



May 18, 2020

To: All Ohio Licensed Manufacturers and Wholesalers of Fireworks

Re: **Variance # V17ed.- 051**
Fireworks sales practices during the COVID-19 pandemic response period

Dear Licensees:

The Ohio Department of Commerce, Division of State Fire Marshal (SFM) received a communication, dated April 22, 2020, from an Ohio licensed wholesaler requesting a variance from multiple provisions of the Ohio Revised Code ("R.C.") and Ohio Administrative Code ("OAC")/Ohio Fire Code ("OFC"). The essence of the request is to permit Ohio licensed fireworks sellers to modify certain consumer fireworks retail sales processes during the COVID-19 pandemic response period in Ohio.

After reviewing the circumstances surrounding this request, the SFM has determined that the retail, wholesale and exhibition fireworks sales processes qualify for an SFM variance for the effective period of Ohio's official COVID-19 pandemic response. Specifically, I make the following findings:

- A. A literal reading of the code prohibits live product retail stores from engaging in online sales transactions, such as placement of product orders and payments for purchases, and product delivery from occurring at any place other than within a retail showroom structure on a licensed premise. Certain provisions regarding the wholesale sales process and the sale of display (1.3G and 1/4G) fireworks to a licensed exhibitor for a properly permitted show may also be interpreted as having similar limitations.
- B. A literal enforcement of Ohio's applicable fireworks sales laws and rules will result in a practical difficulty for licensed manufacturers and wholesalers of fireworks ("Licensees") to comply with mandates and recommended practices of Governor Mike DeWine's Executive Order 2020-01D [<https://coronavirus.ohio.gov/wps/portal/gov/covid-19/resources/public-health-orders/executive-order-2020-01d>] and associated Director of Health Orders, including Dr. Acton's April 30, 2020 "Stay Safe Ohio" Order [<https://coronavirus.ohio.gov/static/publicorders/Directors-Stay-Safe-Ohio-Order.pdf>]. This finding includes practical difficulties in complying with the following sections of law:

1. Retail sales: R.C. §§3743.04(C)(3), 3743.06(F) and (H), 3743.60(D) and (E), 3743.17(C)(2), 3743.19(A), (G) and (I), 3743.61(D), 3743.25(A)(1) and (C), 3743.44(A), 3743.45(A), 3743.63(A) and (C), 3743.65(A), OAC 1301:7-7-56(A), OFC 5601.1.3, and OAC 1301:7-7-56(V), OFC §§5622.1.4, 5622.2.1.1, 5622.5.1 and/or 5622.5.4;
2. Wholesale sales: In addition to the sections listed in “i” of this paragraph, R.C. §§3743.04(C)(2), 3743.17(C)(1), and 3743.25 OAC 1301:7-7-56(V), OFC §5622.5.5; and
3. Exhibitor sales: In addition to the sections listed in “1 and 2” of this paragraph, R.C. §3743.55.

C. Granting a limited variance that permits licensed manufacturers and wholesalers of fireworks to:

1. conduct internet-based retail, wholesale, and exhibition related product sales transactions, such as the online placement of product orders and payments for purchases, and/or
2. deliver validly sold fireworks products to the purchaser at a licensed premise outside of a retail showroom or other licensed structure, such as via curbside pick-up,

is not contrary to the best interests of the public, health, safety or welfare of the citizens of Ohio.

Therefore, effective May 12, 2020, and pursuant to the discretionary powers granted to me by R.C. §3743.59(A) and/or OAC 1301:7-7-56(A)(1)(c)(i), OFC 5601.1.3.1, I hereby issue a variance from R.C. §§3743.04(C)(2) and (3), 3743.06(F) and (H), 3743.17(C)(1) and (2), 3743.19(A), (G) and (I), 3743.25(A)(1),(B) and (C), 3743.44(A), 3743.45(A), 3743.55, 3743.60(D) and (E), 3743.61(D), 3743.63(A) and (C), 3743.65(A), and/or OAC 1301:7-7-56(A), OFC §5601.1.3, and OAC 1301:7-7-56(V), OFC §§5622.1.4, 5622.2.1.1, 5622.5.1, 5622.5.4, and/or 5622.5.5 as follows:

A. Fireworks Sales and Delivery Conditions:

1. Retailers of consumer (1.4G) fireworks:

- a. The terms of this variance apply to all licensed manufacturers and wholesalers;

- b. Customer selection and ordering of 1.4G fireworks per R.C. §§3745.44 and 3743.45 and the exchange of payment for such orders, may occur on a world wide web based or similar digital/internet platform. Individual orders must be specifically associated with a single fireworks manufacturer or wholesaler license identification number and that license's designated licensed premise. All selection, ordering and payment for consumer fireworks must occur at and via the processes as described in this variance or as already established in R.C. Chapter 3743 and OAC 1301:7-7-56;
- c. The delivery of all fireworks acquired pursuant to this variance, or existing sales processes, may occur via a "curb-side" delivery process or within the retail showroom on the designated licensed premise associated with the order. For curb-side deliveries:
 - i. The delivery must be to the verified purchaser of the specifically delivered fireworks and such person must be legally able to purchase the fireworks as otherwise required under Ohio law;
 - ii. The delivery must occur on the licensed premise associated with fireworks sale;
 - iii. The delivery must occur outside of the retail showroom or other structure on the licensed premise. The delivery can occur in specially designated customer pick zones or other areas accessible by motor vehicles of the public on the premise;
 - iv. A delivery consists of the verification of the purchase (*i.e.* – validation of purchaser, payment and items in order) and provision of packaged items to purchaser for placement in a motor vehicle for transport off of the licensed premise or placement of purchased items by employees of the licensee in the motor vehicle of the purchaser;
 - v. Except as noted herein, a delivery under this variance cannot occur inside of any other structure at the licensed premise and the public may not access any structures or trailers on the licensed premise associated with the delivery.

Exception: A licensee may construct a tent or other temporary membrane structure on a licensed premise to provide shelter for licensed employees and/or purchasers and their vehicles at the point of delivery. Such structures must follow the notification and approval processes established in R.C. §§3743.04, 3743.17 and OAC 1301:7-7-56(T), OFC 5620 and be in compliance with all state and local laws, including the Ohio Building Code, Ohio Fire Code, and zoning requirements;

2. Wholesale sales: In addition to incorporating the applicable portions of section “A.1” of the Fireworks Sales and Delivery Provisions of this variance to wholesale sales, licensees are reminded of R.C. 3743.25(B)(4), which states that wholesale sales may occur:

R.C. 3743.25(B): By delivery of wholesale fireworks to a purchaser at a licensed premises outside of a structure or building on that premises. All other portions of the wholesale sales transaction may occur at any location on a licensed premises;

3. Exhibition Fireworks – acquisition of 1.3G/1.4G fireworks for a properly permitted show by a licensed exhibitor: In addition to incorporating the applicable portions of section “A.1” of the Fireworks Sales and Delivery Provisions of this variance to exhibition related fireworks sales, licensees are permitted to conduct virtual (*i.e.* - world wide web based or a similar digital/internet platform) purchaser license and documentation showings and reviews pursuant to R.C. 3743.55;

B. Limitations: For any licensees implementing any of the provisions of this variance:

1. Nothing in this variance shall be construed to be inconsistent with or contravene any COVID-19 related Governor’s Orders, including Governor Mike DeWine’s Executive Order 2020-01D and/or any associated Director of Health Orders, including Dr. Acton’s April 30, 2020 “Stay Safe Ohio” Order. Any licensees implementing any the provisions of this variance must comply with all applicable aspects of all such orders at all times as a condition of this variance;
2. Nothing in this variance shall be construed to, and this variance does not reduce, waive or otherwise eliminate any of the licensure or safety provisions for fireworks manufacturers or wholesalers established in law but not otherwise addressed in this variance. (*i.e.* – security officer requirements established in R.C. §§ 3743.06 and 3743.19);
3. The delivery of fireworks via a mail order, parcel service or similar off licensed premise delivery process is strictly prohibited;
4. A licensee may not offer any fireworks or other items for sale outside of its licensed retail showroom;
5. In no circumstance shall any fireworks be displayed for sale outside of a retail store;
6. Nothing in this variance shall be construed to, and this variance does not reduce, waive or otherwise eliminate any of the licensees’ liability, insurance, workers compensation or similar obligations.

C. General Conditions:

1. As described in this variance, licensees are not required to implement this variance and may maintain a retail showroom sales process as already provided for in Ohio law, but are encouraged to implement this variance to assist them in complying with Governor Mike DeWine's Executive Order 2020-01D and/or any associated Director of Health Orders, including Dr. Acton's April 30, 2020 "Stay Safe Ohio" Order. Accordingly, licensees may, at each individual licensed premise, implement a hybrid system of one or more of the following:
 - a. standard retail showroom sales;
 - b. online selection of and/or payment for fireworks product and in store delivery of product;
 - c. online selection of and/or payment for fireworks product and curbside delivery of product;
 - d. retail showroom-based product selection and payment and curbside delivery; and/or
 - e. Other similar methods approved in writing by the State Fire Marshal and found to be consistent with this variance.
2. Licensees must comply with all applicable state and local laws, including the Ohio Building Code, Ohio Fire Code, and zoning requirements at all times when implementing this variance;
3. Licensees shall be responsible for implementing all reasonable traffic control measures associated with operations under this variance;
4. Licensees shall be responsible for maintaining all regular fireworks sales records and any records necessary to demonstrate compliance with any implemented portion(s) of this variance. Such records shall be made available upon request to the SFM and any law enforcement officers, fire code officials and building code officials with jurisdiction;
5. If a licensee elects to implement any part of this variance, the licensee shall maintain and make available a copy of this variance to the SFM and any law enforcement officers, fire code officials and building code officials with jurisdiction; and
6. Expiration, termination or modification of Variance: This variance shall remain in effect during the active period of Governor Mike DeWine's Executive Order 2020-01D and/or any associated and applicable Director of Health Orders for business operations, including Dr. Acton's April 30, 2020 "Stay Safe Ohio" Order. If a licensee violates any of the terms of this variance, the SFM may terminate this variance for that licensee upon notice to the licensee. The SFM also reserves the right to amend or modify any portion of this variance or terminate it as necessary to protect the safety of the public.

If you have any questions, please contact Danitra Butler at the Division of State Fire Marshal, Bureau of Testing and Registration at 1-877-264-0023.

Sincerely,



William Spurgeon
Interim State Fire Marshal

cc: Timothy C. Thompson, Division Legal Counsel
Alan Smith, Code Enforcement Bureau Chief
Danitra Butler, Chief of Testing a Registration
Regina Hanshaw, Board of Building Standards
Geoff Eaton, Superintendent of Industrial Compliance