

NEW MEXICO

60-2C-1. Short title.

Chapter 60, Article 2C NMSA 1978 may be cited as the "Fireworks Licensing and Safety Act".

60-2C-2. Definitions.

As used in the Fireworks Licensing and Safety Act:

A. "aerial shell" means a cylindrical or spherical cartridge containing a lift charge, burst charge and effect composition. Upon firing from a reloadable tube, the lift charge is consumed and the cartridge is expelled into the air;

B. "aerial shell kit-reloadable tube" means a package or kit containing a cardboard, high-density polyethylene or equivalent launching tube and not more than twelve small aerial shells. Each aerial shell is limited to a maximum of sixty grams of total chemical composition, including lift charges, and the maximum diameter of each shell shall not exceed one and three-fourths inches;

C. "bosque" means a cottonwood corridor adjacent to a river;

D. "chaser" means a paper or cardboard tube venting out the fuse end of the tube that contains no more than twenty grams of chemical composition and travels along the ground, often producing a whistling effect or other noise; an explosive composition not to exceed fifty milligrams may be included to produce a report;

E. "chemical composition" includes all pyrotechnic and explosive composition contained in a fireworks device, but does not include inert materials such as clay used for plugs or organic matter such as rice hulls used for density control;

F. "cone fountain" means a cardboard or heavy paper cone containing no more than fifty grams of pyrotechnic composition that has the same effect as a cylindrical fountain. When more than one cone is mounted on a common base, total pyrotechnic composition shall not exceed two hundred grams;

G. "crackling device" means a sphere or paper tube that contains no more than twenty grams of pyrotechnic composition that produces a flash of light and a mild, audible crackling effect upon ignition, which effect is not considered to be an explosion. Crackling devices are not subject to the fifty-milligram limit of firecrackers;

H. "cylindrical fountain" means a cylindrical tube containing not more than seventy-five grams of pyrotechnic composition that produces a shower of colored sparks and sometimes a whistling effect or smoke. The device may be provided with a spike for insertion into the ground or a wood or plastic base for placing on the ground or a wood or cardboard handle to be hand held. When more than one tube is mounted on a common base, total pyrotechnic composition shall not exceed two hundred grams;

I. "display distributor" means a person, firm or corporation selling display fireworks;

J. "display fireworks" means devices primarily intended for commercial displays that are designed to produce visible or audible effects by combustion, deflagration or detonation, including salutes containing more than one hundred thirty milligrams of explosive composition; aerial shells containing more than forty grams of chemical composition exclusive of lift charge; and other exhibition display items that exceed the limits for permissible fireworks;

K. "distributor" means a person, firm or corporation selling fireworks to wholesalers and retailers for resale;

L. "explosive composition" means a chemical compound or mixture, the primary purpose of which is to function by explosion, producing an audible effect in a fireworks device;

M. "firecracker" means a small, paper-wrapped or cardboard tube containing no more than fifty milligrams of explosive composition that produces noise and a flash of light; provided that firecrackers used in aerial devices may contain up to one hundred thirty milligrams of explosive composition per report;

N. "fireworks" means devices intended to produce a visible or audible effect by combustion, deflagration or detonation and are categorized as "permissible fireworks" or "display fireworks", but does not include novelties or theatrical pyrotechnics articles;

O. "flitter sparkler" means a narrow paper tube attached to a stick or wire and filled with no more than five grams of pyrotechnic composition that produces color and sparks upon ignition and the paper at one end of the tube is ignited to make the device function;

P. "ground spinner" means a small, rapidly spinning device containing no more than twenty grams of pyrotechnic composition venting out an orifice usually on the side of the tube that when ignited produces a shower of sparks and color. "Ground spinner" is similar in operation to a wheel, but is intended to be placed flat on the ground and ignited;

Q. "helicopter" or "aerial spinner" means a tube containing no more than twenty grams of chemical composition with a propeller or blade attached that spins rapidly as it rises into the air with a visible or audible effect sometimes produced at or near the height of flight;

R. "illuminating torch" means a cylindrical tube containing no more than one hundred grams of pyrotechnic composition that produces a colored flame upon ignition and may be spiked, based or hand held. When more than one tube is mounted on a common base, total pyrotechnic composition shall not exceed two hundred grams;

S. "manufacturer" means a person, firm or corporation engaged in the manufacture of fireworks;

T. "mine" or "shell" means a heavy cardboard or paper tube usually attached to a wooden or plastic base and containing no more than sixty grams of total chemical composition, including lift charges, per tube that individually expels pellets of pressed pyrotechnic composition that burn with bright color in a star effect, or other devices propelled into the air, and that contains components producing reports containing a maximum one hundred thirty milligrams of explosive composition per report. A mine may contain more than one tube, but the tubes must fire in sequence upon ignition of one external fuse, must be a dense-packed collection of mine or shell tubes and the total chemical composition, including lift charges, shall not exceed two hundred grams;

U. "missile-type rocket" means a device similar to a stick-type rocket in size, composition and effect that uses fins rather than a stick for guidance and stability and that contains no more than twenty grams of chemical composition;

V. "multiple tube devices" means a device that contains more than one cardboard tube and the ignition of one external fuse that causes all of the tubes to function in sequence. The tubes are individually attached to a wood or plastic base or are dense-packed and are held together by glue, wire, string or other means that securely hold the tubes together during operation. A maximum total weight of five hundred grams of pyrotechnic composition shall be permitted; provided that the tubes are securely attached to a wood or plastic base and are separated from each other on the base by a distance of at least one-half inch. The connecting fuses on multiple tube devices shall be fused in sequence so that the tubes fire sequentially rather than all at once;

W. "novelties" means devices containing small amounts of pyrotechnic or explosive composition that produce limited visible or audible effects, including party poppers, snappers, toy smoke devices, snakes, glowworms, sparklers or toy caps, and devices intended to produce unique visual or audible effects that contain sixteen milligrams or less of explosive composition and limited amounts of other pyrotechnic composition, including cigarette loads, trick matches, explosive auto alarms and other trick noisemakers;

X. "permissible fireworks" or "consumer fireworks" means fireworks legal for sale to and use in New Mexico by the general public that comply with the latest construction, performance, composition and labeling requirements established by the United States consumer product safety commission and the United States department of transportation;

Y. "pyrotechnic composition" means a chemical mixture that on burning and without explosion produces visible or brilliant displays or bright lights or whistles or motion;

Z. "retailer" means a person, firm or corporation purchasing fireworks for resale to consumers;

AA. "roman candle" means a heavy paper or cardboard tube containing no more than twenty grams of chemical composition that individually expels pellets of pressed pyrotechnic composition that burn with bright color in a star effect;

BB. "specialty retailer" means a person, firm or corporation purchasing permissible fireworks for year-round resale in permanent retail stores whose primary business is tourism;

CC. "stick-type rocket" means a cylindrical tube containing no more than twenty grams of chemical composition with a wooden stick attached for guidance and stability that rises into the air upon ignition and produces a burst of color or sound at or near the height of flight;

DD. "theatrical pyrotechnics articles" means a pyrotechnic device for professional use in the entertainment industry similar to permissible fireworks or consumer fireworks in chemical composition and construction but not intended and labeled for consumer use;

EE. "toy smoke device" means a small plastic or paper item containing no more than one hundred grams of pyrotechnic composition that produces white or colored smoke as the primary effect;

FF. "wheel" means a pyrotechnic device that is made to attach to a post or other surface and that revolves, producing a shower of color and sparks and sometimes a whistling effect, and that may have one or more drivers, each of which contains no more than sixty grams of pyrotechnic composition and the total wheel contains no more than two hundred grams total pyrotechnic composition;

GG. "wholesaler" means a person, firm or corporation purchasing fireworks for resale to retailers; and

HH. "wildlands" means lands owned by the governing body of a county or municipality that are designated for public recreational purposes and that are covered wholly or in part by timber, brush or native grass.

60-2C-3. License or permit required for sale of fireworks; administration; permits and licenses.

A. No person may sell, hold for sale, import, distribute or offer for sale, as manufacturer, distributor, wholesaler or retailer, any fireworks in this state unless such person has first obtained the appropriate license or permit.

B. The state fire marshal shall enforce the Fireworks Licensing and Safety Act. All license applications shall be submitted to the office of the state fire marshal. All retailers shall be required to purchase a retail fireworks permit for each retail location. The retail permit may be purchased from any licensed manufacturer, distributor or wholesaler or from the state fire marshal's office. Retail permits may be purchased at any time by the licensed manufacturer, distributor or wholesaler in books of twenty permits per book from the state fire marshal. Permits shall be numbered, and it shall be the responsibility of the licensed manufacturer, distributor or wholesaler to keep records of the purchases of these permits and to submit these records to the state fire marshal semi-annually on January 31 and July 31 of each year. Each semi-annual report is to cover the preceding six-month period. Retail permits that are unsold may be exchanged for new permits.

C. The state fire marshal shall appoint the deputies and employees required to carry out the provisions of the Fireworks Licensing and Safety Act. The state fire marshal may also appoint any commissioned law enforcement officer or duly appointed fire chief or his designee with approval from the local governing body required to carry out the provisions of that act.

D. The state fire board shall formulate, adopt, promulgate and amend or revise rules and regulations for the safe handling of fireworks.

60-2C-4. License and permit fees.

A. An applicant for a license or permit under the Fireworks Licensing and Safety Act shall pay to the state fire marshal's office the following fees, which shall not be refundable:

- (1) manufacturer license \$1,500;
- (2) distributor license 2,000;
- (3) wholesaler license 1,000;
- (4) display distributor license 1,000;
- (5) specialty retailer license 750;
- (6) retailer permit 100; or
- (7) replacement permit 20.

B. All licenses and permits shall be issued for one year beginning on February 1 of each year. All licenses and permits shall be issued within thirty days from the date of receipt of application, except that no application shall be processed during any holiday selling period in which permissible fireworks may be sold.

C. Licenses issued pursuant to provisions of the Fireworks Licensing and Safety Act shall not be restricted in number or limited to any person without cause. Municipalities and counties may require licenses or permits and reasonable fees, not to exceed twenty-five dollars (\$25.00), for the sale of fireworks.

D. Permit and license fees paid to the state fire marshal's office shall be deposited in the fire protection fund to be used by the state fire marshal to enforce and carry out the provisions and purposes of the Fireworks Licensing and Safety Act.

60-2C-5. Possession, sale or use of unauthorized fireworks unlawful.

No individual, firm, partnership, corporation or association shall possess for retail sale in this state, sell or offer for sale at retail or possess or use any fireworks other than permissible fireworks.

60-2C-6. Exportation of fireworks from the state.

Nothing in the Fireworks Licensing and Safety Act shall prohibit licensed wholesalers, distributors, importers or manufacturers from storing, selling, shipping or otherwise transporting fireworks as defined by the United States department of transportation to any person or entity outside the state of New Mexico.

60-2C-7. Permissible fireworks.

A. Permissible fireworks are:

- (1) ground and hand-held sparkling devices:
 - (a) cone fountains;
 - (b) crackling devices;
 - (c) cylindrical fountains;
 - (d) flitter sparklers;

- (e) ground spinners;
- (f) illuminating torches; and
- (g) wheels;
- (2) aerial devices:
 - (a) aerial shell kit-reloadable tubes;
 - (b) aerial spinners;
 - (c) helicopters;
 - (d) mines;
 - (e) missile-type rockets;
 - (f) multiple tube devices;
 - (g) roman candles;
 - (h) shells; and
 - (i) stick-type rockets, except as provided in Subsection B of this section; and
- (3) ground audible devices:
 - (a) chasers; and
 - (b) firecrackers.

B. The following types of fireworks are not permissible fireworks:

(1) stick-type rockets having a tube less than five-eighths inch outside diameter and less than three and one-half inches in length; and

(2) fireworks intended for sale to the public that produce an audible effect, other than a whistle, by a charge of more than one hundred thirty milligrams of explosive composition per report.

C. A municipality or county shall not by ordinance regulate and prohibit the sale or use of any permissible firework except aerial devices and ground audible devices.

60-2C-8. Retail sales or storage of fireworks; regulated activities.

A. Fireworks may not be sold at retail without a retail permit. The permit shall be at the location where the retail sale takes place.

B. All places where fireworks are stored, sold or displayed shall be in compliance with the code of safety standards published by the national fire protection association for the manufacture, transportation, storage and retail sales of fireworks and pyrotechnics articles.

C. It is unlawful to offer for sale or to sell fireworks to children under the age of sixteen years or to an intoxicated person.

D. At all places where fireworks are stored, sold or displayed, the words "NO SMOKING" shall be posted in letters at least four inches in height. Smoking, open flames and any ignition source are prohibited within twenty-five feet of fireworks stock.

E. Fireworks shall not be stored, kept, sold or discharged within fifty feet of a gasoline pump or gasoline bulk station or a building in which gasoline or volatile liquids are sold in quantities in excess of one gallon, except in stores where cleaners, paints and oils are handled in sealed containers only.

F. All fireworks permittees and licensees shall keep and maintain upon the premises a fire extinguisher bearing an underwriters laboratories incorporated rated capacity of at least five-pound ABC per five hundred square feet of space used for fireworks sales or storage.

G. Sales clerks and ancillary personnel employed or volunteering at temporary retail locations where fireworks are sold shall be at least sixteen years of age. A sales clerk shall be on duty to serve consumers at the time of purchase or delivery. Permissible fireworks may be offered for sale only at state-permitted or state-licensed retail locations.

H. Fireworks shall not be discharged within one hundred fifty feet of a fireworks retail sales location.

I. Fireworks shall not be sold or used on state forest land, wildlands or a bosque.

J. A person shall not ignite fireworks within a motor vehicle or throw fireworks from a motor vehicle, nor shall a person place or throw ignited fireworks into or at a motor vehicle or at or near a person or group of people.

K. Fireworks devices that are readily accessible to handling by consumers or purchasers in a retail sales location shall have their exposed fuses protected in a manner to protect against accidental ignition of an item by a spark, cigarette ash or other ignition source. If the fuse is a thread-wrapped safety fuse that has been coated with a nonflammable coating, only the outside end of the safety fuse shall be covered. If the fuse is not a safety fuse, the entire fuse shall be covered.

L. Permissible fireworks may be sold at retail between June 20 and July 6 of each year, six days preceding and including new year's day, three days preceding and including Chinese new year, the sixteenth of September and cinco de Mayo of each year, except that permissible fireworks may be sold all year in permanent retail stores whose primary business is tourism.

60-2C-8.1. Extreme or severe drought conditions; restricted sale and use.

A. The governing body of a municipality may hold a hearing to determine if fireworks restrictions should be imposed within the boundaries of the incorporated municipality affected by extreme or severe drought conditions. The findings of the governing body shall be based on current drought indices published by the national weather service and any other relevant information supplied by the United States forest service.

B. Pursuant to any hearing under Subsection A of this section, the governing body of a municipality shall issue a proclamation declaring extreme or severe drought conditions within the boundaries of the incorporated municipality if the governing body determines such conditions exist. The governing body's proclamation:

(1) shall ban the sale and use of missile-type rockets, helicopters, aerial spinners, stick-type rockets and ground audible devices within the affected drought area; and

(2) shall give the governing body the power to:

(a) limit the use within its jurisdiction of any fireworks not listed in Paragraph (1) of this subsection to areas that are paved or barren or that have a readily accessible source of water for use by the homeowner or the general public;

(b) ban the use of all fireworks within wildlands in its jurisdiction, after consultation with the state forester; and

(c) ban or restrict the sale or use of display fireworks.

C. The municipal governing body's proclamation declaring an extreme or severe drought condition shall be issued no less than twenty days prior to a holiday for which fireworks may be sold. The proclamation shall explain restrictions on the sale or use of fireworks and permitted sales or uses of fireworks.

D. A municipal governing body's proclamation shall be effective for thirty days and the governing body may issue succeeding proclamations if extreme or severe drought conditions warrant. A proclamation may be modified or rescinded within its thirty-day period by the governing body upon conducting an emergency hearing to determine if weather conditions have improved.

E. The governing body of a county may hold a hearing to determine if fireworks restrictions should be imposed within the unincorporated portions of the county affected by extreme or severe drought conditions. The findings of the governing body shall be based on current drought indices published by the national weather service and any other relevant information supplied by the United States forest service.

F. Pursuant to any hearing under Subsection E of this section, the governing body of a county shall issue a proclamation declaring extreme or severe drought conditions within the unincorporated portions of the county if the governing body determines such conditions exist. The governing body's proclamation:

(1) shall ban the sale and use of missile-type rockets, helicopters, aerial spinners, stick-type rockets and ground audible devices within the affected drought area; and

(2) shall give the governing body the power to:

(a) limit the use within its jurisdiction of any fireworks not listed in Paragraph (1) of this subsection to areas that are paved or barren or that have a readily accessible source of water for use by the homeowner or the general public;

(b) ban the use of all fireworks within wildlands in its jurisdiction, after consultation with the state forester; and

(c) ban or restrict the sale or use of display fireworks.

G. The county governing body's proclamation declaring an extreme or severe drought condition shall be issued no less than twenty days prior to a holiday for which fireworks may be sold. The proclamation shall explain restrictions on the sale or use of fireworks and permitted sales or uses of fireworks.

H. Except as otherwise provided in this subsection, a proclamation shall be effective for thirty days, and the county governing body may issue succeeding proclamations if extreme or severe drought conditions warrant. A proclamation may be modified or rescinded within its thirty-day period by the governing body upon conducting an emergency hearing to determine if weather conditions have improved.

60-2C-10. Penalty; criminal.

A. Any individual, firm, partnership or corporation that violates any provision of the Fireworks Licensing and Safety Act is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than one thousand dollars (\$1,000) or imprisonment for not more than one year, or both.

B. Nothing in the Fireworks Licensing and Safety Act shall apply to or prohibit any employees of the department of game and fish or the United States fish and wildlife service from possessing fireworks for control of game birds and animals or to prohibit any law enforcement officer from possessing fireworks in the performance of his duties or to prohibit any municipality or civic organization therein from sponsoring and conducting in connection with any public celebration, an officially supervised and controlled fireworks display.

60-2C-11. Penalty; civil.

A. If a person is found guilty of violating any of the provisions of the Fireworks Licensing and Safety Act, that person's license or permit may be revoked or suspended by the state fire marshal, his deputies or designees.

B. No individual, firm, corporation or partnership shall possess any fireworks for sale within New Mexico, other than those authorized in the Fireworks Licensing and Safety Act. The state fire marshal, his deputies or designees may at reasonable hours enter and inspect the permittee's premises, building, mobile or motor vehicle or temporary or permanent structure to determine compliance with the Fireworks Licensing and Safety Act. If any retailer has in his possession any fireworks in violation of that act, his permit shall be revoked and all such fireworks seized, and the fireworks shall be kept to be used as evidence. If any person has in his possession any fireworks in violation of that act, a warrant may be issued for the seizure of fireworks and the fireworks shall be safely kept to be used as evidence. Upon conviction of the offender, the fireworks shall be destroyed, but if the offender is discharged, the permissible fireworks shall be returned to the person in whose possession they were found; provided, however, that nothing in the Fireworks Licensing and Safety Act applies to the transportation of fireworks by regulated carriers.