Fires --

In all, nationwide there were nearly 24,200 fires associated with fireworks use in 1999 according to NFPA statistics. Most of the fires were outdoor brush or refuse fires. These fires usually begin with outdoor use of fireworks. For example, when a device is launched outside and lands on a roof or other location, it can ignite combustibles before being retrieved.

Cost of Fires --

\$17.2 million in property damage for the nation in the past 10 years according to the NFPA. In a typical year, on the July 4th holiday, fireworks cause more fires in the U.S. than all other causes of fire combined.

Certificate of Registration --

Under state law the State Fire Marshal issues Certificates of Registration to those firms and individuals engaged in the business of manufacturing, distributing, selling at wholesale and retail, approved sparklers.

Retail Sales --

There are two types of retailers that will be selling *sparklers* to the general public. They are:

- **Retailers:** These people sell *sparklers* to the general public from a fixed place of business throughout the year. For example: convenience stores or supermarkets.
- **Seasonal Retailers:** These people may sell *sparklers* only from June 20 through July 5 and from December 10 through January 2. The temporary stands and tents near roads, in parking lots, etc. are operated by seasonal retailers.

The **Certificate of Registration** issued by the State Fire Marshal is mandatory. The certificate contains the licensed address where sales are permitted and must be posted at the registered location.

Retail Sales –

The following rules apply to both regular retail and seasonal retailers:

Under state law, all retailers of sparklers are required to be registered by the State Fire Marshal.

At the location where the sparklers are being sold the retailer should have a Certificate of Registration from the State Fire Marshal authorizing the business to sell sparklers. The address on the certificate will contain the address of the location where the retailer will sell the sparklers and the address must be the address of the retailer's actual location. If the addresses do not match, then the retailer is in violation of the law. [Source: *Florida Statutes, Section 791.015 and 791.02(2)*]

A sparkler or other authorized product may not be sold by a retailer or seasonal retailer unless the product was obtained from a manufacturer, distributor, or wholesaler registered with the State Fire Marshal.

Each retailer and seasonal retailer shall keep, at every location where sparklers are sold, a copy of an invoice or other evidence of purchase from the manufacturer, distributor or wholesale. The invoice shall include the registration number for the particular manufacturer, distributor, or wholesaler and the specific items covered by the invoice. [Source: *Florida Statutes, Section 791.02(2)*]

Product Verification --

If a retailer is selling sparklers or other combustible items that are unfamiliar to you, seek guidance from your command or the State Fire Marshal.

The State Fire Marshal publishes a ***list of approved sparklers***. If a retailer is selling an item to the general public that is not on the approved list, or the product was obtained from an unlicensed manufacturer, distributor or wholesaler, the retailer is in violation of the law. [Source: *Florida Statutes, Section 791.02(2) and 791.013*]

The list of approved sparklers is available on the Division's Website at www.fldfs.com/sfm

Novelties and Trick Noisemakers --

Novelties and trick noisemakers, as defined and listed in Section 791.01, Florida Statutes, are approved for sale and use at all times.

These items include smoke devices, party poppers, snappers and snakes. [Source: *Section 791.01(4)(c)*]



Novelty & Trick
Noisemakers

Novelty Items that may be legally purchased through retail sales and used legally within Florida are illustrated --



Novelty & Trick
Noisemakers

Smoke
Devices



Sale at Wholesale, etc., exempted... --

Any person, firm, co-partnership, or corporation who has registered with the State Fire Marshal as a manufacturer, distributor or wholesaler may sell fireworks products at wholesale in compliance with the provisions of Section 791.04, Florida Statutes.

A registered manufacturer, distributor or wholesaler, holding a current Certificate of Registration issued by the State Fire Marshal is not prohibited from selling:

- fireworks provided the same are shipped directly out of state by the registered manufacturer, distributor, or wholesaler;
- fireworks to be used by a person holding a permit from any Board of County Commissioners at the display covered by such permit;
- blank cartridges to be used for a show or theater, or for signal or ceremonial purposes in athletics or sports, or for use by military organizations, or organizations composed of the Armed Forces of the United States.

Section 791.04, Florida Statutes, also does not prohibit the use of fireworks by the railroads or other transportation agencies for signal purposes or illumination or when used in quarrying or for blasting or other industrial use. [Source: Section 791.04, Florida Statutes]

Registered wholesalers, manufacturers, or distributors of “**Sparklers**” may sell fireworks products at wholesale only within the provisions of Section 791.04, Florida Statutes. The sale must be a wholesale transaction.

The 3rd District Court of Appeals in Florida opined that how a fireworks sale is treated for sales tax purposes may be instructive as to the legality of the sale. (No collection of sales taxes would be evidence of a wholesale transaction and the collection of retail sales tax in conjunction with the purchase would be evidence of a retail sale).

Florida law prohibits any person, firm, co-partnership or corporation to offer for retail sale, or use or explode, any fireworks. [Source: Section 791.02 and 791.04, Florida Statutes]

Sample Fireworks Prohibited For Normal Retail Sales --

[The following illustrations are not all inclusive and are only a few samples of those prohibited for sale]



Common
Bottle
Rockets

Sample Fireworks Prohibited For Normal Retail Sales --

[The following illustrations are not all inclusive and are only a few samples of those prohibited for sale]



M80's
with
Mortar

M80s



Standard
Fireworks



Firecrackers (rolls)

Sample Fireworks Prohibited For Normal Retail Sales --

[The following illustrations are not all inclusive and are only a few samples of those prohibited for sale]

Launch-able Rockets
With Stands



Projectile Fireworks

Standard Fireworks



Storage --

There are restrictions on the storage of sparklers. Chapter 791, F.S., prohibits the storage of sparklers in any store in which:

- paints, oils, or varnishes are manufactured or kept for the use or sale unless the paints, oils, or varnishes are in unbroken containers.
- resin, turpentine, gasoline, or flammable substances or substances, which may generate vapors are used, stored, or offered for sale unless the resin, turpentine, gasoline, or substances are in unbroken containers.
- there is not at least one approved chemical fire extinguisher, ready, available, and equipped for use in extinguishing fires.

Any location where sparklers are in storage to be offered for sale at retail, requires a sign conspicuously displayed over the entrance to the room in which the sparklers are stored, that states: "CAUTION SPARKLERS - NO SMOKING". No person shall be in the room while in possession of a lighted cigar, cigarette, or pipe. [Source: *Florida Statutes, Section 791.055*]

Storage of sparklers must be in compliance with the provisions of the Florida Fire Prevention Code.

Agricultural Use --

Chapter 791, Florida Statutes, specifically allows the importation, purchase, sale, or use of fireworks for use solely and exclusively in frightening birds from agricultural works and fish hatcheries. Such use is governed entirely by the rules prescribed by the Department of Agriculture and Consumer Services. [Source: *Chapter 5A-3, Florida Administrative Codes*]

Evidence Related to Chapter 791 Enforcement --

Unlawful fireworks and disapproved or non-approved (illegal) sparklers are subject to seizure by law enforcement, pursuant to Section 791.05, Florida Statutes, which reads:

“Each sheriff, or his or her appointee, or another police officer, shall seize, take, remove or cause to be removed at the expense of the owner, all stocks of fireworks or combustibles offered for sale or exposed for sale, stored, or held in violation of this chapter.”

It may not be necessary, or legal, to seize **all** products in one location observed to engage in instances of unlawful retail sales of fireworks or illegal sparklers. Enforcement personnel may choose to only seize those items involved in an illegal transaction or exposed for sale in an illegal manner. Seizing an entire stock of product may be improper as an enforcement procedure if there are lawful wholesale transactions that may be occurring at an enforcement site.

In any prosecution for a crime involving the wrongful taking of property (grand theft, petit theft, retail theft, etc.) a photograph of the property alleged to have been stolen may be deemed competent evidence of such property and may be admissible in the prosecution to the same extent as if such property were introduced as evidence.

Chapter 90, Florida’s Evidence Code, does **not** include such an allowance for Chapter 791 enforcement, therefore to support an enforcement action for the unlawful sale, display or use of illegal fireworks or sparklers the arresting officer or agent must obtain product evidence to support any criminal charges.

After the seized property has served its purpose, it may be disposed of by a law enforcement agency in accordance with Section 705.105, Florida Statutes.

The proper post-arrest destruction of fireworks and sparklers may fall under the jurisdiction of the Department of Environmental Protection and their rules delineated within Chapter 62-730, Florida Administrative Code, if the materials constitute hazardous waste.

Section 90.901 Requirement of Authentication or Identification --

Authentication or identification of evidence is required as a condition precedent to its admissibility. The requirements of this section are satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

History.—s.1, ch. 76-237; s.1, ch. 77-77; s.22, ch. 78-361; s.1, ch. 78-379

Penalties --



Any firm, co-partnership, or corporation violating the provisions of Chapter 791 shall be guilty of a misdemeanor of the first degree, punishable as provided in s. [775.083](#) or, in the case of individuals, the members of a partnership and the responsible officers and agents of an association or corporation, punishable as provided in s. [775.082](#) or s. [775.083](#). Florida Statutes.

Contacts and Additional Resources --

Approved Sparkler list:
<http://www.fldfs.com/SFM/sparklerindex.htm>

ATF Explosive Regulations, 27 CFR
http://www.access.gpo.gov/nara/cfr/waisidx_02/27cfr55_02.html

Florida State Statutes - Chapter 791
<http://www.flsenate.gov/Statutes/>

Florida Administrative Code - Chapter 5A-3
Agricultural Use of Firecrackers

Florida Administrative Code - Chapter 69A-2
Explosives

Florida Administrative Code - Chapter 69A--50
Sparkler Registration and Testing

State v. Miketa, 824 So. 2d 970 (Fla. 3rd DCA 2002)

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