STATE OF MICHIGAN

COURT OF CLAIMS

JAKE'S FIREWORKS, INC.,

Plaintiff,

v

Case No. 26-000129-MZ

Hon. Michael F. Gadola

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS, BUREAU OF FIRE SERVICES, and THOMAS M. HUGHES in his official capacity as State Fire Marshal and Director of the BUREAU OF FIRE SERVICES,

Defendants.
_____ /

OPINION AND ORDER DENYING PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

On June 1, 2026, Thomas M. Hughes, the State Fire Marshal and Director of the Bureau of Fire Services (BFS), issued Advisory Bulletin 2026.01 (the Advisory Bulletin), in which he concluded that fireworks exceeding the pyrotechnic composition limits outlined in the American Pyrotechnics Association's (APA) Standard 87–1 were not "consumer fireworks" as defined in the Michigan Fireworks Safety Act (MFSA), MCL 28.451 *et seq*. Eighteen days later, on June 18, 2026, plaintiff, Jake's Fireworks, Inc., filed this lawsuit for declaratory and injunctive relief, which challenges the Advisory Bulletin. On the same day, plaintiff moved, on an emergency basis, for a temporary restraining order (TRO) and an order to show cause why a preliminary injunction should not issue under MCR 3.310. Plaintiff claims that some of its fireworks devices fall within the scope of the Advisory Bulletin and that, as a result, it is unable to sell those devices in Michigan

as the Independence Day holiday approaches. Despite waiting 18 days after the issuance of the Advisory Bulletin to request relief from the Court, plaintiff requests that this Court issue a TRO on an emergency basis to prohibit enforcement of the Advisory Bulletin. Defendants—the Michigan Department of Licensing and Regulatory Affairs (LARA), BFS, and Director Hughes—have responded to the motion, and plaintiff has replied. The Court DENIES the motion for the reasons discussed in this Opinion and Order.[1]

I. BACKGROUND

Plaintiff is a fireworks wholesaler and retailer headquartered in Kansas. Plaintiff has been in business for over 75 years and has operated in Michigan since 2012. According to plaintiff, it is the largest fireworks importer in the United States. Plaintiff operates seven permanent, year-round retail storefronts and dozens of temporary locations in the State, for a total of 90 retail locations in Michigan. According to plaintiff, approximately 95% of its revenue is earned in the weeks leading up to Independence Day, and it anticipates that sales this year will be even greater than usual because of the 250th anniversary of the signing of the Declaration of Independence. Plaintiff estimates a 25% to 40% increase in revenue for this year. Defendants are the state agencies and the public official charged with implementing and enforcing the MFSA.

The issue in this case concerns a particular type of fireworks product, commonly known as a "cake" (the Products). The Products consist of aerial and multiple-tube fireworks that shoot off a succession of pyrotechnic effects, such as colorful bursts, comets, and sparkling effects. Plaintiff

[1] Considering the emergency nature of the motion and the extensive briefing, the Court GRANTS defendants' request to dispense with oral argument. See MCR 3.310(A); MCR 2.119(E)(3); Court of Claims LCR 2.119(E)(3).

acknowledges in its briefing that the Products contain more than 500 grams of pyrotechnic materials.

According to defendants, they learned that plaintiff was selling the Products in Michigan in July 2025, but at that time, the Products had labels stating that they contained 500 grams of pyrotechnic composition. It was not until sometime later that a Georgia state fire marshal informed BFS that, upon seizure of the same devices in Georgia, it was discovered that the devices were mislabeled and contained 1,500 to 3,000 grams of pyrotechnic composition.

Plaintiff maintains that the Products are safe and underwent "years of specialized and highly regulated testing." In 2018, the United States Department of Transportation (DOT) approved the Products and certified them as "UN0336, 1.4G" consumer fireworks. Plaintiff also alleges that the Products meet all consumer-safety regulations promulgated by the United States Consumer Product Safety Commission. Plaintiff asserts that it is the only fireworks company that sells the Products because of the rigorous testing required. According to plaintiff, it has sold the Products in Michigan without issue in prior years. Plaintiff alleges it has rolled out about 40 versions of the Products this year, some of which contain permanent labels denoting the 250th anniversary of the signing of the Declaration of Independence.

On March 24, 2026, the American Pyrotechnics Association's Board of Directors issued an advisory document reaffirming that, for safety reasons, consumer fireworks should not contain more than 500 grams of pyrotechnic composition, as specified in APA Standard 87–1. On June 1,

2026, Director Hughes issued the Advisory Bulletin.[2] The stated purpose of the Advisory Bulletin was

> [t]o advise consumers, the consumer fireworks industry, retail sales certificate holders, wholesalers, and importers of the Bureau of Fire Services' interpretation of existing law regarding the retail sale of fireworks devices that exceed total pyrotechnic composition limits established in APA Standard 87–1 but that received [DOT] approval as Fireworks, UN0336, 1.4 G.

According to defendants, the Advisory Bulletin was issued because of concerns that retailers would market devices to consumers that met DOT certification for shipment in interstate commerce, but had more explosive materials than the American Pyrotechnics Association recommended and, relatedly, than state law allowed. The Advisory Bulletin did not refer to plaintiff or its Products, although plaintiff alleges that its Products are the only devices that would meet this description.

The Advisory Bulletin cited §§ 3.1.2 and 3.5 of APA Standard 87–1, which are cited in the MFSA's definition of "consumer fireworks," for the position that the pyrotechnic composition limits for consumer fireworks are 200 grams for aerial devices and 500 grams for multiple-tube devices that are securely attached to a wooden or plastic base and separated from each other by at least 0.5 inches. The Advisory Bulletin concluded that DOT approval was not dispositive on this issue.

The Advisory Bulletin concluded as follows:

> Fireworks devices exceeding APA 87–1 Standard consumer pyrotechnic composition limits:

[2] The Court will omit the bolded typeface that appears throughout the Advisory Bulletin.

- Are inconsistent with the Michigan Firework Safety Act's definition of "consumer fireworks[.]"

- May not be sold by retailers to individual consumers in Michigan based upon existing law, regardless of whether DOT approved them for transport.

- Could result in the issuance of a citation and fines, the immediate suspension of a consumer fireworks certificate, or a petition to enjoin a violation of the Act[.]

- Could be secured and seized by the Bureau or another law enforcement agency, pending the disposition of related criminal or civil proceedings[.]

Plaintiff alleges that, after learning about the Advisory Bulletin, it promptly stopped selling the Products in Michigan, resulting in the loss of "immeasurable revenue" that continues to compound every day leading up to the Independence Day holiday. Plaintiff further alleges that the Advisory Bulletin prompted competitors to spread lies about the safety and quality of the Products. According to a signed declaration of plaintiff's Executive Vice President, Mick Marietta, plaintiff's "competitors have designed and marketed multiple, smaller devices bundled together for use together to create similar visual and audio effects to the Products." However, the competitors' products did not pass the DOT safety tests. Plaintiff alleges that it attempted to resolve the matter with the BFS during a June 16, 2026 meeting, but the parties were unable to reach an agreement before this case was filed.

On June 18, 2026, plaintiff filed its complaint for declaratory and injunctive relief, as well as an emergency motion for a TRO/preliminary injunction. Count I of the complaint is a claim for declaratory relief, requesting that this Court declare that the Advisory Bulletin improperly interprets the MFSA and the corresponding administrative rules, Mich Admin Code, R 29.2901 *et seq*. Count II requests a declaratory judgment ruling that the Products meet the definition of "consumer fireworks" within the MFSA. Count III requests a declaratory judgment ruling that the

Advisory Bulletin violates the Administrative Procedures Act, MCL 24.201 *et seq*., because it is an agency rule that was not promulgated in compliance with the required notice and rulemaking procedures. Count IV requests an injunction to prevent enforcement of the Advisory Bulletin.

In its motion for a TRO and preliminary injunction, plaintiff argues that a preliminary injunction would preserve the status quo. Plaintiff contends that it is likely to succeed on the merits because neither the MFSA nor the rules promulgated by the BFS—which are required to incorporate standards from the National Fire Protection Association (NFPA)—limit plaintiff's retail sales to "consumer fireworks" as defined in the MFSA. Plaintiff maintains that the Products follow all DOT regulations and NFPA guidelines, which do not contain the same weight limit on pyrotechnic materials outlined in APA Standard 87–1. Even if the MFSA limits retail sales in this instance to consumer fireworks, plaintiff argues that the Products meet the definition of "consumer fireworks" in the MFSA. Furthermore, plaintiff contends, the Advisory Bulletin is unenforceable because it is a formal rule that was not promulgated in accordance with the Administrative Procedures Act.

Plaintiff argues that it continues to suffer irreparable harm because the Products are a substantial source of plaintiff's goodwill and business competitiveness in the fireworks industry. Plaintiff argues that lies spread by plaintiff's competitors about the Products have harmed plaintiff's reputation. Plaintiff contends that the balancing of the harms also weighs in its favor because, without an injunction, plaintiff will miss out on selling the Products during the largest fireworks season of the year, on the eve of a major anniversary, while defendants will not suffer any cognizable injury if this Court grants a preliminary injunction. Plaintiff asserts that the public interest will not be harmed because the public has a general interest in ensuring the State complies with the law, and the Products in question were thoroughly tested for safety.

Defendants responded, arguing that plaintiff is not likely to prevail on the merits because the Advisory Bulletin lacks the force and effect of law, plaintiff did not exhaust its administrative remedies, and plaintiff's argument rests on a faulty premise that the MFSA contains no limits on explosive materials. Defendants argue that plaintiff will not suffer irreparable harm without an injunction considering that its claims are compensable through economic damages and because defendants never directed plaintiff to stop selling any devices. In fact, defendants contend that plaintiff continued to sell the Products even after filing this lawsuit.

Fireworks Enforcement Supervisor Micky Dingman stated in an affidavit attached to the response that as of June 25, 2026, BFS has not "seized a device at issue under the [MFSA] offered for retail sale in Michigan" by plaintiff and has not cited or fined plaintiff based on any retail sale or storage of "a device at issue." Defendants deny that any conduct on the part of plaintiff's competitors could be attributed to the Advisory Bulletin. Finally, defendants argue that the preliminary injunction would not serve the public interest because the Advisory Bulletin addressed safety concerns.

Plaintiff replied, emphasizing that the preliminary injunction would preserve the status quo. Plaintiff acknowledges that there was a single instance in which the Products were found at 1 out of 90 retail locations in Michigan on June 23, 2026, and represents that the Products were promptly removed. Plaintiff argues that, since this lawsuit was filed, "fireworks inspectors" have begun inspections of retail locations. Plaintiff contends that those fireworks inspectors are showing posters containing photographs of plaintiff's Products and instructing individuals to notify the "fireworks enforcement unit" if any of the Products are found.

II. ANALYSIS

Plaintiff requests a TRO and an order to show cause why a preliminary injunction should not issue. "[A]n injunction represents an extraordinary and drastic use of judicial power that should be employed sparingly and only with full conviction of its urgent necessity." *Davis v Detroit Fin Review Team*, 296 Mich App 568, 613; 821 NW2d 896 (2012) (quotation marks and citation omitted). The purpose of a preliminary injunction is to preserve the status quo in the case pending a final hearing on the rights of the parties. *Hammel v Speaker of the House of Representatives*, 297 Mich App 641, 647-648; 825 NW2d 616 (2012). A preliminary injunction "is an extraordinary remedy that issues only when justice requires, there is no adequate remedy at law, and there exists a real and imminent danger of irreparable injury." *Pontiac Fire Fighters Union Local 376 v Pontiac*, 482 Mich 1, 8; 753 NW2d 595 (2008) (quotation marks and citation omitted). The movant has the burden to prove that four elements favor issuing the preliminary injunction. *Hammel*, 297 Mich App at 648. The four elements are:

> (1) the likelihood that the party seeking the injunction will prevail on the merits, (2) the danger that the party seeking the injunction will suffer irreparable harm if the injunction is not issued, (3) the risk that the party seeking the injunction would be harmed more by the absence of an injunction than the opposing party would be by the granting of the relief, and (4) the harm to the public interest if the injunction is issued. [*Id*. (quotation marks and citation omitted).]

A preliminary injunction should not be granted if an adequate remedy exists at law. *Slis v Michigan*, 332 Mich App 312, 337; 956 NW2d 569 (2020). Additionally, "[t]he mere apprehension of future injury or damage cannot be the basis for injunctive relief." *Id*. (quotation marks and citation omitted). As it relates to claims against the State:

> the Supreme Court has recently recognized that declaratory relief normally will suffice to induce the legislative and executive branches, the principal members of which have taken oaths of fealty to the constitution identical to that taken by the judiciary, Const. 1963, art 11, § 1, to conform their actions to constitutional requirements or confine them within constitutional limits. Only when declaratory relief has failed should the courts even begin to consider additional forms of relief

> in these situations. [*Davis*, 296 Mich App at 614 (quotation marks and citation omitted).]

Because this case involves the interpretation of the MFSA, the Court applies the following principles of statutory interpretation:

> The goal of statutory interpretation is to give effect to the Legislature's intent as determined from the language of the statute. In order to accomplish this goal, this Court interprets every word, phrase, and clause in a statute to avoid rendering any portion of the statute nugatory or surplusage. [The Court will] give the words of a statute their plain, ordinary meaning unless the Legislature employs a term of art. [*Bukowski v Detroit*, 478 Mich 268, 273-274; 732 NW2d 75 (2007).]

As it relates to the BFS's interpretation of the MFSA:

> The construction of a statute by the agency charged with executing the statute is entitled to respectful consideration. Thus, there must be cogent reasons for overruling the agency's interpretation of the statute. Furthermore, when the law is doubtful or obscure, the agency's interpretation is an aid for discerning the Legislature's intent. An agency's construction of a statute, however, is not binding on the courts. And the agency's interpretation cannot conflict with the intent of the Legislature as expressed in the plain language of the statute. [*Zug Island Fuels Co, LLC v Dep't of Treasury*, 341 Mich App 319, 327-328; 989 NW2d 879 (2022) (quotation marks and citations omitted).]

A. LIKELIHOOD OF SUCCESS ON THE MERITS

Plaintiff emphasizes throughout its briefing that it is entitled to a preliminary injunction to preserve the status quo pending a final decision on the merits. However, a preliminary injunction is an extraordinary remedy that should be granted sparingly and only when the plaintiff proves that the four elements favor granting a preliminary injunction. A preliminary injunction is not warranted simply because the status quo is disrupted. In this instance, plaintiff waited 18 days to file this lawsuit after the Advisory Bulletin was issued and contends that it was attempting to resolve the dispute during that timeframe. Plaintiff also acknowledges that the Products were found on the shelves of one of its retail locations as late as Tuesday, June 23, 2026. Given the impending Independence Day holiday, plaintiff has presented no compelling reason for waiting

nearly three weeks to request emergency relief from this Court. Nor is the Court convinced that a preliminary injunction is necessary for the sole purpose of preserving the status quo as it existed more than three weeks before plaintiff filed this lawsuit. Instead, the Court will apply the four elements for a preliminary injunction as required under the law.

Turning to those factors, the Court concludes that the first factor—the likelihood that the party seeking the injunction will prevail on the merits—favors defendants. Plaintiff requests declaratory and injunctive relief under MCR 2.605. MCR 2.605 provides, in relevant part, "In a case of actual controversy within its jurisdiction, a Michigan court of record may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted." MCR 2.605(A)(1). An "actual controversy" exists when the plaintiff pleads and demonstrates "an adverse interest necessitating the sharpening of the issues raised." *Int'l Union, United Auto, Aerospace & Agricultural Implement Workers of America v Central Mich Univ Trustees*, 295 Mich App 486, 495; 815 NW2d 132 (2012) (quotation marks and citation omitted).

Plaintiff presents three legal arguments to support that it is likely to prevail on its claims for declaratory relief: (1) the MFSA does not ban the retail sale of the Products because retail sales are not limited to consumer fireworks; (2) even if the MFSA limited retail sales to consumer fireworks, the Products met the definition of consumer fireworks under the MFSA; and (3) the Advisory Bulletin violates the Administrative Procedures Act because it was not promulgated in accordance with the statute's notice and rulemaking requirements.

1. ADMINISTRATIVE PROCEDURES ACT

The Court first addresses whether the Advisory Bulletin was an agency rule requiring compliance with the Administrative Procedures Act. Agency rules must be promulgated in accordance with the procedures outlined in the Administrative Procedures Act and will not be considered valid otherwise. *Clonlara, Inc v State Bd of Ed*, 442 Mich 230, 239; 501 NW2d 88 (1993). There is no dispute that the Administrative Procedures Act procedures were not followed in this case.

The definition of "rule" is to be construed broadly, while the exceptions outlined in the Administrative Procedures Act must be construed narrowly. *Associated Builders & Contractors of Mich v Dep't of Tech, Mgt, & Budget*, 350 Mich App 168, 196; 31 NW3d 790 (2024). The Administrative Procedures Act defines a "rule" as "an agency regulation, statement, standard, policy, ruling, or instruction of general applicability that implements or applies law enforced or administered by the agency, or that prescribes the organization, procedure, or practice of the agency, including the amendment, suspension, or rescission of the law enforced or administered by the agency." MCL 24.207. However, the definition of "rule" does *not* include "[a] form with instructions, an interpretive statement, a guideline, an informational pamphlet, or other material that in itself does not have the force and effect of law but is merely explanatory." MCL 24.207(h). Additionally,

> [a] guideline, operational memorandum, bulletin, interpretive statement, or form with instructions is not enforceable by an agency, is considered merely advisory, and must not be given the force and effect of law. An agency shall not rely upon a guideline, operational memorandum, bulletin, interpretive statement, or form with instructions to support the agency's decision to act or refuse to act if that decision is subject to judicial review. A court shall not rely upon a guideline, operational memorandum, bulletin, interpretive statement, or form with instructions to uphold an agency decision to act or refuse to act. [MCL 24.232(5).]

Put more generally, an agency action is considered a rule if

> (1) it is an agency regulation, statement, standard, policy, ruling, or instruction; (2) it is of general applicability; (3) it implements or applies law enforced or administered by the agency, or it prescribes the organization, procedure, or practice of the agency; and (4) it, in itself, has the force and effect of law. [*Mich Farm Bureau v Dep't of Environment, Great Lakes, & Energy*, 515 Mich 481, 517-518; 28 NW3d 629 (2024).]

The Advisory Bulletin has not been given the force and effect of law. It does not implement the law but merely outlines the Director of BFS's interpretation of existing law on a particular set of facts. Plaintiff has not provided evidence that, at this time, the BFS has relied on the Advisory Bulletin to support any decisions to act or refuse to act. Although the Advisory Bulletin opines that fireworks devices exceeding APA Standard 87–1 pyrotechnic composition limits may not be sold by retailers, the Advisory Bulletin advises that the sale *could* result in a citation, fines, suspension of a consumer fireworks certificate, or seizure of the devices.

Plaintiff contends that fireworks enforcement officials have appeared at retail locations with what plaintiff characterized as " 'wanted posters' " showing plaintiff's Products and instructing individuals to notify the Fireworks Enforcement Unit if those Products are found in retail stores. Plaintiff attached as evidence what appears to be a screen shot of a text message depicting a photograph of various fireworks materials that states, "PLEASE NOTE: Take no action at this time. Notify the FW FEU if discovered within a retail store." The text message does not include any reference to the Advisory Bulletin.

Defendants deny that they have taken any enforcement efforts against plaintiff based on the Advisory Bulletin or that they have otherwise used the Advisory Bulletin to justify enforcement efforts. Although the Court recognizes that the situation is fluid as the Independence Day holiday approaches, plaintiff has presented no evidence that defendants have enforced the Advisory Bulletin as an independent source of law. The Advisory Bulletin functions more like an

interpretive statement or guideline. Therefore, plaintiff has not established that the Advisory Bulletin was a rule promulgated in violation of the Administrative Procedures Act.

2. RIPENESS

Plaintiff will also face justiciability challenges. The "actual controversy" requirement for declaratory relief prevents the Court from deciding hypothetical issues. *Davis v Wayne Co Election Comm*, 349 Mich App 355, 386; 28 NW3d 354 (2023). Similarly, "[t]he doctrine of ripeness is designed to prevent the adjudication of hypothetical or contingent claims before an actual injury has been sustained." *Id.* (quotation marks and citation omitted). A claim that rests solely on future, contingent events is not considered ripe. *Id*. Even assuming that defendants are looking for plaintiff's Products at retail locations, plaintiff does not allege that it has been cited, fined, or subjected to seizure of the Products. Rather, it appears that plaintiff preemptively decided against selling the Products after reading the Advisory Bulletin. Accordingly, plaintiff's contention that it cannot sell the Products because of the Advisory Bulletin appears at this time to be hypothetical.

3. MFSA PROVISIONS

Plaintiff also has not established a likelihood that it will prevail on the key issue in this case—whether the MFSA incorporates the limits on explosive materials for consumer fireworks outlined in APA Standard 87–1. The MFSA was enacted in 2011, effective January 1, 2012, and regulates the sale and use of certain fireworks in the State. See 2011 PA 256. Before 2012, the retail sale of fireworks in Michigan was largely banned. See MCL 750.342a, as repealed by 2011 PA 256. Pursuant to its statutory authority, the BFS has promulgated administrative rules, which are required to incorporate the guidelines outlined in NFPA 1124. See MCL 28.470(1) and (2)(b).

At issue in this case is whether plaintiff's sale of fireworks at retail was limited to "consumer fireworks." Alternatively, plaintiff argues the Products satisfied the definition of "consumer fireworks" under the MFSA. The term "retailer," as defined in the MFSA, means "a person that sells consumer fireworks or low-impact fireworks for resale to an individual for ultimate use." MCL 28.452(z). There is no dispute that the fireworks are not low-impact fireworks. The MFSA defines "consumer fireworks" as

> fireworks devices that are designed to produce visible effects by combustion, that are required to comply with the construction, chemical composition, and labeling regulations promulgated by the United States Consumer Product Safety Commission under 16 CFR parts 1500 and 1507, and *that are listed in APA Standard 87–1, 3.1.2, 3.1.3, or 3.5*. Consumer fireworks does not include low-impact fireworks. [MCL 28.452(f) (emphasis added).]

Notably, the definition of "consumer fireworks" expressly incorporates by reference APA Standard 87–1, §§ 3.1.2, 3.1.3, and 3.5. The parties do not dispute that the Products are "designed to produce visible effects by combustion" or that they comply with the Consumer Product Safety Commission standards. Thus, the critical issues are whether plaintiff was limited to selling only consumer fireworks or low-impact fireworks, as well as whether the Products meet the definition of consumer fireworks.

On the first issue, plaintiff argues that the term "retailer" as defined in the MFSA does not limit retailers to selling only consumer fireworks or low-impact fireworks. Plaintiff argues that, in another definition for "wholesaler," the Legislature used restrictive language stating that the definition did not include an individual who sells display fireworks or special effects. See MCL 28.452(hh). Plaintiff argues that this definition shows that the Legislature knows how to limit a definition when it intends to do so. However, the interpretation of the statute favors the State given that the Legislature chose to define a retailer as an individual that sells consumer fireworks *or* low-

impact fireworks. It is not clear from the language of the statute that the Legislature somehow intended by implication to permit retailers to sell at retail anything other than consumer fireworks or low-impact fireworks. This Court will not read into the statute language that does not appear there.

Plaintiff also argues that the corresponding administrative rules, which reference NFPA 1124, do not limit the sale of fireworks devices at retail to "consumer fireworks." Plaintiff argues that the Products are permitted under NFPA 1124, § 7.2, which expressly prohibits four categories of devices: display fireworks, pyrotechnic articles, explosive devices prohibited under a specified federal child-safety law, and fireworks that do not follow the Consumer Product Safety Commission or DOT regulations. However, even assuming plaintiff is correct, the MFSA definition of "consumer fireworks" does not incorporate the NFPA 1124 requirements. Rather, the MFSA incorporates APA Standard 87–1. Whether the Products are allowed under NFPA 1124 is not dispositive of whether they are consumer fireworks under the MFSA. Defendants have the more persuasive argument that the MFSA limits the retail sale of fireworks to consumer fireworks and low-impact fireworks, and that the Products in question must meet the definition of consumer fireworks.

Alternatively, plaintiff argues that even if retailers may only sell consumer fireworks or low-impact fireworks, the Products meet the definition of "consumer fireworks" in MCL 28.452(f). The parties dispute whether the Legislature's reference in MCL 28.452(f) to devices "that are *listed in*" APA Standard 87–1, §§ 3.1.2, 3.1.3, or 3.5 was intended to incorporate the definitions within those sections of APA Standard 87–1.

The relevant sections of APA Standard 87–1 include a section describing certain aerial devices, such as "[m]ine and shell devices." APA Standard 87–1, § 3.1.2.5 (bolded emphasis omitted). Those devices are not permitted to have over 200 grams of explosive materials. See *id*. Section 3.1.3 applies to audible ground devices, which are not at issue here. Section 3.5 applies to multiple-tube fireworks devices and pyrotechnic articles. Multiple tube devices are "normally limited to a maximum of 200 g of total pyrotechnic composition for approval as Fireworks, UN0336, 1.4G or Article, Pyrotechnic, UN0431, 1.4G under this Standard." APA Standard 87–1, § 3.5.2. "When the tubes are securely attached to a wood or plastic base, and the tubes are separated from each other on the base by a distance of at least 0.50 inch (12.7 mm), a maximum total weight of 500 g of pyrotechnic composition shall be permitted for approval as 1.4G." APA Standard 87–1, § 3.5.4. Thus, defendants refer to APA Standard 87–1 to justify that a consumer firework is one that is limited to a maximum total weight limit for pyrotechnic composition of 500 grams.

Plaintiff argues that "defined in" and "listed in" have different meanings. Thus, when the MFSA defined "consumer firework" to include fireworks devices "listed in" certain sections of APA Standard 87–1, this was a reference to the titles of those sections and not the descriptions. Plaintiff argues that in other definitions found within the same section of the MFSA, the Legislature used the more specific phrase " 'defined under' " when referring to sections in APA Standard 87–1 and pinpointed the exact subsections incorporated into the statutory definitions. See, e.g., MCL 28.452(n) (defining "low impact fireworks" to mean "ground and handheld sparkling devices as that phrase is defined under APA Standard 87–1, 3.1, 3.1.1.1 to 3.1.1.8, and 3.5.").

Plaintiff's interpretation of the statute would mean that as long as the Products are labeled as "aerial devices, audible ground devices, multiple tube fireworks devices, or pyrotechnic articles," then they would satisfy the definition of "consumer firework" regardless of whether the Products actually met the definitions of those items within APA Standard 87–1.[3] This argument borders on the absurd. Plaintiff's argument would render the citation of APA Standard 87–1 surplusage because the Legislature could have simply named the types of devices considered consumer fireworks instead of referring to APA Standard 87–1. The Court also agrees with defendants that it is far more likely that the Legislature intended to incorporate a limit on explosive materials via its reference to APA Standard 87–1. In summary, the APA Standard 87–1 descriptions limit multiple-tube fireworks devices and pyrotechnic articles to, at most, a maximum total weight of 500 grams. Plaintiff acknowledges that the Products exceed that limit. Therefore, the likelihood of success on the merits weighs against granting the preliminary injunction.

B. IRREPARABLE INJURY

Plaintiff also has not met its burden to establish an irreparable injury if a preliminary injunction is not entered. As the Michigan Court of Appeals has explained:

[3] APA Standard 87–1, § 3.4 outlines a catchall description of "other devices," which does not contain a weight limit and was *not* included in the definition of "consumer fireworks" outlined in MCL 28.452(f). The exclusion of "other devices" from the list of items included in the definition of "consumer fireworks" supports that the Legislature intended for the weight limits in APA Standard 87–1, §§ 3.1.2, 3.1.3, or 3.5 to apply to consumer fireworks.

> In order to establish irreparable injury, the moving party must demonstrate a noncompensable injury for which there is no legal measurement of damages or for which damages cannot be determined with a sufficient degree of certainty. The injury must be both certain and great, and it must be actual rather than theoretical. Economic injuries are not irreparable because they can be remedied by damages at law. A relative deterioration of competitive position does not in itself suffice to establish irreparable injury. [*Slis*, 332 Mich App at 361 (quotation marks and citation omitted).]

"[I]t is well settled that an injunction will not lie upon the mere apprehension of future injury or where the threatened injury is speculative or conjectural." *Mich AFSCME Council 25 v Woodhaven-Brownstown Sch Dist*, 293 Mich App 143, 149; 809 NW2d 444 (2011) (quotation marks and citation omitted; alteration in original).

To support that it will suffer an irreparable injury, plaintiff relies on the principle that "a loss of customer goodwill often amounts to irreparable injury because the damages flowing from such losses are difficult to compute." *Slis*, 332 Mich App at 362 (quotation marks and citation omitted). However, not every loss of business goodwill constitutes an irreparable injury. Instead, the Michigan Court of Appeals has clarified that "[w]hether the loss of customer goodwill amounts to irreparable harm often depends on the significance of the loss to the plaintiff's overall economic well-being." *Id*. (quotation marks and citation omitted).

Plaintiff's alleged injury can be remedied by economic damages. Plaintiff is a large fireworks retailer operating throughout the country. Plaintiff represents that it is "a leader in the fireworks industry" and "the largest United States fireworks importer." Plaintiff's sales are not limited to Michigan. It estimates that the Products are expected to represent only about 15% to 20% of its revenue this year. Plaintiff does not specify how much of that revenue would come from Michigan, specifically. Therefore, this case does not present the kind of catastrophic loss of

customer goodwill that would amount to an irreparable harm.[4] In fact, plaintiff continued to sell the Product at one retail location in Michigan through June 23, 2026. Moreover, plaintiff's ability to quantify the anticipated sales of the Product in Michigan shows that economic damages would be an adequate remedy. At most, this case presents a situation of "relative deterioration of competitive position," which is not an irreparable injury. See *id*. at 361 (quotation marks and citation omitted).[5]

Plaintiff also asserts that its competitors are "spreading lies about the viability and safety of the Products" because of the Advisory Bulletin, causing harm to plaintiff's reputation. Plaintiff has not made a particularized showing of irreparable harm. The Advisory Bulletin does not identify plaintiff as violating the law. Nor does the Advisory Bulletin disparage plaintiff or any other business. Plaintiff's competitors are not named as parties to this lawsuit. Nor do defendants have any control over what the competitors might say about the safety of plaintiff's products. Plaintiff's claim that a preliminary injunction would stop plaintiff's competitors from "spreading lies" about plaintiff's products is speculative in nature and cannot support a preliminary injunction. For this reason, this factor weighs against granting a preliminary injunction.

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[4] Defendants call into question whether plaintiff has, in fact, stopped all sales of the Product. Dingman stated in his affidavit that the BFS received multiple complaints that plaintiff was selling the Products at retail locations and that a BFS official found the Products being offered for sale upon inspection of one location on June 23, 2026, at approximately 1:30 p.m. Plaintiff acknowledges that the Products were found in one location on this date but denies ongoing sales of the Product.

[5] This case is distinguishable from *Brown Dairy Equip, Inc v Lesoski*, unpublished per curiam opinion of the Court of Appeals, issued November 9, 2010 (Docket No. 291372), on which plaintiff relies to support that a loss of customer goodwill may constitute an irreparable injury. In that case, the Court of Appeals concluded that "in the competitive farm-based business of dairy supply sales, goodwill is of considerable value." *Id*. at 3. Thus, unlike in this case, the plaintiff in *Brown Dairy* did not have an adequate remedy at law for the loss of goodwill. See *id*.

C. HARM TO THE PARTIES AND THE PUBLIC INTEREST

The next factors are whether the harm to plaintiff without a preliminary injunction will outweigh the harm to defendants should an injunction be issued, and whether the public interest will be harmed if an injunction is issued. Defendants argue that these two elements are related because defendant's interest aligns with the interest of the public in ensuring that consumer fireworks do not have more explosive materials than the MFSA allows.

Plaintiff argues that it "will miss its biggest season of the year," yet acknowledges that the Products account for, at most, 15% to 20% of its product base. Plaintiff acknowledges that the Products remained on the shelves of at least one retail location through June 23, 2026. Despite plaintiff's assurances that the Products are safe, DOT approval for shipping purposes is not dispositive of whether the Products meet the MFSA standards for retail sale. Furthermore, defendants contend that certain devices contain more pyrotechnic material than what was permitted or previously represented, prompting the need for the Advisory Bulletin. The Advisory Bulletin does not identify plaintiff's Products and extends to all products that receive DOT approval but contain more explosive materials than the MFSA permits. The Court agrees that the public has an interest in the clarity provided by the Advisory Bulletin and the safety concerns surrounding it, and that any economic harm that plaintiff may suffer will not outweigh the State's interest and the public's interest. The final two factors weigh against a preliminary injunction. Accordingly, the four factors weigh against granting a preliminary injunction.

III. CONCLUSION

For the reasons stated in this Opinion and Order,

IT IS ORDERED that plaintiff's motion for a TRO/preliminary injunction is DENIED.

IT IS SO ORDERED. This is not a final order that resolves the last pending claim and does not close the case.

Date: June 30, 2026

Hon. Michael F. Gadola
Chief Judge, Court of Claims