

## Enforcement Policy on GCCS for Exempt Adult Apparel

**Statement of Policy on Enforcement Discretion Regarding General Conformity Certificates for Adult Wearing Apparel Exempt from Testing****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.”<sup>1</sup>

**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.<sup>2</sup> The clothing flammability standard at 16 C.F.R. part 1610 (1610, 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 C.F.R. 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

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<sup>1</sup> 122 Stat. at 3022, § 102(a).

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

## Enforcement Policy on GCCS for Exempt Adult Apparel

Standard, for the purpose of issuing guaranties.<sup>3</sup> 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 [30 days from the date of Commission approval], 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 C.F.R. § 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 C.F.R. §1610.1(d). If the adult wearing apparel is not exempt from testing under 16 C.F.R. §1610.1(d),

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<sup>3</sup> 16 C.F.R. § 1610.1(d).

Enforcement Policy on GCCS for Exempt Adult Apparel

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 C.F.R. §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.