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CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1610

Statement of Policy on Enforcement Discretion Regarding General Conformity Certificates for Adult Wearing Apparel Exempt From Testing

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Statement of enforcement policy.

SUMMARY: The Consumer Product Safety Commission ("CPSC") has approved a Statement of Policy regarding the CPSC's enforcement of the requirement for a general conformity assessment certificate ("GCC") with respect to adult wearing apparel that is exempt from testing under the CPSC's clothing flammability standard.

DATES: Effective March 25, 2016.

FOR FURTHER INFORMATION CONTACT: Mary Toro, Director, Division of Regulatory Enforcement, Office of Compliance, U.S. Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, MD 20814; telephone: (301)-504-7586 email: mtoro@cpsc.gov.

SUPPLEMENTARY INFORMATION:

A. Background

The Consumer Product Safety Improvement Act ("CPSIA") was enacted on August 14, 2008 (Pub. L. 110-314). Section 102(A) of the CPSIA requires that all manufacturers of consumer products subject to a rule, standard, or ban enforced by the CPSC issue a general conformity certificate ("GCC") certifying that "based on a test of each product or upon a reasonable testing program, that such product complies with all rules, bans, standards, or regulations applicable to the product."¹

B. Flammable Fabrics Act and Related Regulations

In 1953, Congress enacted the Flammable Fabrics Act ("FFA") in response to a number of serious injuries and deaths resulting from burns associated with garments made from

high-pile rayon.² The clothing flammability standard at 16 CFR part 1610 ("1610" or "the Standard") provides for classification of various types of fabrics and describes in detail the test method to determine flammability.

Section 1610.1(c) excepts from the flammability standard certain hats, gloves, footwear, and interlining fabrics. Because this section specifically says that the "standard shall not apply to" these articles, they are not "subject to" a rule, standard, or ban under section 102(a) of the CPSIA, and therefore manufacturers and importers are neither subject to the regulation nor required to produce a GCC for these products.

Section 1610.1(d), conversely, exempts from *testing*, but not from the standard as a whole, garments made entirely from certain fabrics that the Commission has consistently found not to be flammable. These include:

(1) Plain surface fabrics, regardless of fiber content, weighing 2.6 ounces per square yard or more; and

(2) All fabrics, both plain surface and raised-fiber surface textiles, regardless of weight, made entirely from any of the following fibers or entirely from combination of the following fibers: Acrylic, modacrylic, nylon, olefin, polyester, wool.

Because products made from these fabrics are exempt from testing but *not* excepted from the standard as a whole, they are still "subject to" a rule, standard, or ban and manufacturers and importers of these exempted products have been required to issue a GCC.

C. Rationale for Enforcement Discretion

Experience gained from years of testing in accordance with 16 CFR part 1610 demonstrates that the exempted fabrics referenced above consistently yield acceptable results when tested in accordance with the Standard. This experience allowed an exemption from testing in the Standard, for the purpose of issuing guaranties.³ The Standard allows persons or firms issuing an initial guaranty of any of the referenced fabrics, or of products made entirely from one or more of these fabrics, an exemption from any requirement for testing to support guaranties of those fabrics.

Certificates of compliance for children's products and other consumer products regulated by the Commission serve many vital purposes, not least of which is to assure our compliance staff that these goods have met the testing

requirements set forth in our rules. Adult apparel is rarely, if ever, subject to more than one CPSC regulation. Many retailers are issuing GCCs simply noting an exemption from testing to the Standard. The Commission believes the issuance of GCCs for these products is not necessary for CPSC staff to enforce the Standard because the Commission has granted a testing exemption to these fabrics and adult apparel made from these fabrics is unlikely to be subject to other consumer product safety rules, standards, or bans. This proposal provides an opportunity to reduce costs to manufacturers and importers without affecting consumer safety.

D. Statement of Policy

The Commission votes to exercise the following enforcement discretion: Effective March 25, 2016, the Commission will not pursue compliance or enforcement actions against manufacturers, importers or private labelers for failure to certify or to issue, provide or make available to the Commission a general conformity certificate as required by 15 U.S.C. 2063(a)(1) with respect to adult wearing apparel that is exempt from testing pursuant to 16 CFR 1610.1(d).

E. Limitations of Enforcement Discretion

The intent of this enforcement discretion should be read narrowly within its precise terms. The Commission will use enforcement discretion only for *certificate* violations related to the indicated product category. *These products must still comply with all flammability requirements under the FFA; failure to comply with flammability standards will still subject the products to enforcement action.*

Further, this enforcement discretion does not apply to any adult wearing apparel that does not fit the specific testing exemptions provided for in 16 CFR 1610.1(d). For example, if a manufacturer produced a garment made from a plain surface silk fabric that weighs *less* than 2.6 ounces per square yard, that garment would not fall within the exemption, and the manufacturer would still be expected to produce a GCC. Should the Commission become aware of unsafe products entering the market as a result of this statement of policy, it reserves the right to withdraw the policy prospectively with no less than 90 days' notice.

This statement of policy, and the enforcement discretion described herein, is limited to certificates required for adult wearing apparel that is exempt from testing pursuant to 16 CFR

² Floyd B. Oglesbay, *The Flammable Fabrics Problem*, 44 *Pediatrics* 827 (1969), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1730418/pdf/v004p00317.pdf>.

³ 16 CFR 1610.1(d).

¹ 122 Stat. at 3022, 102(a).

1610.1(d). If the adult wearing apparel is not exempt from testing under 16 CFR 1610.1(d), none of this policy, the enforcement discretion described in this policy nor the implications of such enforcement discretion shall apply. In addition, any misrepresentation or omission regarding the applicable facts or application of 16 CFR 1610.1(d) under the circumstances could subject the applicable firm to applicable compliance or enforcement action and potential civil and/or criminal penalties.

The Commission's exercise of the enforcement discretion described in this policy is not intended to, does not and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party against the CPSC or otherwise against the United States government.

Dated: February 26, 2016.

Todd A. Stevenson,
Secretary, Consumer Product Safety Commission.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0155]

RIN 1625-AA00

Safety Zone; Upper Mississippi River 321.4 to 321.6; Quincy, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all waters of the Upper Mississippi River (UMR) from mile 321.4 to mile 321.6. The safety zone is needed to protect persons, property, and infrastructure from potential damage and safety hazards associated with work being completed on new power lines across the river. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP). Deviation from the safety zone may be requested and will be considered on a case-by-case basis as specifically authorized by the COTP or a designated representative.

DATES: This rule is effective from 7:00 a.m. until 5:00 p.m. daily beginning on March 21, 2016 through April 1, 2016.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0155 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

www.regulations.gov, type USCG-2016-0155 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email LCDR Sean Peterson, Chief of Prevention, U.S. Coast Guard; telephone 314-269-2332, email Sean.M.Peterson@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

BNM Broadcast Notice to Mariners
CFR Code of Federal Regulations
COTP Captain of the Port
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
UMR Upper Mississippi River
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency finds good cause that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because Ameren notified the Coast Guard on February 17, 2016, that this work will require helicopters to stretch the power lines across the river. Due to the risks associated with this work crossing the navigable channel, a closure is needed. It would be impracticable to publish a NPRM because the safety zone must be established beginning March 21, 2016. Broadcast Notices to Mariners (BNM) and information sharing with waterway users will update mariners of the safety zone and enforcement times during the operations.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. Providing 30 days notice would be impracticable because immediate action is needed to protect vessels from the hazards associated with the rope crossing the navigable channel.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The

COTP UMR has determined that potential hazards associated with using helicopters to stretch power lines across the navigational channel presents safety concerns for anyone within this limited area of the UMR. This rule provides additional safety measures, to protect persons and vessels, in the form of a safety zone from mile 321.4 to mile 321.6 on the UMR to protect those in the area and for the Coast Guard to maintain navigational safety.

IV. Discussion of the Rule

The Coast Guard is establishing a temporary safety zone prohibiting access to the UMR from mile 321.4 to mile 321.6, extending the entire width of the river from 7:00 a.m. until 5:00 p.m. daily beginning on March 21, 2016 and scheduled to end on April 1, 2016, or until conditions allow for safe navigation, whichever occurs earlier. Deviation from the safety zone may be requested and will be considered on a case-by-case basis as specifically authorized by the COTP or a designated representative. The COTP may be contacted by telephone at 314-269-2332 or can be reached by VHF-FM channel 16.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget. This rule establishes a temporary safety zone limiting access to the UMR from mile 321.4 to mile 321.6. Notifications of enforcement times will be communicated to the marine community via BNM. The impacts on navigation will be limited to ensure the safety of mariners and vessels during the period that the helicopters will be pulling the power lines across the navigational channel. Deviation requests