

TEXT

Title 9 of the Official Compilation of New York Codes, Rules, and Regulation is amended by adding a new Part 225, to read as follows:

PART 225

SPARKLING DEVICES

Sec.

- 225.1 Definitions
- 225.2 Registration
- 225.3 Fees
- 225.4 Certificate of Registration
- 225.5 Records and Reports
- 225.6 Reporting of Incidents
- 225.7 General Requirements

Section 225.1. Definitions

(a) The term “sparkling devices” shall have the meaning ascribed to that term by section 270.00(1)(a)(vi) of the Penal Law, and shall include “ground-based or hand-held devices” (as defined in paragraph (1) of this subdivision) and “novelties” (as defined in paragraph (2) of this subdivision). In addition, for purposes of this chapter, “sparkling devices” shall be considered consumer fireworks consistent with the 19 NYCRR Part 1219, Uniform Fire Prevention and Building Code.

(1) Ground-Based or Hand-Held Devices. The term “ground-based or hand-held

devices” shall include the category of devices described in section 270.00(1)(a)(vi)(1) of the Penal Law, i.e.: ground-based or hand-held devices that produce a shower of white, gold, or colored sparks as their primary pyrotechnic effect. Additional effects may include a colored flame, an audible crackling effect, an audible whistle effect, and smoke. These devices do not rise into the air, do not fire inserts or projectiles into the air, and do not explode or produce a report (an audible crackling-type effect is not considered to be a report). Ground-based or hand-held devices that produce a cloud of smoke as their sole pyrotechnic effect are also included in this category. Specific types of devices in this category include the following:

(i) Cylindrical fountain: cylindrical tube containing not more than seventy-five grams of pyrotechnic composition that may be contained in a different shaped exterior such as a square, rectangle, cylinder or other shape but the interior tubes are cylindrical in shape. Upon ignition, a shower of colored sparks, and sometimes a whistling effect or smoke, is produced. This device may be provided with a spike for insertion into the ground (spike fountain), a wood or plastic base for placing on the ground (base fountain), or a wood or cardboard handle to be hand held (handle fountain). When more than one tube is mounted on a common base, total pyrotechnic composition may not exceed two hundred grams, and when tubes are securely attached to a base and the tubes are separated from each other on the base by a distance of at least half an inch (12.7 millimeters), a maximum total weight of five hundred grams of pyrotechnic composition shall be allowed.

(ii) Cone fountain: cardboard or heavy paper cone containing not more than fifty grams of pyrotechnic composition. The effect is the same as that of a cylindrical fountain. When more than one cone is mounted on a common base, total pyrotechnic composition may not exceed two

hundred grams,

(iii) Wooden sparkler/dipped stick: these devices consist of a wood dowel that has been coated with pyrotechnic composition. Upon ignition of the tip of the device, a shower of sparks is produced. Sparklers may contain up to one hundred grams of pyrotechnic composition per item.

(2) Novelties. The term “novelties” shall include the category of devices described in section 270.00(1)(a)(iv)(2) of the Penal Law, i.e.: novelties which do not require approval from the United States Department of Transportation and are not regulated as explosives, provided that they are manufactured and packaged as described below:

(i) Party popper: small devices with paper or plastic exteriors that are actuated by means of friction (a string or trigger is typically pulled to actuate the device). They frequently resemble champagne bottles or toy pistols in shape. Upon activation, the device expels flame-resistant paper streamers, confetti, or other novelties and produces a small report. Devices may contain not more than sixteen milligrams (0.25 grains) of explosive composition, which is limited to potassium chlorate and red phosphorus. These devices must be packaged in an inner packaging which contains a maximum of seventy-two devices.

(ii) Snapper: small, paper-wrapped devices containing not more than one milligram of silver fulminate coated on small bits of sand or gravel. When dropped, the device explodes, producing a small report. Snappers must be in inner packages not to exceed fifty devices each, and the inner packages must contain sawdust or a similar, impact-absorbing material.

(b) Distributor. The term “distributor” means any person or entity engaged in the business of selling sparkling devices to wholesalers, specialty retailers, permanent retailers or

temporary seasonal retailers for resale.

(c) Manufacturer. The term “manufacturer” means any person or entity engaged in the manufacture or construction of sparkling devices.

(d) Specialty Retailer. The term “specialty retailer” means any person or entity who, at a fixed place of business, is engaged solely in selling sparkling devices at retail. For purposes of this Part, a person or entity is engaged solely in selling sparkling devices if fifty-one percent or more of such person’s or entity’s annual gross sales are from the sale of sparkling devices.

(e) Permanent Retailer. The term “permanent retailer” means any person or entity who, at a fixed place of business, is engaged in selling sparkling devices at retail.

(f) Temporary Seasonal Retailer. The term “temporary seasonal retailer” means any person or entity who, at a temporary stand or tent, is engaged in selling sparkling devices from June twentieth through July fifth or from December tenth through January second of each year at retail.

(g) Wholesaler. The term “wholesaler” means any person or entity engaged in the business of selling sparkling devices to specialty retailers, permanent retailers or temporary seasonal retailers at wholesale.

(h) Authority Having Jurisdiction. The term “authority having jurisdiction” shall mean the state, city, town, village, county or other governmental unit or agency responsible for administration and enforcement of the Uniform Fire Prevention and Building Code with respect to a building or structure.

Section 225.2. Registration

(a) A manufacturer, distributor, wholesaler, specialty retailer, or permanent retailer must annually register with the Office of Fire Prevention and Control using forms prescribed by such Office. Temporary seasonal retailers must register with the Office of Fire Prevention and Control per season, consistent with the dates specified in this Part.

(b) The Office of Fire Prevention and Control shall develop a registration form, to be maintained on its website.

(c) The Registration form shall contain the following:

(1) Business Name. The form shall provide the full legal name of the registrant and, if applicable, any assumed name under which the registrant does business.

(2) Address or addresses. The form shall provide the full street address of the location where the registrant will conduct business and shall specify the jurisdiction (city, town or village) and county in which such location is located. Any specialty retailer, permanent retailer or temporary seasonal retailer that sells sparkling devices at more than one location may submit one registration form for all locations, but must provide the full street address, jurisdiction, and county of each location. Any manufacturer, distributor or wholesaler that conducts business at more than one location must submit a separate registration form for each location.

(3) Telephone Number. The form shall provide the registrant's business telephone number.

(4) Tax identification number (employer identification number).

(5) Principals. If the registrant is a corporation, limited liability company, general partnership, limited partnership, or other business entity, the form shall provide the name and title of each principal of the registrant. The term "principal of the registrant" includes each

officer of a corporation, each member or manager of a limited liability company, each general partner in the general partnership or limited partnership, and each person in charge of the operation or management of any other business entity.

(6) Contact Person. The form shall provide the name of and contact information for an individual designated by the registrant as the registrant's contact person. The contact information shall include all telephone numbers, cell phone numbers, email addresses, and other means of contacting the individual at any time, 24 hours a day, 7 days a week.

(7) Verification. The form shall include a verification clause indicating that the person signing the registration form certifies, under penalties of perjury: that the person is duly authorized to sign the registration form on behalf of the registrant; that the information provided in the registration form is true and complete; that each location where the registrant will conduct business as a manufacturer, distributor, wholesaler, specialty retailer, permanent retailer, and/or temporary seasonal retailer is in compliance with 19 NYCRR Part 1215, the Uniform Fire Prevention and Building Code; that the registrant is in compliance with applicable federal, state and local laws, rules and regulation and ordinances; and that each location where the registrant will conduct business as a manufacturer, distributor, wholesaler, specialty retailer, permanent retailer, and/or temporary seasonal retailer is located in a city or county that has opted by local law pursuant to section 405.00(5)(b) of the Penal Law to exclude sparkling devices from the definitions of "fireworks" and "dangerous fireworks."

(8) Signature. The form shall provide the name and title of the authorized representative signing the form on behalf of the registrant and shall be signed by such authorized representative in the presence of a notary public.

(9) Notarization. The form shall include a jurat that must be completed and signed by the notary public in whose presence the form is signed.

(d) As part of each registration package, the registrant shall provide:

(1) A Certificate of Insurance evidencing commercial general liability coverage inclusive of products/completed operations. This coverage shall have a minimum limit of one million dollars and shall list the New York State Division of Homeland Security and Emergency Services Office of Fire Prevention and Control as a certificate holder.

(2) A current copy of a federal permit under 18 USC 843, if the registrant is a manufacturer.

(e) As part of any registration process, the Office of Fire Prevention and Control shall be authorized to perform an inspection to assure compliance with this section.

Section 225.3 Fees

(a) A manufacturer, distributor, or wholesaler must pay an annual registration fee of \$5,000 to the Office of Fire Prevention and Control.

(b) A specialty retailer must pay an annual registration fee of \$2,500 to the Office of Fire Prevention and Control for each location.

(c) A permanent retailer must pay an annual registration fee of \$200 to the Office of Fire Prevention and Control for each location.

(d) A temporary seasonal retailer must pay a registration fee of \$250 per season to the Office of Fire Prevention and Control for each location.

Section 225.4 Certificate of Registration

(a) Upon a manufacturer, distributor, wholesaler, specialty retailer, or permanent retailer meeting registration and fee requirements contained in this Part, the Office of Fire Prevention and Control shall issue a certificate of registration valid for one year from the date of issuance.

(b) Upon a temporary seasonal retailer meeting registration and fee requirements contained in this Part, the Office of Fire Prevention and Control shall issue a certificate of registration valid for the dates specified in this Part.

(c) Every registered manufacturer, distributor, wholesaler, specialty retailer, permanent retailer, and temporary seasonal retailer shall continuously meet the requirements set forth in this Part. Non-compliance with any of the requirements set forth may result in a revocation of the certificate of registration, as determined by the Office of Fire Prevention and Control. Revocation shall remain in effect until the manufacturer, distributor, wholesaler, specialty retailer, permanent retailer, or temporary seasonal retailer provides evidence of compliance acceptable to the Office of Fire Prevention and Control.

(d) The certificate of registration authorizes a manufacturer, distributor, wholesaler, specialty retailer, permanent retailer, or temporary seasonal retailer to sell sparkling devices in this state during the dates specified in this Part.

Section 225.5 Records and Reports.

(a) Every manufacturer, distributor, wholesaler, specialty retailer, permanent retailer and temporary seasonal retailer shall maintain, and make available to the Office of Fire Prevention and Control, accurate records regarding the name and quantity of any sparkling devices produced

in, imported to, exported from, or sold in this state.

(b) Every manufacturer, distributor, wholesaler, specialty retailer, permanent retailer and temporary seasonal retailer shall provide the Office of Fire Prevention and Control with access to the building, facility, or retail location to allow for its inspection to assure compliance with the terms of the registration, as required in this Part.

225.6 Reporting of incidents

(a) Every manufacturer, distributor, wholesaler, specialty retailer, permanent retailer and temporary seasonal retailer shall report to the Office of Fire Prevention and Control basic information relating to all fires or explosions, including any accidental discharge of sparkling devices, that occur on premises. This report shall be submitted within 24 hours of the occurrence or discovery of the fire or explosion. Reports may be submitted via fax or e-mail as instructed on a form prescribed by the Office of Fire Prevention and Control.

(b) Every manufacturer, distributor, wholesaler, specialty retailer, permanent retailer, and temporary seasonal retailer shall report to the Office of Fire Prevention and Control any fire or explosion that results in injury or death within one hour of its occurrence or as soon as practicable. This initial report shall be made by telephone to Office of Fire Prevention and Control's 24-hour answering point at (518) 292-2200 or (518) 474-6746

(c) The Office of Fire Prevention and Control will provide information regarding incidents to the applicable code enforcement official.

Section 225.7 General Requirements

(a) The sale of sparkling devices by a manufacturer, distributor, wholesaler, specialty retailer, permanent retailer is limited to June 1 to July 5 and December 26 to January 2 as restricted in General Business Law section 392-j.

(b) The sale of sparkling devices by a temporary retailer is limited to June 20 to July 5 and December 26 to January 2 as restricted by General Business Law section 392-j and Executive Law section 156-h.

(c) Each registered specialty retailer, permanent retailer or temporary seasonal retailer shall prominently post for public view the following documents at each location where such specialty retailer, permanent retailer or temporary seasonal retailer conducts business:

(1) A copy of the Office of Fire Prevention and Control certificate of registration for such location.

(2) The list, as most recently published by the New York State Police, of counties and cities that have opted by local law to legalize the use of sparkling devices.

(3) A copy of a sparkling device safety pamphlet produced by the Office of Fire Prevention and Control.