

112TH CONGRESS
1ST SESSION

H. R. 1939

To provide the Consumer Product Safety Commission with greater authority and discretion in enforcing the consumer product safety laws, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 23, 2011

Mrs. BONO MACK (for herself and Mr. UPTON) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To provide the Consumer Product Safety Commission with greater authority and discretion in enforcing the consumer product safety laws, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Enhancing CPSC Au-
5 thority and Discretion Act of 2011”.

6 **SEC. 2. DEFINITION OF CHILDREN’S PRODUCT.**

7 (a) DEFINITION.—Section 3(a)(2) of the Consumer
8 Product Safety Act (15 U.S.C. 2052(a)(2)) is amended
9 in the matter preceding subparagraph (A)—

1 (1) by striking “intended primarily for chil-
2 dren” and inserting “primarily intended for use by
3 children”; and

4 (2) by striking “intended for a child” and in-
5 serting “intended for use by a child”.

6 (b) **TECHNICAL AMENDMENT.**—Section 101(a)(1) of
7 the Consumer Product Safety Improvement Act of 2008
8 (15 U.S.C. 1278a(a)(1)) is amended by striking “(as de-
9 fined in section 3(a)(16) of the Consumer Product Safety
10 Act (15 U.S.C. 2052(a)(16)))” and inserting “(as defined
11 in section 3(a) of the Consumer Product Safety Act (15
12 U.S.C. 2052(a)))”.

13 **SEC. 3. CHILDREN’S PRODUCTS CONTAINING LEAD.**

14 (a) **IN GENERAL.**—Section 101(a)(2) of the Con-
15 sumer Product Safety Improvement Act of 2008 (15
16 U.S.C. 1278a(a)(2)) is amended—

17 (1) in subparagraph (A), by striking “600 parts
18 per million” both places it appears and inserting
19 “0.06 percent”;

20 (2) by striking subparagraphs (B) and (C) and
21 inserting the following:

22 “(B) 0.03 PERCENT BY WEIGHT.—Except
23 as provided in subparagraphs (C), (D), (F) and
24 (G), beginning August 14, 2009, the lead limit
25 referred to in paragraph (1) is 0.03 percent

1 total lead content by weight for any part of a
2 children's product.

3 “(C) 0.01 PERCENT BY WEIGHT.—Except
4 as provided in subparagraphs (D) and (G), be-
5 ginning on the date that is 4 years after the
6 date of enactment of this Act, the lead limit re-
7 ferred to in paragraph (1) is 0.01 percent total
8 lead content by weight for any part of a chil-
9 dren's product that—

10 “(i) is designed or intended primarily
11 for use by a child 6 years of age or young-
12 er; and

13 “(ii) can be placed in a child's
14 mouth.”;

15 (3) in subparagraph (D)—

16 (A) by striking “100 parts per million”
17 and inserting “0.01 percent”;

18 (B) by inserting “described in such sub-
19 paragraph” after “product category”;

20 (C) by striking “300 parts per million”
21 both places it appears and inserting “0.03 per-
22 cent”; and

23 (D) by striking “3 years” and inserting “4
24 years”;

1 (4) by redesignating subparagraph (E) as sub-
2 paragraph (G) and inserting after subparagraph (D)
3 the following:

4 “(E) DETERMINATION GUIDELINES.—For
5 purposes of subparagraphs (C)(ii) and (D) and
6 subsection (b)(1)(A)(ii), a children’s product
7 can be placed in a child’s mouth if any part of
8 the children’s product can actually be brought
9 to the mouth and kept in the mouth by a child
10 so that it can be sucked and chewed. If the chil-
11 dren’s product can only be licked, it is not re-
12 garded as able to be placed in the mouth. If a
13 toy or part of a toy in one dimension is smaller
14 than 5 centimeters, it can be placed in the
15 mouth.

16 “(F) APPLICATION OF MORE STRINGENT
17 LIMIT TO OTHER CHILDREN’S PRODUCTS.—The
18 Commission may, by regulation, apply the limit
19 set forth in subparagraph (C) or (D) to any
20 children’s product or class of products if it de-
21 termines after a hearing that the lead content
22 in such product or class of products, as limited
23 by subparagraph (B), presents an unreasonable
24 risk to children’s health.”; and

1 (5) in subparagraph (G) (as so redesignated),
2 by striking “or (D)” and inserting “(D), or (F)”.

3 (b) PROSPECTIVE APPLICATION OF LEAD LIMIT FOR
4 CHILDREN’S PRODUCTS.—Section 101(a) of the Con-
5 sumer Product Safety Improvement Act of 2008 (15
6 U.S.C. 1278a(a)) is further amended by adding at the end
7 the following:

8 “(3) APPLICATION.—Each limit set forth in
9 paragraph (2) (except for the limit set forth in sub-
10 paragraph (A)) shall apply only to a children’s prod-
11 uct (as defined in section 3(a) of the Consumer
12 Product Safety Act (15 U.S.C. 2052(a))) that is
13 manufactured after the effective date of such respec-
14 tive limit.”.

15 (c) ALTERNATIVE LIMITS AND EXCEPTIONS.—Sec-
16 tion 101(b) of such Act (15 U.S.C. 1278a(b)(1)) is
17 amended—

18 (1) by striking paragraph (1) and inserting the
19 following:

20 “(1) FUNCTIONAL PURPOSE EXCEPTION.—

21 “(A) IN GENERAL.—The Commission, on
22 its own initiative or upon petition by an inter-
23 ested party, shall grant an exception to the pro-
24 hibition in subsection (a) for a specific product,
25 material, or component part if the Commission,

1 after notice and comment in accordance with
2 subparagraph (B), determines that—

3 “(i) the product, material, or compo-
4 nent part requires the inclusion of lead be-
5 cause it is not practicable or not techno-
6 logically feasible to manufacture such
7 product, material, or component part, as
8 the case may be, in accordance with sub-
9 section (a) by removing the excessive lead
10 or by making the lead inaccessible;

11 “(ii) the product, material, or compo-
12 nent part is not likely to be placed in the
13 mouth or ingested, taking into account
14 normal and reasonably foreseeable use and
15 abuse of such product, material, or compo-
16 nent part by a child; and

17 “(iii) an exception for the product,
18 material, or component part will have no
19 measurable adverse effect on public health
20 or safety, taking into account normal and
21 reasonably foreseeable use and abuse.

22 For purposes of clause (iii), there is no measur-
23 able adverse effect on public health or safety if
24 the exception described in this subparagraph

1 will result in no measurable increase in blood
2 lead levels.

3 “(B) PROCEDURES FOR GRANTING EXCEP-
4 TION.—

5 “(i) NOTICE AND COMMENT PE-
6 RIOD.—Before granting an exception under
7 subparagraph (A), the Commission shall
8 allow not fewer than 60 days for public
9 comment after publishing the notice of the
10 proposed exception.

11 “(ii) BURDEN OF PROOF.—A party
12 seeking an exception under subparagraph
13 (A) has the burden of demonstrating that
14 it meets the requirements of such subpara-
15 graph.

16 “(iii) GROUNDS FOR DECISION.—In
17 the case where a party has petitioned for
18 an exception, in determining whether to
19 grant the exception, the Commission may
20 base its decision solely on the materials
21 presented by the party seeking the excep-
22 tion and any materials received through
23 notice and comment.

24 “(iv) ADMISSIBLE EVIDENCE.—In
25 demonstrating that it meets the require-

1 ments of subparagraph (A), a party seek-
2 ing an exception under such subparagraph
3 may rely on any nonproprietary informa-
4 tion submitted by any other party seeking
5 such an exception and such information
6 shall be considered part of the record pre-
7 sented by the party that relies on that in-
8 formation.

9 “(v) SCOPE OF EXCEPTION.—If an ex-
10 ception is sought for an entire product, the
11 burden is on the petitioning party to dem-
12 onstrate that the criteria in subparagraph
13 (A) are met with respect to every acces-
14 sible component or accessible material of
15 the product.

16 “(C) LIMITATION ON EXCEPTION.—If the
17 Commission grants an exception for a product,
18 material, or component part under subpara-
19 graph (A), the Commission may, as necessary
20 to protect public health or safety—

21 “(i) require each manufacturer of
22 such product, material, or component part
23 to reduce the level of lead in such product,
24 material, or component part; or

1 “(ii) place a manufacturing expiration
2 date on such exception or establish a
3 schedule after which the manufacturer of
4 such product, material, or component part
5 shall be in full compliance with the limits
6 in subsection (a).

7 “(D) APPLICATION OF EXCEPTION.—An
8 exception under subparagraph (A) for a prod-
9 uct, material, or component part shall apply re-
10 gardless of the date of manufacture unless the
11 Commission expressly provides otherwise.

12 “(E) PREVIOUSLY SUBMITTED PETI-
13 TIONS.—A party seeking an exception under
14 this paragraph may rely on materials previously
15 submitted in connection with a petition for ex-
16 clusion under this section. In such cases, peti-
17 tioners must notify the Commission of their in-
18 tent to rely on materials previously submitted.
19 Such reliance does not affect petitioners’ obliga-
20 tion to demonstrate that they meet all require-
21 ments of this paragraph as required by sub-
22 paragraph (B)(ii).”;

23 (2) in paragraph (2)(A), by striking “include
24 to,” and inserting “include”;

1 (3) by redesignating paragraph (5) as para-
2 graph (7) and inserting after paragraph (4) the fol-
3 lowing:

4 “(5) CERTAIN OUTDOOR RECREATIONAL PROD-
5 UCTS.—

6 “(A) METAL COMPONENT PARTS.—In lieu
7 of the lead limits established in subsection
8 (a)(2), the limits set forth for each respective
9 material in section 1500.88 of title 16, Code of
10 Federal Regulations (as in effect on January
11 20, 2010) shall apply to metal component parts
12 made of such materials in children’s products,
13 other than apparel, intended primarily for out-
14 door recreational use, regardless of the date on
15 which such products were manufactured.

16 “(B) BATTERY TERMINALS.—The lead
17 limits established in subsection (a)(2) shall not
18 apply to battery terminals in children’s prod-
19 ucts intended primarily for outdoor recreational
20 use.

21 “(6) EXCLUSION OF CERTAIN USED CHIL-
22 DREN’S PRODUCTS.—

23 “(A) GENERAL EXCLUSION.—The lead
24 limits established under subsection (a) shall not
25 apply to a used children’s product.

1 “(B) DEFINITION.—The term ‘used chil-
2 dren’s product’ means a children’s product that
3 was obtained by the seller for use and not for
4 the purpose of resale or was obtained by the
5 seller, either directly or indirectly, from a per-
6 son who obtained such children’s product for
7 use and not for the purpose of resale. Such
8 term also includes a children’s product that was
9 donated to the seller for charitable distribution
10 or resale to support charitable purposes. Such
11 term shall not include—

12 “(i) children’s metal jewelry; or

13 “(ii) any children’s product for which
14 the donating party or the seller has actual
15 knowledge that the product is in violation
16 of the lead limits in this section.

17 For purposes of this definition, the term ‘seller’
18 includes a person who lends or donates a used
19 children’s product.”; and

20 (4) in paragraph (7) (as so redesignated)—

21 (A) by inserting “the alternative limits set
22 forth in this subsection and” after “review and
23 revise”; and

24 (B) by striking “the first promulgation of
25 a of a regulation under this subsection” and in-

1 serting “the date of enactment of the Enhanc-
2 ing CPSC Authority and Discretion Act of
3 2011,”.

4 **SEC. 4. APPLICATION OF THIRD-PARTY TESTING REQUIRE-**
5 **MENTS.**

6 (a) **APPLICABLE CHILDREN’S PRODUCTS.**—Section
7 14(a) of the Consumer Product Safety Act (15 U.S.C.
8 2063(a)) is amended—

9 (1) in paragraph (2)—

10 (A) in the matter preceding subparagraph
11 (A), by inserting “described in paragraph
12 (3)(B)” after “a children’s product safety rule”;

13 (B) in subparagraph (B), by striking “the
14 children’s product safety rule” and inserting
15 “such children’s product safety rule”; and

16 (C) by striking the flush sentence following
17 subparagraph (B); and

18 (2) in paragraph (3)—

19 (A) in subparagraph (A), by inserting “de-
20 scribed in subparagraph (B)” after “a chil-
21 dren’s product safety rule”; and

22 (B) by amending subparagraph (B)(vi) to
23 read as follows:

24 “(vi) **OTHER DURABLE NURSERY**
25 **PRODUCTS.**—The Commission shall publish

1 notice of the requirements for accreditation
2 of third-party conformity assessment bod-
3 ies to assess conformity with other rules
4 promulgated under section 104 of the Con-
5 sumer Product Safety Improvement Act of
6 2008 not later than 90 days before such
7 rules or revisions take effect.”.

8 (b) THIRD-PARTY TESTING REQUIREMENTS.—

9 (1) REQUIREMENTS.—Section 14(b) of the
10 Consumer Product Safety Act (15 U.S.C. 2063(b))
11 is amended to read as follows:

12 “(b) TESTING PROGRAMS.—

13 “(1) IN GENERAL.—The Commission may, by
14 rule, prescribe reasonable testing programs to be
15 used as the basis for certification under subsection
16 (a).

17 “(2) TESTING BY AN INDEPENDENT THIRD
18 PARTY.—Any test or testing program on the basis of
19 which a certificate is issued under subsection (a)
20 may, at the option of the person required to certify
21 the product, be conducted by an independent third
22 party qualified to perform such tests, unless the
23 Commission, by rule and in accordance with para-
24 graph (3), requires testing by an independent third
25 party for—

1 “(A) a particular rule, regulation, stand-
2 ard, ban;

3 “(B) any portion of a particular rule, regu-
4 lation, standard, or ban; or

5 “(C) a particular class of products.

6 “(3) REQUIREMENTS FOR TESTING BY AN
7 INDEPENDENT THIRD PARTY.—

8 “(A) REQUIREMENTS.—The Commission
9 may not require testing by an independent third
10 party under paragraph (2) until the Commis-
11 sion has—

12 “(i) established and published notice
13 of the requirements for accreditation of
14 third-party conformity assessment bodies
15 who are determined to be qualified by the
16 Commission to conduct such testing;

17 “(ii) determined that the testing ca-
18 pacity of accredited third-party conformity
19 assessment bodies, taken together as a
20 whole, is sufficient or is likely to be suffi-
21 cient in a reasonable period of time to pre-
22 vent unreasonable delays due to testing;

23 “(iii) established, by rule, exemptions
24 or alternative testing procedures for the
25 certification of works of art and other one-

1 of-a-kind products and of specialty prod-
2 ucts for the disabled, and products that
3 are produced in small quantities such that
4 the cost of testing by an independent third
5 party is not economically practicable; and

6 “(iv) made a reasoned determina-
7 tion—

8 “(I) that the benefits from re-
9 quiring third-party testing justify the
10 costs; and

11 “(II) that any rule issued pursu-
12 ant to this paragraph is tailored to
13 impose the least possible burden, tak-
14 ing into account to the extent prac-
15 ticable, the costs of cumulative regula-
16 tions.

17 “(B) PRODUCED IN SMALL QUANTITIES
18 DEFINED.—For purposes of subparagraph
19 (A)(iii), the term ‘produced in small quantities’
20 means that not more than 10,000 units of the
21 same product (or substantially similar products)
22 are produced in one year by a manufacturer
23 and any affiliated manufacturer. A manufac-
24 turer may not subdivide the production of such

1 manufacturer into small quantities in order to
2 evade third-party testing requirements.

3 “(4) STAY OF ENFORCEMENT AND REVIEW OF
4 REQUIREMENTS.—

5 “(A) STAY OF ENFORCEMENT.—The Com-
6 mission may not enforce any third-party testing
7 requirement relating to lead content limits
8 (other than for children’s metal jewelry),
9 phthalate limits, or the mandatory toy standard
10 until the Commission has complied with the re-
11 quirements of paragraph (3) with respect to
12 such requirement.

13 “(B) REVIEW.—The Commission may
14 modify any other third-party testing require-
15 ment it has adopted, based on a review of such
16 requirements in accordance with paragraph (3),
17 to provide additional flexibility or to eliminate
18 unnecessary burdens.”.

19 (2) PROHIBITED ACT.—Section 19(a)(14) of
20 the Consumer Product Safety Act (15 U.S.C.
21 2068(a)(14)) is amended by inserting before the pe-
22 riod the following: “, or to subdivide the production
23 of any children’s product into small quantities in
24 order to evade any third-party testing requirements
25 under section 14(a)(2)”.

1 (c) CONTINUING TESTING.—Section 14(d)(2) of the
2 Consumer Product Safety Act (15 U.S.C. 2063(d)(2)) is
3 amended—

4 (1) by striking “Not later than 15 months after
5 the date of enactment of the Consumer Product
6 Safety Improvement Act of 2008, the” and inserting
7 “(A) The”;

8 (2) by redesignating clauses (i) through (iv) of
9 subparagraph (B) as subclauses (I) through (IV),
10 respectively, and by redesignating subparagraphs
11 (A) and (B) as clauses (i) and (ii), respectively;

12 (3) in the matter preceding clause (i) (as so re-
13 designated), by striking “shall”;

14 (4) in clause (i) (as so redesignated), by strik-
15 ing “initiate” and inserting “not later than 15
16 months after the date of enactment of the Consumer
17 Product Safety Improvement Act of 2008, shall ini-
18 tiate”; and

19 (5) in clause (ii) (as so redesignated), by strik-
20 ing “establish” and inserting “may establish”; and

21 (6) by inserting at the end the following:

22 “(B) The Commission may not enforce any
23 third-party testing requirement pursuant to this
24 paragraph without first having determined that such

1 requirement is consistent with the requirements of
2 subsection (b)(3)(A)(iv).”.

3 **SEC. 5. APPLICATION OF AND PROCESS FOR UPDATING DU-**
4 **RABLE NURSERY PRODUCTS STANDARDS.**

5 (a) UPDATING STANDARD.—Section 104(b) of the
6 Consumer Product Safety Improvement Act of 2008 (15
7 U.S.C. 2056a(b)) is amended by adding at the end the
8 following:

9 “(4) PROCESS FOR CONSIDERING SUBSEQUENT
10 REVISIONS TO VOLUNTARY STANDARD.—

11 “(A) NOTICE OF ADOPTION OF VOL-
12 UNTARY STANDARD.—When the Commission
13 promulgates a consumer product safety stand-
14 ard under this subsection that is based, in
15 whole or in part, on a voluntary standard, the
16 Commission shall notify the organization that
17 issued the voluntary standard of the Commis-
18 sion’s action and shall provide a copy of the
19 consumer product safety standard to the orga-
20 nization.

21 “(B) COMMISSION ACTION ON REVISED
22 VOLUNTARY STANDARD.—If an organization re-
23 vises a standard that has been adopted, in
24 whole or in part, as a consumer product safety
25 standard under subparagraph (A), it shall no-

1 tify the Commission. The revised voluntary
2 standard shall be considered to be a consumer
3 product safety standard issued by the Commis-
4 sion under section 9 of the Consumer Product
5 Safety Act (15 U.S.C. 2058), effective 180 days
6 after the date on which the organization notifies
7 the Commission (or such later date specified by
8 the Commission in the Federal Register) unless,
9 within 90 days after receiving that notice, the
10 Commission notifies the organization that it has
11 determined that the proposed revision does not
12 improve the safety of the consumer product cov-
13 ered by the standard and that the Commission
14 is retaining the existing consumer product safe-
15 ty standard.”.

16 (b) APPLICATION OF STANDARD.—Section 104(c) of
17 the Consumer Product Safety Improvement Act of 2008
18 (15 U.S.C. 2056a) is amended by redesignating paragraph
19 (3) as paragraph (4) and inserting after paragraph (2)
20 the following:

21 “(3) APPLICATION.—

22 “(A) IN GENERAL.—Paragraph (1) shall
23 not apply to any revision of the standard pro-
24 mulgated under subsection (b)(1)(B) subse-

1 quent to the initial promulgation of a standard
2 under such subsection.

3 “(B) SPECIAL RULE FOR FIXED-SIDE
4 CRIBS SUBJECT TO CERTAIN STATE OR LOCAL
5 LAW REQUIREMENTS.—Paragraph (1) shall not
6 apply to a fixed-side crib that has not been re-
7 called and that is offered or provided for use in
8 a licensed child care facility (other than a fam-
9 ily child care home) that is subject to the fol-
10 lowing requirements under the law of a State or
11 a political subdivision of a State:

12 “(i) The facility may not allow a child
13 to remain in a crib for any significant
14 amount of time while the child is awake.

15 “(ii) The facility may not place in a
16 crib a child over the age of 16 months.

17 “(iii) An adult must be present when-
18 ever a child is in a crib.”.

19 **SEC. 6. APPLICATION OF SECTION 106 TO FDA-REGULATED**
20 **PRODUCTS.**

21 Section 106(a) of the Consumer Product Safety Im-
22 provement Act (15 U.S.C. 2056b(a)) is amended by in-
23 serting “or any provision that restates or incorporates a
24 regulation promulgated by the Food and Drug Adminis-

1 tration or any statute administered by the Food and Drug
2 Administration” after “or by statute”.

3 **SEC. 7. APPLICATION OF PHTHALATES STANDARD.**

4 (a) ACCESSIBLE, PLASTICIZED COMPONENT
5 PARTS.—Section 108 of the Consumer Product Safety Im-
6 provement Act of 2008 (15 U.S.C. 2057c) is amended—

7 (1) by redesignating subsections (e) through (e)
8 as subsections (d) through (f), respectively; and

9 (2) by inserting after subsection (b) the fol-
10 lowing:

11 “(c) APPLICATION.—

12 “(1) ACCESSIBLE COMPONENT PARTS.—Effec-
13 tive on the date of enactment of this Act, sub-
14 sections (a) and (b)(1) and any rule promulgated
15 under subsection (b)(3) shall apply to any accessible,
16 plasticized component part of a children’s toy or
17 child care article.

18 “(2) COMMISSION AUTHORITY.—The Commis-
19 sion may, by rule, exempt any children’s toy or child
20 care article described in paragraph (1) or any class
21 of such products or materials used in such products
22 from any of the prohibitions under subsections (a)
23 and (b)(1) and any rule promulgated under sub-
24 section (b)(3) where the Commission determines that

1 compliance with any such prohibition is not nec-
2 essary to protect children’s health.”.

3 (b) EFFECT OF CONCLUSIONS OF THE CHRONIC
4 HAZARD ADVISORY PANEL.—Section 108(b)(3) of such
5 Act (15 U.S.C. 2057c(b)(3)) is amended—

6 (1) by striking “Not later than” and inserting
7 the following:

8 “(A) RULEMAKING REQUIRED.—Not later
9 than”;

10 (2) by redesignating subparagraphs (A) and
11 (B) as clauses (i) and (ii), respectively;

12 (3) in clause (i) (as so redesignated), by insert-
13 ing “or terminate such prohibition” after “margin of
14 safety”; and

15 (4) by adding at the end the following:

16 “(B) DEADLINE AND EFFECT ON PROHIBI-
17 TION.—If the Commission does not commence a
18 rulemaking proceeding within 90 days after re-
19 ceiving the report required by paragraph (2)(C)
20 or does not issue a final rule as required by
21 subparagraph (A) within 180 days after com-
22 mencing a rulemaking, the prohibition in para-
23 graph (1) shall terminate.”.

24 (c) DEFINITIONS.—Section 108(f) of the Consumer
25 Product Safety Improvement Act of 2008 (15 U.S.C.

1 2057c(f)) (as redesignated by subsection (a)) is amend-
2 ed—

3 (1) in paragraph (1)—

4 (A) in subparagraph (B), by striking “con-
5 sumer product” and all that follows and insert-
6 ing “children’s product that is subject to the
7 standard made mandatory by section 106(b) or
8 any successor standard”;

9 (B) in subparagraph (C), by striking “con-
10 sumer product” and inserting “children’s prod-
11 uct”; and

12 (C) in subparagraph (D)—

13 (i) by striking “consumer product”
14 and inserting “children’s product”;

15 (ii) by striking “section 3(a)(1)” and
16 inserting “section 3(a)”;

17 (iii) by striking “2052(a)(1)” and in-
18 serting “2052(a)”;

19 (2) by amending paragraph (2) to read as fol-
20 lows:

21 “(2) DETERMINATION GUIDELINES.—For pur-
22 poses of this section, a toy can be placed in a child’s
23 mouth if any part of the toy can actually be brought
24 to the mouth and kept in the mouth by a child so
25 that it can be sucked and chewed. If the children’s

1 product can only be licked, it is not regarded as able
2 to be placed in the mouth. If a toy or part of a toy
3 in one dimension is smaller than 5 centimeters, it
4 can be placed in the mouth.”.

5 **SEC. 8. EXEMPTION AUTHORITY FOR TRACKING LABELS**
6 **REQUIREMENT.**

7 Section 14(a)(5) of the Consumer Product Safety Act
8 (15 U.S.C. 2063(a)(5)) is amended—

9 (1) by striking “Effective 1 year” and inserting
10 “(A) Effective 1 year”;

11 (2) by redesignating subparagraphs (A) and
12 (B) as clauses (i) and (ii), respectively; and

13 (3) by adding at the end the following:

14 “(B) The Commission may, by regulation, exclude a
15 specific product or class of products from the require-
16 ments in subparagraph (A) if the Commission determines
17 that it is not practicable for such product or class of prod-
18 ucts to bear the marks required by such subparagraph.
19 The Commission may establish alternative requirements
20 for any product or class of products excluded under the
21 preceding sentence consistent with the purposes described
22 in clauses (i) and (ii) of subparagraph (A).”.

1 **SEC. 9. REQUIREMENTS FOR PUBLIC DATABASE.**

2 (a) REQUIREMENTS FOR SUBMISSIONS TO THE
3 DATABASE.—Section 6A(b) of the Consumer Product
4 Safety Act (15 U.S.C. 2055a(b)) is amended—

5 (1) in paragraph (1)(A)—

6 (A) in clause (i), by striking “consumers”
7 and inserting “persons who suffer harm or risk
8 of harm related to the use of a product, their
9 next of kin or members of their household, their
10 legal representative, or another person expressly
11 authorized by any such person”; and

12 (B) in clause (v), by striking “public safety
13 entities” and inserting “police, fire, ambulance,
14 emergency medical services, Federal, State, and
15 local law enforcement entities, and other public
16 safety officials”;

17 (2) in paragraph (2)(B)—

18 (A) in clause (i), by inserting “and its lo-
19 cation and availability” after “concerned”;

20 (B) in clause (iv), by inserting “and if
21 such person is not the person harmed by the
22 product, the name and contact information of
23 the person who suffered the harm or risk of
24 harm related to the use of the product” after
25 “report”; and

1 (C) in clause (v), by inserting “that such
2 person is the consumer who used the product
3 that gave rise to the harm, the user’s next of
4 kin, a member of the user’s household, the legal
5 representative of the user, another person ex-
6 pressly authorized by any such person, or a per-
7 son authorized to submit reports of harm under
8 paragraph (1)(A) and” after “person submit-
9 ting the information”; and

10 (3) in paragraph (6), by inserting “or any per-
11 son on whose behalf such a report was submitted,”
12 after “paragraph (1)(A),”.

13 (b) ADEQUACY AND ACCURACY OF INFORMATION RE-
14 PORTED TO THE PUBLIC DATABASE.—Section 6A(c)(2) of
15 the Consumer Product Safety Act (15 U.S.C.
16 2055a(c)(2)) is amended—

17 (1) in subparagraph (A), by striking “to sub-
18 mit” and all that follows and inserting “to—

19 “(i) notify the Commission within 10
20 business days after receipt of the report
21 that the information provided in the report
22 is insufficient for determining which of the
23 manufacturer’s products is the subject of
24 the complaint, in which case the manufac-
25 turer shall provide the Commission (and

1 the person submitting the complaint, if
2 that person has consented to disclosure of
3 contact information) with information to
4 assist the person submitting the report to
5 sufficiently identify or provide an adequate
6 description of the product;

7 “(ii) notify the Commission within 10
8 business days after receipt of the report
9 that the information provided in the report
10 is materially inaccurate and to provide the
11 Commission with any additional informa-
12 tion supporting the manufacturer’s claim
13 of inaccuracy; and

14 “(iii) submit other comments to the
15 Commission on the information contained
16 in such report.”; and

17 (2) by redesignating subparagraphs (B) and
18 (C) as subparagraphs (C) and (D), respectively, and
19 inserting after subparagraph (A) the following:

20 “(B) ACTION BY THE COMMISSION.—

21 “(i) INSUFFICIENT PRODUCT IDENTI-
22 FICATION.—If a manufacturer notifies the
23 Commission of the insufficiency of the
24 product information in a report pursuant
25 to subparagraph (A)(i), and the Commis-

1 sion agrees that the information provided
2 is insufficient to identify the product, the
3 Commission shall provide the information
4 provided by the manufacturer to the per-
5 son submitting the report (unless such in-
6 formation has already been provided di-
7 rectly by the manufacturer) and seek to
8 obtain from such person an adequate de-
9 scription of the product.

10 “(ii) MATERIALLY INACCURATE IN-
11 FORMATION.—If a manufacturer notifies
12 the Commission of a material inaccuracy in
13 a report pursuant to subparagraph (A)(ii),
14 and the Commission determines that the
15 claim is potentially valid, the Commission
16 shall seek to resolve the inaccuracy by any
17 of the following:

18 “(I) Obtaining from the person
19 submitting the report such additional
20 information necessary to correct the
21 inaccuracy.

22 “(II) Investigating the incident
23 giving rise to the report in order to
24 correct any such inaccuracy.

1 “(III) Providing the manufac-
2 turer a reasonable period of time to
3 investigate and provide additional in-
4 formation to correct any inaccuracy.

5 “(iii) STAY ON INCLUSION IN DATA-
6 BASE.—The Commission shall not include
7 in the database a report described in
8 clauses (i) or (ii) until the product is spe-
9 cifically identified and any material inaccu-
10 racy corrected.”.

11 (c) MISREPRESENTATION PROHIBITED.—Section
12 19(a)(13) of the Consumer Product Safety Act (15 U.S.C.
13 2068(a)(13)) is amended by inserting “related to a sub-
14 mission of information to the database established under
15 section 6A, or” after “misrepresentation to such an officer
16 or employee”.

17 **SEC. 10. SUBPOENA AUTHORITY.**

18 Section 27(b) of the Consumer Product Safety Act
19 (15 U.S.C. 2076(b)) is amended—

20 (1) in paragraph (3), by inserting “and phys-
21 ical” after “documentary”;

22 (2) in paragraph (8), by striking “and”;

23 (3) by redesignating paragraph (9) as para-
24 graph (10) and inserting after paragraph (8) the fol-
25 lowing:

1 “(9) to delegate to the general counsel of the
2 Commission the authority to issue subpoenas solely
3 to Federal, State, or local government agencies for
4 evidence described in paragraph (3); and”;

5 (4) in paragraph (10) (as so redesignated), by
6 inserting “(except as provided in paragraph (9))”
7 after “paragraph (3)”.

8 **SEC. 11. AVAILABILITY OF CERTAIN PERSONAL AND MED-**
9 **ICAL INFORMATION TO THE CPSC.**

10 Section 5 of the Consumer Product Safety Act (15
11 U.S.C. 2054) is amended by adding at the end the fol-
12 lowing new subsection:

13 “(e) AVAILABILITY OF PERSONAL AND MEDICAL IN-
14 FORMATION UNDER HIPAA.—In order to carry out its
15 investigative and enforcement activities under this Act and
16 under any of the Acts enforced by the Commission, the
17 Commission shall be deemed a public health authority
18 within the meaning of section 164.512(b)(i) of title 45,
19 Code of Federal Regulations, for purposes of permitted
20 disclosures of protected health information authorized
21 under such section.”.

22 **SEC. 12. TECHNICAL AMENDMENT.**

23 Section 14 of the Consumer Product Safety Act (15
24 U.S.C. 2063) is further amended by redesignating the sec-
25 ond subsection (d) as subsection (i).

1 **SEC. 13. EFFECTIVE DATE.**

2 Except as provided otherwise, the amendments made
3 by this Act shall take effect on the date of enactment of
4 this Act.

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