

**CONDENSED VERSION OF THE
TEXAS OCCUPATIONS CODE
Chapter 2154
AND
THE FIREWORKS RULES**
For Retail Fireworks Sales & Storage



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Notice of Information

This information is provided in accordance with the *Texas Administrative Code*, Title 28, Chapter 34 State Fire Marshal, Subchapter H, 34.815(b)(4). It is a condensed version of the *Texas Occupations Code* and the Fireworks Rules for the storage, sales, and licensing of retail fireworks. It does not include regulations by other local, county, state or federal authorities that may be applicable. The entire wording of the statute and rules should be consulted prior to use, evaluation or interpretation. The complete text may be obtained through the State Fire Marshal's Office web site: www.tdi.state.tx.us or specifically

www.tdi.state.tx.us/fire/fmlifirework.html

These statute and rules are subject to change without notification.

Spring 2010

Texas Occupations Code
TITLE 13. Sports, Amusement and Entertainment
SUBTITLE D. Other Amusements and Entertainment
Chapter 2154. Regulation of Fireworks and Fireworks Displays
&
28 TAC §§ 34.800
the Fireworks Rules
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OCCUPATIONS CODE
TITLE 13. SPORTS, AMUSEMENT AND ENTERTAINMENT
SUBTITLE D. OTHER AMUSEMENTS AND ENTERTAINMENT
CHAPTER 2154. REGULATION OF FIREWORKS AND FIREWORKS DISPLAYS
Effective June 15, 2007

§ 2154.001. Definitions

In this chapter:

- (3) "Distributor" means a person who:
- (A) imports fireworks into this state; or
 - (B) sells fireworks to:
 - (i) a jobber, retailer, or other distributor for resale; or
 - (ii) a holder of a single public display permit, a multiple public display permit, or another fireworks permit.
- (5) "Fireworks" means a composition or device:
- (A) designed for entertainment to produce a visible or audible effect by combustion, explosion, deflagration, or detonation; and
 - (B) defined by 49 C.F.R. Section 173.56(j) (1996).
- (6) "Fireworks 1.3G" means a large fireworks device:
- (A) primarily designed to produce visible or audible effects by combustion, deflagration, or detonation; and
 - (B) classified as a 1.3G explosive by the department in 49 C.F.R. Part 173 (1996).
- (7) "Fireworks 1.4G" means a small fireworks device:
- (A) primarily designed to produce visible or audible effects by combustion, deflagration, or detonation;
 - (B) that complies with the construction, labeling, and chemical composition requirements of the United States Consumer Product Safety Commission in 16 C.F.R. Part 1507 (1996), or the most recently adopted version of that rule; and
 - (C) that is classified by the department in 49 C.F.R. Part 173 (1996).
- (8) "Illegal fireworks" means a fireworks device manufactured, distributed, or sold in violation of this chapter.
- (11) "Jobber" means a person who purchases fireworks only for resale to retailers.
- (17) "Retailer" means a person who purchases fireworks for resale only to the general public.
- (18) "Sale" means selling or offering for sale merchandise, equipment, or service, at wholesale or retail, to the public or to any person, for an agreed sum of money or other consideration.

§ 2154.002. Exemptions

This chapter does not apply to:

- (1) a toy pistol, toy cane, toy gun, or other device that uses paper or plastic caps in sheets, strips, rolls, or individual caps that contain not more than an average of 25 hundredths of a grain of explosive composition per cap and that is packed and shipped under 49 C.F.R. Part 173 (1996);
- (2) a model rocket or model rocket motor designed, sold, and used to propel recoverable aero models;
- (3) a propelling or expelling charge consisting of a mixture of sulfur, charcoal, and potassium nitrate;
- (4) novelties or trick noisemakers;
- (5) the sale, at wholesale, of any type of fireworks by a resident manufacturer, distributor, importer, or jobber if the fireworks are intended for shipment directly out of state under department regulations;
- (6) the sale or use of, in emergency situations, pyrotechnic signaling devices or distress signals for marine, aviation, or highway use;
- (7) the use of a fusee or a railway torpedo by a railroad;
- (8) the sale of blank cartridges for:
 - (A) use in a radio, television, film, or theater production;

- (B) a signal or ceremonial purpose in an athletic event; or
- (C) an industrial purpose; or
- (9) the use of a pyrotechnic device by a military organization.

§ 2154.003. Permissible Fireworks

- (a) Except as provided by Subsection (b), Fireworks 1.4G are permissible fireworks.
- (b) The following are not permissible fireworks:
 - (1) sky rockets or "bottle rockets" with:
 - (A) a total propellant charge of less than four grams;
 - (B) a casing size of less than five-eighths of an inch for the outside diameter and less than 3 1/2 inches in length; and
 - (C) an overall length, including stick, of less than 15 inches; and
- (2) other fireworks determined not acceptable by the United States Consumer Product Safety Commission.
- (c) The term "bottle rocket" may not be used in association with the advertisement or sale of fireworks.
- (d) In addition to the items described by Subsection (b), pop rockets with a propellant casing length of less than five inches, an exterior diameter of less than three-fourths of an inch, and an overall total rocket length of less than 26 inches are not permissible fireworks. *Paragraph (d) takes effect January 2, 2008.*

§ 2154.004. Effect of Chapter on Local Regulation

- (a) A municipal or county ordinance, order, or rule in effect on January 2, 1986, is not invalidated by this chapter.
- (b) This chapter does not limit or restrict the authority of a county, where specifically authorized by law, or municipality to enact an ordinance or order prohibiting or further regulating fireworks.

§ 2154.052. Rules

- (a) The commissioner:
 - (1) shall administer this chapter through the state fire marshal; and
 - (2) may issue rules to administer this chapter in compliance with Section 2154.054.
- (b) The commissioner shall adopt and the state fire marshal shall administer rules the commissioner considers necessary for the protection, safety, and preservation of life and property, including rules regulating:
 - (1) the issuance of licenses and permits to persons engaged in manufacturing, selling, storing, possessing, or transporting fireworks in this state;
 - (2) the conduct of public fireworks displays; and
 - (3) the safe storage of Fireworks 1.3G and Fireworks 1.4G.
- (c) The commissioner shall adopt rules for applications for licenses and permits.
- (d) In adopting a rule, the commissioner may use standards recognized by federal law or regulation and standards published by a nationally recognized standards-making organization.
- (e) A rule may not be adopted under this chapter that is more restrictive than a rule in effect on September 1, 1998, without specific statutory authority.

§ 2154.055. Fireworks Safety and Education Program

- (a) The commissioner shall establish a fireworks safety and education program.
- (b) The program:
 - (1) shall provide information relating to the proper and safe use of fireworks and the dangers of the improper use of fireworks; and
 - (2) may include any method of communicating the need for safe use of fireworks and the dangers of improper use.
- (c) The program shall be administered by the advisory council established under Section 2154.054. The commissioner must approve a program that the advisory council proposes to present.
- (d) To fund the program, in addition to any other license or permit fees:
 - (1) the holder of a retail permit issued under Section 2154.202 shall pay, on issuance

- or renewal of the permit, a fee in the amount of \$10; and
- (2) the holder of a manufacturer's, distributor's, or jobber's license issued under Section 2154.151, 2154.152, or 2154.153 shall pay, on issuance or renewal of the license, a fee in the amount of \$250.
- (e) Money collected under Subsection (d) may be used only by the commissioner for the purposes of this section.

§ 2154.101. General Requirements

- (a) A person must obtain an appropriate license to:
 - (1) engage in the business of manufacturing, distributing, jobbing, or importing fireworks to be sold or used in this state; or
 - (2) supervise or conduct public fireworks displays.
- (b) A person who is younger than 21 years of age may not be issued a pyrotechnic operator's license. The minimum age of a person issued another license under Subchapter D is 18 years of age.
- (c) A person may not:
 - (1) transfer a license; or
 - (2) obtain or attempt to obtain a license by fraudulent representation.
- (d) A person may not alter or deface a license. An altered or defaced license is void.

§ 2154.201. General Requirements

- (a) A person who is younger than 21 years of age may not be issued a public fireworks display permit. A person who is younger than 18 years of age may not be issued another permit under this subchapter.
- (b) A person may not:
 - (1) transfer a permit issued under this subchapter; or
 - (2) obtain or attempt to obtain a permit under this subchapter by fraudulent representation.
- (c) A person may not alter or deface a permit. An altered or defaced permit is void.

§ 2154.202. Retail Fireworks Permit

- (a) A person selling fireworks directly to the public must annually obtain a nonrenewable retail fireworks permit for each retail location.
- (b) The commissioner shall set and collect a retail fireworks permit fee in an amount not to exceed \$20.
- (c) A retail fireworks permit may be purchased from a licensed manufacturer, distributor, or jobber or from the state fire marshal's office.
- (d) A licensed manufacturer, distributor, or jobber may obtain retail fireworks permits from the commissioner at any time. The commissioner shall provide permits in books containing 20 permits each. Each permit must be clearly printed with the year, date, and permit number. The manufacturer, distributor, or jobber shall keep a record of all permits issued and shall submit the record to the commissioner through the state fire marshal in the manner required by the commissioner.
- (e) A retail fireworks permit expires on January 31 each year and is not renewable.
- (f) an outdated permit may be exchanged for a current permit only in the year following the permit's expiration.
- (g) A retail fireworks permit holder may sell fireworks only to the public, and only during periods:
 - (1) beginning June 24 and ending at midnight on July 4; and
 - (2) beginning December 20 and ending at midnight on January 1 of the following year.
 - (3) beginning May 1 and ending at midnight on May 5 if the fireworks are sold at a location that is not more than 100 miles from the Texas-Mexico border and that is in a county in which the commissioner's court of the county has approved the sale of fireworks during the period.

§ 2154.251. Prohibited Use of Fireworks

- (a) A person may not:
 - (1) explode or ignite fireworks within 600 feet of any church, a hospital other than a vet-

- erinary hospital, an asylum, a licensed child care center, or a public or private primary or secondary school or institution of higher education unless the person receives authorization in writing from that organization;
- (2) sell at retail, explode or ignite fireworks within 100 feet of a place where flammable liquids or flammable compressed gasses are stored and dispensed;
- (3) explode or ignite fireworks within 100 feet of a place where fireworks are stored or sold;
- (4) ignite or discharge fireworks in or from a motor vehicle;
- (5) place ignited fireworks in, or throw ignited fireworks at, a motor vehicle;
- (6) conduct a public fireworks display that includes Fireworks 1.3G unless the person is a licensed pyrotechnic operator;
- (7) conduct a proximate display of fireworks that includes Fireworks 1.3G or Fireworks 1.4G as defined in NFPA 1126 Standards for the Use of Pyrotechnics Before a Proximate Audience unless the person is a licensed pyrotechnic special effects operator and has the approval of the local fire prevention officer; or
- (8) sell, store, manufacture, distribute, or display fireworks except as provided by this chapter or rules adopted by the commissioner under this chapter.
- (b) A person may not manufacture, distribute, sell, or use fireworks in a public fireworks display or for agricultural, industrial, or wildlife control purposes without an appropriate license or permit. Fireworks manufactured, distributed, sold, or used without an appropriate license or permit are illegal fireworks.

§ 2154.252. Certain Sales of Fireworks Prohibited

- (a) Unless the fireworks conform to the standards of the United States Consumer Product Safety Commission and the department, a person in this state may not:
 - (1) sell the fireworks at retail;
 - (2) offer the fireworks for retail sale;
 - (3) possess the fireworks for retail sale in this state; or
 - (4) transport, use, or explode the fireworks in this state.
- (b) A person may offer for sale to the general public Fireworks 1.4G only at authorized retail locations. All mail order sales of Fireworks 1.4G are prohibited.
- (c) Fireworks may not be sold or offered for sale to children under 16 years of age or to an intoxicated or incompetent person. A person selling fireworks at retail shall make a reasonable effort to determine that potential purchasers of fireworks are of the minimum age required by this subsection.
- (d) A licensed manufacturer, distributor, jobber, or importer may not sell fireworks to a person who does not hold a license or permit.

§ 2154.254. Employment of Minors

- (a) Except as provided by Subsection (c), a person may not employ or allow a person younger than 16 years of age to manufacture, distribute, sell, or purchase fireworks in the course of the person's business.
- (b) Except as provided by Subsection (c), a person may not employ a person 16 years of age or older but younger than 18 years of age to sell fireworks at a retail sales location unless the person selling fireworks at that location is accompanied by another person who is at least 18 years of age.
- (c) An owner of a retail sales location may employ a person who is otherwise prohibited from engaging in that activity by Subsection (a) or (b) to sell fireworks at the owner's retail sales location if the person employed is:
 - (1) a member of the owner's immediate family;
 - (2) 12 years of age or older; and
 - (3) accompanied by another person who is at least 18 years of age while the person is engaged in selling fireworks at that location.

§ 2154.301. Disciplinary Powers of Commissioner

- (a) The commissioner may, through the state fire marshal, suspend, revoke, or refuse to issue or renew a license or permit if the commissioner finds that any provision of

this chapter, or any rule adopted under this chapter, has been violated.

- (b) A person who has a license or permit revoked may not reapply for the license or permit earlier than one year from the date of revocation. A person reapplying under this subsection must request a public hearing on the reissuance of the license or permit and has the burden of proving that a license or permit should be granted.

§ 2154.303. Penalties

- (a) A person commits an offense if the person violates Section 2154.101(b), (c)(2), or (d), 2154.151 (e), or 2154.201(a), (b)(2), or (c) or Subchapter F.
- (b) Except as provided by Subsection (c), an offense under this section is a Class B misdemeanor.
- (c) A violation of Section 2154.251(a)(1), (2), (3), (4), (5), or (8) that results in property damage in an amount of less than \$200 and does not result in bodily injury or death, or a violation of Section 2154.254(a) or (b), is a Class C misdemeanor.
- (d) Each day a violation occurs or continues constitutes a separate offense.
- (e) Venue under this section is in the county in which the offense is committed or in Travis County.
- (f) If the commissioner determines that a violation of this chapter creates a threat to the public safety, the commissioner may bring suit in the district court of the county in which the person who committed the offense resides or has an office to enjoin the person from engaging in the prohibited activity. The commissioner is not required to give bond as a condition to the issuance of injunctive relief.

§ 2154.304. Seizure of Illegal Fireworks

- (a) The state fire marshal, a fire chief, a fire marshal, their deputies, or a peace officer may seize illegal fireworks. Fireworks seized in the enforcement of this chapter shall be kept in the custody of the seizing agent or the sheriff of the county in which the fireworks were seized.
- (b) The owner of the seized fireworks may file an action contesting the seizure in a district court in the county in which the fireworks were seized.
- (c) Not later than the 30th day after the hearing on the seizure, the court may authorize the return of part or all of the confiscated fireworks. The court shall order any fireworks not returned to be destroyed. If an action contesting the seizure is not filed by the 30th day after the seizure, the seizing agent or the sheriff shall destroy the fireworks.

TEXAS ADMINISTRATIVE CODE
TITLE 28. INSURANCE
Part I. Texas Department of Insurance
Chapter 34. State Fire Marshal
Subchapter H. Storage and Sale of Fireworks
Effective December 8, 2002

§ 34.801. Purpose

The purpose of the rules set forth in this subchapter is to regulate the sale, distribution, and use of certain fireworks in the interest of protecting and preserving lives and property pursuant to the *Occupations Code* Chapter 2154. These rules should be read in conjunction with *Occupations Code* Chapter 2154, for a complete understanding of the regulation of this subject matter.

§ 34.808. Definitions

- (3) Bare wiring—Any electrical cable or cord any part of which has the insulating cover broken or removed, exposing bare wire.
- (10) Business—The manufacturing, importing, distributing, jobbing, retailing of permissible fireworks, acting as a pyrotechnic operator, the conducting of multiple public fireworks displays, using fireworks for agricultural, wildlife, or industrial purposes.
- (11) Buyer—Any person or group of persons offering an agreed upon sum of money or other considerations to a sales person for fireworks.
- (13) Commissioner—The Commissioner of Insurance.
- (18) Generator—Any device driven by an engine and powered by gasoline or other fuels to generate electricity for use in a retail fireworks stand.
- (19) Highway—The paved surface, or where unpaved, the edge of a graded or maintained public street, public alley, or public road.
- (20) Indoor retail fireworks site—A retail fireworks site other than a retail stand which sells Fireworks 1.4G from a building or structure.
- (25) Master electric switch—A manually operated device designed to interrupt the flow of electricity.
- (32) Retail fireworks site—The structure from which Fireworks 1.4G are sold and in which Fireworks 1.4G are held pending retail sale.
- (33) Retail stand—A retail site which sells Fireworks 1.4G over the counter to the general public who always remain outside the structure.
- (36) Selling opening—An open area including the counter, through which fireworks are viewed and sold at retail.
- (37) Storage facility—Any building, structure, or facility in which finished Fireworks 1.4G are stored, but in which no manufacturing is performed.
- (38) Supervisor—A person 16 years or older who is responsible for the retail fireworks site during operating hours.
- (39) Walk door—An opening through which retail stand attendants can freely move and which can be secured to keep the public from the interior of the stand.

§ 34.809. General Requirements, Licenses and Permits

- (a) Each firm or person engaged in the manufacture, transportation, storage, wholesale or retail sales of fireworks, public displays utilizing Fireworks 1.3G, pyrotechnic special effects operators, and pyrotechnic operators shall have an applicable license or permit issued by the state fire marshal.
- (2) Permit by type:
 - (A) retailer;
- (c) All required licenses and permits shall be made available for inspection at the facility for which it was issued. The original permit shall be posted at all retail locations for which such permit was issued.
- (d) License and permit holders shall take every reasonable precaution to protect their license or permit documents from loss, theft, defacement, destruction, or unauthorized duplication or use. Unauthorized use or duplication shall be reported immediately to the state fire marshal.

- (e) All holders of licenses or permits who bulk store fireworks shall have storage and other facilities which conform to these sections.
- (f) Each licensee or permittee shall notify the state fire marshal of every location where storage or manufacturing facilities are maintained in Texas.
- (g) A specific business location shall be maintained by each licensee or permittee which shall be indicated on the license or permit document.
- (i) Licensees and permittees shall have adequate storage facilities which comply with appropriate provisions of §34.822 and §34.823 of this title (relating to Storage of Black Powder and Fireworks 1.3G at Other Than Display Sites; Bulk Storage of Fireworks 1.4G).
- (j) Licensees and permittees shall comply with the applicable transportation requirements of §34.825 of this title (relating to Distribution and Transportation).

§ 34.812. Expiration, License, and Permit

- (b) Permits expire depending on permit type.
- (1) Retail permits expire on January 31 each year.

§ 34.814. Fees

- (a) Fees required by the *Occupations Code* Chapter 2154 and this subchapter, shall be paid by cash, money order, or check. Money orders and checks shall be made payable to the Texas Department of Insurance. Except for overpayments resulting from mistakes of law or fact, or credits for unused retail fireworks permits, all fees are nonrefundable and non-transferable.
- (c) Fees shall be as follows:
 - (7) retail permit \$20;

§ 34.815. Retail Permits

- (a) A retail permit shall be required for each retail stand or other retail sales location.
- (b) Retail permits may be obtained at any time of the year from any participating manufacturer, distributor, or jobber holding a valid license to do business in Texas or from the state fire marshal, and shall be signed by the applicant prior to said permit becoming effective.
- (1) A retail permittee shall purchase Fireworks 1.4G only from a distributor or jobber licensed in this state.
- (2) Bulk storage of Fireworks 1.4G by a retail permittee shall be in compliance with §34.823 of this title (relating to Bulk Storage of Fireworks 1.4G).
- (3) Fireworks 1.4G shall be sold to the general public only at legally permitted retail fireworks sites and during the legal selling periods defined in the *Occupations Code* §2154.202.
- (4) A copy of the *Occupations Code* Chapter 2154 and the fireworks rules or a condensed version thereof shall be provided to the purchaser of a retail permit by the participating licensee at the time the permit is issued. Copies of the *Occupations Code* Chapter 2154 and the fireworks rules shall be made available through the State Fire Marshal's office.
- (c) Any licensee purchasing books of permits for sale to retail operators shall properly account for all permits received.
 - (1) The licensee who issues retail permits shall return books containing duplicate copies of each issued permit to the State Fire Marshal's office within a week from the time the last permit in each book has been issued. All used and unused permits shall be returned no later than March 1 of each year.
 - (2) The returned copies in each book are considered the official record of retail permits sold.
 - (3) A licensee may exchange any unissued retail permit which has not been voided or otherwise rendered unusable for a new permit at the end of each year following expiration.

§ 34.817. Retail Sales General Requirements

- (a) A supervisor, 16 years of age or older, shall be on duty during all phases of operation. It shall be the responsibility of the permit holder as well as the supervisor to comply with or require compliance with the fireworks rules.
- (b) A building with more than 350 linear feet of fireworks counter display or containing a total of 500 or more cases of Fireworks 1.4G for sales or storage by a retailer shall comply with §34.823 of this title (relating to Bulk Storage of Fireworks 1.4G), except as provided by §34.832, of this subchapter (related to Specific Requirements for Retail Fireworks Sites Other Than Stands).
- (c) Heat-sealing of packages within retail sites is prohibited.
- (d) Each retail site determined to have fire danger external of the sales area shall be provided with equipment or facilities that are capable of extinguishing small exterior fires that would threaten the retail stand. Retail sales in other than a stand shall have a fire extinguisher rated not less than 2-A. An extinguisher shall be located within 75 feet walking distance from any point in the building, and each extinguisher shall cover a floor area not greater than 1000 square feet per unit of "A" rating.
- (e) An unobstructed pathway to walk doors shall be maintained within the retail fireworks site during selling operation.
- (f) The display, offer for sale, or sales of fireworks from tents and motor vehicles is prohibited.
- (g) Smoking shall not be permitted in the retail fireworks site. The presence of lighted cigars, cigarettes, or pipes within 10 feet of any site is prohibited. "Fireworks" and "No Smoking" signs in letters not less than four inches high shall be conspicuously posted on the inside and outside of each entrance door and at several locations inside the building.
- (h) The consumption or possession of alcoholic beverages in any retail fireworks site is prohibited. No retail sales personnel inside the facility or any supervisor shall be under the influence of or consume alcoholic beverages while on duty.
 - (i) A retail fireworks site may only sell fireworks, fireworks promotional items and accessories and those items listed in the *Occupations Code* §2154.002(4). The display and offer for sale, or sales of fireworks within any structure or building where any other business or any other merchandise is sold is prohibited.
 - (j) A retail permit shall be required for each retail site offering fireworks for sale during selling season and shall be posted in the sales area.
 - (k) The display or offer for sale or sales of fireworks from single or multifamily residential structures is prohibited.
 - (l) All retail fireworks sites must furnish parking off the highway.
 - (m) An area of at least 10 feet in width on all sides of a retail fireworks site shall be kept free of high grass, empty cardboard boxes and trash.
 - (n) Fireworks shall not be displayed or stored behind glass through which direct sunlight will shine on the fireworks.
 - (o) Fireworks offered for sale to the general public in this state shall conform to the labeling requirements of the United States Consumer Product Safety Commission and the United States Department of Transportation. Only labeling specifications or requirements mandated by either of these agencies shall be required for the labeling of items offered for sale in Texas.
 - (p) Internal combustion engines shall not be operated inside a retail fireworks sales site.
 - (q) Prior to the issuance of a retail permit, the applicant must present evidence of a valid current sales tax permit issued by the comptroller of public accounts, and the sales tax permit number must be entered on the retail fireworks permit by the person issuing the permit.

§ 34.818. Specific Requirements for Retail Fireworks Stands

A retail fireworks stand shall comply with the following requirements:

- (1) The fireworks stand in which Fireworks 1.4G are held for retail sale shall be constructed of wood, metal, masonry, or concrete, or combinations thereof.
- (2) Each stand of less than 16 feet in length shall have at least one walk door, which opens outward. Stands measuring 16 feet or longer must have at least two walk doors, one in each end, which open outward.
- (3) A minimum of combustible material such as posters, signs, and decorations may be used on interior walls.
- (4) A minimum distance of six feet shall be maintained from the front of the customer counter to the back side of the stand.
- (5) Electrical service to the stand shall be installed at least eight feet above ground or buried underground according to standards acceptable to the authority having jurisdiction.
- (6) Each stand utilizing electricity shall have a point of power interruption, either inside or outside the stand, (switch or switches) located near an exit door which interrupts all electric supply to devices and equipment located inside and on the stand.
- (7) All electrical wiring, equipment, and devices both inside and outside the stand, shall be UL approved, be securely mounted to the structure, and be installed and maintained to prevent electrical hazards. Splices in electrical wiring servicing equipment and devices inside the stand shall be enclosed in junction boxes. Light fixtures and wiring used for illumination inside and outside of the stand shall be installed and maintained to prevent accidental contact by the general public and employees.
- (8) Drop cords with lights, extension cords, or bare wiring shall not be used in any manner inside a retail stand.
- (9) In stands where generator-created power is used, the generator shall be located in an area free from grass, trash, and other flammable materials and at least 10 feet from the stand. Reserve fuel for the generator must be stored in an approved safety container and a portable fire extinguisher rated to at least 6 BC shall be provided.
- (10) Fireworks stands shall not be illuminated or heated by any device which requires open flame or exposed heating elements. Electric heaters shall be equipped with a switching device to stop the flow of current should the heater be tipped over.
- (11) If the fireworks stand is used for the overnight storage of Fireworks 1.4G, it must be equipped with suitable locking devices to prevent unauthorized entry.

§ 34.819. Records and Reports

- (d) Licensees and permittees shall report in writing any unauthorized incident of explosion or fire involving fireworks to the state fire marshal within 10 days after the occurrence. Incidents resulting in injury or death shall be reported immediately. Reports shall include:
 - (1) a brief account of the cause of injury to any person and such person's name and address; and
 - (2) a brief account of the fire or explosion.

§ 34.823. Bulk Storage of Fireworks 1.4G

- (a) General provisions.
 - (1) These provisions apply to licensees and retail storage of more than 500 cases of Fireworks 1.4G.
 - (2) Storage facilities containing Fireworks 1.4G shall be of solid construction using sound engineering principles.
 - (3) Electrical installation, if used, shall be in compliance with the *National Electric Code*, 1984. An outside electrical master switch shall be provided at each storage facility location when electrical power is installed.
 - (4) Storage facilities containing Fireworks 1.4G shall comply with the following.
 - (A) Storage facilities shall be separated from inhabited buildings, passenger railways, and from the pavement or main traveled surface of any highway by a minimum dis-

tance of 50 feet and be in compliance with Table 1 in §34.824 of this title (relating to Distance Tables). Storage facilities in existence prior to January 1, 1986, and then conforming to existing warehouse distance separation rules for jobbers and distributors are exempt from compliance with Table 1, provided such facilities are not enlarged or expanded beyond their January 1, 1986, capacities. An office used for the operation of a storage facility or a retail/wholesale site established in conjunction with a storage facility is exempt from the distance requirements after notifying the state fire marshal. Subsequent construction by adjacent property owners or public authorities shall not subject licensee to a distance regulation violation under this section, provided existing storage facilities are not enlarged or expanded after the subsequent construction.

- (B) Storage facilities shall not contain windows, and any other openings shall be situated so that the rays of the sun shall not come in contact with or shine through glass directly upon fireworks stored in the facility. Skylights which diffuse sun rays are permitted.
 - (C) No stoves, exposed flames, or electric heaters shall be used in any part of storage facility except in a boiler room, machine shop, office building, pump house, or lavatory. Heating of storage facilities shall be by means of steam, indirect hot air radiation, or hot water.
 - (D) Exit doors other than overhead or sliding doors shall open outward, shall be unlocked during operating hours, and be clearly marked. Aisles and exit doors shall be kept free of any obstruction.
 - (E) At least one approved Class A fire extinguisher shall be provided for each 1,000 square feet of floor space in a storage facility.
 - (F) The land surrounding storage facilities shall be kept clear of brush, dried grass, leaves, and similar combustibles for a distance of at least 10 feet.
 - (G) Smoking shall not be permitted in storage facilities. There shall be signs conspicuously posted with the words "Fireworks - No Smoking" in letters not less than four inches high.
- (5) Storage buildings shall have fencing in compliance with §34.821(a)(1) of this title (relating to Manufacturing Operations) or one of the following:
 - (A) personnel on the premises 24 hours per day and lighted at night; or
 - (B) a security alarm system.
 - (6) Bulk storage of Class I flammable liquids (such as gasoline) and flammable compressed gases shall comply with provisions of §34.821(a)(7) of this title (relating to Manufacturing Operations).
 - (b) Operation of storage facilities.
 - (1) Storage facilities shall be in the charge of a competent person at all times during operating hours who shall be at least 18 years of age, who shall be held responsible for the enforcement of all safety precautions.
 - (2) Doors shall be kept locked, except during hours of operation.

§ 34.824. Distance Tables

The following distance tables shall be applicable to this subchapter except to the extent that the distances are different from less restrictive federal regulations.

Table 1
Minimum Separation Distances of Fireworks 1.4G, Processing Buildings,
and Fireworks Storage Buildings from Inhabited Buildings, Passenger Railways, and
Public Highways

NET WEIGHT OF FIREWORKS¹	DISTANCE FROM PASSENGER RAILWAYS AND PUBLIC HIGHWAYS	DISTANCE FROM INHABITED BUILDINGS
<u>Pounds</u>	<u>Feet</u>	<u>Feet</u>
100	50	50
200	50	60
400	50	70
600	50	80
800	50	90
1,000	50	100
2,000	58	115
3,000	62	124
4,000	65	130
5,000	68	135
6,000	70	139
8,000	73	140
10,000	75	150

1 Net weight in Table 1 is the weight of all pyrotechnic and explosive composition and fuse only.

§ 34.825. Distribution and Transportation

- (a) With regard to Fireworks, Title 49 C.F.R. governing the transportation of hazardous materials, is adopted by reference as rules governing the safe distribution and transportation of fireworks as hazardous materials in Texas. These rules are subject to the following explanations and exceptions.
 - (1) When the term “interstate” or “foreign commerce” is used in the federal regulations, it will, for the purpose of such adoption, include all modes of transportation in Texas.
 - (2) When the term “department” is used in the text of the federal regulations as being the Department of Transportation, it shall, for the purpose of such adoption, mean the Texas Department of Insurance.
- (b) A copy of Title 49 C.F.R. shall be kept available for inspection in the Office of the State Fire Marshal.

§ 34.832. Specific Requirements for Retail Fireworks Sites Other Than Stands

Indoor retail fireworks sites shall comply with the following requirements:

- (1) The retail fireworks sales building shall be a free standing durable structure with only one story of space accessible to the public. It shall not be a tent, boat, or mobile vehicle. The fireworks sales area shall not be part of a multi-use or multi-tenant building.

- (2) The following distance requirements shall apply to an indoor retail fireworks site owned or leased by a fireworks licensee, which had a fireworks retail permit or a building permit in effect or was under construction on or before November 18, 2002, and stores or displays over 500 cases of Fireworks 1.4G in the building.
 - (A) The fireworks sales building shall be a minimum distance of 60 feet from any inhabited building;
 - (B) The fireworks sales building shall be a minimum distance of 30 feet from the property line.
 - (C) The fireworks sales building shall meet the distance requirements of §34.824 Table 1 of this title (relating to Distance Tables), or have a minimum 1 hour fire rated exterior wall with a minimum 3/4 hour fire rated protected openings.
 - (D) An office area used for the operation of the site, separated by a one hour fire rated wall from the fireworks sales or storage area, may be exempt from the distance requirements after it is reported to and reviewed by the state fire marshal.
- (3) The following distance requirements shall apply to an indoor retail fireworks site owned or leased by a fireworks licensee, which did not have a fireworks retail permit or a building permit in effect or was not under construction on or before November 18, 2002, and stores or displays over 500 cases of Fireworks 1.4G in the building.
 - (A) The fireworks sales building shall be a minimum distance of 60 feet from any inhabited building;
 - (B) The fireworks sales building shall be a minimum distance of 30 feet from the property line;
 - (C) The fireworks sales building shall meet the distance requirements of §34.824 Table 1 of this title, or have a complete automatic fire sprinkler system installed in accordance with NFPA 13 “Standard for the Installation of Sprinkler Systems.”
- (4) Subsequent construction by adjacent property owners or public authorities shall not subject licensee or permittee to a distance regulation violation under this section, provided existing facilities are not enlarged or expanded after the subsequent construction.
- (5) Fireworks sales display areas shall be sufficiently designed to prevent customers from handling fireworks, unless an attendant is directly assisting the customer. Sales display areas must include a continuous durable restraint around displayed fireworks separating the customers from all merchandise. The height, weight, and stability of the restraint must be designed to prevent individuals from penetrating the barrier.
- (6) Fireworks in the sales area shall be limited to the displayed merchandise unless stored in closed cardboard boxes not accessible to the public.
- (7) Access to fireworks when stored in a separate and distinct area away from general fireworks sales shall be restricted to employees only and “No Smoking” signs shall be posted inside.
- (8) The local fire department and the county fire marshal, if one is appointed or elected in that county, shall be notified in writing, postmarked or faxed on or before June 14 of each year, of the business location, placement of fireworks in building or structure, maximum amount of fireworks in the building, and time period that fireworks will be stored or sold.
- (9) Trash, rubbish, and unused boxes, except for small quantities stored in an orderly manner for reuse, shall be removed from the sales, storage and adjacent areas daily, or as often as necessary to prevent unsafe accumulation.
- (10) Fireworks shall not be displayed or stored behind glass through which direct sunlight will shine on the fireworks.
- (11) Extension cords shall not be located where the general public could walk over them. An extension cord may be used to extend power to a single appliance or single power

strip. An extension cord providing power to a power strip shall be of the same or greater wire gauge. Power strips used for multiple appliances must contain an internal circuit breaker. Extension cords and power strips shall be protected from accidental damage. Flexible cords and cables shall not be used as a substitute for the fixed wiring of a structure.

- (12) A supervisor, 18 years of age or older, shall be on duty during all phases of operation. All fireworks sales personnel shall be 16 years of age or older. The permit holder and the supervisor shall ensure that all sales personnel comply with this subchapter.
- (13) All trash containers used by the general public shall be metal or heavy plastic and be located 10 feet from any displayed or stored fireworks.
- (14) An outside electrical master switch shall be provided at each retail location.
- (15) Portable space heaters shall not be permitted in retail or storage areas.
- (16) A retail sales permit, for other than a retail stand, shall not be valid until a plan is on file at the state fire marshal's office showing the following:
 - (A) the address or location of the site;
 - (B) the name of the person to whom the permit is issued;
 - (C) the outline and length of all building exterior walls;
 - (D) the floor area, location and dimensions used for fireworks sales;
 - (E) the floor area, location and dimensions used for fireworks storage outside the sales area;
 - (F) the floor area, location and dimensions used for other than fireworks sales and storage;
 - (G) the general location, description and distances from the exterior walls to all buildings, fireworks storage magazines, highways, and equipment for storage or dispensing of flammable liquids or compressed gas;
 - (H) the location of the master electrical cut-off switch;
 - (I) the location and width of all building doors and paths of egress; and
 - (J) the maximum estimated number of cases to be stored or displayed for sale in the site.
- (17) Cooking equipment shall not be used within rooms used for fireworks sales or storage.
- (18) All fireworks retail sites with a sales area more than 2500 square feet, shall have a minimum average ceiling height of 12 feet. The sales area is the total square feet of floor area used to sell or store fireworks in an indoor retail fireworks site. Each sales area may be separated from another sales area by a fire barrier having a resistance rating of not less than one hour, with all openings therein protected by a 3/4 hour fire protection-rated self closing fire doors.
- (19) An indoor retail fireworks site shall comply with the mercantile occupancy requirements of the standards adopted in §34.303 of this title (relating to Applicability of Rules). This standard, NFPA 101, *Life Safety Code*, is published by and is available from National Fire Protection Association, Quincy, Massachusetts, 1-800-344-3555



Texas Department of Insurance
State Fire Marshal's Office, Mail Code 112-FM
 333 Guadalupe • P. O. Box 149221, Austin, Texas 78714-9221
 512-305-7900 • 512-305-7910 fax • www.tdi.state.tx.us
 e-mail fire.marshall@tdi.state.tx.us

FIREWORKS INCIDENT REPORT FORM

28TAC § 34.819(d) requires licensees and permittees to report in writing any unauthorized incident of explosion or fire involving fireworks to the state fire marshal within 10 days after the occurrence. Incidents resulting in injury or death shall be reported immediately. In addition 28TAC § 34.819(c) requires the loss, theft, or unlawful removal of black powder and Fireworks 1.3G shall be reported immediately to the State Fire Marshal. This form may be mailed, faxed or e-mailed to the State Fire Marshal's Office.

PLEASE PRINT OR TYPE

LICENSEE OR PERMITTEE REPORTING THE INCIDENT		
Name (Last, First)	Representing: (Firm name or self)	Phone number
Mailing address (street or PO Box) Number	City & State & Zip Code	Permit or License

INCIDENT INFORMATION	
Date and time of incident	Name of location
Location address (street & city)	
Type of incident	<input type="checkbox"/> Theft <input type="checkbox"/> Fire <input type="checkbox"/> Explosion <input type="checkbox"/> Other
Name(s) and address of any injured person(s):	
This occurred at or during: <input type="checkbox"/> Fireworks 1.3 Public Display <input type="checkbox"/> Flame Effects show <input type="checkbox"/> Pyrotechnics before a proximate audience <input type="checkbox"/> Fireworks sales location <input type="checkbox"/> A fireworks storage facility <input type="checkbox"/> Other	

BRIEF DESCRIPTION OF THE INCIDENT <i>(Attach additional sheets if necessary)</i>

By submission of this form to the State Fire Marshal's Office, it is implied that the information herein is true and correct to the best of my knowledge.

Signature of licensee or permittee: _____ Date: _____

NOTICE ABOUT CERTAIN INFORMATION LAWS AND PRACTICES

With few exceptions, you are entitled to be informed about the information that the Texas Department of Insurance (TDI) collects about you. Under sections 552.021 and 552.023 of the Texas Government Code, you have a right to review or receive copies of information about yourself, including private information. However, TDI may withhold information for reasons other than to protect your right to privacy. Under section 559.004 of the Texas Government Code, you are entitled to request that TDI correct information that TDI has about you that is incorrect. For more information about the procedure and costs for obtaining information from TDI or about the procedure for correcting information kept by TDI, please contact the Agency Counsel Section of TDI's Legal & Compliance Division at (512) 475-1757 or visit the Coprections Procedure section of TDI's web page at www.tdi.state.tx.us.



Date: _____

Deputy: _____

Retail Permit No: _____ Nearest City: _____ County: _____

Stand Location: _____

Stand Operator's Name (at time of inspection): _____

VIOLATIONS OF TEXAS OCCUPATIONS CODE CHAPTER 2154 AND TEXAS ADMINISTRATIVE CODE 28TAC§34.800

CODE	EXTERIOR	CODE	GENERAL
2154.251(2)	<input type="checkbox"/> 1. Sell <100' from storage & dispensing of FLAMMABLES	34.817(g)	<input type="checkbox"/> 25. SMOKING inside or within 10 ft of stand
34.817(l)	<input type="checkbox"/> 2. No off highway PARKING provided	34.817(h)	<input type="checkbox"/> 26. Stand operator consuming or under influence of ALCOHOL
34.817(g)	<input type="checkbox"/> 3. "NO SMOKING" signs not posted (4" letters)	2154.252(c)	<input type="checkbox"/> 27. Fireworks sold or offered to CHILDREN under 16 years old
34.817(m)	<input type="checkbox"/> 4. TRASH or empty cardboard boxes within 10 ft of stand		GENERATOR
34.817(m)	<input type="checkbox"/> 5. High GRASS within 10 ft of stand	34.818(9)	<input type="checkbox"/> 28. Generator <10 ft from stand
34.818(11)	<input type="checkbox"/> 6. LOCKS unsuitable to prevent unauthorized entry at night	34.818(9)	<input type="checkbox"/> 29. Generator too close to grass, trash, or flammables
34.818(5)	<input type="checkbox"/> 7. ELECTRICAL SERVICE to stand is not buried or >8' high	34.818(9)	<input type="checkbox"/> 30. No 6-B:C extinguisher available for generator
34.818(7)	<input type="checkbox"/> 8. Elect. not maintained to prevent ELECTRICAL HAZARD		STRUCTURE
34.818(7)	<input type="checkbox"/> 9. WIRING for lights may be accidentally contacted by public	34.817(k)	<input type="checkbox"/> 31. Selling fireworks from a single or multi-family structure
	INTERIOR	34.817(f)	<input type="checkbox"/> 32. Selling fireworks from a tent or motor vehicle
34.817(e)	<input type="checkbox"/> 10. Item(s) block pathway of FREE EGRESS to door(s)		OTHER
34.818(2)	<input type="checkbox"/> 11. Stand 16 ft or over doesn't have TWO EXIT DOORS	2154.003	<input type="checkbox"/> 33. ILLEGAL FIREWORKS e.g. Bottle or Pop Rockets, M-80's
34.818(2)	<input type="checkbox"/> 12. Exit door(s) don't OPEN OUTWARD	34.817(o)	<input type="checkbox"/> 34. Fireworks do not conform to USCPS LABELING
34.818(2)	<input type="checkbox"/> 13. DOORS LOCKED when occupied	34.809(c)	<input type="checkbox"/> 35. ORIGINAL PERMIT not posted
34.817(d)	<input type="checkbox"/> 14. No equipment to EXTINGUISH small exterior fires	34.818(2)	<input type="checkbox"/> 36. No ONE PANIC hardware door when using roll-up doors
	INTERIOR ELECTRICAL		ELECTRICAL RECEPTACLE TEST (If performed)
34.818(6)	<input type="checkbox"/> 15. No shutoff SWITCH , by exit, for power in and on stand	34.818(7)	<input type="checkbox"/> 37. One or more FAULTS identified on Receptacle Tester
34.818(8)	<input type="checkbox"/> 16. Drop cords, extension CORDS or bare wiring in stand		<input type="checkbox"/> 39. Appears to have substantive violations of state electrical code
34.818(7)	<input type="checkbox"/> 17. All SPLICES inside stand are not in junction boxes		<input type="checkbox"/> 50. _____
34.818(7)	<input type="checkbox"/> 18. Electrical devices inside stand not UL APPROVED		
34.818(10)	<input type="checkbox"/> 19. Electric HEATER does not have a tip over cutoff switch		
34.818(10)	<input type="checkbox"/> 20. Heat or light source with OPEN FLAMES in stand		
34.818(7)	<input type="checkbox"/> 21. Elect. not maintained to prevent ELECTRICAL HAZARD		
	GENERAL		
34.817(j)	<input type="checkbox"/> 22. No PERMIT for retail stand (1 for ea. non connected stand)		
2154.254(b)	<input type="checkbox"/> 23. Supervisor less than 18 YEARS OLD		
34.817(a)	<input type="checkbox"/> 24. Stand UNSUPERVISED (no operator on duty)		

ACTION REQUIRED BY OPERATOR/SUPERVISOR	
A.	<input type="checkbox"/> None at this time
B.	<input type="checkbox"/> Correct violations immediately
C.	<input type="checkbox"/> Correct all violations within 24 hours or sooner
D.	<input type="checkbox"/> Close stand until required action is complete
E.	<input type="checkbox"/> Correct before next selling season
F.	<input type="checkbox"/> Qualified electrician should inspect to National Electric Code

ITEM	ACTION	REQUIRED CORRECTIVE ACTION	<input type="checkbox"/> No faults were detected in the sample of RECEPTACLES tested.

The item(s) noted above as violations of the Occupation Code, Chapter 2154 and the Fireworks Rules 28TAC§34.800 et. seq., are not all inclusive. Other violations may exist that were not observed or noted during the inspection. This report should not be viewed as an approval or acknowledgement of compliance with all applicable laws. 28TAC§34.817(a) states "It is the responsibility of the permit holder as well as the supervisor to comply with or require compliance with the fireworks rules." **I ASSUME RESPONSIBILITY** that all the above actions will be taken to comply with the Texas Occupation Code, Chapter 2154 and the fireworks rules.

Signature (supervisor on duty) _____ Date: _____

The Texas Government Code, Section 417.008 & .009 permits the state fire marshal or his designee to order the removal of a building or take other remedial action if he finds that a dangerous condition is created by the manner of storage of explosives or of any other condition exists that is liable to cause or promote fire.

