



OFC Section 5627 – Fountain Device Retailers

The Ohio Legislature recently amended Ohio's fireworks laws.¹ Among other things, the new laws created a new licensing category and now permit "licensed fountain device retailers" to sell "fountain devices" in their retail stores. See Ohio Revised Code (R.C.) secs. 3743.01(K) and 3743.26. This bulletin will address what the new laws, and new rules adopted per the new laws, do and do not allow with respect to fountain devices and fountain device retailers.

Please note, this bulletin is an overview and does not include all laws and rules applicable to fountain device retailers (FDR) and should not be construed as constituting legal advice. Any person or entity that wants to operate as an FDR should consult their legal counsel and carefully review all applicable laws and rules. These include, but are not limited to, R.C. Chapter 3743., particularly R.C. secs. 3743.22, 3743.26 through 3743.29, 3743.47, and 3743.65 and Ohio Fire Code (OFC) Chapter 56, which is contained within the Ohio Administrative Code (OAC) at sec. 1301:7-7-56, particularly OFC sec. 5627 and 5628 (OAC 1301:7-7-56(AA) and (BB), respectively).

Fountain Devices

First, what are we talking about? Fountain devices are a specific type of 1.4G consumer firework. They are defined in R.C. sec. 3743.01(H) as follows:

(H) "Fountain device" means a specific type of 1.4G firework that meets all of the following criteria:

- (1) It is nonaerial and nonreport producing.
- (2) It is recognized and manufactured in accordance with sections 3.1.1 and 3.5 of APA standard 87-1 (2001 edition).
- (3) It is a ground-based or hand-held sparkler with one or more tubes containing a nonexplosive pyrotechnic mixture that produces a shower of sparks upon ignition, with or without additional effects that may include a colored flame, audible crackling effect, audible whistle effect, or smoke.
- (4) It contains not more than seventy-five grams of the nonexplosive pyrotechnic mixture in any individual tube and not more than five hundred grams or less for multiple tubes.

¹ See House Bill 172 of the 134th General Assembly; new provisions of the law relevant to fountain devices became effective February 7, 2022.

The new laws allow fountain devices to be sold at retail in Ohio but only by those retail establishments that meet the minimum requirements and have first obtained a ‘fountain device retailer license’ from the Ohio Department of Commerce, Division of State Fire Marshal (SFM).²

Licensure

In order to sell fountain devices in Ohio, an individual or entity must first obtain a “fountain device retailer license” from the SFM. Only then can the FDR sell fountain devices in the state of Ohio.

In addition, the only type of firework that an FDR can sell is that specific subset of 1.4G consumer fireworks that meets the definition of a ‘fountain device’ set forth above. FDRs are not permitted to possess, sell or store any other consumer firework or display firework in their retail establishment.

***Please note:** This does not prevent FDRs or other retailers from possessing, storing or selling sparklers, or other trick and novelty items that are not ‘fireworks’ under Ohio law that retailers were permitted to sell prior to the change in the law. Such items are still permissible. Likewise, laws pertaining to the retail sale of fountain devices do not prohibit a FDR who is an individual from possessing, storing and using 1.4G consumer fireworks in conformance with R.C. 3743.45 (consumer discharge of 1.4G fireworks) as long as such possession, storage and use do not occur on the FDR premises and is in conformance with the R.C. and the OFC.*

To get an FDR license, an [application](#)³ must be completed, signed and submitted to the SFM’s Bureau of Testing and Registration (T&R). The application must include all of the following:

1. A license fee of \$25.00
2. An affidavit stating the applicant is in compliance with the 2006 edition of NPFA 1124 or will be in compliance with that standard before engaging in the storage or retail sale of fountain devices.⁴
3. Proof of insurance in an amount set by the SFM (comprehensive general liability insurance coverage, specifically including fire and smoke casualty on premises, in an amount not less than one million dollars for each occurrence for bodily injury liability and wrongful death; products liability coverage on all inventory located at the business in an amount not less than one million dollars.)

A separate application must be submitted for each location where a person or entity wants to sell fountain devices.

The license must be prominently displayed at the fountain device sales location.

Initial Application

An initial application for an FDR license (an entity that does not have a current FDR license) can be submitted at any time and will be processed in the order in which it is received.

² As previously allowed by Ohio law, Ohio licensed wholesalers of fireworks and Ohio licensed manufacturers of fireworks may sell 1.4G fireworks, including fountain devices, at retail within their licensed premise.

³ In addition to the link above, the application for a FDR license can be located at: <https://com.ohio.gov/divisions-and-programs/state-fire-marshal/licensing-and-certification/applications-and-forms/fountain-device-retailer-application>.

⁴ NFPA 1124, is promulgated by the National Fire Protection Association (NFPA) and is entitled *Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles*.

If an initial FDR license application is submitted in October or November, the license cannot be issued before December 1, but will be issued no later than 2 months after it was received by the SFM. If an initial FDR application is submitted at any time other than in October or November, the license will be issued no later than 2 months after it was received by the SFM.

Renewal Application

FDR licenses must be renewed annually and renewal applications must be submitted to the SFM before October 1 of each year.

Current FDR license holders will receive a reminder notice from the SFM on or before September 1 of each year reminding them of the deadline to submit a renewal application.

Licenses that have been renewed will be issued on December 1 of each calendar year.

Initial FDR licenses are good from the date of their issuance through November 30 following their issuance. Renewal FDR licenses are good from the date of their issuance, which will be on December 1 of each calendar year, through the following November 30.

Inspection

FDRs must know and comply with all sections of the R.C. and the OFC that apply to them and must ensure that their sales location operates in conformance with such laws and rules. FDR sales locations may be but do not have to be inspected as a part of the licensure process; however, FDR sales locations can be inspected by the SFM at any time to ensure full compliance with the R.C. and OFC. When inspections do occur, they may include, but are not limited to, an inspection of any of the following:

- Sales and inventory locations
- FDR records, including sales fee records and practices, training records, inventory records, fire protection system inspection, maintenance and testing records, etc.
- Storage areas
- Fire protection systems
- Any premise area subject to licensure

Failure to comply with applicable laws and rules may result in any of the following:

1. An order from the SFM, in writing, ordering the FDR to eliminate, correct, or otherwise remedy all code violations within a specified period of time;
2. An order from the SFM, in writing, ordering the FDR to immediately cease the storage and related sale of fountain devices.
3. The revocation of the FDR's license in accordance with Chapter 119. of the Revised Code (or the denial of a renewal application).

Notification

FDRs are required to notify their local fire code official of their initial licensure and of the maximum quantity of fountain device inventory they intend to have at the location. Notifications to the local fire code official may also be required on a periodic basis. FDRs should check with their local fire code official to determine what notification requirements exist in their area.

Displays

Fountain device displays must comply with all of the following:

***Please note:** this list contains some of the major parameters for displays but is not exhaustive. To ensure compliance with all applicable laws and rules, FDRs should review all applicable provisions of the R.C. and OFC.*

- There is no limit to how many different fountain device display areas an FDR can have, but all the displays added together cannot exceed 300 sq. ft.
- No single fountain device display can exceed 150 sq. ft.
- Each fountain device display must be at least 50 feet from any other fountain device display and from other “highly flammable materials.”
 - Examples of “highly flammable materials” include, among other things, aerosols, acetone, rubbing alcohol, hand sanitizers, pool chemicals, and automotive fluids.
 - See OFC sec. sec. 5627.2.2 (OAC 1301:7-7-56(AA)(2)(b)) for the full definition of “highly flammable materials.”
- Fountain device displays cannot be within a means of egress and cannot block entrances or exits.
- Fountain devices cannot be displayed within 5 feet of any public entrance.
- Fountain devices cannot be displayed within 2 feet of any private entrance.
- Fountain device displays must be under visual supervision by an employee of the FDR at all times while the location is open to the public.
 - The SFM will permit such supervision to be accomplished through the use of video monitoring as long as there is a camera designated solely to the fountain device display area at all times and the camera is attended at all times the FDR location is open to the public.
- FDRs can only possess and sell fountain devices as packaged merchandise with covered fuses.
 - Loose or open product is not permissible.

Shelving

Shelving used in FDR sales locations and in fountain device displays must comply with all of the following as specified:

- Flame breaks are required for fountain device displays unless the FDR sales location is protected throughout with an approved automatic sprinkler system.
- Not more than 10% of the shelving used in fountain device displays can contain holes or other openings, unless certain conditions are met.
- Combustible material or merchandise cannot be stored directly above fountain device displays unless horizontal barriers are installed to separate the fountain devices from the combustible material or merchandise.

- Partitions, counters, shelving, cases and other similar space dividers inside the perimeter of an FDRs retail sales area cannot be higher than 6 feet in height above the floor surface.
- Merchandise on shelves or counters or other fixtures within the fountain device sales area cannot be more than 6 feet in above the floor surface.

Aisles and doorways

Aisles in fountain device display areas and egress doors serving fountain device display areas must comply with all of the following:

- Aisles must have a clear width of at least 48 inches which must be unobstructed at all times that the facility is open to the public.
- Dead-end aisles are prohibited.
- Egress doors must be at least 36 inches in width.
- Egress doors with latching devices must have panic hardware.
- Egress doors must be side-hinge swinging and must swing in the direction of egress travel.

Please note: *The above bullet points are an abbreviated list of display, shelving, aisle and doorway requirements. To ensure full compliance with all applicable OFC requirements, FDRs should review the full text of all applicable OFC requirements, including but not limited to requirements for permits, plan submission and certificates of occupancy. See R.C. sec. 3743.26 – 3743.29 and OFC sec. 5627; OAC 1301:7-7-56(AA). In addition, all FDR sales locations must be in compliance with all applicable provisions of the Ohio Building Code.*

Sales

All fountain device sales must comply with all of the following:

- Fountain devices cannot be sold to anyone under the age of 18 and age must be verified.
- Fountain devices cannot be sold to anyone under the influence of drugs or alcohol.
- Safety glasses must be made available at the site of purchase for anyone who purchases a fountain device.
 - The safety glasses must meet or exceed ANSI Z87.1 standards.⁵
 - FDRs can charge a nominal fee for the safety glasses or provide them for free.
- FDRs must provide a safety pamphlet to every person who purchases fountain devices. The safety pamphlet must specifically state all of the language contained in R.C. 3743.47(A) or contain language that is substantially similar to that language. For the text of the language, please see “Safety Pamphlet” section below or R.C. 3743.47(A).
- Sales must be conducted from inside the licensed location.
 - Fountain devices cannot be sold outside / on the exterior portion of a licensed property and cannot be sold from any other structure that may be located on the licensed premises.
- FDRs can only sell fountain devices that were obtained from a manufacturer or wholesaler of fireworks that is licensed as such in Ohio by the SFM.

⁵ ANSI Z87.1 is promulgated by the American National Standards Institute and is the *American National Standard for Occupational and Educational Personal Eye and Face Protection Devices*.

- FDRs can only sell fountain devices to the public at retail and cannot sell fountain devices at wholesale to any person, to another fountain device retailer, or to fireworks wholesalers or manufacturers.
 - FDRs may transfer product to other licensed locations owned by the same licensee.
- Mail order, internet based or customer delivery-based sales are prohibited unless delivery of the fountain devices will occur INSIDE the licensed location.
 - Fountain devices cannot be mailed to customers, taken to customers through delivery services or couriers, and cannot be delivered through curbside delivery.
- All fountain device sales are subject to the fee provisions of R.C. 3743.22 and OFC sec. 5628 (OAC sec. 1301:7-7-56(BB)).

Storage

Fountain devices that are not located on the retail sales floor for sale, may be stored in either of the following:

- 1) nonpublic interior areas of the sales structure, or
- 2) an approved storage magazine or trailer outside of the licensed structure but on the same premise.

The fountain devices to be stored must be for use within that licensed FDR sales location and may not be for further distribution to other sales locations. The storage of fountain devices must comply with all of the following:

- Fountain devices must be stored in U.S. Department of Transportation approved cartons and packaging.
- The public may not have access to storage areas.
- Fountain devices cannot be stored be within 5 feet of any public entrance.
- Fountain devices cannot be stored within 2 feet of any private entrance.
- **Interior storage**
 - May not exceed 600 sq. ft.,
 - May not exceed 125 pounds net weight of pyrotechnic composition⁶ unless approved by the SFM and the building code official having jurisdiction',
 - Must have one of the following for all interior storage rooms containing fountain devices:
 - an automatic sprinkler system, or
 - a 1-hour fire barrier wall separating the storage area from the retail sales area.
 - ~ If a fire barrier wall is used, it must have self-closing fire doors or fixed fire windows with a 1-hour fire protection rating.
- **Exterior storage** may consist of either of the following:
 - A trailer, which must comply with all of the following:
 - Must be fully surrounded by a steel chain-link fence (or other approved similar barrier) that is at least 6 feet in height,
 - Must be properly enclosed, secured, placarded, disabled, and grounded,

⁶ Where the actual net weight of the pyrotechnic composition of fountain devices is not known, 25% of the gross weight of the fountain devices, including packaging, shall be permitted to be used to determine the net weight of the pyrotechnic composition.

- Must be separated from any structure to which the public is admitted with sufficient space to allow fire-fighting equipment to have full access,
 - Must not be parked within 10 feet of the fountain device sales facility except during delivery, loading and/or unloading operations ,
 - Storage trailers can be closer than 10 feet only to accept or remove cargo and only for a period not to exceed 48 hours,
 - only 2 trailers can be closer than 10 feet at any one time.
 - May not be used for the sale of fountain devices.
- A storage magazine which must comply with all of the following:
- Must be fully surrounded by a steel chain-link fence (or other approved similar barrier) that is at least 6 feet in height;
 - Must be a type 4 storage magazine;
 - Must meet the requirement of 27 C.F.R 555.210 and the OFC.

Employee education and training

All FDR employees who will be responsible for or engage in the storage, display or sale of fountain devices or who visually supervises fountain device displays must be adequately trained. Such training must include all of the following:

- Information regarding how to safely handle, package and store fountain devices.
- Information regarding safe and proper fountain device display location placement, operations, and associated conditions.
- Information regarding fountain device display shelving, separation and height requirements.
- Information regarding basic fire safety measures regarding fountain devices, including but not limited to the location and proper use of fire extinguishers and procedures for contacting emergency personnel.
- Information regarding the statutes and rules that govern the possession, display, storage, handling and sale of fountain devices, and permitted fountain device licensee activities.

Such training must occur before the employee handles, sells, or stores fountain devices or oversees the sales, handling or storage of fountain devices. The licensed FDR is required to repeat the training and update training as the FDR deems necessary to ensure knowledge of and compliance with all applicable laws and rules.

FDRs must keep training records for each employee regarding the training that the employee received regarding fountain devices. The training records must be kept onsite at the fountain device sales location and must do all of the following:

- Identify the person(s) who provided the training,
- State the date(s) of the training,
- Identify the employees that were trained,
- Contain any other information required by the SFM.

Discharge

Fireworks, including but not limited to fountain devices, cannot be discharged within 300 feet of any FDR location. Signs prohibiting the discharge of fireworks must be conspicuously posted on the exterior of each side of the fountain device sales location. The signs must be in letters at least 4 inches high on a contrasting background and must state: "NO FIREWORKS DISCHARGE WITHIN 300 FEET".

Fire Safety

- Smoking is not permitted inside any licensed fountain device sales location.
- Smoking is not permitted within 50 feet of any external fountain device storage area.

Please note: no smoking signs are required as per OFC sec. 5626.6.1.4.1.

- Portable fire extinguishers must be provided for extra (high) hazard. See NFPA 10.⁷
- Each FDR sales location must have a fire safety and evacuation plan.
 - The plan must be in writing and approved by the local fire code official.
 - The fire safety and evacuation plan must be posted and maintained current.
- Fountain device sales areas and storage areas must be kept clean and free of accumulations of debris and rubbish.
- Cleaning up spills or damaged product must be done in accordance with the following:
 - Loose pyrotechnic composition must be removed immediately and safely and properly disposed of.
 - Vacuum cleaners or other mechanical cleaning devices cannot be used to clean up pyrotechnic composition and must not be used in a fountain devices sales or storage area.
 - Brooms, brushes, and dustpans used to sweep up any loose powder or dust must be made of non-sparking materials.
 - Fountain devices that are damaged must be immediately removed from the sales floor, not offered for sale, and safely and properly disposed of by the licensee.
 - Damaged fountain devices can be returned to the dealer or disposed of according to the manufacturer's instructions

Inventory

Fountain device retailers have to maintain a current and accurate inventory of all fountain device product on the premises. If requested, the inventory records must be made available to the SFM or the local fire code official upon request.

The local fire code official may require FDRs to notify them, in writing, if the FDR does any of the following:

- temporarily suspends fountain device sales for a period of longer than thirty days,
- depletes its seasonal inventory of fountain devices,
- otherwise no longer has fountain devices on the premises during the FDRs period of licensure.

FDRs should check with their local fire code official to determine whether that official has any such requirement.

⁷ NFPA 10, is promulgated by the NFPA and is the *Standard for Portable Fire Extinguishers*.