112TH CONGRESS
1ST SESSION

H. R. 2715

IN THE SENATE OF THE UNITED STATES

AUGUST 1, 2011
Received

AN ACT

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

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LIMITATION ON LEAD IN CHILDREN'S PRODUCTS.

(a) PROSPECTIVE APPLICATION OF LEAD LIMIT FOR CHILDREN'S PRODUCTS.—Section 101(a) of the Consumer Product Safety Improvement Act of 2008 (15 U.S.C. 1278a(a)) is amended by adding at the end the following:

''(3) APPLICATION.—Each limit set forth in paragraph (2) (except for the limit set forth in subparagraphs (A) and (B)) shall apply only to a children's product (as defined in section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052(a))) that is manufactured after the effective date of such respective limit.''.

(b) ALTERNATIVE LIMITS AND EXCEPTIONS.—Section 101(b) of such Act (15 U.S.C. 1278a(b)(1)) is amended—

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

''(1) FUNCTIONAL PURPOSE EXCEPTION.—

''(A) IN GENERAL.—The Commission, on its own initiative or upon petition by an interested party, shall grant an exception to the limit in subsection (a) for a specific product, class of product, material, or component part if

the Commission, after notice and a hearing, determines that—

''(i) the product, class of product, material, or component part requires the inclusion of lead because it is not practicable or not technologically feasible to manufacture such product, class of product, material, or component part, as the case may be, in accordance with subsection (a) by removing the excessive lead or by making the lead inaccessible;

''(ii) the product, class of product, material, or component part is not likely to be placed in the mouth or ingested, taking into account normal and reasonably foreseeable use and abuse of such product, class of product, material, or component part by a child; and

''(iii) an exception for the product, class of product, material, or component part will have no measurable adverse effect on public health or safety, taking into account normal and reasonably foreseeable use and abuse.

"(B) MEASUREMENT.—For purposes of subparagraph (A)(iii), there is no measurable adverse effect on public health or safety if the exception described in subparagraph (A) will result in no measurable increase in blood lead levels of a child. The Commission may adopt an alternative method of measurement other than blood lead levels if it determines, after notice and a hearing, that such alternative method is a better scientific method for measuring adverse effect on public health and safety.

"(C) PROCEDURES FOR GRANTING EXCEPTION.—

"(i) BURDEN OF PROOF.—A party seeking an exception under subparagraph (A) has the burden of demonstrating that it meets the requirements of such subparagraph.

"(ii) GROUNDS FOR DECISION.—In the case where a party has petitioned for an exception, in determining whether to grant the exception, the Commission may base its decision solely on the materials presented by the party seeking the excep-

tion and any materials received through notice and a hearing.

''(iii) ADMISSIBLE EVIDENCE.—In demonstrating that it meets the requirements of subparagraph (A), a party seeking an exception under such subparagraph may rely on any nonproprietary information submitted by any other party seeking such an exception and such information shall be considered part of the record presented by the party that relies on that information.

''(iv) SCOPE OF EXCEPTION.—If an exception is sought for an entire product, the burden is on the petitioning party to demonstrate that the criteria in subparagraph (A) are met with respect to every accessible component or accessible material of the product.

''(D) LIMITATION ON EXCEPTION.—If the Commission grants an exception for a product, class of product, material, or component part under subparagraph (A), the Commission may, as necessary to protect public health or safety—

"(i) establish a lead limit that such product, class of product, material, or component part may not exceed; or

"(ii) place a manufacturing expiration date on such exception or establish a schedule after which the manufacturer of such product, class of product, material, or component part shall be in full compliance with the limit established under clause (i) or the limit set forth in subsection (a).

"(E) APPLICATION OF EXCEPTION.—An exception under subparagraph (A) for a product, class of product, material, or component part shall apply regardless of the date of manufacture unless the Commission expressly provides otherwise.

"(F) PREVIOUSLY SUBMITTED PETITIONS.—A party seeking an exception under this paragraph may rely on materials previously submitted in connection with a petition for exclusion under this section. In such cases, petitioners must notify the Commission of their intent to rely on materials previously submitted. Such reliance does not affect petitioners' obligation to demonstrate that they meet all require-

ments of this paragraph as required by subparagraph (C)(i).'';

(2) in paragraph (2)(A), by striking ''include to,'' and inserting ''include''; and

(3) by redesignating paragraph (5) as paragraph (8) and inserting after paragraph (4) the following:

''(5) EXCEPTION FOR OFF-HIGHWAY VEHICLES.—

''(A) IN GENERAL.—Subsection (a) shall not apply to an off-highway vehicle.

''(B) OFF-HIGHWAY VEHICLE DEFINED.—For purposes of this section, the term 'off-highway vehicle'—

''(i) means any motorized vehicle—

''(I) that is manufactured primarily for use off public streets, roads, and highways;

''(II) designed to travel on 2, 3, or 4 wheels; and

''(III) that has either—

''(aa) a seat designed to be straddled by the operator and handlebars for steering control; or

"(bb) a nonstraddle seat, steering wheel, seat belts, and roll-over protective structure; and

"(ii) includes a snowmobile.

"(6) BICYCLES AND RELATED PRODUCTS.—In lieu of the lead limits established in subsection (a)(2), the limits set forth for each respective material in the notice of the Commission entitled 'Notice of Stay of Enforcement Pertaining to Bicycles and Related Products', published June 30, 2009 (74 Fed. Reg. 31254), shall apply to any metal component part of the products to which the stay of enforcement described in such notice applies, except that after December 31, 2011, the limits set forth in such notice shall not be more than 300 parts per million total lead content by weight for any metal component part of the products to which such stay pertains.

"(7) EXCLUSION OF CERTAIN USED CHILDREN'S PRODUCTS.—

"(A) GENERAL EXCLUSION.—The lead limits established under subsection (a) shall not apply to a used children's product.

"(B) DEFINITION.—In this paragraph, the term 'used children's product' means a chil-

dren's product (as defined in section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052(a)) that was obtained by the seller for use and not for the purpose of resale or was obtained by the seller, either directly or indirectly, from a person who obtained such children's product for use and not for the purpose of resale. Such term also includes a children's product that was donated to the seller for charitable distribution or resale to support charitable purposes. Such term shall not include—

''(i) children's metal jewelry;

''(ii) any children's product for which the donating party or the seller has actual knowledge that the product is in violation of the lead limits in this section; or

''(iii) any other children's product or product category that the Commission determines, after notice and a hearing.

For purposes of this definition, the term 'seller' includes a person who lends or donates a used children's product.''.

SEC. 2. APPLICATION OF THIRD PARTY TESTING REQUIREMENTS.

(a) IN GENERAL.—Section 14(d) of the Consumer Product Safety Act (15 U.S.C. 2063(d)) is amended—

(1) in paragraph (2)(B)(ii), by striking ''random'' and inserting ''representative''; and

(2) by adding at the end the following:

''(3) REDUCING THIRD PARTY TESTING BURDENS.—

''(A) ASSESSMENT.—Not later than 60 days after the date of enactment of this paragraph, the Commission shall seek public comment on opportunities to reduce the cost of third party testing requirements consistent with assuring compliance with any applicable consumer product safety rule, ban, standard, or regulation. The request for public comment shall include the following:

''(i) The extent to which the use of materials subject to regulations of another government agency that requires third party testing of those materials may provide sufficient assurance of conformity with an applicable consumer product safety rule, ban, standard, or regulation without further third party testing.

''(ii) The extent to which modification of the certification requirements may have the effect of reducing redundant third party testing by or on behalf of 2 or more importers of a product that is substantially similar or identical in all material respects.

''(iii) The extent to which products with a substantial number of different components subject to third party testing may be evaluated to show compliance with an applicable rule, ban, standard, or regulation by third party testing of a subset of such components selected by a third party conformity assessment body.

''(iv) The extent to which manufacturers with a substantial number of substantially similar products subject to third party testing may reasonably make use of sampling procedures that reduce the overall test burden without compromising the benefits of third party testing.

''(v) The extent to which evidence of conformity with other national or international governmental standards may provide assurance of conformity to consumer

product safety rules, bans, standards, or regulations applicable under this Act.

''(vi) The extent to which technology, other than the technology already approved by the Commission, exists for third party conformity assessment bodies to test or to screen for testing consumer products subject to a third party testing requirement.

''(vii) Other techniques for lowering the cost of third party testing consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations.

''(B) REGULATIONS.—Following the public comment period described in subparagraph (A), but not later than 1 year after the date of enactment of this paragraph, the Commission shall review the public comments and may prescribe new or revised third party testing regulations if it determines that such regulations will reduce third party testing costs consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations.

''(C) REPORT.—If the Commission determines that it lacks authority to implement an opportunity for reducing the costs of third-party testing consistent with assuring compliance with the applicable consumer product safety rules, bans, standards, and regulations, it shall transmit a report to Congress reviewing those opportunities, along with any recommendations for any legislation to permit such implementation.

''(4) SPECIAL RULES FOR SMALL BATCH MANUFACTURERS.—

''(A) SPECIAL CONSIDERATION; EXEMPTION.—

''(i) CONSIDERATION; ALTERNATIVE REQUIREMENTS.—Subject to subparagraph (C), in implementing third party testing requirements under this section, the Commission shall take into consideration any economic, administrative, or other limits on the ability of small batch manufacturers to comply with such requirements and shall, after notice and a hearing, provide alternative testing requirements for covered products manufactured by small batch

manufacturers in lieu of those required under subsection (a) or (b). Any such alternative requirements shall provide for reasonable methods to assure compliance with any applicable consumer product safety rule, ban, standard, or regulation. The Commission may allow such alternative testing requirements for small batch manufacturers with respect to a specific product or product class or with respect to a specific safety rule, ban, standard, or regulation, or portion thereof.

''(ii) EXEMPTION.—If the Commission determines that no alternative testing requirement is available or economically practicable, it shall exempt small batch manufacturers from third party testing requirements under subsections (a) and (b).

''(iii) CERTIFICATION.—In lieu of or as part of any alternative testing requirements provided under clause (i), the Commission may allow certification of a product to an applicable consumer product safety rule, ban, standard, or regulation, or portion thereof, based on documentation

that the product complies with another national or international governmental standard or safety requirement that the Commission determines is the same or more stringent than the consumer product safety rule, ban, standard, or regulation, or portion thereof. Any such certification shall only be allowed to the extent of the equivalency with a consumer product safety rule, ban, standard, or regulation and not to any other part of the consumer product safety rule, ban, standard, or regulation.

''(iv) RESTRICTION.—Except as provided in subparagraph (C), and except where the Commission determines that the manufacturer does not meet the definition of a small batch manufacturer, for any small batch manufacturer registered pursuant to subparagraph (B), the Commission may not require third party testing of a covered product by a third party conformity assessment body until the Commission has provided either an alternative testing requirement or an exemption in ac-

cordance with clause (i) or (ii), respectively.

''(B) REGISTRATION.—Any small batch manufacturer that utilizes alternative requirements or an exemption under this paragraph shall register with the Commission prior to using such alternative requirements or exemptions pursuant to any guidelines issued by the Commission to carry out this requirement.

''(C) LIMITATION.—The Commission shall not provide or permit to continue in effect any alternative requirements or exemption from third party testing requirements under this paragraph where it determines, based on notice and a hearing, that full compliance with subsection (a) or (b) is reasonably necessary to protect public health or safety. The Commission shall not provide any alternative requirements or exemption for—

''(i) any of the third party testing requirements described in clauses (i) through (v) of subsection (a)(3)(B); or

''(ii) durable infant or toddler products, as defined in section 104(f) of the

Consumer Product Safety Improvement Act of 2008 (15 U.S.C. 2056a(f)).

''(D) SUBSEQUENT MANUFACTURER.—Nothing in this paragraph shall be construed to affect third party testing or any other requirements with respect to a subsequent manufacturer or other entity that uses components provided by one or more small batch manufacturers.

''(E) DEFINITIONS.—For purposes of this paragraph—

''(i) the term '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; and

''(ii) the term 'small batch manufacturer' means 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. The dollar amount contained in this paragraph shall be adjusted annually by the percentage increase in the Consumer Price Index for all

urban consumers published by the Department of Labor.

For purposes of determining the total gross revenue for all sales of all consumer products of a manufacturer under this subparagraph, such total gross revenue shall be considered to include all gross revenue from all sales of all consumer products of each entity that controls, is controlled by, or is under common control with such manufacturer. The Commission shall take steps to ensure that all relevant business affiliations are considered in determining whether or not a manufacturer meets this definition.

''(5) EXCLUSION FROM THIRD PARTY TESTING.—

''(A) CERTAIN PRINTED MATERIALS.—

''(i) IN GENERAL.—The third party testing requirements established under subsection (a) shall not apply to ordinary books or ordinary paper-based printed materials.

''(ii) DEFINITIONS.—

''(I) ORDINARY BOOK.—The term 'ordinary book' means a book printed on paper or cardboard, printed with

inks or toners, and bound and finished using a conventional method, and that is intended to be read or has educational value. Such term does not include books with inherent play value, books designed or intended for a child 3 years of age or younger, and does not include any toy or other article that is not a book that is sold or packaged with an ordinary book.

''(II) ORDINARY PAPER-BASED PRINTED MATERIALS.—The term 'ordinary paper-based printed materials' means materials printed on paper or cardboard, such as magazines, posters, greeting cards, and similar products, that are printed with inks or toners and bound and finished using a conventional method.

''(III) EXCLUSIONS.—Such terms do not include books or printed materials that contain components that are printed on material other than paper or cardboard or contain nonpaper-based components such as metal or

plastic parts or accessories that are not part of the binding and finishing materials used in a conventional method.

''(B) METAL COMPONENT PARTS OF BICYCLES.—The third party testing requirements established under subsection (a) shall not apply to metal component parts of bicycles with respect to compliance with the lead content limits in place pursuant to section 101(b)(6) of the Consumer Product Safety Improvement Act of 2008.''.

(b) PROHIBITED ACT.—Section 19(a)(14) of the Consumer Product Safety Act (15 U.S.C. 2068(a)(14)) is amended by striking the period and inserting '', or to subdivide the production of any children's product into small quantities that have the effect of evading any third party testing requirements under section 14(a)(2);''.

SEC. 3. APPLICATION OF AND PROCESS FOR UPDATING DURABLE NURSERY PRODUCTS STANDARDS.

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

"(4) PROCESS FOR CONSIDERING SUBSEQUENT REVISIONS TO VOLUNTARY STANDARD.—

"(A) NOTICE OF ADOPTION OF VOLUNTARY STANDARD.—When the Commission promulgates a consumer product safety standard under this subsection that is based, in whole or in part, on a voluntary standard, the Commission shall notify the organization that issued the voluntary standard of the Commission's action and shall provide a copy of the consumer product safety standard to the organization.

"(B) COMMISSION ACTION ON REVISED VOLUNTARY STANDARD.—If an organization revises a standard that has been adopted, in whole or in part, as a consumer product safety standard under this subsection, it shall notify the Commission. The revised voluntary standard shall be considered to be a consumer product safety standard issued by the Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 180 days after the date on which the organization notifies the Commission (or such later date specified by the Commission in the Federal Register) unless,

within 90 days after receiving that notice, the Commission notifies the organization that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard and that the Commission is retaining the existing consumer product safety standard.''.

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

''(3) APPLICATION OF ANY REVISION.—With respect to any revision of the standard promulgated under subsection (b)(1)(B) subsequent to the initial promulgation of a standard under such subsection, paragraph (1) shall apply only to a person that manufactures or imports cribs, unless the Commission determines that application to any other person described in paragraph (2) is necessary to protect against an unreasonable risk to health or safety. If the Commission determines that application to a person described in paragraph (2) is necessary, it shall provide not less than 12 months for such person to come into compliance.''.

SEC. 4. APPLICATION OF SECTION 106 TO FDA-REGULATED PRODUCTS.

Section 106(a) of the Consumer Product Safety Improvement Act of 2008 (15 U.S.C. 2056b(a)) is amended by inserting ''or any provision that restates or incorporates a regulation promulgated by the Food and Drug Administration or any statute administered by the Food and Drug Administration'' after ''or by statute''.

SEC. 5. APPLICATION OF PHTHALATES LIMIT.

(a) ACCESSIBLE, PLASTICIZED COMPONENT PARTS.—Section 108 of the Consumer Product Safety Improvement Act of 2008 (15 U.S.C. 2057c) is amended—

(1) by redesignating subsections (c) through (e) as subsections (e) through (g), respectively; and

(2) by inserting after subsection (b) the following:

''(c) APPLICATION.—Effective on the date of enactment of this Act, subsections (a) and (b)(1) and any rule promulgated under subsection (b)(3) shall apply to any plasticized component part of a children's toy or child care article or any other component part of a children's toy or child care article that is made of other materials that may contain phthalates.

''(d) EXCLUSION FOR INACCESSIBLE COMPONENT PARTS.—

''(1) IN GENERAL.—The prohibitions established under subsections (a) and (b) shall not apply to any component part of a children's toy or child care article that is not accessible to a child through normal and reasonably foreseeable use and abuse of such product, as determined by the Commission. A component part is not accessible under this paragraph if such component part is not physically exposed by reason of a sealed covering or casing and does not become physically exposed through reasonably foreseeable use and abuse of the product. Reasonably foreseeable use and abuse shall include swallowing, mouthing, breaking, or other children's activities, and the aging of the product.

''(2) LIMITATION.—The Commission may revoke an exclusion or all exclusions granted under paragraph (1) at any time and require that any or all component parts manufactured after such exclusion is revoked comply with the prohibitions established under subsections (a) and (b) if the Commission finds, based on scientific evidence, that such compliance is necessary to protect the public health or safety.

''(3) INACCESSIBILITY PROCEEDING.—Within 1 year after the date of enactment of this subsection, the Commission shall—

''(A) promulgate a rule providing guidance with respect to what product components, or classes of components, will be considered to be inaccessible for purposes of paragraph (1); or

''(B) adopt the same guidance with respect to inaccessibility that was adopted by the Commission with regards to accessibility of lead under section 101(b)(2)(B), with additional consideration, as appropriate, of whether such component can be placed in a child's mouth.

''(4) APPLICATION PENDING COMMISSION GUIDANCE.—Until the Commission promulgates a rule pursuant to paragraph (3), the determination of whether a product component is inaccessible to a child shall be made in accordance with the requirements laid out in paragraph (1) for considering a component to be inaccessible to a child.''.

SEC. 6. AUTHORITY TO MODIFY TRACKING LABELS REQUIREMENT.

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

(1) by striking ''Effective 1 year'' and inserting ''(A) Effective 1 year'';

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

(3) by adding at the end the following:

''(B) The Commission may, by regulation, exclude a specific product or class of products from the requirements in subparagraph (A) if the Commission determines that it is not practicable for such product or class of products to bear the marks required by such subparagraph. The Commission may establish alternative requirements for any product or class of products excluded under the preceding sentence consistent with the purposes described in clauses (i) and (ii) of subparagraph (A).''.

SEC. 7. IMPROVED PRODUCT IDENTIFICATION FOR PUBLIC DATABASE.

Section 6A(c) of the Consumer Product Safety Act (15 U.S.C. 2055a(c)) is amended—

(1) in paragraph (3)(A), by inserting ''or paragraph (5)'' after ''paragraph (4)(A)'';

(2) in paragraph (4)(A), by striking ''determines that the information in such report or comment is materially inaccurate, the Commission shall—'' and inserting ''receives notice that the information in such report or comment is materially

inaccurate, the Commission shall stay the publication of the report on the database as required under paragraph (3) for a period of no more than 5 additional days. If the Commission determines that the information in such report or comment is materially inaccurate, the Commission shall—''; and

(3) by adding at the end the following new paragraph:

''(5) OBTAINING CERTAIN PRODUCT IDENTIFICATION INFORMATION.—

''(A) IN GENERAL.—If the Commission receives a report described in subsection (b)(1)(A) that does not include the model or serial number of the consumer product concerned, the Commission shall seek from the individual or entity submitting the report such model or serial number or, if such model or serial number is not available, a photograph of the product. If the Commission obtains information relating to the serial or model number of the product or a photograph of the product, it shall immediately forward such information to the manufacturer of the product. The Commission shall make the report available in the database on the 15th business day after the date on which the Com-

mission transmits the report under paragraph (1) and shall include in the database any additional information about the product obtained under this paragraph.

''(B) RULE OF CONSTRUCTION.—Nothing in this paragraph shall be construed to—

''(i) permit the Commission to delay transmission of the report under paragraph (1) until the Commission has obtained the model or serial number or a photograph of the consumer product concerned; or

''(ii) make inclusion in the database of a report described in subsection (b)(1)(A) contingent on the availability of the model or serial number or a photograph of the consumer product concerned.''.

SEC. 8. SUBPOENA AUTHORITY.

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

(1) in paragraph (3), by inserting ''and physical'' after ''documentary'';

(2) in paragraph (8), by striking ''and'';

(3) by redesignating paragraph (9) as paragraph (10) and inserting after paragraph (8) the following:

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

(4) in paragraph (10) (as so redesignated), by inserting ''(except as provided in paragraph (9))'' after ''paragraph (3)''.

SEC. 9. DEADLINE FOR RULE BY CONSUMER PRODUCT SAFETY COMMISSION ON STANDARDS FOR ALL TERRAIN VEHICLES.

The Commission shall issue the final rule described in section 42(d) of the Consumer Product Safety Act (15 U.S.C. 2089(d)) not later than 1 year after the date of enactment of this Act.

SEC. 10. TECHNICAL AMENDMENTS.

(a) CPSA.—Section 14 of the Consumer Product Safety Act (15 U.S.C. 2063) is further amended by redesignating the second subsection (d) as subsection (i).

(b) CPSIA.—Section 101(a)(1) of the Consumer Product Safety Improvement Act of 2008 (15 U.S.C. 1278a(a)(1)) is amended by striking ''(as defined in section 3(a)(16) of the Consumer Product Safety Act (15

U.S.C. 2052(a)(16)))'' and inserting ''(as defined in section 3(a) of the Consumer Product Safety Act (15 U.S.C. 2052(a)))''.

SEC. 11. EFFECTIVE DATE.

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

Passed the House of Representatives August 1, 2011.

Attest: KAREN L. HAAS,

Clerk.