



**U.S. CONSUMER PRODUCT SAFETY COMMISSION**  
**4330 EAST WEST HIGHWAY**  
**BETHESDA, MD 20814**

This document has been electronically  
approved and signed.

**BALLOT VOTE SHEET**

**DATE:** September 23, 2011

**TO:** The Commission  
Todd A. Stevenson, Secretary

**THROUGH:** Cheryl A. Falvey, General Counsel  
Kenneth R. Hinson, Executive Director

**FROM:** Mary T. Boyle, Attorney

**SUBJECT:** Notice of Public Hearing: Alternative Testing Requirements for Small  
Batch Manufacturers

**Ballot Vote Due:** September 29, 2011

Attached is a draft *Federal Register* notice announcing a public hearing to receive views from all interested parties concerning alternative testing requirements for small batch manufacturers. Under certain circumstances, the Commission may allow small batch manufacturers to use alternative testing requirements in lieu of testing prescribed in an applicable children's product safety rule, ban, standard, or regulation, and this hearing is intended to solicit information on the availability and economic practicability of such potential alternatives. If, however, the Commission determines that no alternative testing requirement is available or economically practicable, it shall exempt eligible small batch manufacturers from third party testing requirements. Thus, this notice also invites stakeholders seeking exemption to provide information pertaining to exemption requests. Finally, because the Commission cannot grant an exemption where it determines that full compliance with the third party testing provisions of the CPSIA "is reasonably necessary to protect the public health and safety," this notice invites

comments on this issue as well. The hearing is intended to fulfill all of the notice and hearing requirements of HR 2715 with regard to the amendment of Section 14(d)(2)(B)(ii)(4) of the CPSA, "Special Rules for Small Batch Manufacturers."

Please indicate your vote on the following options:

I. Approve publication of the draft notice in the *Federal Register*.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

II. Approve publication of the draft notice in the *Federal Register*, with changes. (Please specify.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

III. Do not approve publication of the draft notice in the *Federal Register*.

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

IV. Take other action (Please specify.)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

Attachment: Draft *Federal Register* notice of public hearing.

BILLING CODE 6355-01-P

**U.S. CONSUMER PRODUCT SAFETY COMMISSION**

**Alternative Testing Requirements for Small Batch Manufacturers**

**AGENCY:** U.S. Consumer Product Safety Commission

**[Docket No. CPSC-2011-0070]**

**ACTION:** Notice of public hearing.

**SUMMARY:** Section 14(d)(4)(A)(i) of the Consumer Product Safety Act, 15 U.S.C. 2063(d)(4)(A)(i), provides that the Commission, in implementing third party testing requirements, under certain circumstances, may allow small batch manufacturers to use alternative testing requirements in lieu of testing prescribed in an applicable consumer product safety rule, ban, standard, or regulation. If, however, the Commission determines that no alternative testing requirement is available or economically practicable, it shall exempt eligible small batch manufacturers from third party testing requirements. Through this notice, the Commission is announcing that it will conduct a public hearing to receive views from all interested parties about whether such alternative testing requirements are available or economically practicable or, in the absence of economically practicable alternatives, whether an exemption from third party testing is appropriate.

**DATES:** The public hearing will begin at 10 a.m. EST on October 26, 2011.

**ADDRESSES:** The public hearing will be held in the Hearing Room, 4<sup>th</sup> Floor of the Bethesda Towers Building, 4330 East West Highway, Bethesda, MD 20814.

**ONLINE REGISTRATION AND WEBCAST:** Members of the public who wish to attend the public hearing are requested to preregister online at: <http://www/cpsc.gov>. You may preregister until 5 p.m. EST on October 25, 2011. This public hearing also will be available live via

webcast on October 26, 2011, at: <http://www/cpsc.gov/webcast>. Registration is not necessary to view the webcast. A transcript will be made of the proceedings of the public hearing.

**ORAL PRESENTATIONS AND WRITTEN COMMENTS:** To make oral presentations, participants must preregister online. Presenters must also submit a request to make an oral presentation, and the written text of such presentation, captioned “Alternative Testing Requirements for Small Batch Manufacturers Public Hearing,” by electronic mail (e-mail) to: [cpSC-os@cpSC.gov](mailto:cpSC-os@cpSC.gov), or mailed or delivered to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, no later than 5 p.m. EST on October 21, 2011. Commenters should limit their presentations to 15 minutes, exclusive of questioning by the Commissioners or CPSC staff. We may limit the time further for any presentation and impose other restrictions to avoid excessive duplication of presentations.

Participants who are unable to make an oral presentation may submit written comments regarding the issues outlined under Supplementary Information captioned, “Alternative Testing Requirements for Small Batch Manufacturers Public Hearing” by electronic mail (e-mail) to: [cpSC-os@cpSC.gov](mailto:cpSC-os@cpSC.gov), or mailed or delivered to the Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, no later than 5 p.m. EST on October 21, 2011. Any information submitted in writing or presented orally to the CPSC at the public hearing will become part of the public record.

**FOR FURTHER INFORMATION CONTACT:** Concerning requests and procedures for oral presentations of comments, contact: Rockelle Hammond, Consumer Product Safety Commission, Bethesda, MD 20814; telephone: (301) 504-6833; e-mail: [cpSCos@cpSC.gov](mailto:cpSCos@cpSC.gov). For all other matters, contact: Robert Howell, Deputy Executive Director, Safety Operations,

Consumer Product Safety Commission, Bethesda, MD 20814; telephone: (301) 504–7621; e-mail: rhowell@cpsc.gov.

**SUPPLEMENTARY INFORMATION:** Section 14(a)(2)(A) of the Consumer Product Safety Act, 15 U.S.C. 2063(a)(2)(A), provides that every manufacturer of a children’s product that is subject to a children’s product safety rule shall submit sufficient samples of the children’s product, or samples that are identical in all material respects to the product, to a CPSC-approved third party conformity assessment body to be tested for compliance with such children’s product safety rule. Further, section 14(d)(2) requires continued testing of children’s products, directing the Commission to, by regulation, establish protocols and standards—

- (i) for ensuring that a children’s product tested for compliance with an applicable children’s product safety rule is subject to testing periodically and when there has been a material change in the product design or manufacturing process, including the sourcing of component parts;
- (ii) for the testing of representative samples to ensure continued compliance;
- (iii) for verifying that a children’s product tested by a conformity assessment body complies with applicable children’s product safety rules; and
- (iv) for safeguarding against the undue influence on a third party conformity assessment body by a manufacturer or private labeler.

The Commission has been working to adopt a testing and certification rule that sets forth the continued testing requirements mandated by section 14(d). In this context, we have explored possible alternatives for small batch manufacturers to reduce the burden and cost of third party testing on such entities. However, as originally adopted, section 14 imposed third party testing

on all manufacturers of children's products that are subject to a children's product safety rule, irrespective of the size of the business or the number of units produced, thereby limiting the Commission's ability to provide such relief. As recently amended by H.R. 2715, however, section 14(d)(4) provides special rules for small batch manufacturers through which the Commission is required, in implementing third party testing requirements, to take into consideration any economic, administrative, or other limits on the ability of small batch manufacturers to comply with such requirements. In addition, small batch manufacturers of covered products, under certain circumstances, may use alternative testing requirements, if such alternatives are available. Under section 14(d)(4)(E)(i), a "covered product" means a consumer product manufactured by a small batch manufacturer where no more than 7,500 units of the same product were manufactured in the previous calendar year. Section 14(d)(4)(E)(ii) defines the term "small batch manufacturer" to mean a manufacturer that had no more than \$1,000,000 in total gross revenue from sales of all consumer products in the previous calendar year.

In light of this new authority, the Commission seeks to hear from interested stakeholders about whether such alternatives are available and what such alternatives would entail. For example, alternatives for a particular rule may include different screening techniques, sampling procedures, or a first party testing regime. Staff has also been exploring the idea of co-op approaches to testing expense. However, if the Commission determines that no such alternative testing requirement is available or economically practicable for a particular rule, ban, regulation, or standard, section 14(d)(4)(ii) permits the Commission to exempt small batch manufacturers from third party testing requirements. Thus, in addition to seeking information about alternative testing requirements, the Commission also wants to hear from interested parties about whether

they seek exemption from third party testing requirements because alternatives are not available or are not economically practicable. The Commission will explore at the hearing whether exemptions are appropriate with regard to any and all children's product safety rules for which small batch manufacturers may need relief. We note, however, that in some cases, even if alternatives are available and economically practicable, we may not allow the use of such an alternative (or, if it is determined that no alternative is available, the Commission may not permit an exemption) where the Commission determines that full compliance with the third party testing requirements is reasonably necessary to protect public health or safety. Moreover, sections 14(d)(4)(C)(i) and (ii) prohibit the Commission from providing alternative testing requirements or exemptions for any of the third party testing requirements contained in clauses (i) through (v) of section 14(a)(3)(B) (lead paint, full-size or non-full-size cribs, pacifiers, small parts, children's metal jewelry, baby bouncers, walkers, and jumpers) or durable infant or toddler products, as defined in section 104(f) of the Consumer Product Safety Improvement Act of 2008, 15 U.S.C. 2056(a)(f).

In seeking information about possible alternative testing requirements, we stress that any such alternative must satisfy the underlying objectives prescribed in the children's product safety rule for which the alternative is sought, and must provide reasonable methods to ensure compliance. Every rule, ban, standard, or regulation issued by the Commission is the result of careful analysis, review, and research through which alternatives are evaluated and certain standard criteria are met. In that process, Commission staff has considered possible alternative testing requirements to minimize the burden of testing since passage of the CPSIA. With regard to chemical testing, for example, staff has approved the use—in appropriate circumstances—of

XRF screening techniques for lead. In addition, staff has been following closely the development of screening techniques for phthalates. Where appropriate, and when the screening methods are reliable and reproducible, staff would be open to allowing the use of screening techniques to mitigate testing costs for chemical content testing of children's products and toys or the heavy metals content of the paints and surface coatings used on toys.

Screening techniques, however, are not appropriate alternative testing requirements for all children's product safety rules. For example, staff is not aware of any screening technique that would detect the flammability of a child's carpet and rug. In addition, many of the performance standards and tests in our rules have particularized test methods for which an alternative simply does not appear to be practicable. The bicycle standard, for example, contains rigorous performance standards to reduce unreasonable risks of injury, including exacting and well-documented test procedures that are analyzed to ensure the reproducibility of the results and minimize interlaboratory variability.

Therefore, as a threshold matter, any alternative testing requirement submitted to the Commission for consideration, in addition to satisfying the fundamental purpose of the rule for which an alternative is presented, must demonstrate acceptable performance in the areas of:

- accuracy;
- precision;
- repeatability;
- reproducibility;
- range;
- sensitivity (to test setup and/or test environment);

- relevance (usefulness in predicting consumer product performance); and
- correlation between the proposed alternative and existing regulatory testing requirements.

Using these criteria, stakeholders should submit specific and well-documented information on the availability and economic practicability of alternative testing requirements for the following children’s product safety rules:

<b>16 CFR Part # (or Test Method or Standard)</b>	<b>Description</b>
1420	All-Terrain Vehicles
1203	Bicycle Helmets
1512	Bicycles
1513	Bunk Beds
1500.86(a)(5)	Clacker Balls
1500.86(a)(7) and (8)	Dive Sticks and Other Similar Articles
1505	Electrically Operated Toys or Articles
1615	Flammability of Children’s Sleepwear, Sizes 0 through 6X
1616	Flammability of Children’s Sleepwear, Sizes 7 through 14
1610	Flammability of Clothing Textiles
1632	Flammability of Mattresses and Mattress Pads
1633	Flammability (Open-Flame) of Mattress Sets
1611	Flammability of Vinyl Plastic Film
1215	Infant Bath Seats
Sec. 101 of CPSIA (Test Method CPSC-CH-E1001-08 or CPSC-CH-E1001-08.1)	Lead Content in Children’s Metal Products

Sec. 101 of CPSIA (Test Method CPSC-CH-E1002-08 and/or CPSC-CH-E1002-08.1)	Lead Content in Children’s Non-Metal Products
Sec. 108 of CPSIA (Test Method CPSC-CH-C1001-09.3 )	Phthalate Content of Children’s Toys and Child Care Articles
1510	Rattles
1630	Surface Flammability of Carpets and Rugs
1631	Surface Flammability of Small Carpets and Rugs
1217	Toddler Beds
(ASTM F963)	Toys

Stakeholders seeking an exemption from one of the above-listed rules should submit information to the Commission demonstrating that an alternative testing requirement is not available or economically practicable. In addition, because the Commission cannot grant an exemption where it determines that full compliance with the third party testing provisions of the CPSIA “is reasonably necessary to protect the public health and safety,” the Commission is accepting comments on this issue. The Commission intends this hearing to fulfill all of the notice and hearing requirements of HR 2715 with regard to the amendment of Section 14(d)(2)(B)(ii)(4) of the CPSA, “Special Rules for Small Batch Manufacturers.”

Any information submitted in writing or presented orally to the CPSC at the public hearing will become part of the public record. Access to the docket to read background documents, including a transcript of the public meeting, or comments received, will be made available at: <http://www.regulations.gov> under Docket No. CPSC-2011-0070.

Dated:

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Todd A. Stevenson, Secretary

Consumer Product Safety Commission