



## A F S L N E W S

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**URGENT NOTICE****New CPSC Compliance Requirements**

Legislation enacted recently by the U.S. Congress and signed into law by President Bush imposes new compliance requirements on manufacturers and importers of consumer fireworks that require your urgent attention. Under the Consumer Product Safety Improvement Act of 2008, you may be subject to new testing, certification and reporting obligations as summarized below.

**New Testing and Certification Requirements**

The new law requires all fireworks products that are subject to mandatory safety standards issued by the U.S. Consumer Product Safety Commission (CPSC) to be tested and certified for conformity with those standards. Such standards include the design, performance and labeling regulations adopted by the CPSC for fireworks products, as well as any fireworks bans issued by the CPSC.

***What Products Are Covered?*** Consumer fireworks manufactured on or after November 12, 2008, that are imported or produced domestically for consumption or warehousing in the U.S. are required to be tested and certified. The CPSC staff is still considering whether imported products that will not be used by consumers (for example, products imported solely for testing purposes, for trade shows, or for re-export) will be subject to the new certification requirements.

***Who Must Certify Conformity?*** The new law requires every manufacturer, importer and private labeler of consumer fireworks to certify their products' conformity with the applicable CPSC fireworks safety standards and bans. This may result in multiple certifications for imported products and products that bear private labels, because the certification requirement applies independently to each manufacturer, importer and private labeler of a product. For example, an importer must certify a product's conformity with the CPSC's standards even though the manufacturer has already provided its own certification. As discussed below, though, it may be possible for a manufacturer, importer and/or private labeler to issue a joint certification.

***What Testing Is Required?*** Certifications of conformity with CPSC regulations or bans must be based upon a reasonable product testing program. Testing that serves as the basis for certifying products does not have to be third party testing, but in fact may be based on a company's own testing. However, the use of third party testing helps to avoid concerns about whether or not the testing program is "reasonable".

The CPSC currently is defining “reasonable testing program” as a program that provides reasonable assurance of compliance with the CPSC regulations and that is stringent enough to detect variations that could cause the items to fail.

***AFSL’s testing program meets the CPSC’s requirements for such certifications.***

***Who Should Test?*** The new law does not require separate testing by both the manufacturer and the importer that certify a product. Instead, the same conformity testing may be used by a manufacturer and importer to certify a product, provided that:

- The importer is a U.S. resident or has a U.S. resident agent; and
- A copy of the test record is in English and is kept in the U.S. for at least three years from the date of certification.

***Form and Content of the Certification.*** The law does not specify the form the certification must take. As a result, certifications may take the form of a product label, an attachment on the shipping container, a separate document, or a section of another document such as an invoice, bill, statement or bill of lading. In addition, the CPSC staff has indicated that certifications issued jointly by manufacturers, importers and/or private labelers may be permitted.

A certification must include the following information:

- Identity of the product covered by the certificate;
- CPSC regulation(s) or ban(s) to which the product is being certified;
- Identity of the manufacturer certifying compliance;
- Identity of the U.S. importer certifying compliance;
- Identity of any private labeler certifying compliance;
- Contact information for the individual maintaining the test records on which the certification is based;
- Date and place of product manufacture;
- Date and place where the product was tested for conformity with the regulation(s) or ban(s) cited above; and
- Identity of any third-party laboratory that performed the testing on which the certification is based.
- A signature is not required on the certification.

Most problematic for the fireworks industry is the requirement that the certificate must include the manufacturer’s name along with the place and date of manufacture. Currently, neither individual fireworks devices nor shipping cartons contain such specific information, although AFSL does require a factory identification number on the shipping carton for tested lots. While the items or cartons themselves are not required to bear this information, it will have to appear in the certificate of compliance. As a result, manufacturers may have to modify their recordkeeping systems to accommodate this requirement.

*AFSL is developing a certification template that may be used by AFSL members, a copy of which will be provided to members along with a complete certification program description within the next few weeks.*

***Who Receives the Certifications?*** The certifications by the manufacturer and importer of a product must accompany each import shipment of the product. **Shipments containing multiple products must have a separate certification for each product.**

For convenience, the certifications may be provided with the shipping documents that accompany a shipment. In addition, **copies of the certifications must be furnished to every distributor and retailer of the product**, although such copies may be supplied separately from the product itself. There is no requirement to notify consumers or the final purchasers of a product about the certification. Also, there is no requirement to submit copies of the certification to the CPSC or to U.S. Customs and Border Patrol, although a copy of the certification must be made available to those agencies upon request.

***How Will U.S. Customs Use the Certifications?*** Although there is no requirement to file with Customs copies of the certifications for imported consumer fireworks products, **import shipments lacking accompanying certifications will be denied entry and destroyed by Customs at the importer's expense.** Re-export of products denied entry will be allowed after permission is granted by the Secretary of Treasury and only in cases where the receiving country has notified the CPSC of its willingness to accept the products.

***Effective Date for Certification.*** **The effective date for the certification requirement is November 12, 2008.** The CPSC staff has indicated that it might not enforce this deadline stringently while it works with industries to assist them in complying with the requirement during the early stages. Although the CPSC staff has stated that it might take a few months for its enforcement efforts to catch up with the legislative changes, fireworks companies should be prepared to begin meeting the requirements right away to avoid compliance concerns during the critical early spring shipping season.

***Impact of AFSL Testing Program on Certification Requirement.*** For AFSL member companies, the biggest challenge will be to properly document the certifications, since their products already are being tested to the CPSC requirements. The certifications must be provided by the manufacturer and U.S. importer and may not be provided by AFSL on behalf of member companies. However, the certification may be based on the testing of each shipment that AFSL already is performing. **Companies who do not participate in the AFSL testing program will have to establish a testing program, either in-house, or using a reliable, effective, and independent third party testing service such as that provided by AFSL.**

AFSL currently is developing a certification program for member companies and will provide full details to members when it is completed. While AFSL cannot provide the certification on behalf of member participants, as noted above, AFSL intends to issue a Certificate of Testing for each lot tested which the manufacturer/importer may use as the basis for the certificate of compliance issued.

AFSL Executive Director John Rogers, is conducting a factory seminar in China on October 30, 2008, at which time the certification provision will be presented to the factories. Materials to be presented during the seminar are being reviewed with CPSC in advance of the meeting. After input from the factories and shippers is obtained, a detailed certification program will be published for AFSL members.

## Additional Requirements of the New Law

The certification requirement is only one of many new requirements contained in the new CPSC legislation enacted by Congress. Other notable changes include:

**Reporting Obligation.** Effective October 13, 2008, manufacturers, importers, distributors and retailers of consumer fireworks must report to the CPSC immediately if they learn that one of their products distributed for sale fails to comply with an applicable CPSC regulation, standard or ban.

**Potential Civil Penalties.** Violations of the new certification and reporting requirements may subject a company to civil penalties of up to \$15 million. Such violations include failure to furnish a certification, issuance of a false certification, and failure to report non-compliant products in a timely manner.

*AFSL will provide summaries of the additional requirements to members in the coming months.* The full text of the legislation--the Consumer Product Safety Improvement Act (CPSIA)--as well as summaries of each section of the new law, may be accessed on the CPSC website at [www.cpsc.gov](http://www.cpsc.gov).

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Please note that the CPSC has not yet issued formal guidance regarding the interpretation and application of the new testing and certification requirements. Consequently, this notice is intended solely to bring those legislative changes to your attention, and it should not be considered a comprehensive or definitive discussion of the new law. We will be meeting with the CPSC staff to confirm how AFSL's testing program will fit within the new certification requirements.

Please contact AFSL if you have any questions regarding this notice. You should consult an attorney for legal advice concerning compliance with the new CPSC requirements.

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