



**U.S. CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814**

**STATEMENT OF COMMISSIONER ELLIOT F. KAYE
ON THE VOTE ON THE FINAL RULE AMENDING THE FIREWORKS REGULATIONS**

October 1, 2019

At a decisional meeting on September 24, 2019, the Commission failed by a vote of 1-3-1 to adopt staff's recommendation to issue a final rule amending our fireworks regulations.¹ Prior to this vote, I offered an amendment to correct what I believed was a fundamental procedural flaw with the vote as called.² Notably, the briefing package before us did not include any staff-proposed draft text for the rule, which staff usually provides to the Commission before it approves issuance of a final rule. Yet in this case, the Commission was asked to vote to "approve the final rule, as recommended in staff's briefing package, and direct OGC to prepare a *Federal Register* notice accordingly."³ If this vote passed, it would have limited each Commissioner's ability to vote on the resulting *Federal Register* notice and prevented the Commission from even considering any substantive changes to the final rule prior to it being published.

My amendment would have ensured that the Commission retained its full voting rights on the final rule by directing staff to prepare a draft final rule consistent with its recommendations for Commission consideration in the normal course. Inexplicably, my amendment was not adopted by a majority of the Commission,⁴ and the original vote was called. I could not in good conscious vote to approve or disapprove a final rule without seeing the actual text of that rule. That is like asking an architect to approve blueprints that have not yet been drawn. Accordingly, I chose to abstain from the vote as called.

¹ Then-Commissioner Adler voted to adopt staff's recommendations. Then-Acting Chairman Buerkle and Commissioners Baiocco and Feldman voted not to adopt staff's recommendations. For the reasons I explain in this statement, I abstained from voting.

² My amendment is attached.

³ Briefing Package at 2.

⁴ Then-Commissioner Adler supported my amendment. Then-Acting Chairman Buerkle and Commissioners Baiocco and Feldman did not.

Staff produced an excellent and thorough briefing package with options to modernize and streamline our regulations in furtherance of consumer safety. I want to thank the fireworks team for their hard work. I am hopeful that the Commission will find a path forward to approve an update to the mandatory standard that improves safety, reflects the current fireworks market and technologies, reduces testing burdens and creates uniformity with other federal and industry standards.

Commissioner Kaye Amendment to Acting Chairman Buerkle's Motion on Draft Final Rule: Amendments to Fireworks Regulations

I move to amend Acting Chairman Buerkle's motion to be as follows:

Staff is directed to prepare a draft final rule *Federal Register* notice for Commission consideration that includes all of staff's recommendations in the briefing package dated September 26, 2018. The draft final rule *Federal Register* notice shall not be treated as an "implementing document," notwithstanding Sections II(L) and X(A) of the Commission Decision Making Procedures.