

Answers To Frequently Asked Questions About Wisconsin Fireworks Law

I. Introduction

There have been no court decisions or statutory changes affecting fireworks since May 1, 2004 in Wisconsin. There are minor changes in this outline in sections III.F (permits) and III.G., out of state sales.

II. Only One Controlling Statute - §167.10

A. Defines items which are "Fireworks" – §167.10(1)

"[A]nything manufactured, processed or packaged for exploding, emitting sparks or combustion which does not have another common use, but does not include . . ."

The significant exceptions are at subs. (i) through (n)

Some exceptions include references to certain items classified as "Division 1.4 explosive, as defined in 49 CFR 173.50" (NOTE: Not all items that are Division 1.4 explosives are unregulated in Wisconsin)

Division 1.4 consists of explosives that present a minor explosion hazard. The explosive effects are largely confined to the package and no projection of fragments of appreciable size or range is to be expected. An external fire must not cause virtually instantaneous explosion of almost the entire contents of the package.

49 CFR sec. 173.50(b)(4) (copy attached)

B. Limits Sales – §167.10(2)

Fireworks may ONLY be sold to persons holding VALID permits, to municipalities, and for other very limited specific purposes.

C. Possession and Use of Fireworks - §167.10 (3)

No possession or use of fireworks without a user's permit from an appropriate official of the municipality in which the possession or use is to occur.

Although it is not specifically defined this way in the statute or any cases, it can easily be argued that this must be a VALID permit. (More on permits later!!)

Among other exceptions in §167.10(3)(b), there is now a "travelers' exception" (created in 1996):

Possession of fireworks is allowed "while transporting the fireworks to a city, town or village where the possession of the fireworks is authorized by permit or ordinance."

A person is no longer traveling if "the person remains in that city, town or village for a period of at least 12 hours."

D. Out-of-state-sales and in-state shipping – §167.10(4)

A "wholesaler or jobber" may sell fireworks "to a person outside of this state or to a person or group granted a permit under sub. (3) (c) 1. to 7" if they ship according to applicable laws, and ship by "common motor carrier, contract motor carrier or private motor carrier."

E. Local ordinances – §167.10(5)

A city, village, town or county may enact an ordinance more strictly limiting items defined as fireworks or prohibiting or regulating the sale, possession or use of fireworks.

F. Enforcement – §167.10(8) and (9)

Only a city, village or town may petition the circuit court for an order enjoining violations of §167.10 or local ordinances.

Fireworks may be seized and held as evidence of the violation, but only the fireworks that are the subject of a violation may be destroyed after conviction.

If fireworks are seized and no conviction results, the fireworks "shall be returned to the owner in the same condition as they were when seized to the extent practicable."

Most violations are forfeitures only.

Parents or guardians can be convicted for consenting to minors' use of fireworks.

III. Common Questions, or "Permits, Permits, Permits . . ."

A. Who can issue fireworks permits? – §167.10(3)(a)

Only the mayor of the city, president of the village or chairperson of the town in which the possession or use is to occur, or an official or employe of that municipality designated by the mayor, president or chairperson.

This duty may not be delegated to others, such as a private business owner (but note the occasional situation where a municipal official is also a business owner).

B. Who can permits be issued to? – §167.10(3)(c)

Permits may only be issued to . . . 1) A public authority; 2) A fair association; 3) An amusement park; 4) A park board; 5) A civic organization; 6) A group of resident or nonresident individuals; 7) An agricultural producer for the protection of crops from predatory birds or animals." In addition, subsection (h) specifies that a permit may not be issued to a minor.

C. What must a permit contain? – §167.10(3)(f)

In order to be valid, a permit must contain the name and address of the permit holder, the date on and after which fireworks may be purchased, the kind and quantity of fireworks which may be purchased, the date and location of permitted use, and other special conditions prescribed by ordinance.

D. Are there any other types of permits that might do the trick?

18 U.S.C. §§ 841-848 regulate the interstate importing, manufacturing, distributing and storing of explosive materials. 18 U.S.C. § 843 provides for a license issued by the U.S. Department of Transportation to engage in these activities. Some of the larger "legitimate" fireworks merchants might have one of these federal licenses, which obviates their need to have a local license. *City of Wisconsin Dells v. Dells Fireworks*, 197 Wis.2d 1, 19, 539 N.W.2d 916 (Ct. App. 1995). A federal license only allows the holder to possess and use fireworks, or sell to other federal licensees. A local ordinance could require a sellers' license of federal license holders.

E. What does a permit under state law allow?

A permit can allow its holder to:

- Purchase fireworks:
 - anywhere in the state
 - type and quantity must be specified in the permit
 - on or after the date for purchase specified in the permit

- Transport those fireworks to a location specified in permit:

Remaining in a "non-permitted" city, town or village more than 12 hours means you are no longer "transporting."

If a person is not on a reasonably direct route between the location of purchase and the location of the permit, it can probably also be argued that they are not really transporting to the permitted location.

- Use Fireworks:

Date and location must be specified in permit.

F. What about this stand that is "selling" permits?

It doesn't work.

Upon closer examination, fireworks stands in Wisconsin have not generally been selling the actual permits themselves. Several "organizations" (see sub. 167.10(3)(c)6.) may have obtained permits from authorized entities, and then the fireworks dealers have purported to sell "memberships" into the organization holding the fireworks permit to individuals wishing to purchase fireworks. Their argument has been that this allows the member to take advantage of the group's permit for their own individual use.

DOJ objected to this practice for many years. In a letter dated June 9, 1987, Assistant Attorney General Daniel A. Milan expressed doubts about the validity of one organization's permit scheme. He argued that the intent of §167.10 was to permit the use of fireworks by groups of people at a specific place and time if authorized by the local municipality. Commenting on one organization's practices, he stated that "this is a scheme to facilitate the sale of fireworks rather than to promote Club functions."

More recently, a court has finally decided this issue, holding that "[u]nder §167.10(3)(c)6, STATS., the permit is issued to a group, not to the individuals that make up the group. Therefore, it is the group, W[isconsin] F[ireworks] A[ssociation], which holds the permit, not the members of the WFA." *Dells Fireworks*, 197 Wis. 2d at 20. Since the permits made clear that the individuals had no ability to exercise any control over the organization itself, they were not acting on behalf of the organization. The court went on to say that:

Except for an agricultural producer, user permits may not be issued to individuals. These requirements give the issuing municipality the ability to carefully control the use and possession of fireworks within its boundaries. If any individual who pays two dollars can obtain a permit without the municipality even knowing about it, there is little point to any of these sale and use requirements. It is clear from the WFA membership form and the undisputed circumstances of the membership purchases, that WFA is not exercising any control over the purchase or use of fireworks by its members.

Dells Fireworks, 197 Wis.2d at 21.

Under this decision, an association that holds a valid permit may authorize named individuals to make purchases on its behalf, but it may not issue blanket authorizations to all members to make purchases on its behalf. Such authorized purchases are limited to the kind of fireworks specified in the association's permit and in total all such authorized purchases cannot exceed the quantity of fireworks authorized in the associations permits. Fireworks purchased on behalf of the association may only be possessed within the municipality that issued the permit to the association. They may only be used on the date and location the permit specifies, and subject to any other limitations in the permit.

G. Can they sell to people from other states who are in Wisconsin?

A wholesaler or "jobber" can sell fireworks "to a person outside of this state," §167.10(4), but that language doesn't provide permission to sell to other states' residents while they are in this state. This

was confirmed by the decision in *State v. Victory Fireworks, Inc.*, 230 Wis.2d 721, 602 N.W.2d 128 (Ct. App. 1999) (see discussion above).

When the seller ships the fireworks they must be packaged and shipped in accordance with applicable state and federal law by, "common motor carrier, contract motor carrier or private motor carrier" (as defined at §§194.01(1), (2) and (11)). This means the fireworks cannot be put into private automobiles for "shipment" out of state. A seller can deliver the fireworks to an out-of-state location using the seller's own truck (a "private motor carrier"), but an out-of-state buyer cannot take possession of the fireworks in Wisconsin.

IV. Conclusion

Contrary to appearances (note the many roadside stands in the summer), fireworks ARE a highly limited and strictly controlled commodity in Wisconsin. Confusion over specifics of this law (much of it fostered by the fireworks industry itself) and diffused expertise in the field have led to widespread misunderstanding of the law. If enforced consistently and clearly, with the cooperation of city, town and village officials, the law regarding the possession, sale and use of fireworks can be used to assure safe and happy summer celebrations.