



A F S L N E W S

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NEWS IN BRIEF

CERTIFICATION REQUIREMENT CLAIRIFIED BY CPSC. CPSC issued a clarification of its certification requirements stating that factories in China are not required to issue certificates of compliance. U.S. importers still are required to issue certifications based on a reasonable testing program. CPSC will allow electronic filing of certifications, and does not expect to begin enforcing the certification requirement immediately, so long as products do in fact meet the CPSC regulations. **Page 1.**

BREAK CHARGE TEST TO BE IMPLEMENTED. AFSL is implementing an objective test to evaluate whether break charges in aerial devices are equivalent to black powder. Those that exceed the explosive force of black powder based on a test developed by the AFSL Standards Committee will be failed under the testing and certification program in China. **Page 1.**

AFSL PLANS AUDITS, MODIFIES TESTING PROGRAM OPERATIONS. AFSL will conduct audits to evaluate the integrity and conformity of previously certified Lots. Sample collection and testing procedures are also being modified to require all tests to be performed at centralized test centers. **Page 1.**

LARGE AERIAL ITEMS EXCLUDED FROM TESTING UNDER ASSORTMENTS PROGRAM. AFSL will no longer test large aerial items under the assortment testing procedure but will apply regular program procedures. **Page 5.**

CPSC MODIFIES CERTIFICATION PROCEDURES FOR MANUFACTURERS/IMPORTERS

The Consumer Product Safety Commission (CPSC) announced last week that it has issued a rule clarifying the new certification requirements for all consumer products including fireworks. Chief among the clarifications is the decision that factories in China are not required to certify shipments as had been previously required; however, certificates of compliance must still be issued by the U.S. importer and domestic manufac-

turer of fireworks. Following is the text of a news release issued by CPSC:

“On Monday, November 10, the U.S. Consumer Product Safety Commission (CPSC) issued a final rule (.pdf) by unanimous vote, addressing the conformity certification required for consumer products subject to safety rules under CPSC jurisdiction.

The Commission ad-

dressed three major issues: 1) who should supply the certificate; 2) how the certificate can be filed; and 3) CPSC enforcement of general certification.

First, the certification process will now be streamlined, by limiting the number of parties who must issue conformity certifications unless a preexisting Commission product standard re-

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BREAK CHARGE TEST TO BE IMPLEMENTED IN DECEMBER

AFSL is implementing a test to determine whether break charges in aerial devices are equivalent to black powder as required in the AFSL standards and the DOT regulations. The test uses a test fixture consisting of a cylindrical steel tube with a 600 gram steel ball to measure the pressure generated when one gram of the break charge powder is ignited. The pres-

sure generated is measured by how high the steel ball is projected into the air.

All fireworks containing aerial shells with a break charge will be evaluated beginning December 15, 2008. AFSL will use a height of 170 centimeters, which is the maximum height obtained for black powder in tests conducted by the

Standards Committee over the past two years. Items that exceed the maximum height by approximately 10% will be failed under the testing program.

The decision to implement the test procedure in December will address concerns that an increasing number of aerial items tested and

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Break Charge Test

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certified by AFSL in China have failed the “audible effects” test used by CPSC. In that test, CPSC evaluates the loudness of the device as an indicator of the explosive force associated with the break charge. If the audible effect is very loud, similar to a flash powder break charge, CPSC determines that the device is designed to produce an audible effect, and is therefore subject to a 130-milligram limit.

The difficulty for AFSL is that with more than 40 technicians conducting testing in China, it is virtually impossible to assure that all follow the same standard for what sounds “too loud”. This is the primary reason that a significant number of items determined by AFSL to comply with the requirement, are being failed by CPSC.

Earlier reports from AFSL indicated that the Standards Committee would develop a final test procedure and failure criteria and submit them to CPSC for approval. However, given the urgency to implement an objective test immediately, AFSL will conduct the test for several months prior to asking for CPSC and DOT approval of the methodology. Once a significant amount of data is obtained, AFSL then will present the data to CPSC and DOT and request formal acceptance of the test procedure.

It is not known at this point whether the two agencies will accept the test, particularly the failure level being used by AFSL. However, if CPSC is no longer finding “too loud” items that have been subjected to the AFSL test, there is a good chance that they could accept the test method and failure criteria used by AFSL.

Factories and shippers were

notified of the decision to implement the test during a seminar in Liu Yang, China on October 29, 2008. AFSL Executive Director, John Rogers, conducted a training course on the test procedure for AFSL technicians the following day.

Test kits are being manufactured for use by the testing team, and AFSL intends to provide each shipper with a test kit which may be used by their factories to evaluate aerial devices using the AFSL procedure. AFSL also plans to make the test kits available to each factory who wishes to purchase one for a reduced fee within the coming weeks.

ASSORTMENTS PROGRAM TO EXCLUDE LARGE AERIAL SHELL DEVICES

The testing and certification procedures used for packaged assortments are being modified to exclude assortments containing at least one large single or multiple tube aerial shell device. Beginning on December 1, 2008, any assortment that contains any device with any tube larger than one inch in diameter will be tested under the regular testing program.

This change was approved by the Board in response to concerns that assortments might be used as a means of sending overloaded aerial mine and shell devices into the U.S. without testing by AFSL. The potential exists because AFSL pre-tests items before they are assembled into assortment packages, then relies on the factory to use the pre-tested merchandise to assemble the assortments.

After the assortments are assembled into final packaging, AFSL

evaluates the final packaging for conformance with the assortment labeling requirements, but does not open the packaged assortments to re-test the contents. The concern is that the packaging factory has the opportunity to replace pre-tested merchandise with items that have not been certified by AFSL. Large aerial shell devices were singled out because of the popularity of overloaded items in this category in the U.S. marketplace.

AFSL advised factories last month of the new procedure and informed them that if an assortment contained at least one large single or multiple tube aerial shell device (any tube larger than one inch in interior diameter), all items in the assortment will be treated as regular merchandise. This means that assortment package will be opened to obtain the number of samples needed to meet the AFSL sampling plan.

Reloadable tube aerial shell devices, as well as rockets, missiles, and helicopters are not covered by this new policy at the present time.

OPERATING PROCEDURES

MODIFIED IN TESTING PROGRAM

AFSL is implementing two modifications to the testing and certification program in China that will change the way samples are collected and tested by its contract testing laboratory, Intertek Testing Services (ITS).

The first is an auditing program designed to verify the accuracy of test results in previously tested and certified Lots. After a Lot has been tested and a complying results obtained, but prior to application of the AFSL certification stickers to the shipping cartons, AFSL will have a team of technicians evaluate the Lot for any discrepancies in the integrity of the Lot. The evaluation will include examination of the packaging, particularly cartons that have been opened for sampling. In addition, samples will be drawn from the Lot and re-tested to determine if the results match those previously obtained by ITS technicians.

Specially trained technicians working directly for AFSL will conduct the audits and report findings directly to AFSL. The number of audits performed is being kept confidential by AFSL and will vary by location, factories involved, etc.

In addition, AFSL is re-designing the sample collection and testing process which will, in effect, require all samples to be tested at a centralized test center under the supervision of ITS and AFSL personnel. At the present time, teams of technicians are sent to factories where samples are collected and tested on site.

When an application for testing is submitted to AFSL, arrangements will be made to have an ITS team go to the factory to collect samples and transport them back to the cen-

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AFSL WELCOMES THE FOLLOWING NEW MEMBERS:

(May 2007 – November 2008)

IMPORTER PARTICIPANTS

- 1 . Arrowhead Fireworks Co., Inc. dba The Arrowhead Co., Inc., Duluth, MN
- 2 . Brick House Imports LLC, Marysville, WA
- 3 . Dreamco International, Melbourne, AR
- 4 . Fireworks & More, dba Fireworks Outlet, Readstown, WI
- 5 . Flashing Thunder Fireworks, Mitchell, IA
- 6 . Funky Monkey Fireworks, Kingston, OK
- 7 . Hale Fireworks, LLC, Buffalo, MO
- 8 . Hisle Enterprises, LLC, Evansville, IN
- 9 . J.K. Marketing LLC dba ACME Discount Fireworks, Rexburg, ID
- 10 . Jake's Fireworks, Inc., Pittsburg, KS
- 11 . Joe's Hog Wild Fireworks, Inc., Silsbee, TX
- 12 . Olympus Fireworks, LLC, Syracuse, UT
- 13 . Pow Wow Fireworks, Pocatello, ID
- 14 . Premium Fireworks Co., Inc., Covington, KY
- 15 . Sky Slam Fireworks/Pacific Fireworks, Las Vegas, NV
- 16 . State Line Fireworks, Inc., Texarkana, AR
- 17 . Stateline Fireworks LLC/Tennessee Alabama Fireworks, South, TN
- 18 . Thundercat Fireworks & Pyrotechnic Display Co., Madison, WI
- 19 . Tri-state Fireworks, Inc., McLean, VA
- 20 . Zenith Specialties, L.P., Clinton, MO

SHIPPER PARTICIPANTS

- 1 . Beihai Kylin Fireworks Co., Ltd.
- 2 . Hefung Fireworks Co., Ltd.
- 3 . Hunan Liuyang Worldwide Fireworks Co., Ltd.
- 4 . Jiangxi Light Ind. Products I/E Co., Ltd.
- 5 . Jiang Xi Ping Xiang Dancing Red Devil Imp. & Exp. Co., Ltd.
- 6 . Liling Shenma Fireworks Co., Ltd.
- 7 . Liuyang Flying Dragon Fireworks Co., Ltd.
- 8 . Liuyang Flying Eagle Fireworks Co., Ltd.
- 9 . Liuyang Jumbo Trading Co., Ltd.
- 10 . Liuyang Leping FWKS & FCKRS Imp. & Exp. Co., Ltd.
- 11 . Liuyang Li Teng Trade Co., Ltd.
- 12 . Liuyang Oriental Pearl Comm. Trade Co., Ltd.
- 13 . Liuyang Pathfinder Fireworks Co., Ltd.
- 14 . Rising Sun Fireworks Co., Ltd.
- 15 . Worldwide Exporting Limited

CPSC CERTIFICATION

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quires otherwise. The Commission determined that for imported products, only the importer needs to issue the conformity certificate.

Foreign manufacturers and private labelers of imported products do not need to issue certificates, and they do not need to be listed as parties on certificates. For products manufactured in the United States, only the domestic manufacturer needs to issue the certificate. Private labelers do not need to issue certificates, and do not need to be listed as parties on certificates.

Second, the rule confirms that electronic means can be used to meet the certification requirement in the Consumer Product Safety Improvements Act of 2008 (CPSIA) and that conformity certifications can accompany the product and be furnished to distributors and retailers by a variety of electronic means. Electronic certificates can also be posted on a website for inspection or included with other electronic documents accompanying shipments through Customs, so long as the certificates can be produced immediately for inspection.

Finally, the agency intends to focus its enforcement efforts on a product's compliance with our safety requirements. While the Commission recognizes that every company is expected to make its best efforts to comply promptly with the new certificate requirements, the agency intends initially to focus more on compliance with the safety rules underlying the certificate, rather than on the certificate or form of the certificate itself. For addition information and a copy of the rule, go to www.cpsc.gov."

At a factory seminar in Liu Yang,

China last month, AFSL informed factories of the requirement to certify, and developed a certification template for them to use to comply with the CPSC requirement. With the new interpretation by CPSC, those factories will not be asked to issue the certificates and the template will be distributed to U.S. importers for their use.

To provide a basis for importers' certification, AFSL will provide to Shippers a Certificate of Testing for each lot tested, which may then be passed on the U.S. importer. This certificate of testing will document for the importer that the lot has been tested under a program that is acceptable to CPSC.

More troublesome for AFSL members is the requirement that all fireworks that are manufactured in the United States also must be certified, based on a reasonable testing program. This means that any products manufactured in the U.S. using components imported from China, as well as assortments packaged in the U.S., and items fully manufactured in the U.S. such as sparklers, must be tested and certified.

AFSL intends to establish a domestic testing program in the United States to address the need for domestic testing. One option would be to employ teams of technicians that could travel to the various manufacturing sites within the U.S. to perform the necessary AFSL testing and Lot certification. Additional details will be issued to members in the coming weeks.

Another positive aspect of the CPSC notice is the indication that CPSC will accept electronic certification in lieu of "paper" certifications. AFSL is exploring whether the existing data base that contains results of all tests performed in China, could serve as the basis for importers' certification. If so, the Importer might need only to refer CPSC to the AFSL data base to

meet the certification requirement. AFSL will discuss this option with CPSC to obtain feedback on the feasibility of this approach.

Finally, the CPSC notice stated that CPSC intends to focus more on a product's compliance with applicable CPSC regulations, and less on the form of certification that is being used by companies. This is consistent with earlier expectations that CPSC would not immediately begin to enforce the November 12, 2008, deadline imposed by Congress, for complying with the certification provisions.

It is believed that the agency will spend the next 2 to 3 months working with various industries to answer questions and establish procedures for meeting the new requirements. Given the enormity of the task faced by all industries to comply with the requirement, this is a prudent decision by CPSC. Rigorous enforcement at this time would likely result in an enormous number of violations, many of which would stem from industries' lack of understanding of what is expected of them.

That said, AFSL believes it is essential for companies immediately to assure compliance with the CPSC regulations by having products tested under a reasonable testing program. Failure to do so could subject companies to the dramatically increased civil penalties of \$15 million that CPSC also gained in the amended legislation.

AFSL members have the assurance of knowing that the AFSL testing program in China qualifies as a reasonable testing program as defined by CPSC.

THREE DIRECTORS RELECTED TO BOARD

Three sitting Directors, Tad, Trout of TNT Fireworks, Alan Zoldan of BJ Alan Company, and Chester Davis of Chess-Lee Enterprises, were re-elected to the Board of Directors at the September 17, 2008 General Membership meeting in Orlando, FL.

Following the election, the Board selected the following officers: Alan Zoldan, President, Mike Collar, Vice President, Mike Ingram, Secretary, Richard Shields, Treasurer, and Tad Trout, Executive Committee Member at Large.

Also during the meeting, the membership voted to approve the reincorporation of AFSL in the State of Delaware. AFSL had been registered as an Alabama Corporation since it was incorporated in 1989. The Board decided to move the State of Incorporation to Delaware, which provides more favorable corporate protections, including greater protection for AFSL in the event of a lawsuit.

New corporate bylaws were drafted and filed with the State of Delaware. One modification in the bylaws allows members to petition the Board for changes in the bylaws if supported by majority of the membership.

QIP Modifications

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tral testing center. Normal testing will be conducted using a different team of technicians than those collecting the samples from the factory. Assuming that the lot complies with all AFSL requirements, a third team of technicians will return to the factory to certify the Lot by the application of the AFSL sticker to the shipping carton.

Due to the difficulty of obtaining suitable test sites, the program will begin initially with two test centers in Liu Yang that will handle approximately 60 percent of all shipments from Liu Yang. Efforts are underway to secure additional sites in Hunan province, Jiangxi, and Beihai and the program will be expanded to include all shipments as soon as feasible.

The plans for the audits and centralized testing were presented to the factories by Executive Director John Rogers during a seminar in Liu Yang, China on October 29, 2008. While no objections were raised regarding the audit program, some of the factories objected to the centralized testing operation due to the cost of transporting samples from the factory to the test center. As a result of those objections, AFSL and ITS have agreed to provide for transportation during the initial stage of the program.

Both the AFSL audits and the centralized testing centers are designed to enhance the accuracy and integrity of tests conducted under the testing program in China. One of the concerns that has been raised in the past is the ability of the factories to influence the outcome of test results obtained by individual technicians. By eliminating the contact with factory personnel by technicians responsible for physically testing products, the potential for such influence is reduced.

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