



PYRO
SPECTACULARS
by Souza

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Re: Comments on Draft Public Safety Fireworks Enforcement Task Force Report (PSFETF)

Dear SFM Berlant, SFM Staff, and Task Force Members,

I sincerely appreciate the ongoing opportunity to serve on the General Fireworks Advisory Committee and for the opportunity to submit these comments on the PSFETF Draft Report. My comments are submitted with the best of intentions and are offered in support of both the legitimate fireworks industry and those tasked with developing and enforcing regulations to ensure its safe operations. We have long been partners in this effort, and we are committed to ongoing support of that partnership.

Evidence demonstrates that current strategies for regulating the import, export, storage, wholesale, and use of fireworks in the State of California are not providing the citizens of this state with adequate protection. The fire in San Jose, the massive seizure of illegal fireworks in Commerce, and the sheer volume of “illegal” fireworks used by the public, especially around the 4th of July holiday, bear witness to this. And, of course, the deadly explosion in Esparto, which inspired the formation of the OSFM Task Force and their report.

I applaud the Task Force's efforts to tackle the serious challenge of navigating a complex jurisdictional network, identifying its weaknesses, and offering recommendations to enhance public safety. Solving this problem is complicated by the numerous regulatory agencies that oversee only specific portions of the firework industry, with no overarching authority to coordinate their efforts into a cohesive whole.

My initial concern is that the Task Force’s recommendations, clearly well-intended, cogently presented, and based on decades of invaluable knowledge and experience, have been formulated without the benefit of the yet-unknown facts contained within the official and comprehensive investigation of the Esparto tragedy. When presented, I suspect that those facts will not reveal glaring shortcomings in regulation. Rather, they will reveal the ill-intentioned methods used by those who aim to be non-compliant. Only with those facts and that knowledge can a solid plan to subvert future tragedies be created.

My comments focus on four areas, 1) Interdiction – Preventing the supply of illegal fireworks from entering the state in the first place, 2) Harmonizing law and regulation across various regulatory agencies: federal, state, and local, 3) Empowering a capable agency or agencies to enforce regulation and levy significant enough penalties against those who violate to deter future violation, and 4) Accomplishing this in a manner that isolates and punishes the “bad actors” in our industry without overburdening legitimate and compliant industry members.

My comments come from the perspective of the Public Display fireworks industry.

1: State Fireworks Law

1.3 – Ensuring that a state license holder has an approved and compliant place to undertake the activities authorized by that license makes sense. Ensuring that state and local regulators communicate effectively to verify compliance with each other’s requirements also makes sense. In practice, this type of cross-verification can only work at the company level. Of the 32 state license types overseen by OSFM, pyrotechnic operator licenses account for a large share. Practicality precludes these licenses from being subject to this same level of cross-verification.

1.6 – Fireworks Kit - In practicality, this is a Special Effects or Theatrical fireworks issue where non-explosive components are combined at a display site to produce a fireworks effect. An ATF Manufacturer License is required to perform this activity. Precursor chemical lists exist in federal regulations.

2. State Fireworks Regulations

2.3 – Current federal markings of identification are in place and adequately describe the commodities being shipped, stored, and used anywhere in the nation. Additional labeling runs the very realistic possibility of adding confusion rather than clarity

2.5 – For 1.3G fireworks, existing ATF recordkeeping regulations track all inventory storage locations and all transfers of that inventory from one storage location to another, through to its final use.

2.6 – As noted, ATF recordkeeping requirements for 1.3G fireworks are in place and effective. Requiring acquisition/disposition records for all fireworks, including 1.4G, would be an onerous new requirement and place an additional California-only burden on legitimate industry.

2.7 – Testing ability in the case of seized fireworks or fireworks suspected of being illegal makes sense. Testing of products that have already been approved as compliant is unwieldy and unlikely to yield the intended result. This is the responsibility of PHMSA and CPSC.

3. Fireworks Program Application Process

3.1 – This ATF requirement is already in place for 1.3G fireworks.

3.2 – Mirroring (harmonizing) with current ATF regulation with respect to fireworks storage is something the display industry already supports.

3.3 – Clearly define which license(s) are at issue here. See comments in 1.3.

3.4 – For display companies, mirror ATF regulation – ATF Form 5400.28 Employee Possessor Questionnaire (EPQ) applies to all whose activities give them access to display products.

3.5 – While improved coordination between state and local authorities is a legitimate objective, there is no uniform or standard “Operational Permit” issued by AHJs for the operation of California’s very few fireworks storage facilities. Some of these facilities even predate local permitting frameworks yet have operated with local knowledge and approval for decades. Local governments and planning authorities may lack specialized expertise in fireworks storage and defer to state and federal licensure and oversight as conditions under which facilities are approved locally for operation. Care must be taken to avoid creating a retroactive requirement that may now be difficult or impossible to satisfy. Confirming local awareness, coupled with a history of safe and compliant operation under state and federal regulations and oversight, should be more than adequate.

4. Fireworks Program Inspections

4.1 – Attempting to coordinate a joint inspection, including ATF, OSFM, and AHJs, of all fireworks storage facilities is unrealistic. ATF inspections may be required at any time ATF deems necessary. In effect, ATF is responsive to real-time circumstances and conditions. Unless otherwise warranted, ATF inspections are generally conducted as part of the license renewal process, every three years. And those inspections take place over the course of months.

5. Create Training Requirements for Employees of Licensed Fireworks Companies

5.1 through 5.3 – OSHA guidelines currently exist for facility employee training. Additionally, the American Pyrotechnics Association offers a wide range of training materials to its members through APA University. AHJ training could be enhanced. Pyro Spectaculars always has and will continue to support and assist OSFM with this task.

6. Fireworks Enforcement Strategies – This entire section would best be focused on efforts to interrupt the supply chain of illegal fireworks coming into the state of California, support thorough investigation of those individuals and companies associated with the illegal practices and fireworks discovered, and aggressive prosecution of all offenders.

Conclusion – Effective laws and regulations are currently in place and being enforced across the fireworks industry. That fact has enabled legitimate companies and individuals to develop a robust and safe industry. Tragedies like those in San Jose and Esparto were caused by companies and individuals operating outside of law and regulation. Therefore, OSFM funding, staffing, and enforcement efforts must be directed at those bad actors.

Respectfully,



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