

NEWS IN BRIEF

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TESTING FEES PAID BY MEMBERS EXPECTED TO INCREASE IN JULY. AFSL announced to members its plans to increase the per case testing cost from 45 cent to 50 cent per case, effective in July 2014. **Page 3**

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AFSL STEPS UP MONITORING OF METAL POWDER IN BREAK CHARGES

AFSL has increased monitoring of metal powders in break charges in aerial devices in an effort to reduce the failure rate for items containing overloaded break charges. Citing an increase in the use of aluminum and other metal powders as a component in break charges, AFSL reminded factories that such metals are prohibited by the AFSL Standards.

The Standards require that break charges in aerial devices much consist

of black powder or equivalent. "Black Powder Equivalent" is defined as "A mixture containing potassium nitrate and non-metallic fuel."

As a result of the increased monitoring of this requirement, some members expressed concerns that AFSL has established a new requirement prohibiting metal powders. In fact, the prohibition has been in effect for many years; however, as the use of metals has become more wide-spread, AFSL

now is focusing more effort on screening for the presence of the prohibited metals. During the annual Technicians Training Program in the summer of 2013, AFSL re-trained technicians on how to conduct the screening procedure, and as a result, within the past three months, the presence of metal powder in break charge has become the leading reason for failures under the testing program in China.

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RECENT MEETINGS WITH COMMISSIONERS EMPHASIZE POSITIVE RELATIONS WITH CPSC

AFSL leadership recently met with all three commissioners of the CPSC to discuss issues of mutual interest. In those meetings, attended variously by AFSL president Mike Collar, Secretary Charles Shivery, Member at Large Alan Zoldan, Executive Director John Rogers and General Counsel Quin Dodd, AFSL highlighted for the

two new commissioners, Marietta ("Marti") Robinson and Ann Marie Buerkle, as well as Commissioner and Acting Chairman Bob Adler, the unique nature of the fireworks industry and fireworks manufacturing. The group also emphasized the need for renewed cooperation between AFSL and the CPSC on a variety of

fronts, especially the need for a more objective and repeatable break charge test method. All meetings appeared to be well received and well worth the effort, and all three commissioners agreed that the AFSL program is important to consumer safety and the mission of the CPSC.

RECENT AMENDMENTS TO AFSL STANDARDS PUBLISHED

The Board of Directors approved the following modifications /amendments to the AFSL Standards. Implementation dates are provided with each modification.

STANDARD FOR RELOADABLE SHELL DEVICES.

The Standards Committee for Consumer Fireworks considered a recommendation to modify or eliminate the Tube Abuse Test requirement for certain smaller, spherical - shaped reloadable shell devices that reportedly generate less energetic explosions when functioning. However, based on tests conducted on seven different models, the Committee concluded that the amount of explosive energy generated from the devices was not sufficiently different from the larger, more powerful items to warrant elimination of the tube abuse test. As a result, the Committee recommended, and the Board ap-



proved, a recommendation to keep the tube abuse test in effect for all reloadable shell devices. The tube abuse test requires that the launcher tube must withstand the explosion of a shell placed upside down in the launcher tube and ignited.

STANDARD FOR FOUNTAINS — Residual Burning in Casings.

The Board approved the implementation of a test procedure to determine if multiple tube fountain casings are likely to continue burning or re-ignite after the fountain has finished functioning. A new provision in Section 2-1.8 of the Standard for Fountains was added in 2011 which states *“The finished item, including tubes and internal construction material, must not continue to burn or re-ignite after functioning.”*

The Board delayed the implementation date of the requirement to allow time for the Committee to develop a test procedure to verify compliance with the requirement. The Committee recommended, and the Board approved a procedure which requires the testers to (a) observe the fountain for one hour after functioning is complete to determine whether the casing continues to burn or re-ignite and (b) to measure the internal temperature of the spent casing after one hour using a thermal sensor device. If the temperature remains at 250°F (121°C) after one hour, the sample will fail due to the likelihood of re-ignition of the casing. The implementation date for the new testing procedure is July 1, 2014. All multiple tube fountains tested by AFSL after that date will be subjected to the testing procedure.

Grenade-Shaped Firecrackers.

The Standards Committee reviewed a firecracker device that



resembles a “smoke grenade” but actually has 4 individual firecrackers inside the casing. The device is referred to as a “Firecracker Grenade.” The Committee considered whether product name “Firecracker Grenade” made the item inconsistent with the cautionary labeling which states “Do Not Hold In Hand”.

The Committee concluded that items such as the Firecracker Grenades that have explosive components, pose a hazard due to the potential for confusion with non-explosive Smoke devices. As a result, the Committee recommended, and the Board approved, a recommendation to amend the Standard for Firecrackers to exclude devices that resemble items designed to be hand-held if such items explode during functioning.

The new language in the Standard reads as follows: *“Section 2-1.12 “Items subject to this standard must not bear a name, bear graphics or be of a product design or physical form that suggests a use of the product that is inconsistent with the caution labeling instructions”.*

The implementation date for this requirement is February 17, 2014.

* * *

INCREASE IN TESTING FEES PLANNED FOR JULY 2014

The Board of Directors announced in February that the per case testing fee charged to AFSL members will increase from 45 cent per case to 50 cent per case, effective July 1, 2014. Citing a decline in the volume of testing in the past two years and increases in services to members, the Board concluded the increase is necessary to balance the budget and to avoid further reductions in operational reserves.

AFSL President Mike Collar announced the pending increase in the February 2014 meeting with industry members in Las Vegas. He noted that the 5 cent per case increase is the first change in the testing fee since 2003. The testing fee charged to members was originally established at 50 cent per case in 1994, but was reduced to 45 cent in 2003, as AFSL began to realize surplus revenue over operating costs.

Collar also cited numerous additional services have been added to the program, including (1) the establishment of a two-person Operations Office in Liuyang, China; (2) Audits of U.S. importers to monitor the effectiveness of SGS's certification process and assist companies in complying with the AFSL program; (3) An increase in the per-case cost paid to the Contract Testing Lab, SGS, along with the imposition of a 3% VAT tax assessed by the China government; and (4) Enhanced databases for tracking and reporting test results in China as well as the development of a database for use by members in filing Certificates of Compliance required by CPSC.

"With the drop-off in testing over the past couple of years" Collar stated, "We simply cannot continue to operated at this reduced revenue level despite making significant cuts in operating expenses".

AFSL also advised members that

it will continue to monitor operating costs for the next few months. If the volume of testing increases sufficiently during the next few months to offset operating losses, the planned increase to members could be cancelled or further delayed. The Board is planning to meet at the end of May 2014 to review financials and will make a decision whether to go forward with the fee increase.

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METAL POWDER PROHIBITION IN BREAK CHARGES

(Continued from page 1)

The current screening procedure for detecting metals requires as a first step, listening to the device to determine if it sounds too loud. Only those devices that produce an audible effect considered to be an aerial "report" are subjected to the metal powder screening procedure. The technician then performs a physical examination of the powder to look for metal, which leaves a coating on the fingers. Next, the break charge powder is mixed in a vial of water to observe whether metal floats on top.

While this process is effective in most instances, AFSL has requested that the Consumer Fireworks Standards Committee study alternatives for a more scientific, standardized field screening procedure for detecting metal. The Committee is meeting in May 2014. Also, the revised version of APA Standard 87-1, relied on by DOT in the issuance of EX Numbers, is consistent with the AFSL prohibition on metal powders. If approved by DOT, the requirement would be consistent for all U.S. importers, not just AFSL members.

DIRECTORS HONORED FOR SERVICE ON AFSL BOARD

Two former AFSL Directors were honored for their service on the AFSL Board. Richard Shields, who retired from the Board in September 2012 received a plaque acknowledging his 23 years of out-



Richard Shields receives 23 yrs. service award.

standing service on the Board. He was one of the original Directors when AFSL was incorporated in 1989.

Robert Foti, who left the Board as a result of a reorganization permitting only two Directors from Display Fireworks companies, re-



Robert Foti receives 3 yrs. Service award.

ceived a plaque for three years of outstanding service to AFSL. He will remain active in AFSL as a Display Fireworks Shipper, and as a member of the AFSL Display Fireworks Standards Committee. The presentations were made during the AFSL General Membership Meeting in September 18, 2013 in Scottsdale, AZ.

DISPLAY FIREWORKS PROGRAM TO IMPROVES

In a meeting with the display fireworks industry in February in Las Vegas, AFSL reiterated the need for greater participation from both the U.S. importers and China factories to maintain recent increases in the volume of testing in the program. AFSL Director, Mike Cartolano stated the Board has agreed to continue supporting the program for the next year, despite the fact that it is experiencing revenue losses. However, if AFSL is to continue to offer the certification program to the industry, more companies need to come on board and all participants must require certification of *each* incoming shipment in the immediate future. “The key”, he said, “is the importers must demand that factories certify *all* shipments, and refuse to accept any shipments that are not fully certified.”

AFSL reported that the level of participation in the Display Fireworks Certification Program increased significantly in recent months. In December 2013, 18,923 cases were tested compared to 8,325 cases tested in December 2012. Membership also has increased recently, both in the number of importers and the number of shippers who subscribe to the program.

Currently, 21 U.S. importers and 23 China/Hong Kong Ship-

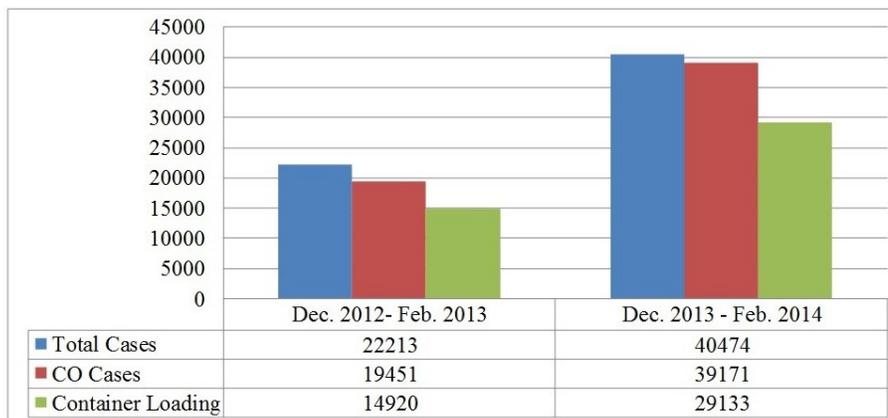
pers have signed up for the program. At this same time last year 16 importers and 20 shippers had signed participation agreements.

AFSL also reported one of the gaps in the program is that all Lots certified by AFSL are not being inspected by AFSL during the Container Loading Process. This is a key provision of the program since it assures that only AFSL-certified products are loaded onto a container. The loading supervision also critical in providing assurances to the shipping lines that the fireworks are safe to

In an effort to provide greater value to current and prospective importer members, AFSL is planning to meet with all the shipping lines to try to persuade them to carry AFSL-certified fireworks. Initiatives also are underway to work with insurance companies to provide greater discounts in insurance rates for AFSL-certified shipments.

Display Fireworks Importers and Shippers interested in joining the program may obtain an application from the AFSL website: www.afsl.org. Manufacturers are not required to sign a membership agreement with AFSL, but are required to under-

Display Fireworks Test Summary



transport.

It is the factories' responsibility to request inspection by AFSL, when the container is scheduled for loading, but this is not happening in all cases. During the past year, only 61% of all shipments that were inspected and certified by AFSL also were inspected during the container loading process.

go a factory audit and register as an AFSL factory in order to have products tested and certified by AFSL.

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COUNSEL'S CORNER

AFSL GENERAL COUNSEL, Quin Dodd



Update on the Status and Future of the CPSC

The Consumer Product Safety Commission has undergone a period of significant change since the 2008 enactment of the Consumer Product Safety Improvement Act (CPSIA). That law, along with a near doubling of the agency's budget from about \$63 million in 2006 to about \$118 million today (still small in comparison to other federal agencies), as well as a new slate of commissioners over that time have all meant significant new requirements for U.S. importers, manufacturers and retailers of fireworks. At the same time, the agency has assumed a generally more aggressive posture to all industries with regard to enforcement of regulations, recalls and civil penalties. This article, my first as General Counsel to the AFSL, will provide a broad overview of some those more significant changes to date, as well as what can be expected going forward.

Since enactment of the CPSIA, the membership of the Commission itself has also turned over. Most recently, the President nominated current CPSC Executive Director (and former Chief of

Staff to former Chairman Inez Tenenbaum), Elliott Kaye, to Chairman of the agency, and former Chief of Staff to former Commissioner Hal Stratton to be the second Republican Commissioner at the agency. This means that all current and future Commissioners at the CPSC will have been appointed since enactment of the landmark CPSIA. Thus, the agency is shifting away from focusing on CPSIA implementation to broader issues that will affect the longer term future of the agency and the fireworks and other industries it regulates.

In general, we have seen a more aggressive Office of Compliance and Office of General Counsel (the former being in charge of making product hazard assessments and undertaking recalls; the latter in assessing and pursuing civil penalties and making legal determinations about product compliance). Recall and import stoppage negotiations are generally now more one-sided in favor of Compliance, and CPSC violations that only a few years ago would have resulted in penalty demands of a few hundred thousand (or even tens of thousands) of dollars now frequently result in demands in the millions.

In addition, the CPSC in recent months has issued three significant new proposed regulations dealing with product certification (including a proposed requirement that certificates be affirmatively filed with CBP as a condition of entry of imports); voluntary recalls (which would set-forth broad new expectations of recalling companies and which would make "voluntary" recall agreements "legally binding"); and the disclosure by the agency of product-specific information to the media or other third parties (which would enable the agency to re-

lease anything it finds on the internet). Each of these rules has been quite controversial, but are expected to become final, in some form, by party-line votes of the Commission.

While the confirmation of a new CPSC Chairman and new Republican could well affect the direction of the agency, at least for the remaining three years of the Obama Administration it can be generally expected that the CPSC will continue to pursue and bring to fruition many of its pending and expected new initiatives, notably including expansion of the agency's import surveillance activities, including a just-released proposal to impose "user fees" on imports to help offset the costs of increased port screenings and inspections. For fireworks, CPSC continues its work on a number of activities relative to mandatory consumer fireworks regulations, including development of an alternative to the so-called "ear test" for the agency's "audible effect" standard (16 CFR 1500.17(a)(3)); and the possible issuance of a proposed regulation to encompass this and other needed updates to CPSC mandatory fireworks standards.

But whatever specific new regulations or policies the CPSC will pursue in the coming years, it is clear that the period of great change represented by the roughly five years since implementation of the CPSIA began, is far from over.

If there are issues you would like to see specifically addressed in future editions of *Counsel's Corner*, please let us know, at afslhq@afsl.org.

AFSL WELCOMES THE FOLLOWING NEW MEMBERS:

(April 2013 – April 2014)

CONSUMER FIREWORKS IMPORTER PARTICIPANTS

- 1 Ammo Hut Productions Inc., Claremore, OK
- 2 Burda Brothers, Inc., Monroe, MI
- 3 Dahila Group LLC DBA Wild Dragon, New Castle, PA
- 4 Enigma Fireworks Inc., Springfield, VA
- 5 Fireworks Empire, Afton, TN
- 6 MPI Entertainment Corporation AKA Prosumerfireworks Brand, Marengo, IL
- 7 Spark Ventures, Alexandria, VA
- 8 TYI Trading LLC, Commerce, CA
- 9 Utah Grand Finale Fireworks, Pleasant Grove, UT

CONSUMER FIREWORKS SHIPPER PARTICIPANTS

- 1 Ali Fireworks Ltd.
- 2 Guangzhou Holiday Import & Export Company Limited
- 3 Jiangxi Province Red Horse Fireworks Co., Ltd.
- 4 Liuyang Fuxiang Fireworks Co., Ltd.
- 5 Liuyang Raging Bull Imp. & Exp. Company Limited
- 6 Wanzai Hongrui Trade Co., Ltd.

DISPLAY FIREWORKS IMPORTER PARTICIPANTS

- 1 Alonzo Fireworks Display, Inc., Mechanicville, NY
- 2 Ammo Hut Productions, Inc., Claremore, OK
- 3 Hamburg Fireworks Display Inc., Lancaster, OH
- 4 Magic in the Sky, LLC, San Antonio, TX
- 5 Starfire Corporation, Carrolltown, PA

DISPLAY FIREWORKS SHIPPER PARTICIPANTS

- 1 Hunan Cereals, Oils and Foodstuffs Import & Export Group Co., Ltd.
- 2 Liuyang Jinsheng Fireworks Co., Ltd.
- 3 Nanchang Xiantian Import & Export Co., Ltd.

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 7316 Wisconsin Avenue
 Suite 214
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 Fax: 301-907-9117
 E-mail: afslhq@afsl.org
 Website: www.afsl.org

John D. Rogers, Executive
 Director

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