



January 26, 2024

VIA ELECTRONIC SUBMISSION

The Honorable Alexander Hoehn-Saric
Chair
Office of the Secretary
U.S. Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814

Re: Docket No. CPSC–2011–0074; Safety Standard Addressing Blade-Contact Injuries on Table Saws.

Dear Chair Hoehn-Saric:

On November 1, 2023, the Consumer Product Safety Commission (CPSC) published a supplemental proposed rule titled “Safety Standard Addressing Blade-Contact Injuries on Table Saws.”¹ The supplemental proposed rule would institute a performance standard that would limit the depth of cut to 3.5 millimeters when a test probe approaches the spinning blade at a rate of 1 meter per second.² To meet the performance standard, table saw manufacturers would be required to license or develop active injury mitigation (AIM) technology to incorporate into each device. This letter constitutes the Office of Advocacy’s (Advocacy) public comments on the proposed rule.

Advocacy commends CPSC’s efforts to mitigate blade contact injuries from table saws. As Advocacy noted in a previous comment letter to CPSC on this issue, however, the rule would impose stringent and cost-prohibitive requirements that would cause most, if not all, small table saw manufacturers to exit the market.³ Given that the supplemental proposed rule is “generally consistent” with its prior iteration, Advocacy’s concerns still apply.⁴

¹ 88 Fed. Reg. 74909 (proposed Nov. 1, 2023).

² *Id.* at 74,909.

³ See U.S. Small Bus. Admin, Off. of Advoc., Comment Letter on Safety Standard Addressing Blade-Contact Injuries on Table Saws (Jul. 26, 2017), <https://www.regulations.gov/comment/CPSC-2011-0074-1292> [hereinafter Advocacy’s 2017 Comment Letter].

⁴ 88 Fed. Reg. at 74,909. In response to the 2017 notice of proposed rulemaking, Advocacy requested that CPSC publish for notice and comment a supplemental initial regulatory flexibility analysis that would consider (1) use of proprietary technology; (2) significant alternatives that minimize the impact on small businesses; (3) a reanalysis of

Advocacy remains concerned that CPSC’s proposed rule will impose costs on small table saw suppliers that are higher than they can support without sufficient evidence that the requirements will minimize risks associated with their products. The proposed rule would require AIM technology on all types of table saws. Small firm representatives have told Advocacy that the accident data supporting the proposed rule has not been appropriately applied to portable table saws because most incidents appear to occur during use of larger, stationary saws in professional settings. Therefore, requiring AIM technology on portable table saws, like bench saws, may not be justified by the costs of the rule.

Advocacy also remains concerned that the updated initial regulatory flexibility analysis (IRFA) contained in the proposed rule lacks essential information required under the Regulatory Flexibility Act (RFA).⁵ Specifically, the updated IRFA does not adequately estimate the costs of the proposal or perform an appropriate analysis of the impact of those costs to small entities. Additionally, the updated IRFA does not adequately consider significant alternatives which could accomplish CPSC’s stated objectives while minimizing the significant economic impact of the proposal on small entities. For these reasons, CPSC must revise and make available for public comment a second supplemental IRFA.

I. Background

A. The Office of Advocacy

Congress established the Office of Advocacy under Pub. L. 94-305 to represent the views of small entities before federal agencies and Congress. Advocacy is an independent office within the U.S. Small Business Administration (SBA) that seeks to ensure small business concerns are heard in the federal regulatory process. Advocacy also works to ensure that regulations do not unduly inhibit the ability of small entities to compete, innovate, or comply with federal laws. The views expressed by Advocacy do not necessarily reflect the views of SBA or the Administration.

The RFA, as amended by the Small Business Regulatory Enforcement Fairness Act,⁶ gives small entities a voice in the rulemaking process. For all rules that are expected to have a significant economic impact on a substantial number of small entities, the RFA requires federal agencies to assess the impact of the proposed rule on small entities and to consider less burdensome alternatives.⁷ If a rule will not have a significant economic impact on a substantial number of small entities, agencies may certify the rule.⁸ The agency must provide a statement of factual basis that adequately supports its certification.⁹

voluntary standards data to ensure accuracy; and (4) supplementing the additional presentations of cost and benefit analysis. Advocacy’s 2017 Comment Letter, *supra* note 3, at 1-2.

⁵ Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

⁶ Pub. L. No. 104-121, tit. II, 110 Stat. 857 (1996) (codified in scattered sections of 5 U.S.C. §§601-612).

⁷ 5 U.S.C. § 603.

⁸ *Id.* § 605(b).

⁹ *Id.*

The Small Business Jobs Act of 2010 requires agencies to give every appropriate consideration to comments provided by Advocacy.¹⁰ The agency must include a response to these written comments in any explanation or discussion accompanying the final rule’s publication in the Federal Register, unless the agency certifies that the public interest is not served by doing so.¹¹

Advocacy’s comments are consistent with Congressional intent underlying the RFA, that “[w]hen adopting regulations to protect the health, safety, and economic welfare of the nation, federal agencies should seek to achieve statutory goals as effectively and efficiently as possible without imposing unnecessary burdens on the public.”¹²

B. Product Background and Proposed Rule

Table saws are stationary power tools used for straight sawing of wood and other materials. Table saws generally fall into three product types: bench saws, contractor saws, and cabinet saws.¹³ Bench saws are transportable, run on standard house voltage (110–120 volts), and tend to be small and lightweight.¹⁴ Bench saws are also relatively inexpensive, with prices ranging from \$129 to \$1,499 for a high-end model.¹⁵ Bench saws account for approximately 79 percent of the table saw market by volume of units sold.¹⁶ Contractor saws are larger and more powerful than bench saws.¹⁷ Although most contractor saws are stationary, a mobile base can be added to the frame. Like bench saws, contractor saws are powered using standard house voltage,¹⁸ which adds to their popularity for home workshop use. Prices for contractor saws range from around \$599 to \$2,000, and contractor saws account for approximately 15 percent of the table saw market by volume of units sold.¹⁹ Cabinet saws, or stationary saws, are the largest, heaviest, and most powerful type of table saw.²⁰ They are powered using 220-240 volts and are designed for heavy use and durability.²¹ Cabinet saws have an average product life of more than 20 years, and prices range from approximately \$1,399 to \$5,000.²² These saws account for approximately 6 percent of the table saw market by volume of units sold.²³

The Consumer Product Safety Act (CPSA)²⁴ authorizes CPSC to promulgate mandatory product safety standards that set performance requirements for consumer products, such as table saws, and/or requirements that a product be marked or accompanied by clear and adequate warnings.²⁵ The standard must be reasonably necessary to prevent or reduce an unreasonable risk or injury.²⁶

¹⁰ Small Business Jobs Act of 2010, Pub. L. No. 111-240, §1601, 214 Stat. 2551 (codified at 5 U.S.C. § 604).

¹¹ *Id.*

¹² Regulatory Flexibility Act, Pub. L. No. 96-354, 94 Stat. 1164 (1980) (codified at 5 U.S.C. §§ 601-612).

¹³ 88 Fed. Reg. at 74,911.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.* at 74,912.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ 15 U.S.C. §§ 2051-89.

²⁵ 15 U.S.C. § 2056(a).

²⁶ *Id.*

According to section (9)(f)(1) of the CPSA, before promulgating a consumer safety rule, CPSC must consider and make findings on the following:

- (1) the degree and nature of the risk of injury that the rule is designed to eliminate or reduce;
- (2) the approximate number of consumer products subject to the rule;
- (3) the public need for the products subject to the rule and the probable effect the rule will have on utility, cost, or availability of such products; and
- (4) the means to achieve the objective of the rule while minimizing adverse effects on competition, manufacturing, and commercial practices.²⁷

CPSC discusses each of these factors in its proposed rulemaking.²⁸

Section 9 of the CPSA also specifies the procedure CPSC must follow to issue a safety standard. CPSC may commence a rulemaking by issuing an Advanced Notice of Proposed Rulemaking (ANPRM). On April 15, 2003, petitioners associated with SawStop, LLC (SawStop) requested that CPSC require performance standards for a system to reduce or prevent injuries associated with contact with the blade of a table saw.²⁹ On October 11, 2011, CPSC published an ANPRM to consider whether there may be an unreasonable risk of blade-contact injuries associated with table saws.³⁰ The ANPRM began a rulemaking proceeding under the CPSA and CPSC received approximately 1,600 public comments in response to its publication.³¹

On May 12, 2017, CPSC published a notice of proposed rulemaking (NPRM) to address blade-contact injuries associated with table saws.³² The NPRM proposed to limit the depth of cut to 3.5mm or less when a human body part or finger contacts the spinning blade at a radial approach rate of one meter per second (m/s).³³ At the time, only saws equipped with SawStop's AIM technology could meet the proposed requirement. During the NPRM's public comment period, Advocacy submitted a public comment letter asking CPSC to, among other things, reconsider what was effectively a requirement to use proprietary technology.³⁴

On November 1, 2023, CPSC issued a supplemental NPRM (SNPRM).³⁵ The SNPRM is substantively similar to the 2017 NPRM, but analyzes updated table saw injury incident data through 2021.³⁶ The SNPRM also outlines several market changes, including SawStop's introduction of a compact table saw and the expiration of two patents related to SawStop's AIM technology.³⁷ CPSC estimates that the SNPRM would prevent or mitigate the severity of an

²⁷ See 15 U.S.C. § 2058(f)(1).

²⁸ 88 Fed. Reg. 74909 at 74,937-38.

²⁹ *Id.* at 74,910.

³⁰ Table Saw Blade Contact Injuries; Advance Notice of Proposed Rulemaking; Request for Comments and Information, 76 Fed. Reg. 62678 (Oct. 11, 2011).

³¹ 88 Fed. Reg. 74909 at 74,910.

³² Safety Standard Addressing Blade-Contact Injuries on Table Saws, 82 Fed. Reg. 22190 (May 12, 2017).

³³ *Id.* at 22,190.

³⁴ See Advocacy's 2017 Comment Letter, *supra* note 3.

³⁵ 88 Fed. Reg. 74909.

³⁶ *Id.* at 74,910.

³⁷ *Id.*

estimated 49,176 injuries treated in a medical setting and that net benefits would range from approximately \$1.28 billion to \$2.32 billion per year.³⁸

The SNPRM includes an updated initial regulatory flexibility analysis.³⁹ In the updated IRFA, CPSC states that seven out of the 23 table saw suppliers in the United States are small.⁴⁰ To comply with the rule, table saw manufacturers would need to license or develop an AIM technology. The IRFA estimates that the cost to develop AIM technology that does not infringe on existing patents would be “at a minimum... several hundred thousand dollars and perhaps several million dollars[.]”⁴¹ The IRFA does not attempt to estimate the costs of licensing AIM technology, despite admitting that this is the most likely option for small manufacturers.⁴² Instead, CPSC states that “there is no certainty that small manufacturers would be able to negotiate acceptable licensing agreements” with patent holders.⁴³ This assessment is likely correct. Small business representatives have told Advocacy that while two patents associated with SawStop’s AIM technology have expired, numerous patents on that technology will not expire until the 2030s. SawStop’s AIM technology is the only AIM system that is currently available in portable table saws. To date, the patent holder has been unwilling to enter into cost-effective license agreements for the technology. According to the IRFA, “[i]f small manufacturers are unable to negotiate acceptable licensing agreements for AIM technology, it is likely they would exit the U.S. table saw market.”⁴⁴

In addition to licensing and development costs, small firms would face additional costs to redesign each of their table saw models with AIM technology. The IRFA estimates that these redesign and retooling costs would range from about \$100,000 to \$700,000 per model and would be expected to take one to three years.⁴⁵ CPSC estimates that the additional components necessary to incorporate an AIM technology would increase the manufacturing cost of each table saw by \$58 to \$74.⁴⁶

The IRFA briefly references the regulatory alternatives generally considered by CPSC in its updated preliminary regulatory analysis.⁴⁷ It does not, however, provide any economic analysis of the costs and benefits of those alternatives to small entities. It also fails to examine specific alternatives that would minimize the cost burden to small entities.⁴⁸

II. Advocacy’s Small Business Concerns

Advocacy’s principal concern is that the IRFA in the proposed rule is deficient. Under the RFA, an IRFA must contain:

³⁸ *Id.*

³⁹ *Id.* at 74,932-34.

⁴⁰ *Id.* at 74,932.

⁴¹ *Id.* at 74,933.

⁴² *Id.*

⁴³ *Id.* at 74,933-34.

⁴⁴ *Id.* at 74,934.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *See id.*

- 1) A description of why the regulatory action is being taken.
- 2) The objectives and legal basis for the proposed regulation.
- 3) A description and estimated number of regulated small entities.
- 4) A description and estimate of compliance requirements, including any differential for different categories of small entities.
- 5) Identification of duplication, overlap, and conflict with other rules and regulations.
- 6) A description of significant alternatives to the rule.⁴⁹

First, Advocacy is concerned that the IRFA fails to adequately estimate the economic impact to regulated small entities because it fails to identify and analyze the costs to those entities. Second, Advocacy believes the IRFA does not adequately discuss specific alternatives that might reduce the impact on small entities.

A. The Updated IRFA Does Not Adequately Estimate the Economic Impact to Small Entities

The updated IRFA found in the SNPRM does not adequately estimate the economic impact to small entities. As acknowledged by CPSC, the proposed rule would be extremely costly to small table saw manufacturers and suppliers. Despite this admission, the IRFA continues to present an unclear and incomplete analysis that fails to properly consider the rule's impact on small firms. In place of the appropriate impact analysis, CPSC gives anecdotal evidence on the share of revenue that table saws account for in relation to total manufacturing business.⁵⁰

CPSC does not offer clear cost estimates that enable it to assess the economic impact of the rule on small entities. The IRFA admits that the costs of developing AIM technology are too high for small manufacturers.⁵¹ Because small manufacturers do not have the resources to develop their own AIM technology, they would be forced to license technology from competitor patent holders. Although CPSC acknowledges this fact, it makes no attempt to estimate the costs of licensing the required technology in its IRFA. Without an estimate of this major cost component of the rule, small firms cannot provide meaningful comments.

Advocacy notes that CPSC does appear to have some idea of the costs associated with licensing AIM technology. In response to Advocacy's 2017 comment letter on this issue, as found in CPSC's briefing package on the SNPRM, CPSC states that "staff does not currently know the price of licensing fees for AIM technology but past statements by industry individuals have indicated the fee could equate to 8 percent of wholesale price."⁵² It is unclear why CPSC would leave this important information, which would have provided a reference point for detailed public comments, out of the updated IRFA.

⁴⁹ 5 U.S.C. § 603.

⁵⁰ 88 Fed. Reg. at 74,934.

⁵¹ See 88 Fed. Reg. at 74,933.

⁵² CPSC, BRIEFING PACKAGE ON FEDERAL REGISTER NOTICE: SAFETY STANDARD ADDRESSING BLADE-CONTACT INJURIES ON TABLE SAWS, SUPPLEMENTAL NOTICE OF PROPOSED RULEMAKING 154 (Sept. 20, 2023), <https://www.cpsc.gov/content/Commission-Briefing-Package-Federal-Register-Notice-Safety-Standard-Addressing-Blade-Contact-Injuries-on-Table-Saws-SNPR>.

Small business representatives have told Advocacy that licensing will be infeasible in many cases because a single manufacturer currently has a patent-protected monopoly on AIM technology for portable table saws.⁵³ That patent holder has been unwilling to enter into fair licensing agreements with small firms. Sales of portable bench saws account for 79% of the table saw market.⁵⁴ If small manufacturers are unable to negotiate cost-effective licensing agreements for AIM technology used in portable saws, it is likely they will exit the market.

CPSC also underestimates the costs small firms will face in redesigning their products with AIM technology. The updated IRFA does not adequately analyze the impact of these costs to small entities relative to those of larger entities. Small firms face disproportionate impacts from regulation because they lack the resources and operational scale necessary to absorb the costs associated with reengineering their products, facilities, and operations. Focusing on the smallest table saw manufacturers is likely to reveal a much higher relative cost burden for those firms.

Finally, Advocacy is concerned that CPSC has not considered the impacts of the proposal to indirectly regulated small entities. Although it is not required by the RFA, Advocacy believes that it is good public policy for federal agencies to examine the reasonably foreseeable effects of regulations on small entities that purchase products or services from directly regulated entities.⁵⁵ CPSC's IRFA ignores the indirect impact of the regulation on small businesses that purchase consumer table saws for sale or use. These small entities are numerous and will face higher costs due to the indirect effects of the regulation. CPSC estimates that prices for the least expensive bench saws available will more than double and that the retail prices of all bench saws could increase by as much as \$285 to \$700 per unit.⁵⁶ CPSC also estimates that the retail prices of contractor and cabinet saws could rise by as much as \$450 to \$1,000 per unit. Such large price increases are likely to significantly impact at least a subset of indirectly affected small firms, particularly those that regularly use the equipment.

B. The Updated IRFA Does Not Adequately Consider Regulatory Alternatives that Will Lower the Burden to Small Entities

The RFA requires that an IRFA discuss significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes, and which minimize any significant economic impact on small entities. The updated IRFA briefly references the regulatory alternatives considered in the rule's updated preliminary regulatory analysis. These regulatory alternatives are:

- 1) take no regulatory action;

⁵³ Small business representatives told Advocacy that the Felder technology referenced in the supplemental proposed rule does not work on portable table saws. It is only available on large table saws, such as cabinet saws, that are primarily used in commercial settings.

⁵⁴ 88 Fed. Reg. at 74,911.

⁵⁵ See U.S. SMALL BUS. ADMIN., OFF. OF ADVOCACY, A GUIDE FOR GOVERNMENT AGENCIES: HOW TO COMPLY WITH THE REGULATORY FLEXIBILITY ACT 23 (Aug. 2017), <https://advocacy.sba.gov/resources/the-regulatory-flexibility-act/a-guide-for-government-agencies-how-to-comply-with-the-regulatory-flexibility-act/>.

⁵⁶ 88 Fed. Reg. at 74,937.

- 2) later effective dates;
- 3) exempt contractor and cabinet saws from a product safety rule;
- 4) limiting applicability of performance requirements to some, but not all, table saws; and
- 5) information and education campaign.⁵⁷

Although the SNPRM includes additional discussion of alternatives as compared with the NPRM, the analysis of those alternatives is still inadequate. CPSC does not provide a quantitative evaluation of alternatives to show their effects on the costs and benefits of the rule. Further, CPSC does not provide information on how each alternative impacts small entities specifically. Without an adequate analysis of the costs and benefits of each alternative to small firms, CPSC's dismissal of those alternatives lacks sufficient consideration.

CPSC should perform a cost analysis that specifically considers the impact of each alternative on small entities. This would allow CPSC to fully understand how this proposed rule can be altered to provide relief to those entities. CPSC should also include an analysis of any additional feasible alternatives that would help minimize the impacts of the rule to small businesses. For example, CPSC should analyze the effects of delaying the effective date of the rule specifically for small firms. In addition, given the assertion by small firms that injury data does not support the necessity of AIM technology in portable table saws, CPSC should also consider exempting these saws from the product safety rule.

C. Advocacy's Recommendations

Advocacy is concerned that, because of deficiencies in the rule's IRFA, the public has not been adequately informed about the possible impact of the proposed rule on small entities. Additionally, small entities have not been given sufficient information regarding less burdensome significant alternatives to the proposed rule that would meet CPSC's objectives.

For these reasons, CPSC must once again prepare and make available for public comment a supplemental IRFA. The second supplemental IRFA should adequately estimate potential impacts to small entities. To do so, CPSC should provide all available information on the costs associated with the regulation, including licensing AIM technology. The second supplemental IRFA should provide detailed information that will allow CPSC to analyze the relative impact of costs based on entity size.

Further, the second supplemental IRFA must provide additional analysis of specific regulatory alternatives that would minimize the cost burden to small entities, as required by the RFA. Advocacy encourages CPSC to provide a detailed analysis of each potential alternative and discuss how that alternative may reduce the economic burden on small entities.

III. Conclusion

Advocacy is concerned that the SNPRM and updated IRFA lack essential information required by the RFA. CPSC must provide a detailed analysis of the impact of the proposed rule to small entities before proceeding to a final rule. CPSC must also provide detailed analysis of specific

⁵⁷ *Id.* at 74,932.

regulatory alternatives that might reduce the significant economic impact to small entities. This analysis should be published in a second supplemental IRFA to provide small entities an opportunity to comment.

If you have any questions or require additional information, please contact me or Assistant Chief Counsel Meagan Singer at (202) 921-4843 or by email at meagan.singer@sba.gov.

Sincerely,

/s/

Major L. Clark, III
Deputy Chief Counsel
Office of Advocacy
U.S. Small Business Administration

/s/

Meagan Singer
Assistant Chief Counsel
Office of Advocacy
U.S. Small Business Administration

Copy to: The Honorable Richard L. Revesz, Administrator
Office of Information and Regulatory Affairs
Office of Management and Budget