

section 38 establishing requirements for low speed electric bicycles.

Specifically, section 1 of the Act makes low-speed electric bicycles subject to the Commission's existing regulations on bicycles.

(a) Notwithstanding any other provision of law, low-speed electric bicycles are consumer products within the meaning of section 3(a)(1) [of the CPSA] and shall be subject to the Commission regulations published at § 1500.18(a)(12) and part 1512 of title 16, Code of Federal Regulations.

Public Law 107–319, section 1, 116 Stat. 2776.

The Act defines the term “low-speed electric bicycle” as follows:

(b) for purposes of this section, the term “low-speed electric bicycle” means a two- or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph.

Id.

The Commission's regulation at 16 CFR 1500.18(a)(12) makes the determination that bicycles that do not comply with the requirements of 16 CFR part 1512 present a mechanical hazard within the meaning of section 2(s) of the Federal Hazardous Substances Act (FHSA). 15 U.S.C. 1261(s). The effect of this determination is that noncomplying bicycles are “hazardous substances” for purposes of section 2(f)(1)(D) of the FHSA, and are also “banned hazardous substances” pursuant to section 2(q)(1)(A) of the FHSA. 15 U.S.C. 1261(f)(1)(D), 1261(q)(1)(A). See also, *Forester v. Consumer Product Safety Com'n*, 559 F.2d 774, 783–786 (D.C. Cir. 1977).

The amendment to § 1512.2 of 16 CFR part 1512 promulgated today incorporates the Act's definition of “low-speed electric bicycle,” thereby helping to inform the public of the statutory application of part 1512 to low-speed electric bicycles.

Section 553(b)(3)(B) of the Administrative Procedure Act (APA) authorizes an agency to dispense with certain notice procedures for a rule when it finds “good cause” to do so. 5 U.S.C. 553(b)(3)(B). Specifically, under section 553(b)(3)(B), the requirement for notice and an opportunity to comment does not apply when the agency, for good cause, finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” The requirement reflected in this amendment is imposed by the Act and is not discretionary with the Commission. Accordingly, the Commission hereby finds that notice

and an opportunity for comment on this amendment are unnecessary.

Section 553(d)(3) of the APA authorizes an agency, “for good cause found and published with the rule,” to dispense with the otherwise applicable requirement that a rule be published in the **Federal Register** at least 30 days before its effective date. The Commission hereby finds that the 30 day delay in effective date is unnecessary because the requirement reflected in the amendment was imposed by the Act and is not discretionary with the Commission.

Because this amendment incorporates a requirement mandated by statute that is not discretionary with the Commission, and thus is not subject to notice and comment, this rule is not subject to the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Because this amendment incorporates a statutory requirement not subject to agency discretion, it is not an agency action subject to the National Environmental Policy Act, 42 U.S.C. 4321, *et seq.*

Pursuant to Executive Order No. 12988, the Commission states the preemptive effect of this regulation as follows. Section 1 of the Act provides that its requirements “shall supercede any State law or requirement with respect to low-speed electric bicycles to the extent that such State law or requirement is more stringent than the Federal law or requirements referred to in subsection (a) [the Commission's regulations on bicycles at 16 CFR part 1512].” Public Law No. 107–319, section 1, 116 Stat. 2776.

List of Subjects in 16 CFR Part 1512

Consumer protection, Hazardous substances, Imports, Infants and children, Labeling, Law enforcement, and Toys.

For the foregoing reasons, the Commission amends Title 16 of the Code of Federal Regulation to read as follows:

PART 1512—REQUIREMENTS FOR BICYCLES

1. The authority citation for Part 1512 is revised to read as follows:

Authority: Secs. 2(f)(1)(D), (q)(1)(A), (s), 3(e)(1), 74 Stat. 372, 374, 375, as amended, 80 Stat. 1304–05, 83 Stat. 187–89 (15 U.S.C. 1261, 1262); Pub. L. 107–319, 116 Stat. 2776.

§ 1512.2. [Amended]

2. Amend § 1512.2, to revise paragraph (a) to read as follows:

(a) Bicycle means:

(1) A two-wheeled vehicle having a rear drive wheel that is solely human-powered;

(2) A two- or three-wheeled vehicle with fully operable pedals and an electric motor of less than 750 watts (1 h.p.), whose maximum speed on a paved level surface, when powered solely by such a motor while ridden by an operator who weighs 170 pounds, is less than 20 mph.

Dated: February 6, 2003.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 03–009]

RIN 2115–AA97

Security Zone; San Diego Bay

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily expanding the geographical boundaries of the permanent security zone at Naval Submarine Base San Diego, California (33 CFR 165.1103) at the request of the U.S. Navy. The additional size will accommodate the Navy's placement of anti-small boat barrier booms on the perimeter of the zone. Entry into this zone is prohibited unless authorized by the Captain of the Port, the Commander, Naval Base San Diego, or the Commander, Submarine Force, U.S. Pacific Fleet Representative, West Coast.

DATES: This rule is effective from 11:59 p.m. on February 11, 2003 to 11:59 p.m. on May 11, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket [COTP San Diego 03–009], and are available for inspection or copying at U.S. Coast Guard Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego California 92101, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Rick Sorrell, Chief of Port Operations, Marine Safety Office San Diego, at (619) 683–6495.

SUPPLEMENTARY INFORMATION

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this temporary regulation. Under 5 U.S.C.