



National Fireworks Association

Secretary
Steve Houser

March 07, 2018

Mr. Todd A. Stevenson
Office of the Secretary
Consumer Product Safety Commission
Room 820
4330 East-West Highways
Bethesda, MD 20814

RE: CPSC Fireworks NPR; Oral Presentation

Madame Chair and Commissioners:

On behalf of the National Fireworks Association (“NFA”) and its 1,200 members, I thank you for holding this meeting to examine the regulations proposed in the NPR. NFA represents a broad spectrum of the fireworks industry, including manufacturers, importers, distributors, retailers, and individuals. Its mission is to promote the widespread and safe use of consumer fireworks. NFA is especially proud of the role it plays in looking out for many of its members whose voices are sometimes drowned out in a small industry with a handful of dominant players.

NFA appreciates the hard work and dedication of CPSC, including its technical staff, in attempting to improve fireworks regulations in the United States, and hopes to continue an earnest dialogue about the mutually shared goal of consumer safety. Safety is not only critical to NFA members for business reasons, but also for personal ones. NFA members enjoy fireworks with their friends and families for pleasure, and to celebrate holidays and other special occasions. The last thing anyone wants are unsafe fireworks.

After careful consideration of the proposed rule, NFA has serious concerns with the proposed “Metals Ban,” which would prohibit all aerial devices that have any powdered metal in their burst charges. My comments are directed towards the burden that this regulation will place on NFA’s members, many of whom derive more than 50%, and some as much as 90%, of their sales from aerial devices.

The most obvious burden arising from the proposed rule is the dramatic increase in failures of aerial devices that are currently permissible under CPSC’s standards. According to CPSC’s random testing of fireworks samples collected from the Office of Compliance, 84% of samples failed under the proposed Metals Ban—a 394% increase over the 17% failure rate that was observed using the ear test.¹ The sharp spike in failures in this sample is alarming. NFA is unaware of any subsequent data from CPSC that would relieve these fears. NFA’s testing also showed a

¹ The CPSC’s Notice of Proposed Rulemaking (“NPR”) cites this data to support the required finding that there is not likely to be substantial compliance with voluntary industry standards.

significantly greater failure rate than what CPSC has reported occurs under the ear test. So while NFA bristles at the current economic costs that arise from the subjectivity and unpredictability of ear test failures, imposing a test that is likely to drive more failures will only lead to more costs. If there were ever an instance of jumping out of the frying pan and into the fire, this appears to be it.

The severity of the financial harm caused by the increase in failed products will be magnified for small businesses, many of which purchase only a few containers of fireworks each year. If those fireworks fail CPSC's testing, the businesses could lose their entire investment and have no means of replacing that inventory in time for the fireworks season. While big business may be able to survive the loss of a container's worth of fireworks (or many more for larger players), a single container's worth can put a small company out of business. This is particularly true for some companies who buy these fireworks on credit. If their containers are seized by CPSC, they not only lose their product but are then straddled with debt. The failed product must be destroyed, which could cost more than the products themselves.

NFA struggles to see a countervailing benefit to this burden from a proposed rule that is written in a way that allows more powerful devices to pass while less powerful ones can fail. For example, a small aerial device with 1% powdered aluminum in the burst charge would fail and be deemed unreasonably dangerous. Conversely, a large aerial device with a non-metallic, but more explosive, burst charge would be deemed safe. How is this logical?

Turning now to the actual cause of failures, many of the failures identified by the CPSC staff were due to low, single-digit percentages of metals that are most likely the result of contamination and manufacturing variances rather than an intentional effort to produce an overloaded product. Someone who wanted to create an overloaded product would use much greater amounts of powdered metals, likely above 10%, to do so. If any limitation on powdered metals in burst charges is to be imposed, it should be one that reflects current market norms. Zero is unjustifiable and unattainable.

The NPR suggests that to meet the zero-tolerance limit of the proposed Metals Ban, manufacturers will simply swap out burst charge compositions, as if fireworks were fast food hamburgers and you can just ask for pickles instead of lettuce. The reality is that businesses, especially smaller ones, may be forced to incur significant costs to change their devices to ensure compliance. For context, virtually all consumer aerial fireworks are manufactured today in China, which supplies not just the U.S., but also Europe and other parts of the world with different standards. Fireworks are made by hand and there are greater variances in the manufacturing process than can be expected for most other types of goods.

Many small businesses that buy directly from Chinese factories lack the purchasing power to persuade a factory to take all the steps that would be necessary to reliably produce devices that will comply with the proposed Metals Ban. These steps may require purer chemicals, elimination of contaminants, substitutions for clay plugs, more adhesion for stars, and other changes. A small company lacks the ability to get a factory to make these changes without paying for them.

On the other hand, big business may be able to extract these changes as they have the financial power to purchase entire production lines, thereby influencing how all devices will be made by a particular factory.

The cost of testing is also likely to go up under the proposed Metals Ban. The XRF device used by the CPSC costs \$40,000, and there are costs of calibration and training. These costs are also more likely to impact smaller companies, especially those that want options in the testing laboratories that they choose to use.

Looking at all of these costs, including those of increased product failures, manufacturing, and testing, it paints a dark picture for many businesses, especially for smaller ones. Small fireworks businesses are already under significant pressure from higher costs for paper from recently enacted Chinese pollution controls, and increases in shipping and transportation rates. It is not hyperbole to say that additional pressure from the proposed rule may be more than some businesses can bear.

In sum, there are likely to be significant economic burdens that arise from the proposed Metals Ban. As pointed out both in comments by NFA and by the U.S. Small Business Administration's Office of Advocacy, these burdens are not accounted for in the cost-benefit analysis in the NPR. Weighed against the speculative safety benefits of the proposed rule, these burdens prevail.

NFA again expresses appreciation to the Commissioners, technical staff, and all involved in this rulemaking proceeding for what we recognize as sincere efforts to protect consumer safety and to address universal frustration with the ear test. But the proposed Metals Ban misses the mark on both.

In closing, NFA would like to meet with APA and other stakeholders, and continue our conversation with CPSC staff, to have a vibrant exchange of ideas and opinions. This is good for the rulemaking process and helps ensure that any proposed regulations, which have the potential to significantly impact the lives of many people, are thoroughly vetted and will likely achieve intended results.

We encourage everyone's participation in this process and hope that we can soon begin an earnest and robust dialogue, outside of the formal rulemaking process, to pursue a satisfactory outcome for our industry and public safety.

Thank you.