

ONEIDA INDIAN NATION
REGULATIONS GOVERNING THE SALE AND STORAGE OF SPARKLING DEVICES ON
REACQUIRED LAND

The regulations below were promulgated by the Oneida Indian Nation and are effective June 13, 2016.

PART 1: PURPOSE AND DEFINITIONS

Section 1.01 **Purpose.** To establish requirements for the protection of the land, environment, public health and safety in connection with the sale and storage of Sparkling Devices within Reacquired Land as that term is defined in this Part. These Regulations are promulgated under the authority of the Land Use, Environmental, Health & Safety Ordinance (Ordinance No. O-14-03).

Section 1.02 **Definitions.** For purposes of these Regulations, the following terms have the meanings set forth below:

1. “Applicable Selling Season” means the time period during which sales of Sparkling Devices are authorized, which is from May first (1st) through July fifth (5th), or August twenty-fifth (25th) through September eighth (8th), or from December twenty-sixth (26th) through January second (2nd) of each year.
2. “Highway” means a public street or public road.
3. “NFPA 1124” means the publication entitled “Code for the Manufacture, Transportation, Storage, and Retail Sales of Fireworks and Pyrotechnic Articles” published by the National Fire Protection Association (current version in effect).
4. “Permanent Retailer” means any person or entity who, at a fixed place of business, is engaged in selling Sparkling Devices at retail during the Applicable Selling Season.
5. “Reacquired Land” means all land possessed by the Nation within the exterior boundaries of the Nation’s Reservation (as defined in the intergovernmental Settlement Agreement by the Nation, the State of New York, the County of Madison and the County of Oneida, with an effective date of March 4, 2014), but does not include (a) the 32 acres (more or less) of state tax-exempt land held to be tribal land retained by the Nation in *Boylan v. United States*, 256 F.165 (2d Cir. 1920), (b) the 104 acres (more or less) of state tax-exempt land retained by the Nation as Lots 2 and 3 in the June 25, 1842 Orchard Party treaty or (c) land that has been transferred to the United States Department of Interior to be held in trust for the Nation.
6. “Sparkling Devices” mean “Ground-based or Hand-held devices” (as defined in subparagraph (a) of this paragraph) and “Novelties” (as defined in subparagraph (b) of this paragraph).
 - a. “Ground-Based or Hand-Held Devices” means sparkling devices which are ground-based or hand-held devices that produce a shower of white, gold, or colored sparks as their primary pyrotechnic effect. Additional effects may include a colored flame, an audible crackling effect, an audible whistle effect, and smoke. These devices do not rise into the air, do not fire inserts or projectiles into the air, and do not explode or produce a report (an audible crackling- type effect is not considered to be a report). Ground-based or hand-held devices that produce a cloud of smoke as their sole pyrotechnic effect are also included in this category. Types of devices in this category include:

- i. Cylindrical fountain: cylindrical tube containing not more than seventy-five grams of pyrotechnic composition that may be contained in a different shaped exterior such as a square, rectangle, cylinder or other shape but the interior tubes are cylindrical in shape. Upon ignition, a shower of colored sparks, and sometimes a whistling effect or smoke, is produced. This device may be provided with a spike for insertion into the ground (spike fountain), a wood or plastic base for placing on the ground (base fountain), or a wood or cardboard handle to be hand held (handle fountain). When more than one tube is mounted on a common base, total pyrotechnic composition may not exceed two hundred grams, and when tubes are securely attached to a base and the tubes are separated from each other on the base by a distance of at least half an inch (12.7 millimeters), a maximum total weight of five hundred grams of pyrotechnic composition shall be allowed.
 - ii. Cone fountain: cardboard or heavy paper cone containing not more than fifty grams of pyrotechnic composition. The effect is the same as that of a cylindrical fountain. When more than one cone is mounted on a common base, total pyrotechnic composition may not exceed two hundred grams, and when cones are securely attached to a base and the cones are separated from each other on the base by a distance of at least half an inch (12.7 millimeters), a maximum total weight of five hundred grams of pyrotechnic composition shall be allowed.
 - iii. Wooden sparkler / dipped stick: these devices consist of a wood dowel that has been coated with pyrotechnic composition. Upon ignition of the tip of the device, a shower of sparks is produced. Sparklers may contain up to one hundred grams of pyrotechnic composition per item.
- b. “Novelties” means novelties which are not pyrotechnics classified as hazardous materials and are not regulated as explosives, provided that they are manufactured and packaged as described below:
- i. Party popper: small devices with paper or plastic exteriors that are actuated by means of friction (a string or trigger is typically pulled to actuate the device). Upon activation, the device expels flame-resistant paper streamers, confetti, or other novelties and produces a small report. Devices may contain not more than sixteen milligrams (0.25 grains) of explosive composition, which is limited to potassium chlorate and red phosphorus.
 - ii. Snapper: small, paper-wrapped devices containing not more than one milligram of silver fulminate coated on small bits of sand or gravel. When dropped, the device explodes, producing a small report. Snappers must be in inner packages and the inner packages must contain sawdust or a similar, impact-absorbing material.
7. “Temporary Seasonal Retailer” means any person or entity who, at a temporary stand or tent, is engaged in selling Sparkling Devices at retail during the Applicable Selling Season.

PART 2: REGISTRATION, FEES, AND REPORTING

Section 2.01 Registration.

1. Permanent Retailers must annually register with the Nation Fire Marshall.

2. Temporary Seasonal Retailers must register with the Nation Fire Marshall each Applicable Selling Season.
3. The registration form to be prescribed by the Nation shall include the following information:
 - a. Business name. Full legal name of the registrant and, if applicable, any assumed name under which the registrant does business.
 - b. Address. Full street address of the location where the registrant will conduct business. Registrants that sell sparkling devices at more than one location may submit one registration form for all locations, but must provide the full street address of each location.
 - c. Business telephone number.
 - d. Principals. If the registrant is a corporation, limited liability company, general partnership, limited partnership, or other business entity, the form shall provide the name and title of each principal of the registrant. The term “principal of the registrant” includes each officer of a corporation, each member or manager of a limited liability company, each general partner in the partnership or limited partnership, and each person in charge of the operation or management of any other business entity.
 - e. Contact Person. The name and contact information for an individual designated as the registrant’s contact person. The contract information shall include all telephone numbers, cell phone numbers, email addresses, and other means of contacting the individual any time, twenty-four (24) hours a day, seven (7) days a week.
 - f. Certification. The person signing the registration form must certify, under penalties of perjury: that the person is duly authorized to sign the registration form on behalf of the registrant; that the information provided in the registration form is true and complete; that each location where the registrant will conduct business is in compliance with the Land Use, Environmental, Health & Safety Ordinance (Ordinance No. O-14-03) and all other applicable Nation laws, rules and regulations.
 - g. Signature and Notarization. The name and title of the authorized representative signing the form on behalf of the registrant in the presence of a notary public.
 - h. Certificate of Occupancy: For each building or structure in which the registrant will conduct business, a copy of the Certificate of Occupancy issued by the Nation Code Enforcement Officer.
 - i. Certificate of Insurance. A Certificate of Insurance evidencing commercial general liability coverage inclusive of products/operations completed. The coverage shall have a minimum limit of one million dollars and shall list the Oneida Indian Nation as a certificate holder. Submission of a Certificate of Insurance is waived for Nation-owned entities.
4. Inspection. As part of the registration process, including renewals, the Nation Fire Marshall is authorized to perform an inspection to assure compliance with these Regulations.
5. Renewals.
 - a. Permanent Retailers must apply for registration renewals sixty (60) days prior the expiration of their current certificate of registration.

- b. Temporary Seasonal Retailers must apply for registration renewals sixty (60) days prior to the start of the Applicable Selling Season during which they seek to sell Sparkling Devices.
6. Registration Fees
- a. The annual registration fee for Permanent Retailers is \$200.
 - b. The registration fee for Temporary Seasonal Retailers is \$250 for each Applicable Selling Season during which they seek to sell Sparkling Devices.
 - c. Payment of registration fees is waived for Nation-owned entities.
7. Certificate of Registration.
- a. Upon review and approval that an applicant meets the registration and fee requirements contained in this Section, the Nation Fire Marshall shall issue a certificate of registration that authorizes the registrant to sell Sparkling Devices on Reacquired Land only during the Applicable Selling Season.
 - b. The certificate of registration issued to Permanent Retailers shall be valid for one (1) year from the date of its issuance.
 - c. The certificate of registration issued to Temporary Seasonal Retailers shall be valid for no more than thirty (30) days before the first day and thirty (30) days after the last day of the Applicable Selling Season.
 - d. Every registrant must continuously meet the requirements set forth in these Regulations. Non-compliance with any of the requirements set forth may result in a revocation of the certificate of registration, as determined by the Nation Fire Marshall. Revocation shall remain in effect until the retailer provides evidence of compliance acceptable to the Nation Fire Marshall.

Section 2.02 **Records, Inspections, and Reports.**

1. Records.
- a. Every registrant shall maintain, and make available to the Nation Fire Marshall, accurate and complete records regarding the name and quantity of any Sparkling Devices sold on Reacquired Land.
 - b. Every registrant shall make available upon request of the Nation Fire Marshall the following documents at each location where it sells Sparkling Devices:
 - i. A copy of the Certificate of Registration issued by the Nation Fire Marshall;
 - ii. A copy of the Certificate of Insurance if the entity is not owned by the Nation; and
 - iii. A copy of the Sparkling Devices safety sheet produced by the Nation Fire Marshall.
2. Inspection. Every registrant shall provide the Nation Fire Marshall with access to the retail location(s) to allow for inspection to assure compliance with the terms of registration.
3. Reporting of Incidents.

- a. Every registrant shall report to the Nation Fire Marshall basic information relating to all fires or explosions, including any accidental discharge of Sparkling Devices that occur on premises. The report must be submitted within twenty-four (24) hours of the occurrence or discovery of the fire or explosion.
- b. Every registrant shall report to the Nation Fire Marshall any fire or explosion that results in injury or death within one (1) hour of its occurrence or as soon as practicable. This initial report shall be made by telephone to the Nation Police Department, who will notify the Nation Fire Marshall.
- c. The Nation Fire Marshall will provide information regarding incidents to the Nation Code Enforcement Officer.

PART 3: SAFETY STANDARDS FOR SALES AND STORAGE

Section 3.01 Retail Sales.

1. No person shall sell Sparkling Devices to anyone under the age of eighteen (18) years old.
2. No person shall construct a retail display of Sparkling Devices or offer sparkling devices for sale upon highways, sidewalks or public property or in an occupancy designated as Assembly (Group A) or Educational (Group E) under the International Building Code.
3. Retail sales of Sparkling Devices shall comply with the applicable requirements of NFPA 1124.
4. A minimum of one pressurized-water portable fire extinguisher complying with section 906 of the International Fire Code shall be located not more than 15 feet (4572 mm) and not less than 10 feet (3048 mm) from each area where Sparkling Devices are stored or displayed for retail sale.
5. “No Smoking” signs complying with section 310 of the International Fire Code shall be conspicuously posted in each area where sparkling devices are stored or displayed for retail sale.

Section 3.02 Storage of Sparking Devices.

The storage or temporary storage of Sparkling Devices shall comply with the applicable requirements of NFPA 1124.

Section 3.03 Interpretation.

The provisions in this Section shall be in addition to, and not in limitation of, the standards and guidelines adopted by the Nation in Land Use, Environmental, Health & Safety Ordinance (Ordinance No. O-14-03).