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110TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } 110-____

CONSUMER PRODUCT SAFETY MODERNIZATION ACT

_____, 2008.—Ordered to be printed.

Mr. DINGELL, from the committee of conference,
submitted the following

CONFERENCE REPORT

[To accompany H.R. 4040]

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4040), to establish consumer product safety standards and other safety requirements for children's products and to reauthorize and modernize the Consumer Product Safety Commission, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

See corrections on pages 1 and 15.

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Consumer Product Safety Improvement Act of 2008”.

4 (b) **TABLE OF CONTENTS.**—The table of contents for
5 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. References.
- Sec. 3. Authority to issue implementing regulations.

TITLE I—CHILDREN’S PRODUCT SAFETY

- Sec. 101. Children’s products containing lead; lead paint rule.
- Sec. 102. Mandatory third party testing for certain children’s products.
- Sec. 103. Tracking labels for children’s products.
- Sec. 104. Standards and consumer registration of durable nursery products.
- Sec. 105. Labeling requirement for advertising toys and games.
- Sec. 106. Mandatory toy safety standards.
- Sec. 107. Study of preventable injuries and deaths in minority children related to consumer products.
- Sec. 108. Prohibition on sale of certain products containing specified phthalates.

TITLE II—CONSUMER PRODUCT SAFETY COMMISSION REFORM

Subtitle A—Administrative Improvements

- Sec. 201. Reauthorization of the Commission.
- Sec. 202. Full Commission requirement; interim quorum; personnel.
- Sec. 203. Submission of copy of certain documents to Congress.
- Sec. 204. Expedited rulemaking.
- Sec. 205. Inspector general audits and reports.
- Sec. 206. Industry-sponsored travel ban.
- Sec. 207. Sharing of information with Federal, State, local, and foreign government agencies.
- Sec. 208. Employee training exchanges.
- Sec. 209. Annual reporting requirement.

Subtitle B—Enhanced Enforcement Authority

- Sec. 211. Public disclosure of information.
- Sec. 212. Establishment of a public consumer product safety database.
- Sec. 213. Prohibition on stockpiling under other Commission-enforced statutes.
- Sec. 214. Enhanced recall authority and corrective action plans.
- Sec. 215. Inspection of firewalled conformity assessment bodies; identification of supply chain.
- Sec. 216. Prohibited acts.
- Sec. 217. Penalties.

Sec. 218. Enforcement by State attorneys general.

Sec. 219. Whistleblower protections.

Subtitle C—Specific Import-Export Provisions

Sec. 221. Export of recalled and non-conforming products.

Sec. 222. Import safety management and interagency cooperation.

Sec. 223. Substantial product hazard list and destruction of noncompliant imported products.

Sec. 224. Financial responsibility.

Sec. 225. Study and report on effectiveness of authorities relating to safety of imported consumer products.

Subtitle D—Miscellaneous Provisions and Conforming Amendments

Sec. 231. Preemption.

Sec. 232. All-terrain vehicle standard.

Sec. 233. Cost-benefit analysis under the Poison Prevention Packaging Act of 1970.

Sec. 234. Study on use of formaldehyde in manufacturing of textile and apparel articles.

Sec. 235. Technical and conforming changes.

Sec. 236. Expedited judicial review.

Sec. 237. Repeal.

Sec. 238. Pool and Spa Safety Act technical amendments.

Sec. 239. Effective dates and Severability.

1 SEC. 2. REFERENCES.

2 (a) **DEFINED TERMS.**—As used in this Act—

3 (1) the term “appropriate Congressional com-
4 mittees” means the Committee on Energy and Com-
5 merce of the House of Representatives and the Com-
6 mittee on Commerce, Science, and Transportation of
7 the Senate; and

8 (2) the term “Commission” means the Con-
9 sumer Product Safety Commission.

10 (b) **CONSUMER PRODUCT SAFETY ACT.**—Except as
11 otherwise expressly provided, whenever in this Act an
12 amendment is expressed as an amendment to a section
13 or other provision, the reference shall be considered to be

1 made to a section or other provision of the Consumer
2 Product Safety Act (15 U.S.C. 2051 et seq.).

3 **SEC. 3. AUTHORITY TO ISSUE IMPLEMENTING REGULA-**
4 **TIONS.**

5 The Commission may issue regulations, as necessary,
6 to implement this Act and the amendments made by this
7 Act.

8 **TITLE I—CHILDREN’S PRODUCT**
9 **SAFETY**

10 **SEC. 101. CHILDREN’S PRODUCTS CONTAINING LEAD; LEAD**
11 **PAINT RULE.**

12 (a) GENERAL LEAD BAN.—

13 (1) TREATMENT AS A BANNED HAZARDOUS
14 SUBSTANCE.—Except as expressly provided in sub-
15 section (b) beginning on the dates provided in para-
16 graph (2), any children’s product (as defined in sec-
17 tion 3(a)(16) of the Consumer Product Safety Act
18 (15 U.S.C. 2052(a)(16))) that contains more lead
19 than the limit established by paragraph (2) shall be
20 treated as a banned hazardous substance under the
21 Federal Hazardous Substances Act (15 U.S.C. 1261
22 et seq.).

23 (2) LEAD LIMIT.—

24 (A) 600 PARTS PER MILLION.—Except as
25 provided in subparagraphs (B), (C), (D), and

1 (E), beginning 180 days after the date of enact-
2 ment of this Act, the lead limit referred to in
3 paragraph (1) is 600 parts per million total
4 lead content by weight for any part of the prod-
5 uct.

6 (B) 300 PARTS PER MILLION.—Except as
7 provided by subparagraphs (C), (D), and (E),
8 beginning on the date that is 1 year after the
9 date of enactment of this Act, the lead limit re-
10 ferred to in paragraph (1) is 300 parts per mil-
11 lion total lead content by weight for any part of
12 the product.

13 (C) 100 PARTS PER MILLION.—Except as
14 provided in subparagraphs (D) and (E), begin-
15 ning on the date that is 3 years after the date
16 of enactment of this Act, subparagraph (B)
17 shall be applied by substituting “100 parts per
18 million” for “300 parts per million” unless the
19 Commission determines that a limit of 100
20 parts per million is not technologically feasible
21 for a product or product category. The Commis-
22 sion may make such a determination only after
23 notice and a hearing and after analyzing the
24 public health protections associated with sub-
25 stantially reducing lead in children’s products.

1 (D) ALTERNATE REDUCTION OF LIMIT.—

2 If the Commission determines under subpara-
3 graph (C) that the 100 parts per million limit
4 is not technologically feasible for a product or
5 product category, the Commission shall, by reg-
6 ulation, establish an amount that is the lowest
7 amount of lead, lower than 300 parts per mil-
8 lion, the Commission determines to be techno-
9 logically feasible to achieve for that product or
10 product category. The amount of lead estab-
11 lished by the Commission under the preceding
12 sentence shall be substituted for the 300 parts
13 per million limit under subparagraph (B) begin-
14 ning on the date that is 3 years after the date
15 of enactment of this Act.

16 (E) PERIODIC REVIEW AND FURTHER RE-
17 Ductions.—The Commission shall, based on
18 the best available scientific and technical infor-
19 mation, periodically review and revise downward
20 the limit set forth in this subsection, no less
21 frequently than every 5 years after promulga-
22 tion of the limit under subparagraph (C) or (D)
23 to require the lowest amount of lead that the
24 Commission determines is technologically fea-
25 sible to achieve. The amount of lead established

1 by the Commission under the preceding sen-
2 tence shall be substituted for the lead limit in
3 effect immediately before such revision.

4 (b) EXCLUSION OF CERTAIN MATERIALS OR PROD-
5 UCTS AND INACCESSIBLE COMPONENT PARTS.—

6 (1) CERTAIN PRODUCTS OR MATERIALS.—The
7 Commission may, by regulation, exclude a specific
8 product or material from the prohibition in sub-
9 section (a) if the Commission, after notice and a
10 hearing, determines on the basis of the best-avail-
11 able, objective, peer-reviewed, scientific evidence that
12 lead in such product or material will neither—

13 (A) result in the absorption of any lead
14 into the human body, taking into account nor-
15 mal and reasonably foreseeable use and abuse
16 of such product by a child, including swal-
17 lowing, mouthing, breaking, or other children's
18 activities, and the aging of the product; nor

19 (B) have any other adverse impact on pub-
20 lic health or safety.

21 (2) EXCEPTION FOR INACCESSIBLE COMPO-
22 NENT PARTS.—

23 (A) IN GENERAL.—The limits established
24 under subsection (a) shall not apply to any
25 component part of a children's product that is

1 not accessible to a child through normal and
2 reasonably foreseeable use and abuse of such
3 product, as determined by the Commission. A
4 component part is not accessible under this sub-
5 paragraph if such component part is not phys-
6 ically exposed by reason of a sealed covering or
7 casing and does not become physically exposed
8 through reasonably foreseeable use and abuse of
9 the product. Reasonably foreseeable use and
10 abuse shall include to, swallowing, mouthing,
11 breaking, or other children's activities, and the
12 aging of the product.

13 (B) INACCESSIBILITY PROCEEDING.—
14 Within 1 year after the date of enactment of
15 this Act, the Commission shall promulgate a
16 rule providing guidance with respect to what
17 product components, or classes of components,
18 will be considered to be inaccessible for pur-
19 poses of subparagraph (A).

20 (C) APPLICATION PENDING CPSC GUID-
21 ANCE.—Until the Commission promulgates a
22 rule pursuant to subparagraph (B), the deter-
23 mination of whether a product component is in-
24 accessible to a child shall be made in accord-
25 ance with the requirements laid out in subpara-

1 graph (A) for considering a component to be in-
2 accessible to a child.

3 (3) CERTAIN BARRIERS DISQUALIFIED.—For
4 purposes of this subsection, paint, coatings, or elec-
5 troplating may not be considered to be a barrier that
6 would render lead in the substrate inaccessible to a
7 child, or to prevent absorption of any lead into the
8 human body, through normal and reasonably fore-
9 seeable use and abuse of the product.

10 (4) CERTAIN ELECTRONIC DEVICES.—If the
11 Commission determines that it is not technologically
12 feasible for certain electronic devices, including de-
13 vices containing batteries, to comply with subsection
14 (a), the Commission, by regulation, shall—

15 (A) issue requirements to eliminate or min-
16 imize the potential for exposure to and accessi-
17 bility of lead in such electronic devices, which
18 may include requirements that such electronic
19 devices be equipped with a child-resistant cover
20 or casing that prevents exposure to and accessi-
21 bility of the parts of the product containing
22 lead; and

23 (B) establish a schedule by which such
24 electronic devices shall be in full compliance
25 with the limits in subsection (a), unless the

1 Commission determines that full compliance will
2 not be technologically feasible for such devices
3 within a schedule set by the Commission.

4 (5) PERIODIC REVIEW.—The Commission shall,
5 based on the best available scientific and technical
6 information, periodically review and revise the regu-
7 lations promulgated pursuant to this subsection no
8 less frequently than every 5 years after the first pro-
9 mulgation of a regulation under this subsection to
10 make them more stringent and to require the lowest
11 amount of lead the Commission determines is tech-
12 nologically feasible to achieve.

13 (c) APPLICATION WITH ASTM F963.—To the extent
14 that any regulation promulgated by the Commission under
15 this section (or any section of the Consumer Product Safe-
16 ty Act or any other Act enforced by the Commission, as
17 such Acts are affected by this section) is inconsistent with
18 the ASTM F963 standard, such promulgated regulation
19 shall supersede the ASTM F963 standard to the extent
20 of the inconsistency.

21 (d) TECHNOLOGICAL FEASIBILITY DEFINED.—For
22 purposes of this section, a limit shall be deemed techno-
23 logically feasible with regard to a product or product cat-
24 egory if—

1 (1) a product that complies with the limit is
2 commercially available in the product category;

3 (2) technology to comply with the limit is com-
4 mercially available to manufacturers or is otherwise
5 available within the common meaning of the term;

6 (3) industrial strategies or devices have been
7 developed that are capable or will be capable of
8 achieving such a limit by the effective date of the
9 limit and that companies, acting in good faith, are
10 generally capable of adopting; or

11 (4) alternative practices, best practices, or other
12 operational changes would allow the manufacturer to
13 comply with the limit.

14 (e) PENDING RULEMAKING PROCEEDINGS TO HAVE
15 NO EFFECT.—The pendency of a rulemaking proceeding
16 to consider—

17 (1) a delay in the effective date of a limit or an
18 alternate limit under this section related to techno-
19 logical feasibility,

20 (2) an exception for certain products or mate-
21 rials or inaccessibility guidance under subsection (b)
22 of this section, or

23 (3) any other request for modification of or ex-
24 emption from any regulation, rule, standard, or ban

1 under this Act or any other Act enforced by the
2 Commission,
3 shall not delay the effect of any provision or limit under
4 this section nor shall it stay general enforcement of the
5 requirements of this section.

6 (f) MORE STRINGENT LEAD PAINT BAN.—

7 (1) IN GENERAL.—Effective on the date that is
8 1 year after the date of enactment of this Act, the
9 Commission shall modify section 1303.1 of its regu-
10 lations (16 C.F.R. 1301.1) by substituting “0.009
11 percent” for “0.06 percent” in subsection (a) of that
12 section.

13 (2) PERIODIC REVIEW AND REDUCTION.—The
14 Commission shall, no less frequently than every 5
15 years after the date on which the Commission modi-
16 fies the regulations pursuant to paragraph (1), re-
17 view the limit for lead in paint set forth in section
18 1303.1 of title 16, Code of Federal Regulations (as
19 revised by paragraph (1)), and shall by regulation
20 revise downward the limit to require the lowest
21 amount of lead that the Commission determines is
22 technologically feasible to achieve.

23 (3) METHODS FOR SCREENING LEAD IN SMALL
24 PAINTED AREAS.—In order to provide for effective
25 and efficient enforcement of the limit set forth in

1 section 1303.1 of title 16, Code of Federal Regula-
2 tions, the Commission may rely on x-ray fluores-
3 cence technology or other alternative methods for
4 measuring lead in paint or other surface coatings on
5 products subject to such section where the total
6 weight of such paint or surface coating is no greater
7 than 10 milligrams or where such paint or surface
8 coating covers no more than 1 square centimeter of
9 the surface area of such products. Such alternative
10 methods for measurement shall not permit more
11 than 2 micrograms of lead in a total weight of 10
12 milligrams or less of paint or other surface coating
13 or in a surface area of 1 square centimeter or less.

14 (4) ALTERNATIVE METHODS OF MEASURING
15 LEAD IN PAINT GENERALLY.—

16 (A) STUDY.—Not later than 1 year after
17 the date of enactment of this Act, the Commis-
18 sion shall complete a study to evaluate the ef-
19 fectiveness, precision, and reliability of x-ray
20 fluorescence technology and other alternative
21 methods for measuring lead in paint or other
22 surface coatings when used on a children's
23 product or furniture article in order to deter-
24 mine compliance with part 1303 of title 16,

1 Code of Federal Regulations, as modified pur-
2 suant to this subsection.

3 (B) RULEMAKING.—If the Commission de-
4 termines, based on the study in subparagraph
5 (A), that x-ray fluorescence technology or other
6 alternative methods for measuring lead in paint
7 are as effective, precise, and reliable as the
8 methodology used by the Commission for com-
9 pliance determinations prior to the date of en-
10 actment of this Act, the Commission may pro-
11 mulgate regulations governing the use of such
12 methods in determining the compliance of prod-
13 ucts with part 1303 of title 16, Code of Federal
14 Regulations, as modified pursuant to this sub-
15 section. Any regulations promulgated by the
16 Commission shall ensure that such alternative
17 methods are no less effective, precise, and reli-
18 able than the methodology used by the Commis-
19 sion prior to the date of enactment of this Act.

20 (5) PERIODIC REVIEW.—The Commission shall,
21 no less frequently than every 5 years after the Com-
22 mission completes the study required by paragraph
23 (4)(A), review and revise any methods for measure-
24 ment utilized by the Commission pursuant to para-
25 graph (3) or pursuant to any regulations promul-

1 gated under paragraph (4) to ensure that such
2 methods are the most effective methods available to
3 protect children's health. The Commission shall con-
4 duct an ongoing effort to study and encourage the
5 further development of alternative methods for
6 measuring lead in paint and other surface coating
7 that can effectively, precisely, and reliably detect
8 lead levels at or below the level set forth in part
9 1303 of title 16, Code of Federal Regulations, or
10 any lower level established by regulation.

11 (6) NO EFFECT ON LEGAL LIMIT.—Nothing in
12 paragraph (3), nor reliance by the Commission on
13 any alternative method of measurement pursuant to
14 such paragraph, nor any rule prescribed pursuant to
15 paragraph (4), nor any method established pursuant
16 to paragraph (5) shall be construed to alter the limit
17 set forth in section 1303 of title 16, Code of Federal
18 Regulations, as modified pursuant to this subsection,
19 or provide any exemption from such limit.

20 (7) CONSTRUCTION.—Nothing in this sub-
21 section shall be construed to affect the authority of
22 the Commission or any other person to use alter-
23 native methods for detecting lead as a screening
24 method to determine whether further testing or ac-
25 tion is needed.

1 (g) TREATMENT AS A REGULATION UNDER THE
2 FHSA.—Any ban imposed by subsection (a) or rule pro-
3 mulgated under subsection (a) or (b) of this section, and
4 section 1303.1 of title 16, Code of Federal Regulations
5 (as modified pursuant to subsection (f)(1) or (2)), or any
6 successor regulation, shall be considered a regulation of
7 the Commission promulgated under or for the enforcement
8 of section 2(q) of the Federal Hazardous Substances Act
9 (15 U.S.C. 1261(q)).

10 **SEC. 102. MANDATORY THIRD PARTY TESTING FOR CER-**
11 **TAIN CHILDREN'S PRODUCTS.**

12 (a) MANDATORY AND THIRD PARTY TESTING.—

13 (1) GENERAL CONFORMITY CERTIFICATION.—

14 (A) AMENDMENT.—Paragraph (1) of sec-
15 tion 14(a) (15 U.S.C. 2063(a)) is amended to
16 read as follows:

17 “(1) GENERAL CONFORMITY CERTIFICATION.—

18 Except as provided in paragraphs (2) and (3), every
19 manufacturer of a product which is subject to a con-
20 sumer product safety rule under this Act or similar
21 rule, ban, standard, or regulation under any other
22 Act enforced by the Commission and which is im-
23 ported for consumption or warehousing or distrib-
24 uted in commerce (and the private labeler of such

1 product if such product bears a private label) shall
2 issue a certificate which—

3 “(A) shall certify, based on a test of each
4 product or upon a reasonable testing program,
5 that such product complies with all rules, bans,
6 standards, or regulations applicable to the prod-
7 uct under this Act or any other Act enforced by
8 the Commission; and

9 “(B) shall specify each such rule, ban,
10 standard, or regulation applicable to the prod-
11 uct.”.

12 (B) EFFECTIVE DATE.—The amendment
13 made by subparagraph (A) shall take effect 90
14 days after the date of enactment of this Act.

15 (2) THIRD PARTY TESTING REQUIREMENT.—
16 Section 14(2) (15 U.S.C. 2063(2)) is further amend-
17 ed by redesignating paragraph (2) as paragraph (4)
18 and inserting after paragraph (1) the following:

19 “(2) THIRD PARTY TESTING REQUIREMENT.—
20 Effective on the dates provided in paragraph (3), be-
21 fore importing for consumption or warehousing or
22 distributing in commerce any children’s product that
23 is subject to a children’s product safety rule, every
24 manufacturer of such children’s product (and the

1 private labeler of such children's product if such
2 children's product bears a private label) shall—

3 “(A) submit sufficient samples of the chil-
4 dren's product, or samples that are identical in
5 all material respects to the product, to a third
6 party conformity assessment body accredited
7 under paragraph (3) to be tested for compliance
8 with such children's product safety rule; and

9 “(B) based on such testing, issue a certifi-
10 cate that certifies that such children's product
11 complies with the children's product safety rule
12 based on the assessment of a third party con-
13 formity assessment body accredited to conduct
14 such tests.

15 A manufacturer or private labeler shall issue either
16 a separate certificate for each children's product
17 safety rule applicable to a product or a combined
18 certificate that certifies compliance with all applica-
19 ble children's product safety rules, in which case
20 each such rule shall be specified.

21 “(3) SCHEDULE FOR IMPLEMENTATION OF
22 THIRD PARTY TESTING.—

23 “(A) GENERAL APPLICATION.—Except as
24 provided under subparagraph (F), the require-
25 ments of paragraph (2) shall apply to any chil-

1 dren’s product manufactured more than 90
2 days after the Commission has established and
3 published notice of the requirements for accred-
4 itation of third party conformity assessment
5 bodies to assess conformity with a children’s
6 product safety rule to which such children’s
7 product is subject.

8 “(B) TIME LINE FOR ACCREDITATION.—

9 “(i) LEAD PAINT.—Not later than 30
10 days after the date of enactment of the
11 Consumer Product Safety Improvement
12 Act of 2008, the Commission shall publish
13 notice of the requirements for accreditation
14 of third party conformity assessment bod-
15 ies to assess conformity with part 1303 of
16 title 16, Code of Federal Regulations.

17 “(ii) FULL-SIZE CRIBS; NON FULL-
18 SIZE CRIBS; PACIFIERS.—Not later than
19 60 days after the date of enactment of the
20 Consumer Product Safety Improvement
21 Act of 2008, the Commission shall publish
22 notice of the requirements for accreditation
23 of third party conformity assessment bod-
24 ies to assess conformity with parts 1508,
25 1509, and 1511 of such title.

1 “(iii) SMALL PARTS.—Not later than
2 90 days after the date of enactment of the
3 Consumer Product Safety Improvement
4 Act of 2008, the Commission shall publish
5 notice of the requirements for accreditation
6 of third party conformity assessment bod-
7 ies to assess conformity with part 1501 of
8 such title.

9 “(iv) CHILDREN’S METAL JEWELRY.—
10 Not later than 120 days after the date of
11 enactment of the Consumer Product Safety
12 Improvement Act of 2008, the Commission
13 shall publish notice of the requirements for
14 accreditation of third party conformity as-
15 sessment bodies to assess conformity with
16 the requirements of section 101(a)(2) of
17 such Act with respect to children’s metal
18 jewelry.

19 “(v) BABY BOUNCERS, WALKERS, AND
20 JUMPERS.—Not later than 210 days after
21 the date of enactment of the Consumer
22 Product Safety Improvement Act of 2008,
23 the Commission shall publish notice of the
24 requirements for accreditation of third
25 party conformity assessment bodies to as-

1 sess conformity with parts 1500.18(a)(6)
2 and 1500.86(a) of such title.

3 “(vi) ALL OTHER CHILDREN’S PROD-
4 UCT SAFETY RULES.—The Commission
5 shall publish notice of the requirements for
6 accreditation of third party conformity as-
7 sessment bodies to assess conformity with
8 other children’s product safety rules at the
9 earliest practicable date, but in no case
10 later than 10 months after the date of en-
11 actment of the Consumer Product Safety
12 Improvement Act of 2008, or, in the case
13 of children’s product safety rules estab-
14 lished or revised 1 year or more after such
15 date of enactment, not later than 90 days
16 before such rules or revisions take effect.

17 “(C) ACCREDITATION.—Accreditation of
18 third party conformity assessment bodies pursu-
19 ant to the requirements established under sub-
20 paragraph (B) may be conducted either by the
21 Commission or by an independent accreditation
22 organization designated by the Commission.

23 “(D) PERIODIC REVIEW.—The Commission
24 shall periodically review and revise the accredi-
25 tation requirements established under subpara-

1 graph (B) to ensure that the requirements as-
2 sure the highest conformity assessment body
3 quality that is feasible.

4 “(E) PUBLICATION OF ACCREDITED ENTI-
5 TIES.—The Commission shall maintain on its
6 Internet website an up-to-date list of entities
7 that have been accredited to assess conformity
8 with children’s product safety rules in accord-
9 ance with the requirements published by the
10 Commission under this paragraph.

11 “(F) EXTENSION.—If the Commission de-
12 termines that an insufficient number of third
13 party conformity assessment bodies have been
14 accredited to permit certification for a chil-
15 dren’s product safety rule under the accelerated
16 schedule required by this paragraph, the Com-
17 mission may extend the deadline for certifi-
18 cation to such rule by not more than 60 days.

19 “(G) RULEMAKING.—Until the date that is
20 3 years after the Consumer Product Safety Im-
21 provement Act of 2008, Commission pro-
22 ceedings under this paragraph shall be exempt
23 from the requirements of sections 553 and 601
24 through 612 of title 5, United States Code.”.

1 (3) CONFORMING AMENDMENTS.—Section
2 14(a)(4) (15 U.S.C. 2063(a)(4)), as redesignated by
3 paragraph (2) of this subsection, is amended—

4 (A) by striking “required by paragraph (1)
5 of this subsection” and inserting “required
6 under paragraph (1), (2), or (3)”; and

7 (B) by striking “requirement under para-
8 graph (1)” and inserting “requirement under
9 paragraph (1), (2), or (3)”.

10 (b) ADDITIONAL REQUIREMENTS; DEFINITIONS.—
11 Section 14 (15 U.S.C. 2063) is further amended by adding
12 at the end the following:

13 “(d) ADDITIONAL REGULATIONS FOR THIRD PARTY
14 TESTING.—

15 “(1) AUDIT.—Not later than 10 months after
16 the date of enactment of the Consumer Product
17 Safety Improvement Act of 2008, the Commission
18 shall by regulation establish requirements for the
19 periodic audit of third party conformity assessment
20 bodies as a condition for the continuing accredita-
21 tion of such conformity assessment bodies under
22 subsection (a)(3)(C).

23 “(2) COMPLIANCE; CONTINUING TESTING.—Not
24 later than 15 months after the date of enactment of

1 the Consumer Product Safety Improvement Act of
2 2008, the Commission shall by regulation—

3 “(A) initiate a program by which a manu-
4 facturer or private labeler may label a consumer
5 product as complying with the certification re-
6 quirements of subsection (a); and

7 “(B) establish protocols and standards—

8 “(i) for ensuring that a children’s
9 product tested for compliance with an ap-
10 plicable children’s product safety rule is
11 subject to testing periodically and when
12 there has been a material change in the
13 product’s design or manufacturing process,
14 including the sourcing of component parts;

15 “(ii) for the testing of random sam-
16 ples to ensure continued compliance;

17 “(iii) for verifying that a children’s
18 product tested by a conformity assessment
19 body complies with applicable children’s
20 product safety rules; and

21 “(iv) for safeguarding against the ex-
22 ercise of undue influence on a third party
23 conformity assessment body by a manufac-
24 turer or private labeler.

25 “(e) WITHDRAWAL OF ACCREDITATION.—

1 “(1) IN GENERAL.—The Commission may with-
2 draw its accreditation or its acceptance of the ac-
3 creditation of a third party conformity assessment
4 body accredited under this section if the Commission
5 finds, after notice and investigation, that—

6 “(A) a manufacturer, private labeler, or
7 governmental entity has exerted undue influ-
8 ence on such conformity assessment body or
9 otherwise interfered with or compromised the
10 integrity of the testing process with respect to
11 the certification of a children’s product under
12 this section; or

13 “(B) such conformity assessment body
14 failed to comply with an applicable protocol,
15 standard, or requirement established by the
16 Commission under subsection (d).

17 “(2) PROCEDURE.—In any proceeding to with-
18 draw the accreditation of a conformity assessment
19 body, the Commission—

20 “(A) shall consider the gravity of the con-
21 formity assessment body’s action or failure to
22 act, including—

23 “(i) whether the action or failure to
24 act resulted in injury, death, or the risk of
25 injury or death;

1 “(ii) whether the action or failure to
2 act constitutes an isolated incident or rep-
3 resents a pattern or practice; and

4 “(iii) whether and when the con-
5 formity assessment body initiated remedial
6 action; and

7 “(B) may—

8 “(i) withdraw its acceptance of the ac-
9 creditation of the conformity assessment
10 body on a permanent or temporary basis;
11 and

12 “(ii) establish requirements for re-
13 accreditation of the conformity assessment
14 body.

15 “(3) FAILURE TO COOPERATE.—The Commis-
16 sion may suspend the accreditation of a conformity
17 assessment body if it fails to cooperate with the
18 Commission in an investigation under this section.

19 “(f) DEFINITIONS.—In this section:

20 “(1) CHILDREN’S PRODUCT SAFETY RULE.—
21 The term ‘children’s product safety rule’ means a
22 consumer product safety rule under this Act or simi-
23 lar rule, regulation, standard, or ban under any
24 other Act enforced by the Commission, including a

1 rule declaring a consumer product to be a banned
2 hazardous product or substance.

3 “(2) THIRD PARTY CONFORMITY ASSESSMENT
4 BODY.—

5 “(A) IN GENERAL.—The term ‘third party
6 conformity assessment body’ means a con-
7 formity assessment body that, except as pro-
8 vided in subparagraph (D), is not owned, man-
9 aged, or controlled by the manufacturer or pri-
10 vate labeler of a product assessed by such con-
11 formity assessment body.

12 “(B) GOVERNMENTAL PARTICIPATION.—
13 Such term may include an entity that is owned
14 or controlled in whole or in part by a govern-
15 ment if—

16 “(i) to the extent practicable, manu-
17 facturers or private labelers located in any
18 nation are permitted to choose conformity
19 assessment bodies that are not owned or
20 controlled by the government of that na-
21 tion;

22 “(ii) the entity’s testing results are
23 not subject to undue influence by any
24 other person, including another govern-
25 mental entity;

1 “(iii) the entity is not accorded more
2 favorable treatment than other third party
3 conformity assessment bodies in the same
4 nation who have been accredited under this
5 section;

6 “(iv) the entity’s testing results are
7 accorded no greater weight by other gov-
8 ernmental authorities than those of other
9 third party conformity assessment bodies
10 accredited under this section; and

11 “(v) the entity does not exercise
12 undue influence over other governmental
13 authorities on matters affecting its oper-
14 ations or on decisions by other govern-
15 mental authorities controlling distribution
16 of products based on outcomes of the enti-
17 ty’s conformity assessments.

18 “(C) TESTING AND CERTIFICATION OF ART
19 MATERIALS AND PRODUCTS.—A certifying orga-
20 nization (as defined in appendix A to section
21 1500.14(b)(8) of title 16, Code of Federal Reg-
22 ulations (or any successor regulation or ruling))
23 meets the requirements of subparagraph (A)
24 with respect to the certification of art material
25 and art products required under this section or

1 by regulations prescribed under the Federal
2 Hazardous Substances Act (15 U.S.C. 1261 et
3 seq.).

4 “(D) FIREWALLED CONFORMITY ASSESS-
5 MENT BODIES.—Upon request, the Commission
6 may accredit a conformity assessment body that
7 is owned, managed, or controlled by a manufac-
8 turer or private labeler as a third party con-
9 formity assessment body if the Commission by
10 order finds that—

11 “(i) accreditation of the conformity
12 assessment body would provide equal or
13 greater consumer safety protection than
14 the manufacturer’s or private labeler’s use
15 of an independent third party conformity
16 assessment body; and

17 “(ii) the conformity assessment body
18 has established procedures to ensure
19 that—

20 “(I) its test results are protected
21 from undue influence by the manufac-
22 turer, private labeler or other inter-
23 ested party;

24 “(II) the Commission is notified
25 immediately of any attempt by the

1 manufacturer, private labeler or other
2 interested party to hide or exert
3 undue influence over test results; and
4 “(III) allegations of undue influ-
5 ence may be reported confidentially to
6 the Commission.

7 “(g) REQUIREMENTS FOR CERTIFICATES.—

8 “(1) IDENTIFICATION OF ISSUER AND CON-
9 FORMITY ASSESSMENT BODY.—Every certificate re-
10 quired under this section shall identify the manufac-
11 turer or private labeler issuing the certificate and
12 any third party conformity assessment body on
13 whose testing the certificate depends. The certificate
14 shall include, at a minimum, the date and place of
15 manufacture, the date and place where the product
16 was tested, each party’s name, full mailing address,
17 telephone number, and contact information for the
18 individual responsible for maintaining records of test
19 results.

20 “(2) ENGLISH LANGUAGE.—Every certificate
21 required under this section shall be legible and all
22 content required by this section shall be in the
23 English language. A certificate may also contain the
24 same content in any other language.

1 “(3) AVAILABILITY OF CERTIFICATES.—Every
2 certificate required under this section shall accom-
3 pany the applicable product or shipment of products
4 covered by the same certificate and a copy of the
5 certificate shall be furnished to each distributor or
6 retailer of the product. Upon request, the manufac-
7 turer or private labeler issuing the certificate shall
8 furnish a copy of the certificate to the Commission.

9 “(4) ELECTRONIC FILING OF CERTIFICATES
10 FOR IMPORTED PRODUCTS.—In consultation with
11 the Commissioner of Customs, the Commission may,
12 by rule, provide for the electronic filing of certifi-
13 cates under this section up to 24 hours before ar-
14 rival of an imported product. Upon request, the
15 manufacturer or private labeler issuing the certifi-
16 cate shall furnish a copy to the Commission and to
17 the Commissioner of Customs.

18 “(h) RULE OF CONSTRUCTION.—Compliance of any
19 children’s product with third party testing and certifi-
20 cation or general conformity certification requirements
21 under this section shall not be construed to exempt such
22 children’s product from any requirement that such prod-
23 uct actually be in conformity with all applicable rules, reg-
24 ulation, standards, or ban under any Act enforced by the
25 Commission.”.

1 (c) CPSC CONSIDERATION OF EXISTING REQUIRE-
2 MENTS.—In establishing standards for accreditation of a
3 third party conformity assessment body under section
4 14(a)(3) of the Consumer Product Safety Act, as added
5 by subsection (a), the Commission may consider standards
6 and protocols for accreditation of such conformity assess-
7 ment bodies by independent accreditation organizations
8 that are in effect on the date of enactment of this Act,
9 but shall ensure that the protocols, standards, and re-
10 quirements prescribed under such section 14(a)(3) incor-
11 porate, as the standard for accreditation, the most current
12 scientific and technological standards and techniques
13 available.

14 (d) CONFORMING AMENDMENTS.—Section 14(b) (15
15 U.S.C. 2063(b)) is amended—

16 (1) by striking “consumer products which are
17 subject to consumer product safety standards under
18 this Act” and inserting “any product which is sub-
19 ject to a consumer product safety rule under this
20 Act, or a similar rule, regulation, standard, or ban
21 under any other Act enforced by the Commission,”;
22 and

23 (2) by striking “or testing programs.” and in-
24 serting “, unless the Commission, by rule, requires
25 testing by an independent third party for a par-

1 ticular rule, regulation, standard, or ban, or for a
2 particular class of products.”.

3 **SEC. 103. TRACKING LABELS FOR CHILDREN'S PRODUCTS.**

4 (a) IN GENERAL.—Section 14(a) (15 U.S.C.
5 2063(a)), as amended by section 102 of this Act, is further
6 amended by adding at the end the following:

7 “(5) Effective 1 year after the date of enactment of
8 the Consumer Product Safety Improvement Act of 2008,
9 the manufacturer of a children’s product shall place per-
10 manent, distinguishing marks on the product and its pack-
11 aging, to the extent practicable, that will enable—

12 “(A) the manufacturer to ascertain the location
13 and date of production of the product, cohort infor-
14 mation (including the batch, run number, or other
15 identifying characteristic), and any other informa-
16 tion determined by the manufacturer to facilitate
17 ascertaining the specific source of the product by
18 reference to those marks; and

19 “(B) the ultimate purchaser to ascertain the
20 manufacturer or private labeler, location and date of
21 production of the product, and cohort information
22 (including the batch, run number, or other identi-
23 fying characteristic).”.

24 (b) LABEL INFORMATION.—Section 14(c) (15 U.S.C.
25 2063(c)) is amended by redesignating paragraphs (2) and

1 (3) as paragraphs (3) and (4) and by inserting after para-
2 graph (1) the following:

3 “(2) The cohort information (including the
4 batch, run number, or other identifying char-
5 acteristic) of the product.”.

6 (c) ADVERTISING, LABELING, AND PACKAGING REP-
7 RESENTATION.—Section 14 (15 U.S.C. 2063) is further
8 amended by adding at the end the following:

9 “(d) REQUIREMENT FOR ADVERTISEMENTS.—No ad-
10 vertisement for a consumer product or label or packaging
11 of such product may contain a reference to a consumer
12 product safety rule or a voluntary consumer product safety
13 standard unless such product conforms with the applicable
14 safety requirements of such rule or standard.”.

15 **SEC. 104. STANDARDS AND CONSUMER REGISTRATION OF**
16 **DURABLE NURSERY PRODUCTS.**

17 (a) SHORT TITLE.—This section may be cited as the
18 “Danny Keysar Child Product Safety Notification Act”.

19 (b) SAFETY STANDARDS.—

20 (1) IN GENERAL.—The Commission shall—

21 (A) in consultation with representatives of
22 consumer groups, juvenile product manufactur-
23 ers, and independent child product engineers
24 and experts, examine and assess the effective-
25 ness of any voluntary consumer product safety

1 standards for durable infant or toddler prod-
2 ucts; and

3 (B) in accordance with section 553 of title
4 5, United States Code, promulgate consumer
5 product safety standards that—

6 (i) are substantially the same as such
7 voluntary standards; or

8 (ii) are more stringent than such vol-
9 untary standards, if the Commission deter-
10 mines that more stringent standards would
11 further reduce the risk of injury associated
12 with such products.

13 (2) TIMETABLE FOR RULEMAKING.—Not later
14 than 1 year after the date of enactment of this Act,
15 the Commission shall commence the rulemaking re-
16 quired under paragraph (1) and shall promulgate
17 standards for no fewer than 2 categories of durable
18 infant or toddler products every 6 months thereafter,
19 beginning with the product categories that the Com-
20 mission determines to be of highest priority, until
21 the Commission has promulgated standards for all
22 such product categories. Thereafter, the Commission
23 shall periodically review and revise the standards set
24 forth under this subsection to ensure that such

1 standards provide the highest level of safety for such
2 products that is feasible.

3 (3) JUDICIAL REVIEW.—Any person adversely
4 affected by such standards may file a petition for re-
5 view under the procedures set forth in section 11(g)
6 of the Consumer Product Safety Act (15 U.S.C.
7 2060(g)), as added by section 236 of this Act.

8 (c) CRIBS.—

9 (1) IN GENERAL.—It shall be a violation of sec-
10 tion 19(a)(1) of the Consumer Product Safety Act
11 (15 U.S.C. 2068(a)(1)) for any person to which this
12 subsection applies to manufacture, sell, contract to
13 sell or resell, lease, sublet, offer, provide for use, or
14 otherwise place in the stream of commerce a crib
15 that is not in compliance with a standard promul-
16 gated under subsection (b).

17 (2) PERSONS TO WHICH SUBSECTION AP-
18 PLIES.—This subsection applies to any person
19 that—

20 (A) manufactures, distributes in commerce,
21 or contracts to sell cribs;

22 (B) based on the person's occupation,
23 holds itself out as having knowledge or skill pe-
24 culiar to cribs, including child care facilities and
25 family child care homes;

1 (C) is in the business of contracting to sell
2 or resell, lease, sublet, or otherwise place cribs
3 in the stream of commerce; or

4 (D) owns or operates a place of public ac-
5 commodation affecting commerce (as defined in
6 section 4 of the Federal Fire Prevention and
7 Control Act of 1974 (15 U.S.C. 2203) applied
8 without regard to the phrase “not owned by the
9 Federal Government”).

10 (3) CRIB DEFINED.—In this subsection, the
11 term “crib” includes—

12 (A) new and used cribs;

13 (B) full-sized or nonfull-sized cribs; and

14 (C) portable cribs and crib-pens.

15 (d) CONSUMER REGISTRATION REQUIREMENT.—

16 (1) RULEMAKING.—Notwithstanding any provi-
17 sion of chapter 6 of title 5, United States Code, or
18 the Paperwork Reduction Act of 1980 (44 U.S.C.
19 3501 et seq.), not later than 1 year after the date
20 of enactment of this Act, the Commission shall, pur-
21 suant to its authority under section 16(b) of the
22 Consumer Product Safety Act (15 U.S.C. 2065(b)),
23 promulgate a final consumer product safety rule to
24 require each manufacturer of a durable infant or
25 toddler product—

1 (A) to provide consumers with a postage-
2 paid consumer registration form with each such
3 product;

4 (B) to maintain a record of the names, ad-
5 dresses, e-mail addresses, and other contact in-
6 formation of consumers who register their own-
7 ership of such products with the manufacturer
8 in order to improve the effectiveness of manu-
9 facturer campaigns to recall such products; and

10 (C) to permanently place the manufacturer
11 name and contact information, model name and
12 number, and the date of manufacture on each
13 durable infant or toddler product.

14 (2) REQUIREMENTS FOR REGISTRATION
15 FORM.—The registration form required to be pro-
16 vided to consumers under paragraph (1) shall—

17 (A) include spaces for a consumer to pro-
18 vide the consumer's name, address, telephone
19 number, and e-mail address;

20 (B) include space sufficiently large to per-
21 mit easy, legible recording of all desired infor-
22 mation;

23 (C) be attached to the surface of each du-
24 rable infant or toddler product so that, as a

1 practical matter, the consumer must notice and
2 handle the form after purchasing the product;

3 (D) include the manufacturer's name,
4 model name and number for the product, and
5 the date of manufacture;

6 (E) include a message explaining the pur-
7 pose of the registration and designed to encour-
8 age consumers to complete the registration;

9 (F) include an option for consumers to
10 register through the Internet; and

11 (G) include a statement that information
12 provided by the consumer shall not be used for
13 any purpose other than to facilitate a recall of
14 or safety alert regarding that product.

15 In issuing regulations under this section, the Com-
16 mission may prescribe the exact text and format of
17 the required registration form.

18 (3) RECORD KEEPING AND NOTIFICATION RE-
19 QUIREMENTS.—The rules required under this section
20 shall require each manufacturer of a durable infant
21 or toddler product to maintain a record of reg-
22 istrants for each product manufactured that includes
23 all of the information provided by each consumer
24 registered, and to use such information to notify
25 such consumers in the event of a voluntary or invol-

1 untary recall of or safety alert regarding such prod-
2 uct. Each manufacturer shall maintain such a record
3 for a period of not less than 6 years after the date
4 of manufacture of the product. Consumer informa-
5 tion collected by a manufacturer under this Act may
6 not be used by the manufacturer, nor disseminated
7 by such manufacturer to any other party, for any
8 purpose other than notification to such consumer in
9 the event of a product recall or safety alert.

10 (4) STUDY.—The Commission shall conduct a
11 study at such time as it considers appropriate on the
12 effectiveness of the consumer registration forms re-
13 quired by this section in facilitating product recalls
14 and whether such registration forms should be re-
15 quired for other children’s products. Not later than
16 4 years after the date of enactment of this Act, the
17 Commission shall report its findings to the appro-
18 priate Congressional committees.

19 (e) USE OF ALTERNATIVE RECALL NOTIFICATION
20 TECHNOLOGY.—

21 (1) TECHNOLOGY ASSESSMENT AND REPORT.—

22 The Commission shall—

23 (A) beginning 2 years after a rule is pro-
24 mulgated under subsection (d), regularly review
25 recall notification technology and assess the ef-

1 fectiveness of such technology in facilitating re-
2 calls of durable infant or toddler products; and

3 (B) not later than 3 years after the date
4 of enactment of this Act and periodically there-
5 after as the Commission considers appropriate,
6 transmit a report on such assessments to the
7 appropriate Congressional committees.

8 (2) DETERMINATION.—If, based on the assess-
9 ment required by paragraph (1), the Commission de-
10 termines by rule that a recall notification technology
11 is likely to be as effective or more effective in facili-
12 tating recalls of durable infant or toddler products
13 as the registration forms required by subsection (d),
14 the Commission—

15 (A) shall submit to the appropriate Con-
16 gressional committees a report on such deter-
17 mination; and

18 (B) shall permit a manufacturer of durable
19 infant or toddler products to use such tech-
20 nology in lieu of such registration forms to fa-
21 cilitate recalls of durable infant or toddler prod-
22 ucts.

23 (f) DEFINITION OF DURABLE INFANT OR TODDLER
24 PRODUCT.—As used in this section, the term “durable in-
25 fant or toddler product”—

1 (1) means a durable product intended for use,
2 or that may be reasonably expected to be used, by
3 children under the age of 5 years; and

4 (2) includes—

5 (A) full-size cribs and nonfull-size cribs;

6 (B) toddler beds;

7 (C) high chairs, booster chairs, and hook-
8 on chairs;

9 (D) bath seats;

10 (E) gates and other enclosures for con-
11 fining a child;

12 (F) play yards;

13 (G) stationary activity centers;

14 (H) infant carriers;

15 (I) strollers;

16 (J) walkers;

17 (K) swings; and

18 (L) bassinets and cradles.

19 **SEC. 105. LABELING REQUIREMENT FOR ADVERTISING**

20 **TOYS AND GAMES.**

21 Section 24 of the Federal Hazardous Substances Act
22 (15 U.S.C. 1278) is amended—

23 (1) by redesignating subsections (c) and (d) as
24 subsections (d) and (e), respectively; and

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

3 “(c) ADVERTISING.—

4 “(1) REQUIREMENT.—

5 “(A) CAUTIONARY STATEMENT.—Any ad-
6 vertisement by a retailer, manufacturer, im-
7 porter, distributor, or private labeler (including
8 advertisements on Internet websites or in cata-
9 logues or other printed materials) that provides
10 a direct means for the purchase or order of a
11 product for which a cautionary statement is re-
12 quired under subsection (a) or (b) shall include
13 the appropriate cautionary statement displayed
14 on or immediately adjacent to that advertise-
15 ment, as modified by regulations issued under
16 paragraph (3).

17 “(B) APPLICATION TO RETAILERS.—

18 “(i) REQUIREMENT TO INFORM.—A
19 manufacturer, importer, distributor, or pri-
20 vate labeler that provides such a product
21 to a retailer shall inform the retailer of any
22 cautionary statement requirement applica-
23 ble to the product.

24 “(ii) RETAILER’S REQUIREMENT TO
25 INQUIRE.—A retailer is not in violation of

1 subparagraph (A) if the retailer requested
2 information from the manufacturer, im-
3 porter, distributor, or private labeler as to
4 whether the cautionary statement required
5 by subparagraph (A) applies to the product
6 that is the subject of the advertisement
7 and the manufacturer, importer, dis-
8 tributor, or private labeler provided false
9 information or did not provide such infor-
10 mation.

11 “(C) DISPLAY.—The cautionary statement
12 required by subparagraph (A) shall be promi-
13 nently displayed—

14 “(i) in the primary language used in
15 the advertisement;

16 “(ii) in conspicuous and legible type
17 in contrast by typography, layout, or color
18 with other material printed or displayed in
19 such advertisement; and

20 “(iii) in a manner consistent with part
21 1500 of title 16, Code of Federal Regula-
22 tions.

23 “(D) DEFINITIONS.—In this subsection:

24 “(i) The terms ‘manufacturer’, ‘dis-
25 tributor’, and ‘private labeler’ have the

1 meaning given those terms in section 3 of
2 the Consumer Product Safety Act (15
3 U.S.C. 2052).

4 “(ii) The term ‘retailer’ has the mean-
5 ing given that term in section 3 of the
6 Consumer Product Safety Act (15 U.S.C.
7 2052), but does not include an individual
8 whose selling activity is intermittent and
9 does not constitute a trade or business.

10 “(2) EFFECTIVE DATE.—The requirement in
11 paragraph (1) shall take effect—

12 “(A) with respect to advertisements on
13 Internet websites, 120 days after the date of
14 enactment of the Consumer Product Safety Im-
15 provement Act of 2008; and

16 “(B) with respect to catalogues and other
17 printed materials, 180 days after such date of
18 enactment.

19 “(3) RULEMAKING.—Notwithstanding any pro-
20 vision of chapter 6 of title 5, United States Code, or
21 the Paperwork Reduction Act of 1980 (44 U.S.C.
22 3501 et seq.), the Commission shall, not later than
23 90 days after the date of enactment of the Con-
24 sumer Product Safety Improvement Act of 2008,
25 promulgate regulations to effectuate this section

1 with respect to catalogues and other printed mate-
2 rial. The Commission may, under such regulations,
3 provide a grace period of no more than 180 days for
4 catalogues and other printed material printed prior
5 to the effective date of paragraph (1) during which
6 time distribution of such catalogues and other print-
7 ed material shall not be considered a violation of
8 such paragraph. The Commission may promulgate
9 regulations concerning the size and placement of the
10 cautionary statement required by paragraph (1) of
11 this subsection as appropriate relative to the size
12 and placement of the advertisements in such cata-
13 logues and other printed material. The Commission
14 shall promulgate regulations that clarify the applica-
15 bility of these requirements to catalogues and other
16 printed material distributed solely between busi-
17 nesses and not to individual consumers.

18 “(4) ENFORCEMENT.—The requirements in
19 paragraph (1) shall be treated as a consumer prod-
20 uct safety standard promulgated under section 9 of
21 the Consumer Product Safety Act (15 U.S.C. 2056).
22 The publication or distribution of any advertisement
23 that is not in compliance with paragraph (1) shall
24 be treated as a prohibited act under section 19(a)(1)
25 of such Act (15 U.S.C. 2068).”.

1 **SEC. 106. MANDATORY TOY SAFETY STANDARDS.**

2 (a) **IN GENERAL.**—Beginning 180 days after the date
3 of enactment of this Act, the provisions of ASTM Inter-
4 national Standard F963–07 Consumer Safety Specifica-
5 tions for Toy Safety (ASTM F963), as it exists on the
6 date of enactment of this Act (except for section 4.2 and
7 Annex 4 or any provision that restates or incorporates an
8 existing mandatory standard or ban promulgated by the
9 Commission or by statute) shall be considered to be con-
10 sumer product safety standards issued by the Commission
11 under section 9 of the Consumer Product Safety Act (15
12 U.S.C. 2058).

13 (b) **RULEMAKING FOR SPECIFIC TOYS, COMPONENTS**
14 **AND RISKS.**—

15 (1) **EVALUATION.**—Not later than 1 year after
16 the date of enactment of this Act, the Commission,
17 in consultation with representatives of consumer
18 groups, juvenile product manufacturers, and inde-
19 pendent child product engineers and experts, shall
20 examine and assess the effectiveness of ASTM F963
21 or its successor standard (except for section 4.2 and
22 Annex 4), as it relates to safety requirements, safety
23 labeling requirements, and test methods related to—

24 (A) internal harm or injury hazards caused
25 by the ingestion or inhalation of magnets in
26 children's products;

- 1 (B) toxic substances;
- 2 (C) toys with spherical ends;
- 3 (D) hemispheric-shaped objects;
- 4 (E) cords, straps, and elastics; and
- 5 (F) battery-operated toys.

6 (2) RULEMAKING.—Within 1 year after the
7 completion of the assessment required by paragraph
8 (1), the Commission shall promulgate rules in ac-
9 cordance with section 553 of title 5, United States
10 Code, that—

11 (A) take into account other children's
12 product safety rules; and

13 (B) are more stringent than such stand-
14 ards, if the Commission determines that more
15 stringent standards would further reduce the
16 risk of injury of such toys.

17 (c) PERIODIC REVIEW.—The Commission shall peri-
18 odically review and revise the rules set forth under this
19 section to ensure that such rules provide the highest level
20 of safety for such products that is feasible.

21 (d) CONSIDERATION OF REMAINING ASTM STAND-
22 ARDS.—After promulgating the rules required by sub-
23 section (b), the Commission shall—

24 (1) in consultation with representatives of con-
25 sumer groups, juvenile product manufacturers, and

1 independent child product engineers and experts, ex-
2 amine and assess the effectiveness of ASTM F963
3 (and alternative health protective requirements to
4 prevent or minimize flammability of children's prod-
5 ucts) or its successor standard, and shall assess the
6 adequacy of such standards in protecting children
7 from safety hazards; and

8 (2) in accordance with section 553 of title 5,
9 United States Code, promulgate consumer product
10 safety rules that—

11 (A) take into account other children's
12 product safety rules; and

13 (B) are more stringent than such stand-
14 ards, if the Commission determines that more
15 stringent standards would further reduce the
16 risk of injury associated with such toys.

17 (e) **PRIORITIZATION.**—The Commission shall promul-
18 gate rules beginning with the product categories that the
19 Commission determines to be of highest priority, until the
20 Commission has promulgated standards for all such prod-
21 uct categories.

22 (f) **TREATMENT AS CONSUMER PRODUCT SAFETY**
23 **STANDARDS.**—Rules issued under this section shall be
24 considered consumer product safety standards issued by

1 the Commission under section 9 of the Consumer Product
2 Safety Act (15 U.S.C. 2058).

3 (g) REVISIONS.—If ASTM International (or its suc-
4 cessor entity) proposes to revise ASTM F963–07, or a
5 successor standard, it shall notify the Commission of the
6 proposed revision. The Commission shall incorporate the
7 revision or a section of the revision into the consumer
8 product safety rule. The revised standard shall be consid-
9 ered to be a consumer product safety standard issued by
10 the Consumer Product Safety Commission under section
11 9 of the Consumer Product Safety Act (15 U.S.C. 2058),
12 effective 180 days after the date on which ASTM Inter-
13 national notifies the Commission of the revision unless,
14 within 90 days after receiving that notice, the Commission
15 notifies ASTM International that it has determined that
16 the proposed revision does not improve the safety of the
17 consumer product covered by the standard. If the Commis-
18 sion so notifies ASTM International with respect to a pro-
19 posed revision of the standard, the existing standard shall
20 continue to be considered to be a consumer product safety
21 rule without regard to the proposed revision.

22 (h) RULEMAKING TO CONSIDER EXEMPTION FROM
23 PREEMPTION.—

24 (1) EXEMPTION OF STATE LAW FROM PREEMP-
25 TION.—Upon application of a State or political sub-

1 division of a State, the Commission shall, after no-
2 tice and opportunity for oral presentation of views,
3 consider a rulemaking to exempt from the provisions
4 of section 26(a) of the Consumer Product Safety Act
5 (under such conditions as it may impose in the rule)
6 any proposed safety standard or regulation which is
7 described in such application and which is designed
8 to protect against a risk of injury associated with a
9 children's product subject to the consumer product
10 safety standards described in subsection (a) or any
11 rule promulgated under this section. The Commis-
12 sion shall grant such an exemption if the State or
13 political subdivision standard or regulation—

14 (A) provides a significantly higher degree
15 of protection from such risk of injury than the
16 consumer product safety standard or rule under
17 this section; and

18 (B) does not unduly burden interstate
19 commerce.

20 In determining the burden, if any, of a State or po-
21 litical subdivision standard or regulation on inter-
22 state commerce, the Commission shall consider and
23 make appropriate (as determined by the Commission
24 in its discretion) findings on the technological and
25 economic feasibility of complying with such standard

1 or regulation, the cost of complying with such stand-
2 ard or regulation, the geographic distribution of the
3 consumer product to which the standard or regula-
4 tion would apply, the probability of other States or
5 political subdivisions applying for an exemption
6 under this subsection for a similar standard or regu-
7 lation, and the need for a national, uniform standard
8 under this Act for such consumer product.

9 (2) EFFECT OF STANDARDS ON ESTABLISHED
10 STATE LAWS.—Nothing in this section or in section
11 26 of the Consumer Product Safety Act (15 U.S.C.
12 2075) shall prevent a State or political subdivision
13 of a State from continuing in effect a safety require-
14 ment applicable to a toy or other children's product
15 that is designed to deal with the same risk of injury
16 as the consumer product safety standards estab-
17 lished by this section and that is in effect on the day
18 before the date of enactment of this Act, if such
19 State or political subdivision has filed such require-
20 ment with the Commission within 90 days after the
21 date of enactment of this Act, in such form and in
22 such manner as the Commission may require.

23 (i) JUDICIAL REVIEW.—The issuance of any rule
24 under this section is subject to judicial review as provided

1 in section 11(g) of the Consumer Product Safety Act (15
2 U.S.C. 2060(g)), as added by section 236 of this Act.

3 **SEC. 107. STUDY OF PREVENTABLE INJURIES AND DEATHS**
4 **IN MINORITY CHILDREN RELATED TO CON-**
5 **SUMER PRODUCTS.**

6 (a) **IN GENERAL.**—Not later than 90 days after the
7 date of enactment of this Act, the Comptroller General
8 shall initiate a study, by the Government Accountability
9 Office or by contract through an independent entity, to
10 assess disparities in the risks and incidence of preventable
11 injuries and deaths among children of minority popu-
12 lations, including Black, Hispanic, American Indian, Alas-
13 ka Native, Native Hawaiian, and Asian/Pacific Islander
14 children in the United States. The Comptroller General
15 shall consult with the Commission as necessary.

16 (b) **REQUIREMENTS.**—The study shall examine the
17 racial disparities of the rates of preventable injuries and
18 deaths related to suffocation, poisonings, and drownings,
19 including those associated with the use of cribs, mattresses
20 and bedding materials, swimming pools and spas, and toys
21 and other products intended for use by children.

22 (c) **REPORT.**—Not later than 1 year after the date
23 of enactment of this Act, the Comptroller General shall
24 report the findings to the appropriate Congressional com-
25 mittees. The report shall include—

1 (1) the Comptroller General's findings on the
2 incidence of preventable risks of injuries and deaths
3 among children of minority populations and rec-
4 ommendations for minimizing such risks;

5 (2) recommendations for public outreach,
6 awareness, and prevention campaigns specifically
7 aimed at racial minority populations; and

8 (3) recommendations for education initiatives
9 that may reduce statistical disparities.

10 **SEC. 108. PROHIBITION ON SALE OF CERTAIN PRODUCTS**
11 **CONTAINING SPECIFIED PHTHALATES.**

12 (a) PROHIBITION ON THE SALE OF CERTAIN PROD-
13 UCTS CONTAINING PHTHALATES.—Beginning on the date
14 that is 180 days after the date of enactment of this Act,
15 it shall be unlawful for any person to manufacture for sale,
16 offer for sale, distribute in commerce, or import into the
17 United States any children's toy or child care article that
18 contains concentrations of more than 0.1 percent of di-
19 (2-ethylhexyl) phthalate (DEHP), dibutyl phthalate
20 (DBP), or benzyl butyl phthalate (BBP).

21 (b) PROHIBITION ON THE SALE OF ADDITIONAL
22 PRODUCTS CONTAINING CERTAIN PHTHALATES.—

23 (1) INTERIM PROHIBITION.—Beginning on the
24 date that is 180 days after the date of enactment of
25 this Act and until a final rule is promulgated under

1 paragraph (3), it shall be unlawful for any person to
2 manufacture for sale, offer for sale, distribute in
3 commerce, or import into the United States any chil-
4 dren's toy that can be placed in a child's mouth or
5 child care article that contains concentrations of
6 more than 0.1 percent of diisononyl phthalate
7 (DINP), diisodecyl phthalate (DIDP), or di-n-octyl
8 phthalate (DnOP).

9 (2) CHRONIC HAZARD ADVISORY PANEL.—

10 (A) APPOINTMENT.—Not earlier than 180
11 days after the date of enactment of this Act,
12 the Commission shall begin the process of ap-
13 pointing a Chronic Hazard Advisory Panel pur-
14 suant to the procedures of section 28 of the
15 Consumer Product Safety Act (15 U.S.C. 2077)
16 to study the effects on children's health of all
17 phthalates and phthalate alternatives as used in
18 children's toys and child care articles.

19 (B) EXAMINATION.—The panel shall, with-
20 in 18 months after its appointment under sub-
21 paragraph (A), complete an examination of the
22 full range of phthalates that are used in prod-
23 ucts for children and shall—

1 (i) examine all of the potential health
2 effects (including endocrine disrupting ef-
3 fects) of the full range of phthalates;

4 (ii) consider the potential health ef-
5 fects of each of these phthalates both in
6 isolation and in combination with other
7 phthalates;

8 (iii) examine the likely levels of chil-
9 dren's, pregnant women's, and others' ex-
10 posure to phthalates, based on a reason-
11 able estimation of normal and foreseeable
12 use and abuse of such products;

13 (iv) consider the cumulative effect of
14 total exposure to phthalates, both from
15 children's products and from other sources,
16 such as personal care products;

17 (v) review all relevant data, including
18 the most recent, best-available, peer-re-
19 viewed, scientific studies of these
20 phthalates and phthalate alternatives that
21 employ objective data collection practices
22 or employ other objective methods;

23 (vi) consider the health effects of
24 phthalates not only from ingestion but also

1 as a result of dermal, hand-to-mouth, or
2 other exposure;

3 (vii) consider the level at which there
4 is a reasonable certainty of no harm to
5 children, pregnant women, or other suscep-
6 tible individuals and their offspring, con-
7 sidering the best available science, and
8 using sufficient safety factors to account
9 for uncertainties regarding exposure and
10 susceptibility of children, pregnant women,
11 and other potentially susceptible individ-
12 uals; and

13 (viii) consider possible similar health
14 effects of phthalate alternatives used in
15 children's toys and child care articles.

16 The panel's examinations pursuant to this para-
17 graph shall be conducted *de novo*. The findings
18 and conclusions of any previous Chronic Haz-
19 ard Advisory Panel on this issue and other
20 studies conducted by the Commission shall be
21 reviewed by the panel but shall not be consid-
22 ered determinative.

23 (C) REPORT.—Not later than 180 days
24 after completing its examination, the panel ap-
25 pointed under subparagraph (A) shall report to

1 the Commission the results of the examination
2 conducted under this section and shall make
3 recommendations to the Commission regarding
4 any phthalates (or combinations of phthalates)
5 in addition to those identified in subsection (a)
6 or phthalate alternatives that the panel deter-
7 mines should be declared banned hazardous
8 substances.

9 (3) PERMANENT PROHIBITION BY RULE.—Not
10 later than 180 days after receiving the report of the
11 panel under paragraph (2)(C), the Commission shall,
12 pursuant to section 553 of title 5, United States
13 Code, promulgate a final rule to—

14 (A) determine, based on such report,
15 whether to continue in effect the prohibition
16 under paragraph (1), in order to ensure a rea-
17 sonable certainty of no harm to children, preg-
18 nant women, or other susceptible individuals
19 with an adequate margin of safety; and

20 (B) evaluate the findings and recommenda-
21 tions of the Chronic Hazard Advisory Panel
22 and declare any children's product containing
23 any phthalates to be a banned hazardous prod-
24 uct under section 8 of the Consumer Product
25 Safety Act (15 U.S.C. 2057), as the Commis-

1 sion determines necessary to protect the health
2 of children.

3 (c) TREATMENT OF VIOLATION.—A violation of sub-
4 section (a) or (b)(1) or any rule promulgated by the Com-
5 mission under subsection (b)(3) shall be treated as a viola-
6 tion of section 19(a)(1) of the Consumer Product Safety
7 Act (15 U.S.C. 2068(a)(1)).

8 (d) TREATMENT AS CONSUMER PRODUCT SAFETY
9 STANDARDS; EFFECT ON STATE LAWS.—Subsections (a)
10 and (b)(1) and any rule promulgated under subsection
11 (b)(3) shall be considered consumer product safety stand-
12 ards under the Consumer Product Safety Act. Nothing in
13 this section or the Consumer Product Safety Act (15
14 U.S.C. 2051 et seq.) shall be construed to preempt or oth-
15 erwise affect any State requirement with respect to any
16 phthalate alternative not specifically regulated in a con-
17 sumer product safety standard under the Consumer Prod-
18 uct Safety Act.

19 (e) DEFINITIONS.—

20 (1) DEFINED TERMS.—As used in this section:

21 (A) The term “phthalate alternative”
22 means any common substitute to a phthalate,
23 alternative material to a phthalate, or alter-
24 native plasticizer.

1 (B) The term “children’s toy” means a
2 consumer product designed or intended by the
3 manufacturer for a child 12 years of age or
4 younger for use by the child when the child
5 plays.

6 (C) The term “child care article” means a
7 consumer product designed or intended by the
8 manufacturer to facilitate sleep or the feeding
9 of children age 3 and younger, or to help such
10 children with sucking or teething.

11 (D) The term “consumer product” has the
12 meaning given such term in section 3(a)(1) of
13 the Consumer Product Safety Act (15 U.S.C.
14 2052(a)(1)).

15 (2) DETERMINATION GUIDELINES.—

16 (A) AGE.—In determining whether prod-
17 ucts described in paragraph (1) are designed or
18 intended for use by a child of the ages specified,
19 the following factors shall be considered:

20 (i) A statement by a manufacturer
21 about the intended use of such product, in-
22 cluding a label on such product if such
23 statement is reasonable.

24 (ii) Whether the product is rep-
25 resented in its packaging, display, pro-

1 motion, or advertising as appropriate for
2 use by children of the ages specified.

3 (iii) Whether the product is commonly
4 recognized by consumers as being intended
5 for use by a child of the ages specified.

6 (iv) The Age Determination guidelines
7 issued by the Commission staff in Sep-
8 tember 2002 and any successor to such
9 guidelines.

10 (B) TOY THAT CAN BE PLACED IN A
11 CHILD'S MOUTH.— For purposes of this section
12 a toy can be placed in a child's mouth if any
13 part of the toy can actually be brought to the
14 mouth and kept in the mouth by a child so that
15 it can be sucked and chewed. If the children's
16 product can only be licked, it is not regarded as
17 able to be placed in the mouth. If a toy or part
18 of a toy in one dimension is smaller than 5 cen-
19 timeters, it can be placed in the mouth.

1 **TITLE II—CONSUMER PRODUCT**
2 **SAFETY COMMISSION REFORM**
3 **Subtitle A—Administrative**
4 **Improvements**

5 **SEC. 201. REAUTHORIZATION OF THE COMMISSION.**

6 (a) AUTHORIZATION OF APPROPRIATIONS.—Sub-
7 section (a) of section 32 (15 U.S.C. 2081) is amended to
8 read as follows:

9 “(a) GENERAL AUTHORIZATION OF APPROPRIA-
10 TIONS.—

11 “(1) IN GENERAL.—There are authorized to be
12 appropriated to the Commission for the purpose of
13 carrying out the provisions of this Act and any other
14 provision of law the Commission is authorized or di-
15 rected to carry out—

16 “(A) \$118,200,000 for fiscal year 2010;

17 “(B) \$115,640,000 for fiscal year 2011;

18 “(C) \$123,994,000 for fiscal year 2012;

19 “(D) \$131,783,000 for fiscal year 2013;

20 and

21 “(E) \$136,409,000 for fiscal year 2014.

22 “(2) TRAVEL ALLOWANCE.—From amounts ap-
23 propriated pursuant to paragraph (1), there shall be
24 made available \$1,200,000 for fiscal year 2010,
25 \$1,248,000 for fiscal year 2011, \$1,297,000 for fis-

1 cal year 2012, \$1,350,000 for fiscal year 2013, and
2 \$1,403,000 for fiscal year 2014, for travel, subsist-
3 ence, and related expenses incurred in furtherance of
4 the official duties of Commissioners and employees
5 with respect to attendance at meetings or similar
6 functions, which shall be used by the Commission
7 for such purposes in lieu of acceptance of payment
8 or reimbursement for such expenses from any per-
9 son—

10 “(A) seeking official action from, doing
11 business with, or conducting activities regulated
12 by, the Commission; or

13 “(B) whose interests may be substantially
14 affected by the performance or nonperformance
15 of the Commissioner’s or employee’s official du-
16 ties.”.

17 (b) REPORT.—Not later than 180 days after the date
18 of enactment of this Act, the Commission shall transmit
19 to the appropriate Congressional committees a report of
20 its plans to allocate the funding authorized by subsection
21 (a). Such report shall include—

22 (1) the number of full-time investigators and
23 other full-time equivalents the Commission intends
24 to employ;

1 (2) efforts by the Commission to develop stand-
2 ards for training product safety inspectors and tech-
3 nical staff employed by the Commission;

4 (3) efforts and policies of the Commission to
5 encourage Commission scientific staff to seek appro-
6 priate publishing opportunities in peer-reviewed jour-
7 nals and other media; and

8 (4) the efforts of the Commission to reach and
9 educate retailers of second-hand products and infor-
10 mal sellers, such as thrift shops and yard sales, con-
11 cerning consumer product safety rules and product
12 recalls, especially those relating to durable nursery
13 products, in order to prevent the resale of any prod-
14 ucts that have been recalled, including the develop-
15 ment of educational materials for distribution not
16 later than 1 year after the date of enactment of this
17 Act.

18 (c) CONFORMING AMENDMENTS.—Section 32 (15
19 U.S.C. 2081) is further amended by striking subsection
20 (b) and redesignating subsection (c) as subsection (b) and
21 inserting after such subsection designation the following:
22 “LIMITATION.—”

1 **SEC. 202. FULL COMMISSION REQUIREMENT; INTERIM**
2 **QUORUM; PERSONNEL.**

3 (a) **TEMPORARY QUORUM.**—Notwithstanding section
4 4(d) of the Consumer Product Safety Act (15 U.S.C.
5 2053(d)), 2 members of the Commission, if they are not
6 affiliated with the same political party, shall constitute a
7 quorum for the transaction of business for the 1 year pe-
8 riod beginning on the date of enactment of this Act.

9 (b) **REPEAL OF QUORUM LIMITATION.**—

10 (1) **REPEAL.**—Title III of Public Law 102–389
11 is amended by striking the first proviso in the item
12 captioned “CONSUMER PRODUCT SAFETY COMMIS-
13 SION, SALARIES AND EXPENSES” (15 U.S.C. 2053-
14 note).

15 (2) **EFFECTIVE DATE.**—The amendment made
16 by paragraph (1) shall take effect 1 year after the
17 date of enactment of this Act.

18 (c) **PERSONNEL.**—

19 (1) **PROFESSIONAL STAFF.**—The Commission
20 shall increase the number of full-time personnel em-
21 ployed by the Commission to at least 500 by October
22 1, 2013, subject to the availability of appropriations.

23 (2) **PORTS OF ENTRY; OVERSEAS INSPEC-**
24 **TORS.**—As part of the 500 full-time employees re-
25 quired by paragraph (1), the Commission shall hire
26 personnel to be assigned to duty stations at United

1 States ports of entry, or to inspect overseas manu-
2 facturing facilities, subject to the availability of ap-
3 propriations.

4 **SEC. 203. SUBMISSION OF COPY OF CERTAIN DOCUMENTS**
5 **TO CONGRESS.**

6 (a) **IN GENERAL.**—Notwithstanding any rule, regula-
7 tion, or order to the contrary, the Commission shall com-
8 ply with the requirements of section 27(k) of the Con-
9 sumer Product Safety Act (15 U.S.C. 2076(k)) with re-
10 spect to budget recommendations, legislative recommenda-
11 tions, testimony, and comments on legislation submitted
12 by the Commission to the President or the Office of Man-
13 agement and Budget after the date of enactment of this
14 Act.

15 (b) **REINSTATEMENT OF REQUIREMENT.**—Section
16 3003(d) of Public Law 104–66 (31 U.S.C. 1113 note) is
17 amended—

18 (1) by striking “or” after the semicolon in
19 paragraph (31);

20 (2) by redesignating paragraph (32) as (33);
21 and

22 (3) by inserting after paragraph (31) the fol-
23 lowing:

24 “(32) section 27(k) of the Consumer Product
25 Safety Act (15 U.S.C. 2076(k)); or”.

1 **SEC. 204. EXPEDITED RULEMAKING.**

2 (a) **ANPR REQUIREMENT.**—

3 (1) **IN GENERAL.**—Section 9 (15 U.S.C. 2058)

4 is amended—

5 (A) by striking “shall be commenced” in
6 subsection (a) and inserting “may be com-
7 menced”;

8 (B) by striking “in the notice” in sub-
9 section (b) and inserting “in a notice”;

10 (C) by striking “unless, not less than 60
11 days after publication of the notice required in
12 subsection (a), the” in subsection (c) and in-
13 serting “unless the”;

14 (D) by striking “an advance notice of pro-
15 posed rulemaking under subsection (a) relating
16 to the product involved,” in the third sentence
17 of subsection (c) and inserting “the notice,”;
18 and

19 (E) by striking “Register.” in the matter
20 following paragraph (4) of subsection (c) and
21 inserting “Register. Nothing in this subsection
22 shall preclude any person from submitting an
23 existing standard or portion of a standard as a
24 proposed consumer product safety standard.”.

1 (2) CONFORMING AMENDMENT.—Section
2 5(a)(3) (15 U.S.C. 2054(a)(3)) is amended by strik-
3 ing “an advance notice of proposed rulemaking or”.

4 (b) RULEMAKING UNDER FEDERAL HAZARDOUS
5 SUBSTANCES ACT.—

6 (1) IN GENERAL.—Section 3(a) of the Federal
7 Hazardous Substances Act (15 U.S.C. 1262(a)) is
8 amended to read as follows:

9 “(a) RULEMAKING.—

10 “(1) IN GENERAL.—Whenever in the judgment
11 of the Commission such action will promote the ob-
12 jectives of this Act by avoiding or resolving uncer-
13 tainty as to its application, the Commission may by
14 regulation declare to be a hazardous substance, for
15 the purposes of this Act, any substance or mixture
16 of substances, which it finds meets the requirements
17 of section 2(f)(1)(A).

18 “(2) PROCEDURE.—Proceedings for the
19 issuance, amendment, or repeal of regulations under
20 this subsection and the admissibility of the record of
21 such proceedings in other proceedings, shall be gov-
22 erned by the provisions of subsections (f) through (i)
23 of this section.”.

24 (2) PROCEDURE.—Section 2(q)(2) of the Fed-
25 eral Hazardous Substances Act (15 U.S.C.

1 1261(q)(2)) is amended by striking “Proceedings for
2 the issuance, amendment, or repeal of regulations
3 pursuant to clause (B) of subparagraph (1) of this
4 paragraph shall be governed by the provisions of sec-
5 tions 701(e), (f), and (g) of the Federal Food, Drug,
6 and Cosmetic Act: Provided, That if” and inserting
7 “Proceedings for the issuance, amendment, or repeal
8 of regulations pursuant to clause (B) of subpara-
9 graph (1) of this paragraph shall be governed by the
10 provisions of subsections (f) through (i) of section 3
11 of this Act, except that if”.

12 (3) ANPR REQUIREMENT.—Section 3 of the
13 Federal Hazardous Substances Act (15 U.S.C.
14 1262) is amended—

15 (A) by striking “shall be commenced” in
16 subsection (f) and inserting “may be com-
17 menced”;

18 (B) by striking “in the notice” in sub-
19 section (g)(1) and inserting “in a notice”;

20 (C) by striking “unless, not less than 60
21 days after publication of the notice required in
22 subsection (f), the” in subsection (h) and in-
23 serting “unless the”; and

24 (D) by striking “Committee on Commerce”
25 and all that follows through “Representatives.”

1 in subsection (h), and inserting “appropriate
2 Congressional committees. Nothing in this sub-
3 section shall preclude any person from submit-
4 ting an existing standard or portion of a stand-
5 ard as a proposed regulation.”

6 (4) OTHER CONFORMING AMENDMENTS.—The
7 Federal Hazardous Substances Act (15 U.S.C. 1261
8 et seq.) is amended—

9 (A) by striking paragraphs (c) and (d) of
10 section 2 and inserting the following:

11 “(c) The term ‘Commission’ means the Consumer
12 Product Safety Commission.”;

13 (B) by striking “Secretary” each place it
14 appears and inserting “Commission” except—

15 (i) in section 10(b) (15 U.S.C.
16 1269(b));

17 (ii) in section 14 (15 U.S.C. 1273);

18 and

19 (iii) in section 21(a) (15 U.S.C.
20 1276(a));

21 (C) by striking “Department” each place it
22 appears, except in sections 5(c)(6)(D)(i) and
23 14(b) (15 U.S.C. 1264(c)(6)(D)(i) and
24 1273(b)), and inserting “Commission”;

1 (D) by striking “he” and “his” each place
2 they appear in reference to the Secretary and
3 inserting “it” and “its”, respectively;

4 (E) by striking “Secretary of Health, Edu-
5 cation, and Welfare” each place it appears in
6 section 10(b) (15 U.S.C. 1269(b)) and inserting
7 “Commission”;

8 (F) by striking “Secretary of Health, Edu-
9 cation, and Welfare” each place it appears in
10 section 14 (15 U.S.C. 1273) and inserting
11 “Commission”;

12 (G) by striking “Department of Health,
13 Education, and Welfare” in section 14(b) (15
14 U.S.C. 1273(b)) and inserting “Commission”;

15 (H) by striking “Consumer Product Safety
16 Commission” each place it appears and insert-
17 ing “Commission”;

18 (I) by striking “(hereinafter in this section
19 referred to as the ‘Commission’)” in section
20 14(d) (15 U.S.C. 1273(d)) and section 20(a)(1)
21 (15 U.S.C. 1275(a)(1)); and

22 (J) by striking paragraph (5) of section
23 18(b) (15 U.S.C. 1261 note).

24 (e) RULEMAKING UNDER FLAMMABLE FABRICS

25 ACT.—

1 (1) IN GENERAL.—Section 4 of the Flammable
2 Fabrics Act (15 U.S.C. 1193) is amended—

3 (A) by striking “shall be commenced” in
4 subsection (g) and inserting “may be com-
5 menced by a notice of proposed rulemaking or”;

6 (B) by striking “unless, not less than 60
7 days after publication of the notice required in
8 subsection (g), the” in subsection (i) and insert-
9 ing “unless the”; and

10 (C) by striking “Committee on Commerce”
11 and all that follows through “Representatives.”
12 in subsection (i), and inserting “appropriate
13 Congressional committees. Nothing in this sub-
14 section shall preclude any person from submit-
15 ting an existing standard or portion of a stand-
16 ard as a proposed regulation.”

17 (2) OTHER CONFORMING AMENDMENTS.—The
18 Flammable Fabrics Act (15 U.S.C. 1193) is amend-
19 ed—

20 (A) by striking paragraph (i) of section 2
21 (15 U.S.C. 1191(i)) and inserting the following:

22 “(i) The term ‘Commission’ means the Consumer
23 Product Safety Commission.”;

1 (B) by striking “Secretary of Commerce”
2 each place it appears and inserting “Commis-
3 sion”;

4 (C) by striking “Secretary” each place it
5 appears and inserting “Commission”, except in
6 sections 9 and 14 (15 U.S.C. 1198 and 1201);

7 (D) by striking “he” and “his” each place
8 either such word appears in reference to the
9 Secretary and inserting “it” and “its”, respec-
10 tively;

11 (E) by striking paragraph (5) of section
12 4(e) (15 U.S.C. 1193(e)) and redesignating
13 paragraph (6) as paragraph (5);

14 (F) by striking “Consumer Product Safety
15 Commission (hereinafter in this section referred
16 to as the ‘Commission’) in section 15 (15
17 U.S.C. 1202)” and inserting “Commission”;

18 (G) by amending subsection (d) of section
19 16 (15 U.S.C. 1203) to read as follows:

20 “(d) In this section, a reference to a flammability
21 standard or other regulation for a fabric, related material,
22 or product in effect under this Act includes a standard
23 of flammability continued in effect by section 11 of the
24 Act of December 14, 1967 (Public Law 90–189).”; and

1 (H) by striking “Consumer Product Safety
2 Commission” in section 17 (15 U.S.C. 1204)
3 and inserting “Commission”.

4 **SEC. 205. INSPECTOR GENERAL AUDITS AND REPORTS.**

5 (a) IMPROVEMENTS BY THE COMMISSION.—The In-
6 spector General of the Commission shall conduct reviews
7 and audits to assess—

8 (1) the Commission’s capital improvement ef-
9 forts, including improvements and upgrades of the
10 Commission’s information technology architecture
11 and systems and the development of the database of
12 publicly available information on incidents involving
13 injury or death required under section 6A of the
14 Consumer Product Safety Act, as added by section
15 212 of this Act; and

16 (2) the adequacy of procedures for accrediting
17 conformity assessment bodies as authorized by sec-
18 tion 14(a)(3) of the Consumer Product Safety Act
19 (15 U.S.C. 2063(a)(3)), as amended by this Act,
20 and overseeing the third party testing required by
21 such section.

22 (b) EMPLOYEE COMPLAINTS.—Within 1 year after
23 the date of enactment of this Act, the Inspector General
24 shall conduct a review of—

1 (1) complaints received by the Inspector Gen-
2 eral from employees of the Commission about fail-
3 ures of other employees to enforce the rules or regu-
4 lations of the Consumer Product Safety Act or any
5 other Act enforced by the Commission or otherwise
6 carry out their responsibilities under such Acts if
7 such alleged failures raise issues of conflicts of inter-
8 est, ethical violations, or the absence of good faith;
9 and

10 (2) actions taken by the Commission to address
11 such failures and complaints, including an assess-
12 ment of the timeliness and effectiveness of such ac-
13 tions.

14 (c) PUBLIC INTERNET WEBSITE LINKS.—Not later
15 than 30 days after the date of enactment of this Act, the
16 Commission shall establish and maintain—

17 (1) a direct link on the homepage of its Inter-
18 net website to the Internet webpage of the Commis-
19 sion's Office of Inspector General; and

20 (2) a mechanism on the webpage of the Com-
21 mission's Office of Inspector General by which indi-
22 viduals may anonymously report cases of waste,
23 fraud, or abuse with respect to the Commission.

24 (d) REPORTS.—

1 (1) ACTIVITIES AND NEEDS OF INSPECTOR
2 GENERAL.—Not later than 60 days after the date of
3 enactment of this Act, the Inspector General of the
4 Commission shall transmit a report to the appro-
5 priate Congressional committees on the activities of
6 the Inspector General, any structural barriers which
7 prevent the Inspector General from providing robust
8 oversight of the activities of the Commission, and
9 any additional authority or resources that would fa-
10 cilitate more effective oversight.

11 (2) REVIEWS OF IMPROVEMENTS AND EM-
12 PLOYEE COMPLAINTS.—Beginning for fiscal year
13 2010, the Inspector General of the Commission shall
14 include in an annual report to the appropriate Con-
15 gressional committees the Inspector General's find-
16 ings, conclusions, and recommendations from the re-
17 views and audits under subsections (a) and (b).

18 **SEC. 206. INDUSTRY-SPONSORED TRAVEL BAN.**

19 (a) IN GENERAL.—The Act (15 U.S.C. 1251 et seq.)
20 is amended by adding at the end the following new section:

21 **“SEC. 39. PROHIBITION ON INDUSTRY-SPONSORED TRAVEL.**

22 “Notwithstanding section 1353 of title 31, United
23 States Code, and section 27(b)(6) of this Act, no Commis-
24 sioner or employee of the Commission shall accept travel,
25 subsistence, or related expenses with respect to attendance

1 by a Commissioner or employee at any meeting or similar
2 function relating to official duties of a Commissioner or
3 an employee, from a person—

4 “(1) seeking official action from, doing business
5 with, or conducting activities regulated by, the Com-
6 mission; or

7 “(2) whose interests may be substantially af-
8 fected by the performance or nonperformance of the
9 Commissioner’s or employee’s official duties.”.

10 (b) CLERICAL AMENDMENT.—The table of contents
11 in section 1 (15 U.S.C. 2051 note) is amended by insert-
12 ing at the end the following:

“Sec. 39. Prohibition on industry-sponsored travel.”.

13 **SEC. 207. SHARING OF INFORMATION WITH FEDERAL,**
14 **STATE, LOCAL, AND FOREIGN GOVERNMENT**
15 **AGENCIES.**

16 Section 29 (15 U.S.C. 2078) is amended by adding
17 at the end the following:

18 “(f) SHARING OF INFORMATION WITH FEDERAL,
19 STATE, LOCAL, AND FOREIGN GOVERNMENT AGEN-
20 CIES.—

21 “(1) AGREEMENTS AND CONDITIONS.—Not-
22 withstanding the requirements of subsections (a)(3)
23 and (b) of section 6, relating to public disclosure of
24 information, the Commission may make information
25 obtained by the Commission available to any Fed-

1 eral, State, local, or foreign government agency upon
2 the prior certification of an appropriate official of
3 any such agency, either by a prior agreement or
4 memorandum of understanding with the Commission
5 or by other written certification, that such material
6 will be maintained in confidence and will be used
7 only for official law enforcement or consumer protec-
8 tion purposes, if—

9 “(A) the agency has set forth a bona fide
10 legal basis for its authority to maintain the ma-
11 terial in confidence;

12 “(B) the materials are to be used for pur-
13 poses of investigating, or engaging in enforce-
14 ment proceedings related to, possible violations
15 of—

16 “(i) laws regulating the manufacture,
17 importation, distribution, or sale of defec-
18 tive or unsafe consumer products, or other
19 practices substantially similar to practices
20 prohibited by any law administered by the
21 Commission;

22 “(ii) a law administered by the Com-
23 mission, if disclosure of the material would
24 further a Commission investigation or en-
25 forcement proceeding; or

1 “(iii) with respect to a foreign law en-
2 forcement agency, with the approval of the
3 Attorney General, other foreign criminal
4 laws, if such foreign criminal laws are of-
5 fenses defined in or covered by a criminal
6 mutual legal assistance treaty in force be-
7 tween the government of the United States
8 and the foreign law enforcement agency’s
9 government; and

10 “(C) in the case of a foreign government
11 agency, such agency is not from a foreign state
12 that the Secretary of State has determined, in
13 accordance with section 6(j) of the Export Ad-
14 ministration Act of 1979 (50 U.S.C. App.
15 2405(j)), has repeatedly provided support for
16 acts of international terrorism, unless and until
17 such determination is rescinded pursuant to
18 section 6(j)(4) of that Act (50 U.S.C. App.
19 2405(j)(4)).

20 “(2) ABROGATION OF AGREEMENTS.—The
21 Commission may abrogate any agreement or memo-
22 randum of understanding with another agency if the
23 Commission determines that the other agency has
24 failed to maintain in confidence any information pro-
25 vided under such agreement or memorandum of un-

1 derstanding, or has used any such information for
2 purposes other than those set forth in such agree-
3 ment or memorandum of understanding.

4 “(3) ADDITIONAL RULES AGAINST DISCLO-
5 SURE.—Except as provided in paragraph (4), the
6 Commission shall not be required to disclose under
7 section 552 of title 5, United States Code, or any
8 other provision of law—

9 “(A) any material obtained from a foreign
10 government agency, if the foreign government
11 agency has requested confidential treatment, or
12 has precluded such disclosure under other use
13 limitations, as a condition of providing the ma-
14 terial;

15 “(B) any material reflecting a consumer
16 complaint obtained from any other foreign
17 source, if that foreign source supplying the ma-
18 terial has requested confidential treatment as a
19 condition of providing the material; or

20 “(C) any material reflecting a consumer
21 complaint submitted to a Commission reporting
22 mechanism sponsored in part by foreign govern-
23 ment agencies.

24 “(4) LIMITATION.—Nothing in this subsection
25 authorizes the Commission to withhold information

1 from the Congress or prevent the Commission from
2 complying with an order of a court of the United
3 States in an action commenced by the United States
4 or the Commission.

5 “(5) DEFINITION.—In this subsection, the term
6 ‘foreign government agency’ means—

7 “(A) any agency or judicial authority of a
8 foreign government, including a foreign state, a
9 political subdivision of a foreign state, or a mul-
10 tinational organization constituted by and com-
11 prised of foreign states, that is vested with law
12 enforcement or investigative authority in civil,
13 criminal, or administrative matters; and

14 “(B) any multinational organization, to the
15 extent that it is acting on behalf of an entity
16 described in subparagraph (A).

17 “(g) NOTIFICATION TO STATE HEALTH DEPART-
18 MENTS.—Whenever the Commission is notified of any vol-
19 untary corrective action taken by a manufacturer (or a
20 retailer in the case of a retailer selling a product under
21 its own label) in consultation with the Commission, or
22 issues an order under section 15(c) or (d) with respect
23 to any product, the Commission shall notify each State’s
24 health department (or other agency designated by the
25 State) of such voluntary corrective action or order.”

1 **SEC. 208. EMPLOYEE TRAINING EXCHANGES.**

2 (a) **IN GENERAL.**—The Commission may—

3 (1) retain or employ officers or employees of
4 foreign government agencies on a temporary basis
5 pursuant to section 4 of the Consumer Product
6 Safety Act (15 U.S.C. 2053) or section 3101 or
7 3109 of title 5, United States Code; and

8 (2) detail officers or employees of the Commis-
9 sion to work on a temporary basis for appropriate
10 foreign government agencies for the purpose of pro-
11 viding or receiving training.

12 (b) **RECIPROCITY AND REIMBURSEMENT.**—The Com-
13 mission may execute the authority contained in subsection
14 (a) with or without reimbursement in money or in kind,
15 and with or without reciprocal arrangements by or on be-
16 half of the foreign government agency involved. Any
17 amounts received as reimbursement for expenses incurred
18 by the Commission under this section shall be credited to
19 the appropriations account from which such expenses were
20 paid.

21 (c) **STANDARDS OF CONDUCT.**—An individual re-
22 tained or employed under subsection (a)(1) shall be con-
23 sidered to be a Federal employee while so retained or em-
24 ployed, only for purposes of—

25 (1) injury compensation as provided in chapter
26 81 of title 5, United States Code, and tort claims li-

1 ability under chapter 171 of title 28, United States
2 Code;

3 (2) the Ethics in Government Act (5 U.S.C.
4 App.) and the provisions of chapter 11 of title 18,
5 United States Code; and

6 (3) any other statute or regulation governing
7 the conduct of Federal employees.

8 **SEC. 209. ANNUAL REPORTING REQUIREMENT.**

9 (a) IN GENERAL.—Section 27(j) (15 U.S.C. 2076(j))
10 is amended—

11 (1) in the matter preceding paragraph (1), by
12 striking “The Commission” and inserting “Notwith-
13 standing section 3003 of the Federal Reports Elimini-
14 nation and Sunset Act of 1995 (31 U.S.C. 1113
15 note), the Commission”; and

16 (2) by redesignating paragraphs (5) through
17 (11) as paragraphs (7) through (13), respectively,
18 and inserting after paragraph (4) the following:

19 “(5) the number and a summary of recall or-
20 ders issued under section 12 or 15 during such year
21 and a summary of voluntary corrective actions taken
22 by manufacturers in consultation with the Commis-
23 sion of which the Commission has notified the pub-
24 lic, and an assessment of such orders and actions;

1 “(6) beginning not later than 1 year after the
2 date of enactment of the Consumer Product Safety
3 Improvement Act of 2008—

4 “(A) progress reports and incident updates
5 with respect to action plans implemented under
6 section 15(d);

7 “(B) statistics with respect to injuries and
8 deaths associated with products that the Com-
9 mission determines present a substantial prod-
10 uct hazard under section 15(e); and

11 “(C) the number and type of communica-
12 tion from consumers to the Commission with
13 respect to each product with respect to which
14 the Commission takes action under section
15 15(d);”.

16 (b) EFFECTIVE DATE.—The amendments made by
17 this section shall apply with respect to reports submitted
18 for fiscal year 2009 and thereafter.

19 **Subtitle B—Enhanced Enforcement** 20 **Authority**

21 **SEC. 211. PUBLIC DISCLOSURE OF INFORMATION.**

22 Section 6 (15 U.S.C. 2055) is amended—

23 (1) by inserting “A manufacturer or private la-
24 beler shall submit any such mark within 15 calendar
25 days after the date on which it receives the Commis-

1 sion's offer." after "paragraph (2)." in subsection
2 (a)(3);

3 (2) by striking "30 days" in subsection (b)(1)
4 and inserting "15 days";

5 (3) by striking "finds that the public" in sub-
6 section (b)(1) and inserting "publishes a finding
7 that the public";

8 (4) by striking "notice and publishes such a
9 finding in the Federal Register)," in subsection
10 (b)(1) and inserting "notice,";

11 (5) by striking "10 days" in subsection (b)(2)
12 and inserting "5 days";

13 (6) by striking "finds that the public" in sub-
14 section (b)(2) and inserting "publishes a finding
15 that the public";

16 (7) by striking "notice and publishes such find-
17 ing in the Federal Register." in subsection (b)(2)
18 and inserting "notice.";

19 (8) in subsection (b)—

20 (A) by striking "(3)" and inserting
21 "(3)(A)"; and

22 (B) by adding at the end thereof the fol-
23 lowing:

24 "(B) If the Commission determines that
25 the public health and safety requires expedited

1 consideration of an action brought under sub-
2 paragraph (A), the Commission may file a re-
3 quest with the District Court for such expedited
4 consideration. If the Commission files such a
5 request, the District Court shall—

6 “(i) assign the matter for hearing at
7 the earliest possible date;

8 “(ii) give precedence to the matter, to
9 the greatest extent practicable, over all
10 other matters pending on the docket of the
11 court at the time;

12 “(iii) expedite consideration of the
13 matter to the greatest extent practicable;
14 and

15 “(iv) grant or deny the requested in-
16 junction within 30 days after the date on
17 which the Commission’s request was filed
18 with the court.”;

19 (9) by striking “section 19 (related to prohib-
20 ited acts);” in subsection (b)(4) and inserting “any
21 consumer product safety rule or provision of this Act
22 or similar rule or provision of any other Act enforced
23 by the Commission;”;

24 (10) by striking “or” after the semicolon in
25 subsection (b)(5)(B);

1 (11) by striking “disclosure.” in subsection
2 (b)(5)(C) and inserting “disclosure; or”;

3 (12) by inserting in subsection (b)(5) after sub-
4 paragraph (C) the following:

5 “(D) the Commission publishes a finding
6 that the public health and safety requires public
7 disclosure with a lesser period of notice than is
8 required under paragraph (1).”; and

9 (13) in the matter following subparagraph (D)
10 of subsection (b)(5) (as added by paragraph (12) of
11 this section), by striking “section 19(a),” and insert-
12 ing “any consumer product safety rule or provision
13 under this Act or similar rule or provision of any
14 other Act enforced by the Commission.”.

15 **SEC. 212. ESTABLISHMENT OF A PUBLIC CONSUMER PROD-**
16 **UCT SAFETY DATABASE.**

17 (a) IN GENERAL.—The Act is amended by inserting
18 after section 6 (15 U.S.C. 2055) the following:

19 **“SEC. 6A. PUBLICLY AVAILABLE CONSUMER PRODUCT**
20 **SAFETY INFORMATION DATABASE.**

21 **“(a) DATABASE REQUIRED.—**

22 **“(1) IN GENERAL.—**Subject to the availability
23 of appropriations, the Commission shall, in accord-
24 ance with the requirements of this section, establish
25 and maintain a database on the safety of consumer

1 products, and other products or substances regu-
2 lated by the Commission, that is—

3 “(A) publicly available;

4 “(B) searchable; and

5 “(C) accessible through the Internet
6 website of the Commission.

7 “(2) SUBMISSION OF DETAILED IMPLEMENTA-
8 TION PLAN TO CONGRESS.—Not later than 180 days
9 after the date of enactment of the Consumer Prod-
10 uct Safety Improvement Act of 2008, the Commis-
11 sion shall transmit to the appropriate Congressional
12 committees a detailed plan for establishing and
13 maintaining the database required by paragraph (1),
14 including plans for the operation, content, mainte-
15 nance, and functionality of the database. The plan
16 shall detail the integration of the database into the
17 Commission’s overall information technology im-
18 provement objectives and plans. The plan submitted
19 under this subsection shall include a detailed imple-
20 mentation schedule for the database, and plans for
21 a public awareness campaign to be conducted by the
22 Commission to increase consumer awareness of the
23 database.

24 “(3) DATE OF INITIAL AVAILABILITY.—Not
25 later than 18 months after the date on which the

1 Commission submits the plan required by paragraph
2 (2), the Commission shall establish the database re-
3 quired by paragraph (1).

4 “(b) CONTENT AND ORGANIZATION.—

5 “(1) CONTENTS.—Except as provided in sub-
6 section (c)(4), the database shall include the fol-
7 lowing:

8 “(A) Reports of harm relating to the use
9 of consumer products, and other products or
10 substances regulated by the Commission, that
11 are received by the Commission from—

12 “(i) consumers;

13 “(ii) local, State, or Federal govern-
14 ment agencies;

15 “(iii) health care professionals;

16 “(iv) child service providers; and

17 “(v) public safety entities.

18 “(B) Information derived by the Commis-
19 sion from notice under section 15(c) or any no-
20 tice to the public relating to a voluntary correc-
21 tive action taken by a manufacturer, in con-
22 sultation with the Commission, of which action
23 the Commission has notified the public.

1 “(C) The comments received by the Com-
2 mission under subsection (c)(2)(A) to the extent
3 requested under subsection (c)(2)(B).

4 “(2) SUBMISSION OF INFORMATION.—In imple-
5 menting the database, the Commission shall estab-
6 lish the following:

7 “(A) Electronic, telephonic, and paper-
8 based means of submitting, for inclusion in the
9 database, reports described in paragraph (1)(A)
10 of this subsection.

11 “(B) A requirement that any report de-
12 scribed in paragraph (1)(A) submitted for in-
13 clusion in such database include, at a min-
14 imum—

15 “(i) a description of the consumer
16 product (or other product or substance
17 regulated by the Commission) concerned;

18 “(ii) identification of the manufac-
19 turer or private labeler of the consumer
20 product (or other product or substance
21 regulated by the Commission);

22 “(iii) a description of the harm relat-
23 ing to the use of the consumer product (or
24 other product or substance regulated by
25 the Commission);

1 “(iv) contact information for the per-
2 son submitting the report; and

3 “(v) a verification by the person sub-
4 mitting the information that the informa-
5 tion submitted is true and accurate to the
6 best of the person’s knowledge and that
7 the person consents that such information
8 be included in the database.

9 “(3) ADDITIONAL INFORMATION.—In addition
10 to the reports received under paragraph (1), the
11 Commission shall include in the database, consistent
12 with the requirements of section 6(a) and (b), any
13 additional information it determines to be in the
14 public interest.

15 “(4) ORGANIZATION OF DATABASE.—The Com-
16 mission shall categorize the information available on
17 the database in a manner consistent with the public
18 interest and in such manner as it determines to fa-
19 cilitate easy use by consumers and shall ensure, to
20 the extent practicable, that the database is sortable
21 and accessible by—

22 “(A) the date on which information is sub-
23 mitted for inclusion in the database;

1 “(B) the name of the consumer product
2 (or other product or substance regulated by the
3 Commission);

4 “(C) the model name;

5 “(D) the manufacturer’s or private label-
6 er’s name; and

7 “(E) such other elements as the Commis-
8 sion considers in the public interest.

9 “(5) NOTICE REQUIREMENTS.—The Commis-
10 sion shall provide clear and conspicuous notice to
11 users of the database that the Commission does not
12 guarantee the accuracy, completeness, or adequacy
13 of the contents of the database.

14 “(6) AVAILABILITY OF CONTACT INFORMA-
15 TION.—The Commission may not disclose, under
16 this section, the name, address, or other contact in-
17 formation of any individual or entity that submits to
18 the Commission a report described in paragraph
19 (1)(A), except that the Commission may provide
20 such information to the manufacturer or private la-
21 beler of the product with the express written consent
22 of the person submitting the information. Consumer
23 information provided to a manufacturer or private
24 labeler under this section may not be used or dis-
25 seminated to any other party for any purpose other

1 than verifying a report submitted under paragraph
2 (1)(A).

3 “(c) PROCEDURAL REQUIREMENTS.—

4 “(1) TRANSMISSION OF REPORTS TO MANUFAC-
5 TURERS AND PRIVATE LABELERS.—Not later than 5
6 business days after the Commission receives a report
7 described in subsection (b)(1)(A) which includes the
8 information required by subsection (b)(2)(B), the
9 Commission shall to the extent practicable transmit
10 the report, subject to subsection (b)(6), to the manu-
11 facturer or private labeler identified in the report.

12 “(2) OPPORTUNITY TO COMMENT.—

13 “(A) IN GENERAL.—If the Commission
14 transmits a report under paragraph (1) to a
15 manufacturer or private labeler, the Commis-
16 sion shall provide such manufacturer or private
17 labeler an opportunity to submit comments to
18 the Commission on the information contained in
19 such report.

20 “(B) REQUEST FOR INCLUSION IN DATA-
21 BASE.—A manufacturer or private labeler may
22 request the Commission to include its comments
23 in the database.

24 “(C) CONFIDENTIAL MATTER.—

1 “(i) IN GENERAL.—If the Commission
2 transmits a report received under para-
3 graph (1) to a manufacturer or private la-
4 beler, the manufacturer or private labeler
5 may review the report for confidential in-
6 formation and request that portions of the
7 report identified as confidential be so des-
8 ignated.

9 “(ii) REDACTION.—If the Commission
10 determines that the designated information
11 contains, or relates to, a trade secret or
12 other matter referred to in section 1905 of
13 title 18, United States Code, or that is
14 subject to section 552(b)(4) of title 5,
15 United States Code, the Commission shall
16 redact the designated information in the
17 report before it is placed in the database.

18 “(iii) REVIEW.—If the Commission
19 determines that the designated information
20 is not confidential under clause (ii), the
21 Commission shall notify the manufacturer
22 or private labeler and include the informa-
23 tion in the database. The manufacturer or
24 private labeler may bring an action in the
25 district court of the United States in the

1 district in which the complainant resides,
2 or has its principal place of business, or in
3 the United States District Court for the
4 District of Columbia, to seek removal of
5 the information from the database.

6 “(3) PUBLICATION OF REPORTS AND COM-
7 MENTS.—

8 “(A) REPORTS.—Except as provided in
9 paragraph (4)(A), if the Commission receives a
10 report described in subsection (b)(1)(A), the
11 Commission shall make the report available in
12 the database not later than the 10th business
13 day after the date on which the Commission
14 transmits the report under paragraph (1) of
15 this subsection.

16 “(B) COMMENTS.—Except as provided in
17 paragraph (4)(A), if the Commission receives a
18 comment under paragraph (2)(A) with respect
19 to a report described in subsection (b)(1)(A)
20 and a request with respect to such comment
21 under paragraph (2)(B) of this subsection, the
22 Commission shall make such comment available
23 in the database at the same time as such report
24 or as soon as practicable thereafter.

25 “(4) INACCURATE INFORMATION.—

1 “(A) INACCURATE INFORMATION IN RE-
2 PORTS AND COMMENTS RECEIVED.—If, prior to
3 making a report described in subsection
4 (b)(1)(A) or a comment described in paragraph
5 (2) of this subsection available in the database,
6 the Commission determines that the informa-
7 tion in such report or comment is materially in-
8 accurate, the Commission shall—

9 “(i) decline to add the materially inac-
10 curate information to the database;

11 “(ii) correct the materially inaccurate
12 information in the report or comment and
13 add the report or comment to the data-
14 base; or

15 “(iii) add information to correct inac-
16 curate information in the database.

17 “(B) INACCURATE INFORMATION IN DATA-
18 BASE.—If the Commission determines, after in-
19 vestigation, that information previously made
20 available in the database is materially inac-
21 curate or duplicative of information in the data-
22 base, the Commission shall, not later than 7
23 business days after such determination—

24 “(i) remove such information from the
25 database;

1 “(ii) correct such information; or

2 “(iii) add information to correct inac-
3 curate information in the database.

4 “(d) ANNUAL REPORT.—The Commission shall sub-
5 mit to the appropriate Congressional committees an an-
6 nual report on the database, including—

7 “(1) the operation, content, maintenance,
8 functionality, and cost of the database for the re-
9 porting year; and

10 “(2) the number of reports and comments for
11 the year—

12 “(A) received by the Commission under
13 this section;

14 “(B) posted on the database; and

15 “(C) corrected on or removed from the
16 database.

17 “(e) GAO STUDY.—Within 2 years after the date on
18 which the Commission establishes the database under this
19 section, the Comptroller General shall submit a report to
20 the appropriate Congressional committees containing—

21 “(1) an analysis of the general utility of the
22 database, including—

23 “(A) an assessment of the extent of use of
24 the database by consumers, including whether
25 the database is accessed by a broad range of

1 the public and whether consumers find the
2 database to be useful; and

3 “(B) efforts by the Commission to inform
4 the public about the database; and

5 “(2) recommendations for measures to increase
6 use of the database by consumers and to ensure use
7 by a broad range of the public.

8 “(f) APPLICATION OF CERTAIN NOTICE AND DISCLO-
9 SURE REQUIREMENTS.—

10 “(1) IN GENERAL.—The provisions of section
11 6(a) and (b) shall not apply to the disclosure under
12 this section of a report described in subsection
13 (b)(1)(A) of this section.

14 “(2) CONSTRUCTION.—Paragraph (1) shall not
15 be construed to exempt from the requirements of
16 section 6(a) and (b) information received by the
17 Commission under—

18 “(A) section 15(b); or

19 “(B) any other mandatory or voluntary re-
20 porting program established between a retailer,
21 manufacturer, or private labeler and the Com-
22 mission.

23 “(g) HARM DEFINED.—In this section, the term
24 ‘harm’ means—

25 “(1) injury, illness, or death; or

1 “(2) risk of injury, illness, or death, as deter-
2 mined by the Commission.”.

3 (b) **UPGRADE OF COMMISSION INFORMATION TECH-**
4 **NOLOGY SYSTEMS.**—The Commission shall expedite ef-
5 ferts to upgrade and improve the information technology
6 systems in use by the Commission on the date of enact-
7 ment of this Act.

8 (c) **CLERICAL AMENDMENT.**—The table of contents
9 in section 1 (15 U.S.C. 2051 note), as amended by section
10 206, is amended by inserting after the item relating to
11 section 6 the following new item:

 “Sec. 6A. Publicly available consumer product safety information database.”.

12 **SEC. 213. PROHIBITION ON STOCKPILING UNDER OTHER**
13 **COMMISSION-ENFORCED STATUTES.**

14 Section 9(g)(2) (15 U.S.C. 2058(g)(2)) is amended—

15 (1) by inserting “or to which a rule under this
16 Act or similar rule, regulation, standard, or ban
17 under any other Act enforced by the Commission ap-
18 plies,” after “applies,”; and

19 (2) by striking “consumer product safety rule”
20 the second, third, and fourth places it appears, and
21 inserting “rule, regulation, standard, or ban”.

22 **SEC. 214. ENHANCED RECALL AUTHORITY AND CORREC-**
23 **TIVE ACTION PLANS.**

24 (a) **ENHANCED RECALL AUTHORITY.**—Section 15
25 (15 U.S.C. 2064) is amended—

1 (1) in subsection (a)(1), by inserting “under
2 this Act or a similar rule, regulation, standard, or
3 ban under any other Act enforced by the Commis-
4 sion” after “consumer product safety rule”;

5 (2) in subsection (b)—

6 (A) by striking “consumer product distrib-
7 uted in commerce,” and inserting “consumer
8 product, or other product or substance over
9 which the Commission has jurisdiction under
10 any other Act enforced by the Commission
11 (other than motor vehicle equipment as defined
12 in section 30102(a)(7) of title 49, United
13 States Code), distributed in commerce,”;

14 (B) by redesignating paragraphs (2) and
15 (3) as paragraphs (3) and (4), respectively;

16 (C) by inserting after paragraph (1) the
17 following:

18 “(2) fails to comply with any other rule, regula-
19 tion, standard, or ban under this Act or any other
20 Act enforced by the Commission;”; and

21 (D) by adding at the end the following: “A
22 report provided under paragraph (2) may not
23 be used as the basis for criminal prosecution of
24 the reporting person under section 5 of the
25 Federal Hazardous Substances Act (15 U.S.C.

1 1264), except for offenses which require a
2 showing of intent to defraud or mislead.”.

3 (3) in subsection (c)—

4 (A) by inserting “(1)” after the subsection
5 designation;

6 (B) by inserting “or if the Commission,
7 after notifying the manufacturer, determines a
8 product to be an imminently hazardous con-
9 sumer product and has filed an action under
10 section 12,” after “from such substantial prod-
11 uct hazard,”;

12 (C) by redesignating paragraphs (1)
13 through (3) as subparagraphs (D) through (F),
14 respectively;

15 (D) by inserting after “the following ac-
16 tions:” the following:

17 “(A) To cease distribution of the product.

18 “(B) To notify all persons that transport, store,
19 distribute, or otherwise handle the product, or to
20 which the product has been transported, sold, dis-
21 tributed, or otherwise handled, to cease immediately
22 distribution of the product.

23 “(C) To notify appropriate State and local pub-
24 lic health officials.”;

1 (E) by striking “comply.” in subparagraph
2 (D), as redesignated, and inserting “comply, in-
3 cluding posting clear and conspicuous notice on
4 its Internet website, providing notice to any
5 third party Internet website on which such
6 manufacturer, retailer, distributor, or licensor
7 has placed the product for sale; and announce-
8 ments in languages other than English and on
9 radio and television where the Commission de-
10 termines that a substantial number of con-
11 sumers to whom the recall is directed may not
12 be reached by other notice.”; and

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

14 “(2) The Commission may require a notice described
15 in paragraph (1) to be distributed in a language other
16 than English if the Commission determines that doing so
17 is necessary to adequately protect the public.

18 “(3) If a district court determines, in an action filed
19 under section 12, that the product that is the subject of
20 such action is not an imminently hazardous consumer
21 product, the Commission shall rescind any order issued
22 under this subsection with respect to such product.”;

23 (4) in subsection (f)—

1 (A) by striking “An order” and inserting
2 “(1) Except as provided in paragraph (2), an
3 order”; and

4 (B) by inserting at the end the following:
5 “(2) The requirement for a hearing in paragraph (1)
6 shall not apply to an order issued under subsection (c)
7 or (d) relating to an imminently hazardous consumer
8 product with regard to which the Commission has filed
9 an action under section 12.”

10 (b) CORRECTIVE ACTION PLANS.—Section 15(d) (15
11 U.S.C. 2064(d)) is amended—

12 (1) by inserting “(1)” after the subsection des-
13 ignation;

14 (2) by inserting “to provide the notice required
15 by subsection (c) and” after “such product” the first
16 place it appears;

17 (3) by striking “whichever of the following ac-
18 tions the person to whom the order is directed
19 elects:” and inserting “any one or more of the fol-
20 lowing actions it determines to be in the public in-
21 terest:”;

22 (4) by redesignating paragraphs (1), (2), and
23 (3) as subparagraphs (A), (B), and (C);

24 (5) in each of subparagraphs (A) and (B) (as
25 so redesignated), by striking “consumer product

1 safety rule” each place it appears and inserting
2 “rule, regulation, standard, or ban”;

3 (6) by striking “more (A)” in subparagraph
4 (C), as redesignated, and inserting “more (i)”;

5 (7) by striking “or (B)” in subparagraph (C),
6 as redesignated, and inserting “or (ii)”;

7 (8) by striking “An order under this subsection
8 may” and inserting:

9 “(2) An order under this subsection shall”;

10 (9) by striking “satisfactory to the Commis-
11 sion,” and inserting “for approval by the Commis-
12 sion,”;

13 (10) by striking “paragraphs of this subsection
14 under which such person has elected to act” and in-
15 serting “subparagraphs under which such person
16 has been ordered to act”;

17 (11) by striking “if the person to whom the
18 order is directed elects to take the action described
19 in paragraph (3)” and insert “if the Commission or-
20 ders the action described in subparagraph (C)”;

21 (12) by striking “If an order under this sub-
22 section is directed” and all that follows through “has
23 the election under this subsection”;

24 (13) by striking “described in paragraph (3).”
25 and inserting “described in paragraph (1)(C).”; and

1 (14) by adding at the end the following:

2 “(3)(A) If the Commission approves an action plan,
3 it shall indicate its approval in writing.

4 “(B) If the Commission finds that an approved action
5 plan is not effective or appropriate under the cir-
6 cumstances, or that the manufacturer, retailer, or dis-
7 tributor is not executing an approved action plan effec-
8 tively, the Commission may, by order, amend, or require
9 amendment of, the action plan. In determining whether
10 an approved plan is effective or appropriate under the cir-
11 cumstances, the Commission shall consider whether a re-
12 pair or replacement changes the intended functionality of
13 the product.

14 “(C) If the Commission determines, after notice and
15 opportunity for comment, that a manufacturer, retailer,
16 or distributor has failed to comply substantially with its
17 obligations under its action plan, the Commission may re-
18 voke its approval of the action plan. The manufacturer,
19 retailer, or distributor to which the action plan applies
20 may not distribute in commerce the product to which the
21 action plan relates after receipt of notice of a revocation
22 of the action plan.”.

23 (c) CONTENT OF NOTICE.—Section 15 (15 U.S.C.
24 2064) is further amended by adding at the end the fol-
25 lowing:

1 “(i) REQUIREMENTS FOR RECALL NOTICES.—

2 “(1) GUIDELINES.—Not later than 180 days
3 after the date of enactment of the Consumer Prod-
4 uct Safety Improvement Act of 2008, the Commis-
5 sion shall, by rule, establish guidelines setting forth
6 a uniform class of information to be included in any
7 notice required under an order under subsection (c)
8 or (d) of this section or under section 12. Such
9 guidelines shall include any information that the
10 Commission determines would be helpful to con-
11 sumers in—

12 “(A) identifying the specific product that
13 is subject to such an order;

14 “(B) understanding the hazard that has
15 been identified with such product (including in-
16 formation regarding incidents or injuries known
17 to have occurred involving such product); and

18 “(C) understanding what remedy, if any, is
19 available to a consumer who has purchased the
20 product.

21 “(2) CONTENT.—Except to the extent that the
22 Commission determines with respect to a particular
23 product that one or more of the following items is
24 unnecessary or inappropriate under the cir-
25 cumstances, the notice shall include the following:

1 “(A) description of the product, includ-
2 ing—

3 “(i) the model number or stock keep-
4 ing unit (SKU) number of the product;

5 “(ii) the names by which the product
6 is commonly known; and

7 “(iii) a photograph of the product.

8 “(B) A description of the action being
9 taken with respect to the product.

10 “(C) The number of units of the product
11 with respect to which the action is being taken.

12 “(D) A description of the substantial prod-
13 uct hazard and the reasons for the action.

14 “(E) An identification of the manufactur-
15 ers and significant retailers of the product.

16 “(F) The dates between which the product
17 was manufactured and sold.

18 “(G) The number and a description of any
19 injuries or deaths associated with the product,
20 the ages of any individuals injured or killed,
21 and the dates on which the Commission re-
22 ceived information about such injuries or
23 deaths.

24 “(H) A description of—

1 “(i) any remedy available to a con-
2 sumer;

3 “(ii) any action a consumer must take
4 to obtain a remedy; and

5 “(iii) any information a consumer
6 needs in order to obtain a remedy or infor-
7 mation about a remedy, such as mailing
8 addresses, telephone numbers, fax num-
9 bers, and email addresses.

10 “(I) Other information the Commission
11 deems appropriate.”.

12 **SEC. 215. INSPECTION OF FIREWALLED CONFORMITY AS-**
13 **SESSMENT BODIES; IDENTIFICATION OF SUP-**
14 **PLY CHAIN.**

15 (a) **INSPECTION OF FIREWALLED CONFORMITY AS-**
16 **SESSMENT BODY.**—Section 16(a) (15 U.S.C. 2065(a)) is
17 amended—

18 (1) by striking “or (B)” and inserting “(B) any
19 firewalled conformity assessment bodies accredited
20 under section 14(f)(2)(D), or (C)” in paragraph (1);
21 and

22 (2) by inserting “firewalled conformity assess-
23 ment body,” after “factory,” in paragraph (2).

24 (b) **IDENTIFICATION OF MANUFACTURERS, IMPORT-**
25 **ERS, RETAILERS, AND DISTRIBUTORS.**—Section 16 (15

1 U.S.C. 2065) is further amended by adding at the end
2 thereof the following:

3 “(c) IDENTIFICATION OF MANUFACTURERS, IMPORT-
4 ERS, RETAILERS, AND DISTRIBUTORS.—Upon request by
5 an officer or employee duly designated by the Commis-
6 sion—

7 “(1) every importer, retailer, or distributor of a
8 consumer product (or other product or substance
9 over which the Commission has jurisdiction under
10 this or any other Act) shall identify the manufac-
11 turer of that product by name, address, or such
12 other identifying information as the officer or em-
13 ployee may request, to the extent that such informa-
14 tion is known or can be readily determined by the
15 importer, retailer, or distributor; and

16 “(2) every manufacturer shall identify by name,
17 address, or such other identifying information as the
18 officer or employee may request—

19 “(A) each retailer or distributor to which
20 the manufacturer directly supplied a given con-
21 sumer product (or other product or substance
22 over which the Commission has jurisdiction
23 under this or any other Act);

1 “(B) each subcontractor involved in the
2 production or fabrication of such product or
3 substance; and

4 “(C) each subcontractor from which the
5 manufacturer obtained a component thereof.”.

6 (c) CONFORMING AMENDMENTS.—Section 16 (15
7 U.S.C. 2065) is further amended—

8 (1) in subsection (a), by inserting “INSPEC-
9 TION.—” after the subsection designation; and

10 (2) in subsection (b), by inserting “RECORD-
11 KEEPING.—” after the subsection designation.

12 **SEC. 216. PROHIBITED ACTS.**

13 (a) SALE OF RECALLED PRODUCTS.—Section 19(a)
14 (15 U.S.C. 2068(a)) is amended—

15 (1) by striking paragraphs (1) and (2) and in-
16 serting the following:

17 “(1) sell, offer for sale, manufacture for sale,
18 distribute in commerce, or import into the United
19 States any consumer product, or other product or
20 substance that is regulated under this Act or any
21 other Act enforced by the Commission, that is not
22 in conformity with an applicable consumer product
23 safety rule under this Act, or any similar rule, regu-
24 lation, standard, or ban under any other Act en-
25 forced by the Commission;

1 “(2) sell, offer for sale, manufacture for sale,
2 distribute in commerce, or import into the United
3 States any consumer product, or other product or
4 substance that is—

5 “(B) subject to voluntary corrective action
6 taken by the manufacturer, in consultation with
7 the Commission, of which action the Commis-
8 sion has notified the public or if the seller, dis-
9 tributor, or manufacturer knew or should have
10 known of such voluntary corrective action;

11 “(C) subject to an order issued under sec-
12 tion 12 or 15 of this Act; or

13 “(D) a banned hazardous substance within
14 the meaning of section 2(q)(1) of the Federal
15 Hazardous Substances Act (15 U.S.C.
16 1261(q)(1));”;

17 (2) by amending paragraph (6) to read as fol-
18 lows:

19 “(6) fail to furnish a certificate required by this
20 Act or any other Act enforced by the Commission,
21 or to issue a false certificate if such person in the
22 exercise of due care has reason to know that the cer-
23 tificate is false or misleading in any material re-
24 spect; or to fail to comply with any requirement of
25 section 14 (including the requirement for tracking

1 labels) or any rule or regulation under such sec-
2 tion;”.

3 (3) by striking “or” after the semicolon in
4 paragraph (7);

5 (4) by striking “and” after the semicolon in
6 paragraph (8);

7 (5) by striking “insulation).” in paragraph (9)
8 and inserting “insulation);”; and

9 (6) by striking the period at the end of para-
10 graph (10) and inserting a semicolon; and

11 (7) by inserting at the end the following:

12 “(12) sell, offer for sale, distribute in com-
13 merce, or import into the United States any con-
14 sumer product bearing a registered safety certifi-
15 cation mark owned by an accredited conformity as-
16 sessment body, which mark is known, or should have
17 been known, by such person to be used in a manner
18 unauthorized by the owner of that certification
19 mark;

20 “(13) misrepresent to any officer or employee
21 of the Commission the scope of consumer products
22 subject to an action required under section 12 or 15;
23 or to make a material misrepresentation to such an
24 officer or employee in the course of an investigation

1 under this Act or any other Act enforced by the
2 Commission; or

3 “(14) exercise, or attempt to exercise, undue in-
4 fluence on a third party conformity assessment body
5 (as defined in section 14(f)(2)) with respect to the
6 testing, or reporting of the results of testing, of any
7 product for compliance under this Act or any other
8 Act enforced by the Commission.

9 “(15) export from the United States for pur-
10 pose of sale any consumer product, or other product
11 or substance regulated by the Commission (other
12 than a consumer product or substance, the export of
13 which is permitted by the Secretary of the Treasury
14 pursuant to section 17(e)) that—

15 “(A) is subject to an order issued under
16 section 12 or 15 of this Act or is a banned haz-
17 ardous substance within the meaning of section
18 2(q)(1) of the Federal Hazardous Substances
19 Act (15 U.S.C. 1261(q)(1)); or

20 “(B) is subject to a voluntary corrective
21 action taken by the manufacturer, in consulta-
22 tion with the Commission, of which action the
23 Commission has notified the public; or

24 “(16) violate an order of the Commission issued
25 under section 18(c).”.

1 (b) CONFORMING AMENDMENT.—Section 17(a)(2)
2 (15 U.S.C. 2066(a)(2)) is amended to read as follows:

3 “(2) is not accompanied by a certificate re-
4 quired by this Act or any other Act enforced by the
5 Commission, or is accompanied by a false certificate,
6 if the manufacturer in the exercise of due care has
7 reason to know that the certificate is false or mis-
8 leading in any material respect, or is not accom-
9 panied by any label or certificate (including tracking
10 labels) required under section 14 or any rule or reg-
11 ulation under such section;”.

12 **SEC. 217. PENALTIES.**

13 (a) MAXIMUM CIVIL PENALTIES OF THE CONSUMER
14 PRODUCT SAFETY COMMISSION.—

15 (1) CONSUMER PRODUCT SAFETY ACT.—Section
16 20(a)(1) (15 U.S.C. 2069(a)(1)) is amended—

17 (A) by striking “\$5,000” and inserting
18 “\$100,000”;

19 (B) by striking “\$1,250,000” both places
20 it appears and inserting “\$15,000,000”; and

21 (C) by striking “December 1, 1994,” in
22 paragraph (3)(B) and inserting “December 1,
23 2011,”.

1 (2) FEDERAL HAZARDOUS SUBSTANCES ACT.—
2 Section 5(e)(1) of the Federal Hazardous Sub-
3 stances Act (15 U.S.C. 1264(c)(1)) is amended—

4 (A) by striking “\$5,000” in paragraph (1)
5 and inserting “\$100,000”;

6 (B) by striking “\$1,250,000” both places
7 it appears and inserting “\$15,000,000”; and

8 (C) by striking “December 1, 1994,” in
9 paragraph (6)(B) and inserting “December 1,
10 2011,”.

11 (3) FLAMMABLE FABRICS ACT.—Section 5(e)(1)
12 of the Flammable Fabrics Act (15 U.S.C.
13 1194(e)(1)) is amended—

14 (A) by striking “\$5,000” in paragraph (1)
15 and inserting “\$100,000”;

16 (B) by striking “\$1,250,000” and insert-
17 ing “\$15,000,000”; and

18 (C) by striking “December 1, 1994,” in
19 paragraph (6)(B) and inserting “December 1,
20 2011,”.

21 (4) EFFECTIVE DATE.—The amendments made
22 by this subsection shall take effect on the date that
23 is the earlier of the date on which final regulations
24 are issued under subsection (b)(2) or 1 year after
25 the date of enactment of this Act.

1 (b) DETERMINATION OF PENALTIES BY THE CON-
2 SUMER PRODUCT SAFETY COMMISSION.—

3 (1) FACTORS TO BE CONSIDERED.—

4 (A) CONSUMER PRODUCT SAFETY ACT.—

5 Section 20 (15 U.S.C. 2069) is amended—

6 (i) in subsection (b)—

7 (I) by inserting “the nature, cir-
8 cumstances, extent, and gravity of the
9 violation, including” after “shall con-
10 sider”;

11 (II) by striking “products distrib-
12 uted, and” and inserting “products
13 distributed,” ; and

14 (III) by inserting “, including
15 how to mitigate undue adverse eco-
16 nomic impacts on small businesses,
17 and such other factors as appro-
18 priate” before the period; and

19 (ii) in subsection (c)—

20 (I) by inserting “, including how
21 to mitigate undue adverse economic
22 impacts on small businesses, the na-
23 ture, circumstances, extent, and grav-
24 ity of the violation, including” after
25 “person charged”; and

1 (II) by inserting “, and such
2 other factors as appropriate” after
3 “products distributed”.

4 (B) FEDERAL HAZARDOUS SUBSTANCES
5 ACT.—Section 5(c) of the Federal Hazardous
6 Substances Act (15 U.S.C. 1264(c)) is amend-
7 ed—

8 (i) in paragraph (3)—

9 (I) by inserting “the nature, cir-
10 cumstances, extent, and gravity of the
11 violation, including” after “shall con-
12 sider”;

13 (II) by striking “substance dis-
14 tributed, and” and inserting “sub-
15 stance distributed,”; and

16 (III) by inserting “, including
17 how to mitigate undue adverse eco-
18 nomic impacts on small businesses,
19 and such other factors as appro-
20 priate” before the period; and

21 (ii) in paragraph (4)—

22 (I) by inserting “, including how
23 to mitigate undue adverse economic
24 impacts on small businesses, the na-
25 ture, circumstances, extent, and grav-

1 ity of the violation, including” after
2 “person charged”; and

3 (II) by inserting “, and such
4 other factors as appropriate” after
5 “substance distributed”.

6 (C) FLAMMABLE FABRICS ACT.—Section
7 5(e) of the Flammable Fabrics Act (15 U.S.C.
8 1194(e)) is amended—

9 (i) in paragraph (2)—

10 (I) by striking “nature and num-
11 ber” and inserting “nature, cir-
12 cumstances, extent, and gravity”;

13 (II) by striking “absence of in-
14 jury, and” and inserting “absence of
15 injury,”; and

16 (III) by inserting “, and such
17 other factors as appropriate” before
18 the period; and

19 (ii) in paragraph (3)—

20 (I) by striking “nature and num-
21 ber” and inserting “nature, cir-
22 cumstances, extent, and gravity”;

23 (II) by striking “absence of in-
24 jury, and” and inserting “absence of
25 injury,”; and

1 (III) by inserting “, and such
2 other factors as appropriate” before
3 the period.

4 (2) CIVIL PENALTY CRITERIA.—Not later than
5 1 year after the date of enactment of this Act, and
6 in accordance with the procedures of section 553 of
7 title 5, United States Code, the Commission shall
8 issue a final regulation providing its interpretation
9 of the penalty factors described in section 20(b) of
10 the Consumer Product Safety Act (15 U.S.C.
11 2069(b)), section 5(c)(3) of the Federal Hazardous
12 Substances Act (15 U.S.C. 1264(c)(3)), and section
13 5(e)(2) of the Flammable Fabrics Act (15 U.S.C.
14 1194(e)(2)), as amended by subsection (a).

15 (c) CRIMINAL PENALTIES.—

16 (1) IN GENERAL.—Section 21(a) (15 U.S.C.
17 2070(a)) is amended to read as follows:

18 “(a) Violation of section 19 of this Act is punishable
19 by—

20 “(1) imprisonment for not more than 5 years
21 for a knowing and willful violation of that section;

22 “(2) a fine determined under section 3571 of
23 title 18, United States Code; or

24 “(3) both.”

1 (2) DIRECTORS, OFFICERS, AND AGENTS.—Sec-
2 tion 21(b) (15 U.S.C. 2070(b)) is amended by strik-
3 ing “19, and who has knowledge of notice of non-
4 compliance received by the corporation from the
5 Commission,” and inserting “19”.

6 (3) UNDER THE FEDERAL HAZARDOUS SUB-
7 STANCES ACT.—Section 5(a) of the Federal Haz-
8 ardous Substances Act (15 U.S.C. 1264(a)) is
9 amended by striking “one year, or a fine of not more
10 than \$3,000, or both such imprisonment and fine.”
11 and inserting “5 years, a fine determined under sec-
12 tion 3571 of title 18, United States Code, or both.”.

13 (4) UNDER THE FLAMMABLE FABRICS ACT.—
14 Section 7 of the Flammable Fabrics Act (15 U.S.C.
15 1196) is amended to read as follows:

16 “PENALTIES

17 “SEC. 7. Violation of section 3 or 8(b) of this Act,
18 or failure to comply with section 15(c) of this Act, is pun-
19 ishable by—

20 “(1) imprisonment for not more than 5 years
21 for a knowing and willful violation of that section;

22 “(2) a fine determined under section 3571 of
23 title 18, United States Code; or

24 “(3) both.”.

1 (d) CRIMINAL PENALTIES TO INCLUDE ASSET FOR-
2 FEITURE.—Section 21 (15 U.S.C. 2070) is amended by
3 adding at the end thereof the following:

4 “(c)(1) In addition to the penalties provided by sub-
5 section (a), the penalty for a criminal violation of this Act
6 or any other Act enforced by the Commission may include
7 the forfeiture of assets associated with the violation.

8 “(2) In this subsection, the term ‘criminal violation’
9 means a violation of this Act or any other Act enforced
10 by the Commission for which the violator is sentenced to
11 pay a fine, be imprisoned, or both.”

12 **SEC. 218. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

13 (a) IN GENERAL.—Section 24 (15 U.S.C. 2073) is
14 amended—

15 (1) by striking “**PRIVATE**” in the section head-
16 ing and inserting “**ADDITIONAL**”;

17 (2) by inserting “(a) IN GENERAL.—” before
18 “Any interested person”; and

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

20 “(b) STATE ATTORNEY GENERAL ENFORCEMENT.—

21 “(1) RIGHT OF ACTION.—Except as provided in
22 paragraph (5), the attorney general of a State, or
23 other authorized State officer, alleging a violation of
24 section 19(a)(1), (2), (5), (6), (7), (9), or (12) of
25 this Act that affects or may affect such State or its

1 residents may bring an action on behalf of the resi-
2 dents of the State in any United States district
3 court for the district in which the defendant is found
4 or transacts business to obtain appropriate injunc-
5 tive relief.

6 “(2) INITIATION OF CIVIL ACTION.—

7 “(A) NOTICE TO COMMISSION REQUIRED
8 IN ALL CASES.—A State shall provide written
9 notice to the Commission regarding any civil ac-
10 tion under paragraph (1). Except when pro-
11 ceeding under subparagraph (C), the State shall
12 provide the notice at least 30 days before the
13 date on which the State intends to initiate the
14 civil action by filing a complaint.

15 “(B) FILING OF COMPLAINT.—A State
16 may initiate the civil action by filing a com-
17 plaint—

18 “(i) at any time after the date on
19 which the 30-day period ends; or

20 “(ii) earlier than such date if the
21 Commission consents to an earlier initi-
22 ation of the civil action by the State.

23 “(C) ACTIONS INVOLVING SUBSTANTIAL
24 PRODUCT HAZARD.—Notwithstanding subpara-
25 graph (B), a State may initiate a civil action

1 under paragraph (1) by filing a complaint im-
2 mediately after notifying the Commission of the
3 State's determination that such immediate ac-
4 tion is necessary to protect the residents of the
5 State from a substantial product hazard (as de-
6 fined in section 15(a)).

7 “(D) FORM OF NOTICE.—The written no-
8 tice required by this paragraph may be provided
9 by electronic mail, facsimile machine, or any
10 other means of communication accepted by the
11 Commission.

12 “(E) COPY OF COMPLAINT.—A State shall
13 provide a copy of the complaint to the Commis-
14 sion upon filing the complaint or as soon as
15 possible thereafter.

16 “(3) INTERVENTION BY THE COMMISSION.—
17 The Commission may intervene in such civil action
18 and upon intervening—

19 “(A) be heard on all matters arising in
20 such civil action; and

21 “(B) file petitions for appeal of a decision
22 in such civil action.

23 “(4) CONSTRUCTION.—Nothing in this section,
24 section 5(d) of the Federal Hazardous Substances
25 Act (15 U.S.C. 1264(d)), section 9 of the Poison

1 Prevention Packaging Act of 1970, or section 5(a)
2 of the Flammable Fabrics Act (15 U.S.C. 1194(d))
3 shall be construed—

4 “(A) to prevent the attorney general of a
5 State, or other authorized State officer, from
6 exercising the powers conferred on the attorney
7 general, or other authorized State officer, by
8 the laws of such State; or

9 “(B) to prohibit the attorney general of a
10 State, or other authorized State officer, from
11 proceeding in State or Federal court on the
12 basis of an alleged violation of any civil or
13 criminal statute of that State.

14 “(5) LIMITATION.—No separate suit shall be
15 brought under this subsection (other than a suit al-
16 leging a violation of paragraph (1) or (2) of section
17 19(a)) if, at the time the suit is brought, the same
18 alleged violation is the subject of a pending civil or
19 criminal action by the United States under this Act.

20 “(6) RESTRICTIONS ON PRIVATE COUNSEL.—If
21 private counsel is retained to assist in any civil ac-
22 tion under paragraph (1), the private counsel re-
23 tained to assist the State may not—

1 “(A) share with participants in other pri-
2 vate civil actions that arise out of the same op-
3 erative facts any information that is—

4 “(i) subject to attorney-client or work
5 product privilege; and

6 “(ii) was obtained during discovery in
7 the action under paragraph (1); or

8 “(B) use any information that is subject to
9 attorney-client or work product privilege that
10 was obtained while assisting the State in the
11 action under paragraph (1) in any other private
12 civil actions that arise out of the same operative
13 facts.”.

14 (b) CONFORMING AMENDMENTS.—

15 (1) POISON PREVENTION PACKAGING ACT.—

16 The Poison Prevention Packaging Act of 1970 (15
17 U.S.C. 1471 et seq.) is amended by adding at the
18 end the following:

19 **“SEC. 9. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

20 “The attorney general of a State, or other authorized
21 State officer, alleging a violation of a standard or rule pro-
22 mulgated under section 3 that affects or may affect such
23 State or its residents, may bring an action on behalf of
24 the residents of the State in any United States district
25 court for the district in which the defendant is found or

1 transacts business to obtain appropriate injunctive relief.
2 The procedural requirements of section 24(b) of the Con-
3 sumer Product Safety Act (15 U.S.C. 2073(b)) shall apply
4 to any such action.”.

5 (2) CLERICAL AMENDMENT.—The table of con-
6 tents in section 1 (15 U.S.C. 2051 note) is amended
7 by striking the item relating to section 24 and in-
8 serting the following:

“Sec. 24. Additional enforcement of product safety rules and of section 15 or-
ders.”.

9 **SEC. 219. WHISTLEBLOWER PROTECTIONS.**

10 (a) IN GENERAL.—The Act (15 U.S.C. 2051 et seq.),
11 as amended by section 206 of this Act, is further amended
12 by adding at the end the following:

13 “WHISTLEBLOWER PROTECTION

14 “SEC. 40. (a) No manufacturer, private labeler, dis-
15 tributor, or retailer, may discharge an employee or other-
16 wise discriminate against an employee with respect to
17 compensation, terms, conditions, or privileges of employ-
18 ment because the employee, whether at the employee’s ini-
19 tiative or in the ordinary course of the employee’s duties
20 (or any person acting pursuant to a request of the em-
21 ployee)—

22 “(1) provided, caused to be provided, or is
23 about to provide or cause to be provided to the em-
24 ployer, the Federal Government, or the attorney

1 general of a State information relating to any viola-
2 tion of, or any act or omission the employee reason-
3 ably believes to be a violation of any provision of this
4 Act or any other Act enforced by the Commission,
5 or any order, rule, regulation, standard, or ban
6 under any such Acts;

7 “(2) testified or is about to testify in a pro-
8 ceeding concerning such violation;

9 “(3) assisted or participated or is about to as-
10 sist or participate in such a proceeding; or

11 “(4) objected to, or refused to participate in,
12 any activity, policy, practice, or assigned task that
13 the employee (or other such person) reasonably be-
14 lieved to be in violation of any provision of this Act
15 or any other Act enforced by the Commission, or
16 any order, rule, regulation, standard, or ban under
17 any such Acts.

18 “(b)(1) A person who believes that he or she has been
19 discharged or otherwise discriminated against by any per-
20 son in violation of subsection (a) may, not later than 180
21 days after the date on which such violation occurs, file
22 (or have any person file on his or her behalf) a complaint
23 with the Secretary of Labor alleging such discharge or dis-
24 crimination and identifying the person responsible for
25 such act. Upon receipt of such a complaint, the Secretary

1 shall notify, in writing, the person named in the complaint
2 of the filing of the complaint, of the allegations contained
3 in the complaint, of the substance of evidence supporting
4 the complaint, and of the opportunities that will be af-
5 farded to such person under paragraph (2).

6 “(2)(A) Not later than 60 days after the date of re-
7 ceipt of a complaint filed under paragraph (1) and after
8 affording the complainant and the person named in the
9 complaint an opportunity to submit to the Secretary a
10 written response to the complaint and an opportunity to
11 meet with a representative of the Secretary to present
12 statements from witnesses, the Secretary shall initiate an
13 investigation and determine whether there is reasonable
14 cause to believe that the complaint has merit and notify,
15 in writing, the complainant and the person alleged to have
16 committed a violation of subsection (a) of the Secretary’s
17 findings. If the Secretary concludes that there is reason-
18 able cause to believe that a violation of subsection (a) has
19 occurred, the Secretary shall accompany the Secretary’s
20 findings with a preliminary order providing the relief pre-
21 scribed by paragraph (3)(B). Not later than 30 days after
22 the date of notification of findings under this paragraph,
23 either the person alleged to have committed the violation
24 or the complainant may file objections to the findings or
25 preliminary order, or both, and request a hearing on the

1 record. The filing of such objections shall not operate to
2 stay any reinstatement remedy contained in the prelimi-
3 nary order. Any such hearing shall be conducted expedi-
4 tiously. If a hearing is not requested in such 30-day pe-
5 riod, the preliminary order shall be deemed a final order
6 that is not subject to judicial review.

7 “(B)(i) The Secretary shall dismiss a complaint filed
8 under this subsection and shall not conduct an investiga-
9 tion otherwise required under subparagraph (A) unless the
10 complainant makes a prima facie showing that any behav-
11 ior described in paragraphs (1) through (4) of subsection
12 (a) was a contributing factor in the unfavorable personnel
13 action alleged in the complaint.

14 “(ii) Notwithstanding a finding by the Secretary that
15 the complainant has made the showing required under
16 clause (i), no investigation otherwise required under sub-
17 paragraph (A) shall be conducted if the employer dem-
18 onstrates, by clear and convincing evidence, that the em-
19 ployer would have taken the same unfavorable personnel
20 action in the absence of that behavior.

21 “(iii) The Secretary may determine that a violation
22 of subsection (a) has occurred only if the complainant
23 demonstrates that any behavior described in paragraphs
24 (1) through (4) of subsection (a) was a contributing factor

1 in the unfavorable personnel action alleged in the com-
2 plaint.

3 “(iv) Relief may not be ordered under subparagraph
4 (A) if the employer demonstrates by clear and convincing
5 evidence that the employer would have taken the same un-
6 favorable personnel action in the absence of that behavior.

7 “(3)(A) Not later than 120 days after the date of
8 conclusion of any hearing under paragraph (2), the Sec-
9 retary shall issue a final order providing the relief pre-
10 scribed by this paragraph or denying the complaint. At
11 any time before issuance of a final order, a proceeding
12 under this subsection may be terminated on the basis of
13 a settlement agreement entered into by the Secretary, the
14 complainant, and the person alleged to have committed the
15 violation.

16 “(B) If, in response to a complaint filed under para-
17 graph (1), the Secretary determines that a violation of
18 subsection (a) has occurred, the Secretary shall order the
19 person who committed such violation—

20 “(i) to take affirmative action to abate the vio-
21 lation;

22 “(ii) to reinstate the complainant to his or her
23 former position together with compensation (includ-
24 ing back pay) and restore the terms, conditions, and

1 privileges associated with his or her employment;

2 and

3 “(iii) to provide compensatory damages to the

4 complainant.

5 If such an order is issued under this paragraph, the Sec-
6 retary, at the request of the complainant, shall assess
7 against the person against whom the order is issued a sum
8 equal to the aggregate amount of all costs and expenses
9 (including attorneys’ and expert witness fees) reasonably
10 incurred, as determined by the Secretary, by the complain-
11 ant for, or in connection with, the bringing of the com-
12 plaint upon which the order was issued.

13 “(C) If the Secretary finds that a complaint under
14 paragraph (1) is frivolous or has been brought in bad
15 faith, the Secretary may award to the prevailing employer
16 a reasonable attorneys’ fee, not exceeding \$1,000, to be
17 paid by the complainant.

18 “(4) If the Secretary has not issued a final decision
19 within 210 days after the filing of the complaint, or within
20 90 days after receiving a written determination, the com-
21 plainant may bring an action at law or equity for *de novo*
22 review in the appropriate district court of the United
23 States with jurisdiction, which shall have jurisdiction over
24 such an action without regard to the amount in con-
25 troversy, and which action shall, at the request of either

1 party to such action, be tried by the court with a jury.
2 The proceedings shall be governed by the same legal bur-
3 dens of proof specified in paragraph (2)(B). The court
4 shall have jurisdiction to grant all relief necessary to make
5 the employee whole, including injunctive relief and com-
6 pensatory damages, including—

7 “(A) reinstatement with the same seniority sta-
8 tus that the employee would have had, but for the
9 discharge or discrimination;

10 “(B) the amount of back pay, with interest; and

11 “(C) compensation for any special damages sus-
12 tained as a result of the discharge or discrimination,
13 including litigation costs, expert witness fees, and
14 reasonable attorney’s fees.

15 “(5)(A) Unless the complainant brings an action
16 under paragraph (4), any person adversely affected or ag-
17 grieved by a final order issued under paragraph (3) may
18 obtain review of the order in the United States Court of
19 Appeals for the circuit in which the violation, with respect
20 to which the order was issued, allegedly occurred or the
21 circuit in which the complainant resided on the date of
22 such violation. The petition for review must be filed not
23 later than 60 days after the date of the issuance of the
24 final order of the Secretary. Review shall conform to chap-
25 ter 7 of title 5, United States Code. The commencement

1 of proceedings under this subparagraph shall not, unless
2 ordered by the court, operate as a stay of the order.

3 “(B) An order of the Secretary with respect to which
4 review could have been obtained under subparagraph (A)
5 shall not be subject to judicial review in any criminal or
6 other civil proceeding.

7 “(6) Whenever any person has failed to comply with
8 an order issued under paragraph (3), the Secretary may
9 file a civil action in the United States district court for
10 the district in which the violation was found to occur, or
11 in the United States district court for the District of Co-
12 lumbia, to enforce such order. In actions brought under
13 this paragraph, the district courts shall have jurisdiction
14 to grant all appropriate relief including, but not limited
15 to, injunctive relief and compensatory damages.

16 “(7)(A) A person on whose behalf an order was
17 issued under paragraph (3) may commence a civil action
18 against the person to whom such order was issued to re-
19 quire compliance with such order. The appropriate United
20 States district court shall have jurisdiction, without regard
21 to the amount in controversy or the citizenship of the par-
22 ties, to enforce such order.

23 “(B) The court, in issuing any final order under this
24 paragraph, may award costs of litigation (including rea-

1 sonable attorneys' and expert witness fees) to any party
2 whenever the court determines such award is appropriate.

3 “(c) Any nondiscretionary duty imposed by this sec-
4 tion shall be enforceable in a mandamus proceeding
5 brought under section 1361 of title 28, United States
6 Code.

7 “(d) Subsection (a) shall not apply with respect to
8 an employee of a manufacturer, private labeler, dis-
9 tributor, or retailer who, acting without direction from
10 such manufacturer, private labeler, distributor, or retailer
11 (or such person’s agent), deliberately causes a violation
12 of any requirement relating to any violation or alleged vio-
13 lation of any order, regulation, or consumer product safety
14 standard under this Act or any other law enforced by the
15 Commission.”.

16 (b) CONFORMING AMENDMENT.—The table of con-
17 tents, as amended by section 206 of this Act, is further
18 amended by inserting after the item relating to section 39
19 the following:

“Sec. 40. Whistleblower protection.”.

20 **Subtitle C—Specific Import-Export**
21 **Provisions**

22 **SEC. 221. EXPORT OF RECALLED AND NON-CONFORMING**
23 **PRODUCTS.**

24 (a) IN GENERAL.—Section 18 (15 U.S.C. 2067) is
25 amended—

1 (1) in subsection (b), by striking “any prod-
2 uct—” and all that follows through “promulgated
3 under section 9,” and inserting “any product which
4 is not in conformity with an applicable consumer
5 product safety rule in effect under this Act,”; and

6 (2) by adding at the end the following:

7 “(e) The Commission may prohibit a person from ex-
8 porting from the United States for purpose of sale any
9 consumer product that is not in conformity with an appli-
10 cable consumer product safety rule under this Act, unless
11 the importing country has notified the Commission that
12 such country accepts the importation of such consumer
13 product, provided that if the importing country has not
14 so notified the Commission within 30 days after the Com-
15 mission has provided notice to the importing country of
16 the impending shipment, the Commission may take such
17 action as appropriate within its authority with respect to
18 the disposition of the product under the circumstances.

19 “(d) Nothing in this section shall apply to any con-
20 sumer product, the export of which is permitted by the
21 Secretary of the Treasury pursuant to section 17(e).”.

22 (b) CONFORMING AMENDMENTS TO FLAMMABLE
23 FABRICS ACT.—Section 15 of the Flammable Fabrics Act
24 (15 U.S.C. 1202) is amended by adding at the end the
25 following:

1 “(d) Notwithstanding any other provision of this sec-
2 tion, the Consumer Product Safety Commission may pro-
3 hibit, by order, a person from exporting from the United
4 States for purpose of sale any fabric or related material
5 that the Commission determines is not in conformity with
6 an applicable standard or rule under this Act, unless the
7 importing country has notified the Commission that such
8 country accepts the importation of such fabric or related
9 material, provided that if the importing country has not
10 so notified the Commission within 30 days after the Com-
11 mission has provided notice to the importing country of
12 the impending shipment, the Commission may take such
13 action as is appropriate with respect to the disposition of
14 the fabric or related material under the circumstances.

15 “(e) Nothing in this section shall apply to any fabric
16 or related material, the export of which is permitted by
17 the Secretary of the Treasury pursuant to section 17(e).”.

18 **SEC. 222. IMPORT SAFETY MANAGEMENT AND INTER-**
19 **AGENCY COOPERATION.**

20 (a) **RISK ASSESSMENT METHODOLOGY.**—Not later
21 than 2 years after the date of enactment of this Act, the
22 Commission shall develop a risk assessment methodology
23 for the identification of shipments of consumer products
24 that are—

1 (1) intended for import into the United States;
2 and

3 (2) likely to include consumer products in viola-
4 tion of section 17(a) of the Consumer Product Safe-
5 ty Act (15 U.S.C. 2066(a)) or other import provi-
6 sions enforced by the Commission.

7 (b) USE OF INTERNATIONAL TRADE DATA SYSTEM
8 AND OTHER DATABASES.—In developing the methodology
9 required under subsection (a), the Commission shall—

10 (1) provide for the use of the International
11 Trade Data System, insofar as is practicable, estab-
12 lished under section 411(d) of the Tariff Act of
13 1930 (19 U.S.C. 1411(d)) to evaluate and assess in-
14 formation about shipments of consumer products in-
15 tended for import into the customs territory of the
16 United States;

17 (2) incorporate the risk assessment method-
18 ology required under this section into its information
19 technology modernization plan;

20 (3) examine, in consultation with U.S. Customs
21 and Border Protection, how to share information
22 collected and retained by the Commission, including
23 information in the database required under section
24 6A of the Consumer Product Safety Act, for the
25 purpose of identifying shipments of consumer prod-

1 ucts in violation of section 17(a) of such Act (15
2 U.S.C. 2066(a)) or other import provisions enforced
3 by the Commission; and

4 (4) examine, in consultation with U.S. Customs
5 and Border Protection, how to share information re-
6 quired by section 15(j) of the CPSA as added by
7 section 223 of this Act for the purpose of identifying
8 shipments of consumer products in violation of sec-
9 tion 17(a) of the Consumer Product Safety Act (15
10 U.S.C. 2066(a)) or other import provisions enforced
11 by the Commission.

12 (c) COOPERATION WITH U.S. CUSTOMS AND BOR-
13 DER PROTECTION.—Not later than 1 year after the date
14 of enactment of this Act, the Commission shall develop
15 a plan for sharing information and coordinating with U.S.
16 Customs and Border Protection that considers, at a min-
17 imum, the following:

18 (1) The number of full-time equivalent per-
19 sonnel employed by the Commission that should be
20 stationed at U.S. ports of entry for the purpose of
21 identifying shipments of consumer products that are
22 in violation of section 17(a) of the Consumer Prod-
23 uct Safety Act (15 U.S.C. 2066(a)) or other import
24 provisions enforced by the Commission.

1 (2) The extent and nature of cooperation be-
2 tween the Commission and U.S. Customs and Bor-
3 der Protection personnel stationed at ports of entry
4 in the identification of shipments of consumer prod-
5 uct that are in violation of section 17(a) of the Con-
6 sumer Product Safety Act (15 U.S.C. 2066(a)) or
7 other import provisions enforced by the Commission
8 under this Act or any other provision of law.

9 (3) The number of full-time equivalent per-
10 sonnel employed by the Commission that should be
11 stationed at the National Targeting Center (or its
12 equivalent) of U.S. Customs and Border Protection,
13 including—

14 (A) the extent and nature of cooperation
15 between Commission and U.S. Customs and
16 Border Protection personnel stationed at the
17 National Targeting Center (or its equivalent),
18 as well as at United States ports of entry;

19 (B) the responsibilities of Commission per-
20 sonnel assigned to the National Targeting Cen-
21 ter (or its equivalent) under subsection (b)(3);
22 and

23 (C) whether the information available at
24 the National Targeting Center (or its equiva-
25 lent) would be useful to the Commission or U.S.

1 Customs and Border Protection in identifying
2 the consumer products described in subsection
3 (a).

4 (4) The development of rule sets for the Auto-
5 mated Targeting System and expedited access for
6 the Commission to the Automated Targeting Sys-
7 tem.

8 (5) The information and resources necessary
9 for the development, updating, and effective imple-
10 mentation of the risk assessment methodology re-
11 quired in subsection (a).

12 (d) REPORT TO CONGRESS.—Not later than 180 days
13 after completion of the risk assessment methodology re-
14 quired under this section, the Commission shall submit a
15 report to the appropriate Congressional committees con-
16 cerning, at a minimum, the following:

17 (1) The Commission's plan for implementing
18 the risk assessment methodology required under this
19 section.

20 (2) The changes made or necessary to be made
21 to the Commission's memorandum of understanding
22 with U.S. Customs and Border Protection.

23 (3) The status of—

1 (A) the development of the Automated
2 Targeting System rule set required under sub-
3 section (c)(4) of this section;

4 (B) the Commission's access to the Auto-
5 mated Targeting System; and

6 (C) the effectiveness of the International
7 Trade Data System in enhancing cooperation
8 between the Commission and U.S. Customs and
9 Border Protection for the purpose of identifying
10 shipments of consumer products in violation of
11 section 17(a) of the Consumer Product Safety
12 Act (15 U.S.C. 2066(a)) or other import provi-
13 sions enforced by the Commission;

14 (4) Whether the Commission requires additional
15 statutory authority under the Consumer Product
16 Safety Act, the Federal Hazardous Substances Act,
17 the Flammable Fabrics Act, or the Poison Preven-
18 tion Packaging Act of 1970 in order to implement
19 the risk assessment methodology required under this
20 section.

21 (5) The level of appropriations necessary to im-
22 plement the risk assessment methodology required
23 under this section.

1 **SEC. 223. SUBSTANTIAL PRODUCT HAZARD LIST AND DE-**
2 **STRUCTION OF NONCOMPLIANT IMPORTED**
3 **PRODUCTS.**

4 (a) IDENTIFICATION OF SUBSTANTIAL HAZARDS.—
5 Section 15 (15 U.S.C. 2064), as amended by section 214,
6 is amended by adding at the end thereof the following:

7 “(j) SUBSTANTIAL PRODUCT HAZARD LIST.—

8 “(1) IN GENERAL.—The Commission may
9 specify, by rule, for any consumer product or class
10 of consumer products, characteristics whose exist-
11 ence or absence shall be deemed a substantial prod-
12 uct hazard under subsection (a)(2), if the Commis-
13 sion determines that—

14 “(A) such characteristics are readily ob-
15 servable and have been addressed by voluntary
16 standards; and

17 “(B) such standards have been effective in
18 reducing the risk of injury from consumer prod-
19 ucts and that there is substantial compliance
20 with such standards.

21 “(2) JUDICIAL REVIEW.—Not later than 60
22 days after promulgation of a rule under paragraph
23 (1), any person adversely affected by such rule may
24 file a petition for review under the procedures set
25 forth in section 11 of this Act.”

1 (b) DESTRUCTION OF NONCOMPLIANT IMPORTED
2 PRODUCTS.—Section 17(e) (15 U.S.C. 2066(e)) is amend-
3 ed to read as follows:

4 “(e) Products refused admission into the customs ter-
5 ritory of the United States shall be destroyed unless, upon
6 application by the owner, consignee, or importer of record,
7 the Secretary of the Treasury permits the export of the
8 product in lieu of destruction. If the owner, consignee, or
9 importer of record does not export the product within 90
10 days of approval to export, such product shall be de-
11 stroyed.”.

12 (c) INSPECTION AND RECORDKEEPING REQUIRE-
13 MENT.—The Act is further amended—

14 (1) by amending section 17(g) (15 U.S.C.
15 2066(g)) to read as follows:

16 “(g) Manufacturers of imported products shall be in
17 compliance with all inspection and recordkeeping require-
18 ments under section 16 applicable to such products, and
19 the Commission shall advise the Secretary of the Treasury
20 of any manufacturer who is not in compliance with all in-
21 spection and recordkeeping requirements under section
22 16.”; and

23 (2) by adding at the end of section 16 (15
24 U.S.C. 2065) the following:

1 “(d) The Commission shall, by rule, condition the
2 manufacturing for sale, offering for sale, distribution in
3 commerce, or importation into the United States of any
4 consumer product or other product on the manufacturer’s
5 compliance with the inspection and recordkeeping require-
6 ments of this Act and the Commission’s rules with respect
7 to such requirements.”.

8 **SEC. 224. FINANCIAL RESPONSIBILITY.**

9 (a) IN GENERAL.—The Act (15 U.S.C. 2051 et seq.),
10 as amended by section 219, is further amended by adding
11 at the end the following:

12 **“SEC. 41. FINANCIAL RESPONSIBILITY.**

13 “(a) IDENTIFICATION AND DETERMINATION OF
14 BOND.—The Commission, in consultation with U.S. Cus-
15 toms and Border Protection and other relevant Federal
16 agencies, shall identify any consumer product, or other
17 product or substance that is regulated under this Act or
18 any other Act enforced by the Commission, for which the
19 cost of destruction would normally exceed bond amounts
20 determined under sections 623 and 624 of the Tariff Act
21 of 1930 (19 U.S.C. 1623, 1624) and shall recommend to
22 U.S. Customs and Border Protection a bond amount suffi-
23 cient to cover the cost of destruction of such products or
24 substances.

1 “(b) STUDY OF REQUIRING ESCROW FOR RECALLS
2 AND DESTRUCTION OF PRODUCTS.—

3 “(1) STUDY.—The Comptroller General shall
4 conduct a study to determine the feasibility of re-
5 quiring—

6 “(A) the posting of an escrow, proof of in-
7 surance, or security sufficient in amount to
8 cover the cost of destruction of a domestically-
9 produced product or substance regulated under
10 this Act or any other Act enforced by the Com-
11 mission; and

12 “(B) the posting of an escrow, proof of in-
13 surance, or security sufficient in amount to
14 cover the cost of an effective recall of a product
15 or substance, domestic or imported, regulated
16 under this Act or any other Act enforced by the
17 Commission.

18 “(2) REPORT.—Not later than 180 days after
19 the date of enactment of the Consumer Product
20 Safety Improvement Act of 2008, the Comptroller
21 General shall transmit to the appropriate Congres-
22 sional committees a report on the conclusions of the
23 study required under paragraph (1), including an as-
24 sessment of whether such an escrow requirement

1 could be implemented and any recommendations for
2 such implementation.”.

3 (b) CONFORMING AMENDMENTS.—The table of con-
4 tents in section 1 (15 U.S.C. 2051 note), as amended by
5 section 219, is amended by adding at the end the fol-
6 lowing:

 “Sec. 41. Financial responsibility.”.

7 **SEC. 225. STUDY AND REPORT ON EFFECTIVENESS OF AU-**
8 **THORITIES RELATING TO SAFETY OF IM-**
9 **PORTED CONSUMER PRODUCTS.**

10 Not later than 1 year after the date of enactment
11 of this Act, the Comptroller General of the United States
12 shall—

13 (1) conduct a study of the authorities and pro-
14 visions of the Consumer Product Safety Act (15
15 U.S.C. 2051 et seq.) to assess the effectiveness of
16 such authorities and provisions in preventing unsafe
17 consumer products from entering the customs terri-
18 tory of the United States;

19 (2) review and provide recommendations with
20 respect to plans to prevent unsafe consumer prod-
21 ucts from entering the customs territory of the
22 United States; and

23 (3) submit to the appropriate Congressional
24 committees a report on the findings of the Comp-
25 troller General with respect to paragraphs (1) and

1 (2), including legislative recommendations related to,
2 at a minimum—

3 (A) inspection of foreign manufacturing
4 plants by the Commission; and

5 (B) requiring foreign manufacturers to
6 consent to the jurisdiction of United States
7 courts with respect to enforcement actions by
8 the Commission.

9 **Subtitle D—Miscellaneous Provi-**
10 **sions and Conforming Amend-**
11 **ments**

12 **SEC. 231. PREEMPTION.**

13 (a) **RULE WITH REGARD TO PREEMPTION.**—The
14 provisions of sections 25 and 26 of the Consumer Product
15 Safety Act (15 U.S.C. 2074 and 2075, respectively), sec-
16 tion 18 of the Federal Hazardous Substances Act (15
17 U.S.C. 1261 note), section 16 of the Flammable Fabrics
18 Act (15 U.S.C. 1203), and section 7 of the Poison Pack-
19 aging Prevention Act of 1970 (15 U.S.C. 1476) estab-
20 lishing the extent to which those Acts preempt, limit, or
21 otherwise affect any other Federal, State, or local law, any
22 rule, procedure, or regulation, or any cause of action
23 under State or local law may not be expanded or con-
24 tracted in scope, or limited, modified or extended in appli-
25 cation, by any rule or regulation thereunder, or by ref-

1 erence in any preamble, statement of policy, executive
2 branch statements, or other matter associated with the
3 publication of any such rule or regulation. In accordance
4 with the provisions of those Acts, the Commission may not
5 construe any such Act as preempting any cause of action
6 under State or local common law or State statutory law
7 regarding damage claims.

8 (b) **PRESERVATION OF CERTAIN STATE LAW.**—Noth-
9 ing in this Act or the Federal Hazardous Substances Act
10 shall be construed to preempt or otherwise affect any
11 warning requirement relating to consumer products or
12 substances that is established pursuant to State law that
13 was in effect on August 31, 2003.

14 **SEC. 232. ALL-TERRAIN VEHICLE STANDARD.**

15 (a) **IN GENERAL.**—The Act (15 U.S.C. 2051 et seq.),
16 as amended by section 224, is further amended by adding
17 at the end thereof the following:

18 **“SEC. 42. ALL-TERRAIN VEHICLES.**

19 “(a) **IN GENERAL.**—

20 “(1) **MANDATORY STANDARD.**—Notwith-
21 standing any other provision of law, within 90 days
22 after the date of enactment of the Consumer Prod-
23 uct Safety Improvement Act of 2008, the Commis-
24 sion shall publish in the Federal Register as a man-
25 datory consumer product safety standard the Amer-

1 ican National Standard for Four Wheel All-Terrain
2 Vehicles Equipment Configuration, and Performance
3 Requirements developed by the Specialty Vehicle In-
4 stitute of America (American National Standard
5 ANSI/SVIA -1-2007). The standard shall take ef-
6 fect 150 days after it is published.

7 “(2) COMPLIANCE WITH STANDARD.—After the
8 standard takes effect, it shall be unlawful for any
9 manufacturer or distributor to import into or dis-
10 tribute in commerce in the United States any new
11 assembled or unassembled all-terrain vehicle un-
12 less—

13 “(A) the all-terrain vehicle complies with
14 each applicable provision of the standard;

15 “(B) the ATV is subject to an ATV action
16 plan filed with the Commission before the date
17 of enactment of the Act, or subsequently filed
18 with and approved by the Commission, and
19 bears a label certifying such compliance and
20 identifying the manufacturer, importer or pri-
21 vate labeler and the ATV action plan to which
22 it is subject; and

23 “(C) the manufacturer or distributor is in
24 compliance with all provisions of the applicable
25 ATV action plan.

1 “(3) VIOLATION.—The failure to comply with
2 any requirement of paragraph (2) shall be deemed to
3 be a failure to comply with a consumer product safe-
4 ty standard under this Act and subject to all of the
5 penalties and remedies available under this Act.

6 “(4) COMPLIANT MODELS WITH ADDITIONAL
7 FEATURES.—Paragraph (2) shall not be construed
8 to prohibit the distribution in commerce of new all-
9 terrain vehicles that comply with the requirements of
10 that paragraph but also incorporate characteristics
11 or components that are not covered by those require-
12 ments. Any such characteristics or components shall
13 be subject to the requirements of section 15 of this
14 Act.

15 “(b) MODIFICATION OF STANDARD.—

16 “(1) ANSI REVISIONS.—If the American Na-
17 tional Standard ANSI/SVIA-1-2007 is revised
18 through the applicable consensus standards develop-
19 ment process after the date on which the product
20 safety standard for all-terrain vehicles is published
21 in the Federal Register, the American National
22 Standards Institute shall notify the Commission of
23 the revision.

24 “(2) COMMISSION ACTION.—Within 120 days
25 after it receives notice of such a revision by the

1 American National Standards Institute, the Com-
2 mission shall issue a notice of proposed rulemaking
3 in accordance with section 553 of title 5, United
4 States Code, to amend the product safety standard
5 for all-terrain vehicles to include any such revision
6 that the Commission determines is reasonably re-
7 lated to the safe performance of all-terrain vehicles,
8 and notify the Institute of any provision it has de-
9 termined not to be so related. The Commission shall
10 promulgate an amendment to the standard for all-
11 terrain vehicles within 180 days after the date on
12 which the notice of proposed rulemaking for the
13 amendment is published in the Federal Register.

14 “(3) UNREASONABLE RISK OF INJURY.—Not-
15 withstanding any other provision of this Act, the
16 Commission may, pursuant to sections 7 and 9 of
17 this Act, amend the product safety standard for all-
18 terrain vehicles to include any additional provision
19 that the Commission determines is reasonably nec-
20 essary to reduce an unreasonable risk of injury asso-
21 ciated with the performance of all-terrain vehicles.

22 “(4) CERTAIN PROVISIONS NOT APPLICABLE.—
23 Sections 7 and 9 of this Act shall not apply to pro-
24 mulgation of any amendment of the product safety
25 standard under paragraph (2). Judicial review of

1 any amendment of the standard under paragraph
2 (2) shall be in accordance with chapter 7 of title 5,
3 United States Code.

4 “(c) REQUIREMENTS FOR 3-WHEELED ALL-TERRAIN
5 VEHICLES.—Until a mandatory consumer product safety
6 standard applicable to 3-wheeled all-terrain vehicles pro-
7 mulgated pursuant to this Act is in effect, new 3-wheeled
8 all-terrain vehicles may not be imported into or distributed
9 in commerce in the United States. Any violation of this
10 subsection shall be considered to be a violation of section
11 19(a)(1) of this Act and may also be enforced under sec-
12 tion 17 of this Act.

13 “(d) FURTHER PROCEEDINGS.—

14 “(1) DEADLINE.—The Commission shall issue a
15 final rule in its proceeding entitled ‘Standards for
16 All Terrain Vehicles and Ban of Three-wheeled All
17 Terrain Vehicles’.

18 “(2) CATEGORIES OF YOUTH ATVS.—In the
19 final rule, the Commission, in consultation with the
20 National Highway Traffic Safety Administration,
21 may provide for a multiple factor method of cat-
22 egorization that, at a minimum, takes into ac-
23 count—

24 “(A) the weight of the ATV;

25 “(B) the maximum speed of the ATV;

1 “(C) the velocity at which an ATV of a
2 given weight is traveling at the maximum speed
3 of the ATV;

4 “(D) the age of children for whose oper-
5 ation the ATV is designed or who may reason-
6 ably be expected to operate the ATV; and

7 “(E) the average weight of children for
8 whose operation the ATV is designed or who
9 may reasonably be expected to operate the
10 ATV.

11 “(3) ADDITIONAL SAFETY STANDARDS.—In the
12 final rule, the Commission, in consultation with the
13 National Highway Traffic Safety Administration,
14 shall review the standard published under subsection
15 (a)(1) and establish additional safety standards for
16 all-terrain vehicles to the extent necessary to protect
17 the public health and safety. As part of its review,
18 the Commission shall consider, at a minimum, estab-
19 lishing or strengthening standards on—

20 “(A) suspension;

21 “(B) brake performance;

22 “(C) speed governors;

23 “(D) warning labels;

24 “(E) marketing; and

25 “(F) dynamic stability.

1 “(e) DEFINITIONS.—In this section:

2 “(1) ALL-TERRAIN VEHICLE OR ATV.—The
3 term ‘all-terrain vehicle’ or ‘ATV’ means—

4 “(A) any motorized, off-highway vehicle
5 designed to travel on 3 or 4 wheels, having a
6 seat designed to be straddled by the operator
7 and handlebars for steering control; but

8 “(B) does not include a prototype of a mo-
9 torized, off-highway, all-terrain vehicle or other
10 motorized, off-highway, all-terrain vehicle that
11 is intended exclusively for research and develop-
12 ment purposes unless the vehicle is offered for
13 sale.

14 “(2) ATV ACTION PLAN.—The term ‘ATV ac-
15 tion plan’ means a written plan or letter of under-
16 taking that describes actions the manufacturer or
17 distributor agrees to take to promote ATV safety,
18 including rider training, dissemination of safety in-
19 formation, age recommendations, other policies gov-
20 erning marketing and sale of the ATVs, the moni-
21 toring of such sales, and other safety related meas-
22 ures, and that is substantially similar to the plans
23 described under the heading ‘The Undertakings of
24 the Companies in the Commission Notice’ published

1 in the Federal Register on September 9, 1998 (63
2 FR 48199–48204).”.

3 (b) GAO STUDY.—The Comptroller General shall
4 conduct a study of the utility, recreational, and other ben-
5 efits of all-terrain vehicles to which section 42 of the Con-
6 sumer Product Safety Act (15 U.S.C. 2085) applies, and
7 the costs associated with all-terrain vehicle-related acci-
8 dents and injuries.

9 (c) CONFORMING AMENDMENT.—The table of con-
10 tents of this Act is further amended by inserting after the
11 item relating to section 42 the following:

“Sec. 42. All-terrain vehicles.”.

12 **SEC. 233. COST-BENEFIT ANALYSIS UNDER THE POISON**
13 **PREVENTION PACKAGING ACT OF 1970.**

14 Section 3 of the Poison Prevention Packaging Act of
15 1970 (15 U.S.C. 1472) is amended by adding at the end
16 thereof the following:

17 “(e) Nothing in this Act shall be construed to require
18 the Consumer Product Safety Commission, in establishing
19 a standard under this section, to prepare a comparison
20 of the costs that would be incurred in complying with such
21 standard with the benefits of such standard.”.

1 **SEC. 234. STUDY ON USE OF FORMALDEHYDE IN MANUFAC-**
2 **TURING OF TEXTILE AND APPAREL ARTI-**
3 **CLES.**

4 Not later than 2 years after the date of enactment
5 of this Act, the Comptroller General, in consultation with
6 the Commission, shall conduct a study on the use of form-
7 aldehyde in the manufacture of textile and apparel arti-
8 cles, or in any component of such articles, to identify any
9 risks to consumers caused by the use of formaldehyde in
10 the manufacturing of such articles, or components of such
11 articles.

12 **SEC. 235. TECHNICAL AND CONFORMING CHANGES.**

13 (a) **DEFINITIONS.**—Section 3(a) (15 U.S.C. 2052) is
14 amended by adding at the end the following:

15 “(15) **APPROPRIATE CONGRESSIONAL COMMIT-**
16 **TEES.**—The term ‘appropriate Congressional com-
17 mittees’ means the Committee on Energy and Com-
18 merce of the House of Representatives and the Com-
19 mittee on Commerce, Science, and Transportation of
20 the Senate.

21 “(16) **CHILDREN’S PRODUCT.**—The term ‘chil-
22 dren’s product’ means a consumer product designed
23 or intended primarily for children 12 years of age or
24 younger. In determining whether a consumer prod-
25 uct is primarily intended for a child 12 years of age
26 or younger, the following factors shall be considered:

1 “(A) A statement by a manufacturer about
2 the intended use of such product, including a
3 label on such product if such statement is rea-
4 sonable.

5 “(B) Whether the product is represented
6 in its packaging, display, promotion, or adver-
7 tising as appropriate for use by children 12
8 years of age or younger.

9 “(C) Whether the product is commonly
10 recognized by consumers as being intended for
11 use by a child 12 years of age or younger.

12 “(D) The Age Determination Guidelines
13 issued by the Commission staff in September
14 2002, and any successor to such guidelines.

15 “(17) THIRD-PARTY LOGISTICS PROVIDER.—
16 The term ‘third-party logistics provider’ means a
17 person who solely receives, holds, or otherwise trans-
18 ports a consumer product in the ordinary course of
19 business but who does not take title to the prod-
20 uct.”.

21 (b) MISCELLANEOUS.—Section 3 (15 U.S.C. 2052)
22 is amended—

23 (1) by striking “(a) for purposes of this Act:”
24 and inserting “(a) IN GENERAL.—In this Act:”;

1 (2) by indenting each paragraph and subpara-
2 graph of subsection (a) 2 em spaces;

3 (3) by inserting a heading, in a form consistent
4 with the form of the heading of this subsection con-
5 sisting of the term defined by such paragraph, after
6 the designation of each paragraph of subsection (a);

7 (4) by reordering such paragraphs and the ad-
8 ditional paragraphs added by paragraph (1) of this
9 subsection in alphabetical order based on the head-
10 ings of such paragraphs and renumbering such para-
11 graphs as so reordered; and

12 (5) by inserting “common carriers, contract
13 carriers, and freight forwarders” after “(b)” in sub-
14 section (b).

15 (c) CONFORMING AMENDMENTS.—

16 (1) Section 3(b) (15 U.S.C. 2052(b) is amended
17 by inserting “third-party logistics provider,” after
18 “contract carrier,”.

19 (2) Section 6(e)(4) (15 U.S.C. 2055(e)(4)) is
20 amended by striking “the Committee on Commerce,
21 Science, and Transportation of the Senate or the
22 Committee on Energy and Commerce of the House
23 of Representatives or any subcommittee of such
24 committee,” and insert “either of the appropriate

1 Congressional committees or any subcommittee
2 thereof.”.

3 (3) Sections 9(a), 9(c), and 35(c)(2)(D)(iii) (15
4 U.S.C. 2058(a), (c), and 2082(c)(2)(D)(iii), and
5 2082(e)(1), respectively) are each amended by strik-
6 ing “the Committee on Commerce, Science, and
7 Transportation of the Senate and the Committee on
8 Energy and Commerce of the House of Representa-
9 tives” each place it appears and inserting “the ap-
10 propriate Congressional committees”.

11 (4) Section 32(b)(1) (15 U.S.C. 2050(b)(1)) is
12 amended by striking “the Committee on Energy and
13 Commerce of the House of Representatives, and by
14 the Committee on Commerce, Science, and Trans-
15 portation of the Senate.” and inserting “the appro-
16 priate Congressional committees.”.

17 (5) Section 35(e)(1) (15 U.S.C. 2082(e)(1)) is
18 amended by striking “the Committee on Commerce,
19 Science, and Transportation of the Senate and to
20 the Committee on Energy and Commerce of the
21 House of Representatives” and insert “the appro-
22 priate Congressional committees”.

23 (6) Sections 17(h)(3), 28(j)(10)(F), and
24 28(k)(1) and (2) (15 U.S.C. 2066(h)(3),
25 2077(j)(10)(F), and 2077(k)(1) and (2), respec-

1 tively) are each amended by striking “the Congress”
2 and inserting “the appropriate Congressional com-
3 mittees”.

4 (7) Section 29(e) (15 U.S.C. 2078(e)) is
5 amended by striking “The Commission” and insert-
6 ing “Notwithstanding section 6(a)(3), the Commis-
7 sion”.

8 **SEC. 236. EXPEDITED JUDICIAL REVIEW.**

9 (a) IN GENERAL.—Section 11 (15 U.S.C. 2060) is
10 amended by adding at the end thereof the following:

11 “(g) EXPEDITED JUDICIAL REVIEW.—

12 “(1) APPLICATION.—This subsection applies, in
13 lieu of the preceding subsections of this section, to
14 judicial review of—

15 “(A) any consumer product safety rule
16 promulgated by the Commission pursuant to
17 section 15(j) (relating to identification of sub-
18 stantial hazards);

19 “(B) any consumer product safety stand-
20 ard promulgated by the Commission pursuant
21 to section 42 (relating to all-terrain vehicles);

22 “(C) any standard promulgated by the
23 Commission under section 104 of the Consumer
24 Product Safety Improvement Act of 2008 (re-

1 lating to durable infant and toddler products);
2 and

3 “(D) any consumer product safety stand-
4 ard promulgated by the Commission under sec-
5 tion 106 of the Consumer Product Safety Im-
6 provement Act of 2008 (relating to mandatory
7 toy safety standards).

8 “(2) IN GENERAL.—Not later than 60 days
9 after the promulgation, by the Commission, of a rule
10 or standard to which this subsection applies, any
11 person adversely affected by such rule or standard
12 may file a petition with the United States Court of
13 Appeals for the District of Columbia Circuit for ju-
14 dicial review of such rule. Copies of the petition shall
15 be forthwith transmitted by the clerk of the court to
16 the Commission or other officer designated by it for
17 that purpose and to the Attorney General. The
18 record of the proceedings on which the Commission
19 based its rule shall be filed in the court as provided
20 for in section 2112 of title 28, United States Code.

21 “(3) REVIEW.—Upon the filing of the petition
22 under paragraph (2) of this subsection, the court
23 shall have jurisdiction to review the rule in accord-
24 ance with chapter 7 of title 5, United States Code,

1 and to grant appropriate relief, including interim re-
2 lief, as provided in such chapter.

3 “(4) CONCLUSIVENESS OF JUDGMENT.—The
4 judgment of the court affirming or setting aside, in
5 whole or in part, any final rule under this section
6 shall be final, subject to review by the Supreme
7 Court of the United States upon certiorari or certifi-
8 cation, as provided in section 1254 of title 28,
9 United States Code.

10 “(5) FURTHER REVIEW.—A rule or standard
11 with respect to which this subsection applies shall
12 not be subject to judicial review in proceedings
13 under section 17 (relating to imported products) or
14 in civil or criminal proceedings for enforcement.”

15 (b) PENDING ACTIONS UNAFFECTED.—The amend-
16 ment made by subsection (a) shall not apply to any peti-
17 tion filed before the date of enactment of this Act for judi-
18 cial review of any action by the Consumer Product Safety
19 Commission.

20 **SEC. 237. REPEAL.**

21 Section 30 (15 U.S.C. 2079) is amended by striking
22 subsection (d).

1 **SEC. 238. POOL AND SPA SAFETY ACT TECHNICAL AMEND-**
2 **MENTS.**

3 Title XIV of the Energy Independence and Security
4 Act of 2007 (Public Law 110–140) is amended—

5 (1) in section 1403 by adding at the end the
6 following:

7 “(8) STATE.—The term ‘State’ has the mean-
8 ing given such term in section 3(10) of the Con-
9 sumer Product Safety Act (15 U.S.C. 2052(10)),
10 and includes the Northern Mariana Islands.”.

11 (2) in section 1404 by adding at the end of sub-
12 section (b) the following: “If a successor standard is
13 proposed, the American Society of Mechanical Engi-
14 neers shall notify the Commission of the proposed
15 revision. If the Commission determines that the pro-
16 posed revision is in the public interest, it shall incor-
17 porate the revision into the standard after providing
18 30 days notice to the public.”; and

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

20 **“SEC. 1409. APPLICABILITY.**

21 “This Act is applicable to the United States and its
22 territories, including American Samoa, the Commonwealth
23 of Puerto Rico, Guam, the Commonwealth of the Northern
24 Mariana Islands, and the United States Virgin Islands.”.

25 **SEC. 239. EFFECTIVE DATES AND SEVERABILITY.**

26 (a) **EFFECTIVE DATES.**—

1 (1) IN GENERAL.—Except as otherwise specifi-
2 cally provided in this Act, this Act and the amend-
3 ments made by this Act shall take effect on the date
4 of enactment of this Act.

5 (2) CERTAIN DELAYED EFFECTIVE DATES.—
6 The amendments made by sections 103(c) and
7 214(a)(2) shall take effect on the date that is 60
8 days after the date of enactment of this Act. Sub-
9 section (c) of section 42 of the Consumer Product
10 Safety Act, as added by section 232 of this Act, and
11 the amendments made by sections 216 and 223(b)
12 shall take effect on the date that is 30 days after
13 the date of enactment of this Act.

14 (b) SEVERABILITY.—If any provision of this Act or
15 the amendments made by this Act, or the application of
16 such provision to any person or circumstance, is held in-
17 valid, the remainder of this Act and the amendments made
18 by this Act, and the application of such provision to other
19 persons not similarly situated or to other circumstances,
20 shall not be affected by such invalidation.

HLC

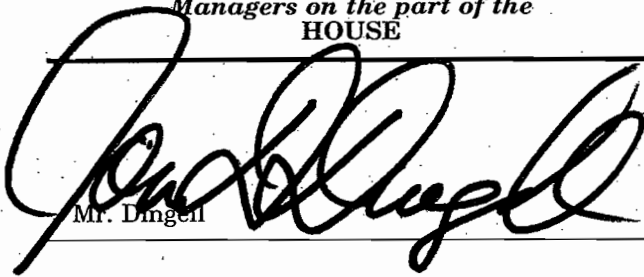
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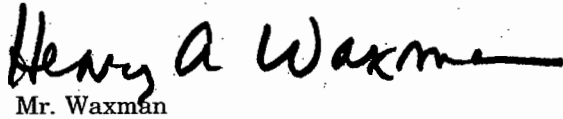
And the Senate agree to the same.

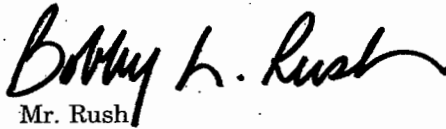
H.R. 4040

*Managers on the part of the
HOUSE*

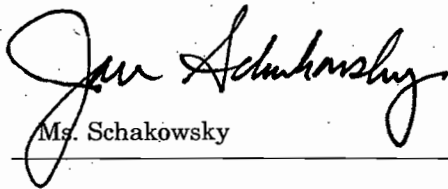
*Managers on the part of the
SENATE*



Mr. Dingell

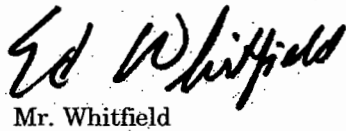

Mr. Waxman

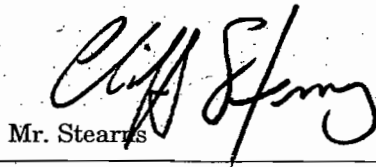

Mr. Rush


Ms. DeGette

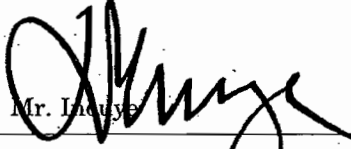
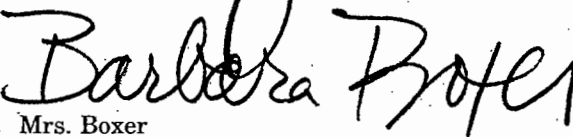

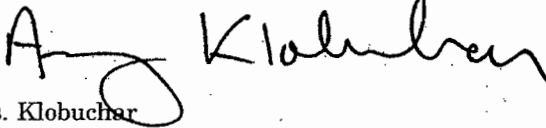




Ms. Schakowsky


Mr. Barton of Texas


Mr. Whitfield


Mr. Stearns

H.R. 4040—Continued

<i>Managers on the part of the HOUSE</i>	<i>Managers on the part of the SENATE</i>
	 Mr. Inoué
	 Mrs. Boxer
	 Mr. Pryor
	 Ms. Klobuchar
	 Mr. Stevens
	 Mrs. Hutchison
	 Mr. Sununu

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF
CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill H.R. 4040, to establish consumer product safety standards and other safety requirements for children's products and to reauthorize and modernize the Consumer Product Safety Commission, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and Senate at the conference on the disagreeing vote of the two Houses on the amendment of the Senate to the bill (H.R. 4010) to establish consumer product safety standards and other safety requirements for children's products and to reauthorize and modernize the Consumer Product Safety Commission, submit the following joint statement to the House and Senate in explanation of the effects of the action agreed upon by the managers and recommended in the accompanying report.

1. SHORT TITLE

House bill

Section 1: "Consumer Product Safety Modernization Act".

Senate amendment

Section 1: "CPSC Reform Act".

Conference substitute

Section 1: "Consumer Product Safety Improvement Act of 2008".

2. REFERENCES

House bill

Section 2: Defines "Commission" as meaning the Consumer Product Safety Commission (Commission), provides that amendments in the Act are to the Consumer Product Safety Act (CPSA) except as otherwise provided, and defines "rule" as meaning a rule, standard, ban, or order under any Act enforced by the Commission.

Senate amendment

Section 2: Provides that amendments in the Act are to the CPSA except as otherwise provided.

Conference substitute

Section 2: Adds definition of "appropriate Congressional committees" as meaning the House of Representatives Committee on Energy and Commerce and the Senate Committee on Commerce, Science, and Transportation. Deletes definition of "rule".

3. AUTHORITY TO USE IMPLEMENTING REGULATIONS

House bill

Section 3: Authorizes Commission to issue implementing regulations for the Act and amendments made by the Act.

Senate amendment

No provision.

Conference substitute

Section 3: House provision.

4. PRODUCT SAFETY IMPROVEMENTS AND COMMISSION REFORM

TITLE I—CHILDREN'S PRODUCT SAFETY

Section 101. Children's Products Containing Lead; Lead Paint Rule.

The Conferees agreed to modified language that is similar to the provisions in the House bill and the Senate amendment. The Conference Report ultimately requires that the Commission lower the permissible lead level in children's products to the lowest amount that is technologically feasible. This section provides a definition of technologically feasible, and includes a provision identifying alternative practices, best practices, or other operational changes that would allow a manufacturer to comply with the lead limit. The intent of this alternative and best practices provision is to require manufacturers to use better methods of producing a product that can be achieved without the need for major technological advances, such as taking steps to better clean equipment or the factory, or to make changes in operation, maintenance, or other practices that can reduce or eliminate lead in the product. The Conference Report also establishes a more stringent lead paint limit.

The Conferees acknowledge that several Federal agencies are charged with protecting children from lead. Historically, lead in public water systems has been governed by the Environmental Protection Agency under the Safe Drinking Water Act and its Lead and Copper Rule. The Conferees do not wish to alter that authority. A child may be exposed to lead through drinking fountains and faucets designed or intended primarily for use by children, such as for use in schools and daycare facilities. In any action under this Conference Report and the CPSA to address the specific issue of lead in drinking fountains and faucets that are designed or intended primarily for use by children, such as in schools and daycare facilities, the Conferees wish that both agencies work collaboratively to protect the health of our children from the dangers posed by lead exposure.

Section 102. Mandatory Third Party Testing for Certain Children's Products.

The Conferees agreed to modified language that is similar to the provisions in the House bill and the Senate amendment, requiring third party testing of certain children's products. The Conferees intend that the accreditation structure for governmental participation will apply equally to all entities, be they domestic, non-domestic, joint ventures, or entities controlled in whole by a government. It is not the intention of the Conferees that the subsection restrict equal participation of entities which are not controlled in whole by a government.

Section 103. Tracking Labels for Children's Products.

The Conferees agreed to modified language that is similar to the provisions in the House bill and the Senate amendment. The Conference Report would require manufacturers of children's products to place distinguishing marks on a product and its packaging, to the extent practicable, that would enable the purchaser to ascertain the source, date, and cohort (including the batch, run number,

or other identifying characteristic) of production of the product by reference to those marks. To the extent that small toys and other small products are manufactured and shipped without individual packaging, the Conferees recognize that it may not be practical for a label to be printed on each item. The packaging of the bulk shipment of those items, however, would be required to be labeled so that retailers and vendors would be able to easily identify products that are recalled.

Section 104. Standards and Consumer Registration of Durable Nursery Products.

The Conferees agreed to modified language that is similar to the provisions in the House bill and the Senate amendment. The Conference Report requires the Commission to promulgate rules to ensure the highest level of safety for durable infant and toddler products. The Conference Report also establishes new requirements for registration forms for these products and requires the Commission to review and assess the effectiveness of alternative recall notification technologies.

Section 105. Labeling Requirement for Advertising Toys and Games.

The Conferees agreed to modified language that is similar to language in the House bill and the Senate amendment, requiring a cautionary statement to be displayed with certain advertisements.

Section 106. Mandatory Toy Safety Standards.

The Conferees agreed to modified language that would make the American Society for Testing and Materials (ASTM) International standard F963-07, as it exists on the date of enactment of this Conference Report (except for section 4.2 and Annex 4 or any provision that restates or incorporates an existing mandatory standard or ban promulgated by the Commission or by statute), an interim consumer product safety standard pending evaluation by the Commission. The Commission shall establish the mandatory standards by rule after the relevant components of the rule are evaluated.

In conducting the evaluation required under this section, the Conferees direct the Commission to conduct a study of injuries and deaths related to toy guns and current safety standards applicable to toy guns, and consider the adoption of a consumer product safety rule providing for more distinctive marking of toy guns to distinguish them from actual firearms.

The Conference Report requires the Commission to promulgate rules to ensure the highest level of safety for toys. The Conferees direct the Commission to designate as quickly as possible the form and manner for States to notify the Commission of any existing State laws or regulations relating to safety requirements for toys.

Section 107. Study of Preventable Injuries and Deaths in Minority Children Related to Consumer Products.

The Conferees agreed to modified language that is similar to provisions in the House bill and the Senate amendment. The Conference Report requires the Government Accountability Office (GAO) to assess and report on the racial disparities of the rates of

preventable injuries and deaths related to suffocation, poisonings, and drowning among children.

Section 108. Prohibition on Sale of Certain Products Containing Specified Phthalates.

The Conferees agreed to a modified version of the Senate amendment's prohibition on specific phthalates in certain children's products.

TITLE II—CONSUMER PRODUCT SAFETY COMMISSION REFORM

SUBTITLE A—ADMINISTRATIVE IMPROVEMENTS

Section 201. Reauthorization of the Commission.

The Conferees agreed to modified language that would reauthorize the Commission for five years beginning in fiscal year 2010 and provided a specific travel allowance for the Commission.

The Conferees recognize nanotechnology as a new technology utilized in the manufacture of consumer products and its nature as an emerging technology. The Conferees expect the Commission to review such utilization and the safety of its application in consumer products consistent with the Commission's mission.

As part of the general authorizations for fiscal years 2010 through 2014, the Conferees authorized \$25,000,000 to establish and maintain the database required by section 212 of the Conference Report and to upgrade and integrate the Commission's information technology systems.

Section 202. Full Commission Requirement; Interim Quorum; Personnel.

The Conferees agreed to modified language that is similar to provisions in the House bill and the Senate amendment. The Conference Report reinstates a five-member Commission after one year, and establishes a two-member quorum for one year after the date of enactment.

Section 203. Submission of Copy of Certain Documents to Congress.

The Conferees agreed to the identical provisions in the House bill and the Senate amendment.

Section 204. Expedited Rulemaking.

The Conferees agreed to modified language that is similar to provisions in the House bill and the Senate amendment. The Conference Report provides the Commission the authority to forgo an Advanced Notice of Proposed Rulemaking.

Section 205. Inspector General Audits and Reports.

The Conferees agreed to modified language that is similar to provisions in the House bill and the Senate amendment. The Conference Report instructs the Inspector General of the Commission to conduct reviews and audits to assess the Commission's capital improvement efforts and the adequacy of procedures for accrediting conformity assessment bodies as required by this Conference Report. The Conference Report also requires that the Commission es-

establish and maintain on the homepage of its Internet website a direct link to the Internet webpage of the Commission's Office of Inspector General.

The Conferees direct the Commission to take steps to inform all employees that they are free to make anonymous complaints through the Inspector General's webpage about waste, fraud and mismanagement within the Commission. The Inspector General should investigate any complaints about the failure of Commission employees to enforce in good faith the rules and regulations of the CPSA or any other Act enforced by the Commission or otherwise carry out their responsibilities under such Acts, including efforts to alter or suppress relevant data, subvert enforcement measures, and succumb to undue influence.

Section 206. Industry-Sponsored Travel Ban.

The House bill and the Senate amendment contained similar provisions. The Senate receded to the House bill with minor modifications.

Section 207. Sharing of Information with Federal, State, Local and Foreign Government Agencies.

The Conferees agreed to modified language that is nearly identical to the provisions in the House bill and the Senate amendment.

Section 208. Employee Training Exchanges.

The Conferees agreed to language that provides the Commission the authority to retain or employ officers or employees of foreign government agencies on a temporary basis or to detail employees of the Commission to work on a temporary basis for appropriate foreign government agencies.

Section 209. Annual Reporting Requirement.

The Conferees agreed to modified language that is nearly identical to the provisions in the House bill and the Senate amendment.

SUBTITLE B—ENHANCED ENFORCEMENT AUTHORITY

Section 211. Public Disclosure of Information.

The House receded to the Senate amendment, which included language that would modify sections 6(a) and 6(b) of the CPSA. The Conference Report includes amendments to the CPSA allowing the Commission, when a manufacturer goes to court under section 6(b)(3) attempting to stop the release of information, to file a request with the Federal District Court for expedited consideration of the matter. While the Conferees expect quick action on these matters to protect public health and safety, they recognize that the prosecution of other matters before the court, such as Class A and Class B felonies, is also extremely important to the public welfare. It is the Conferees' view that the expedited consideration of section 6(b)(3) cases should not delay action on these other important issues.

Section 212. Establishment of a Public Consumer Product Safety Database.

The Conferees agreed to modified language that requires the Commission to establish a publicly available searchable database on the safety of consumer products and other products or substances regulated by the Commission within two years of the date of enactment. The Conferees intend that the Commission prevent duplicative reports from being added to the publicly available database. If multiple reports that describe the same incident are submitted to the database, the Commission should, to the extent practicable, remove unnecessary reports and preserve the most relevant report in the database. However, the Conferees recognize that it is possible that multiple reports regarding the same incident could provide different relevant details and that information from those reports could be helpful to the public and should, therefore, remain in the database. The Conferees also direct the GAO to study the general utility of the database and provide recommendations for measures to increase use of the database.

Section 213. Prohibition on Stockpiling Under Other Commission-Enforced Statutes.

The Conferees agreed to the identical provisions in the House bill and the Senate amendment.

Section 214. Enhanced Recall Authority and Corrective Action Plans.

The Conference Report amends the notification requirements under section 15(b) of the CPSA to promote the timely, accurate, and complete disclosure to the Commission of information that is necessary to protect public health and safety. The Conferees recognize that innovation in the design of consumer products has led to the development of products that can be used in both motor vehicles and the home. For example, some children's car safety seats can be used in a car but also in a frame so that they can be used as strollers or in the home. The Conferees do not intend in the parenthetical language used in section 15(b) to exempt those products from the reporting requirements to the extent that they have defects arising from uses outside a motor vehicle.

To the list of reports required from manufacturers, retailers, and distributors, this section adds the broad requirement to report information that a product fails to comply with any other rule, standard, ban, or order under this Act, or any other Act enforced by the Commission. It also adds a sentence indicating that a report under this new paragraph may not be used as the basis for criminal prosecution of the reporting person under section 5 of the Federal Hazardous Substances Act (FHSA), except for offenses which require a showing of intent to defraud or mislead. With consideration of the increased criminal penalties in the Conference Report, the Conferees took this narrow, limited action in order to avoid an unjust result under a possible construction of section 5 that provides for strict liability for criminal enforcement without regard to any applicable requirement of knowledge, intent, or willfulness in such situations. The Conferees do not intend for the limited use immunity provided by this section to be used to shelter bad actors from

the consequences of their acts but rather to ensure that there are no unintended impediments to the flow of information to the Commission.

The Conferees also agreed to modified language that is similar to provisions in the House bill and the Senate amendment. The Conference Report provides the Commission greater recall authority and creates requirements for recall notices in order to better inform the public of potential product harms.

Section 215. Inspection of Firewalled Conformity Assessment Bodies; Identification of Supply Chain.

The Senate receded to the House bill on language that provides authority to the Commission to inspect firewalled conformity assessment bodies certified as third party conformity assessment bodies. The Conferees also agreed to modified language that is similar to the House bill and the Senate amendment.

Section 216. Prohibited Acts.

The Conferees agreed to modified language that is similar to the provisions in the House bill and the Senate amendment, incorporating into the Prohibited Acts section of the CPSA violations created by this Conference Report. In amending section 19(a) of the CPSA, the restriction on exporting a consumer product subject to a voluntary corrective action is not meant to include products that have been reconditioned or repaired in accordance with the Commission-approved corrective action for such products that are compliant.

Section 217. Penalties.

The Conferees agreed to modified language that increases the civil penalty cap for each violation of a prohibited act under the CPSA, the FHSA, or the Flammable Fabrics Act (FFA) from \$8,000 to \$100,000, and the maximum civil penalty cap for a related series of violations under each Act from \$1,825,000 to \$15,000,000. Within one year of the date of enactment of this Conference Report, the Commission is required to issue a final regulation providing its interpretation of factors to be taken into account by the Commission when determining the amount of any civil penalty.

The Conferees agreed to language that is similar to provisions in the House bill and the Senate amendment, which would authorize the Commission to seek asset forfeiture as a penalty for a criminal violation of this Conference Report. The House receded to Senate language that would increase maximum criminal penalties and remove the knowledge of notice of noncompliance requirements for directors, officers, and agents under section 21(b) of the CPSA.

Section 218. Enforcement by State Attorneys General.

The Conferees agreed to modified language that is similar to the provisions in the House bill and the Senate amendment. The Conferees agreed to include amendments to the CPSA and the Poison Prevention Packaging Act (PPPA) to enhance the ability of the attorney general of a State, or other authorized State officer, alleging specified violations under those Acts that affect or may affect the State or its residents, to obtain appropriate injunctive relief. To en-

sure the efficient operation of enforcement efforts along with the consistent interpretation and application of Commission regulations, the Conferees expect cooperation and consultation to occur between the attorneys general and the Commission in the normal course of business in implementing and carrying out this authority.

This section requires a State attorney general to notify the Commission prior to filing any action and provide the Commission a maximum of 30 days to respond to or assist with an action. The Conferees recognize that certain circumstances require immediate action to protect the public from a substantial product hazard. The Conferees have provided a limited exception that would allow the States to proceed upon notification to the Commission when a substantial product hazard may result from the use of a product. The Conferees believe current and future technologies, such as electronic mail and facsimile, should provide a State attorney general the ability to notify the Commission immediately prior to initiating such enforcement actions.

With regard to the limitation in section 218(b)(5), the Conferees intend to preserve the injunctive authority of State attorneys general to remove dangerous products from the stream of commerce when the Commission is engaged in protracted litigation with defendants. The purpose of this limited exception is to facilitate efficient enforcement of section 19, not impede it. As such, the Conferees do not intend by the parenthetical language to allow unlimited lawsuits against the same defendant in various jurisdictions across the country. Multiple lawsuits involving the same facts and same defendants could delay the prosecution of injunction suits filed by the Commission adding pretrial procedural issues, such as consolidation or transfer. Moreover, the Conferees do not intend for such suits to interfere with the Commission's choice of venue.

Section 219. Whistleblower Protections.

The House receded to the Senate amendment with modifications. The Conference Report includes whistleblower protections for employees of manufacturers, private labelers, retailers, and distributors with respect to alleged violations of any CPSC-enforced product safety requirements.

SUBTITLE C—SPECIFIC IMPORT-EXPORT PROVISIONS

Section 221. Export of Recalled and Non-conforming Products.

The Conferees agreed to modified language that is similar to provisions in the House bill and the Senate amendment.

Section 222. Import Safety Management and Interagency Cooperation.

The House receded to the Senate amendment with modifications. The Conferees agreed to language that would require the Commission, in consultation with the United States Customs and Border Protections (CBP), to develop a risk assessment methodology for the identification of shipments that are likely to include consumer products that violate section 17(a) of the CPSA. The Conferees also agreed to require the Commission to utilize the International Trade Data System (ITDS) insofar as practicable (i.e., as soon as ITDS is

operational) to evaluate and assess information about shipments of consumer products intended for import into the customs territory of the United States when developing the risk assessment methodology pursuant to this section. The Conference Report also requires the Commission to develop a plan for sharing information and enhancing coordination with CBP.

Section 223. Substantial Product Hazard List and Destruction of Noncompliant Imported Products.

The House receded to the Senate amendment with modifications. The Conferees agreed to modified language that would authorize the Commission, by rule, to specify characteristics of a consumer product or class of consumer products whose existence or absence would be deemed to constitute a substantial product hazard. The Conferees also agreed that products refused admission into the customs territory of the United States would be required to be destroyed, unless the Secretary of the Treasury permits the export of the product in lieu of destruction. The Conferees agreed to amend the CPSA to condition the distribution of consumer goods in commerce upon manufacturers' compliance with Commission record-keeping and inspection requirements.

Section 224. Financial Responsibility.

The House receded to the Senate amendment with modifications. The Conferees agreed to modified language regarding identification and determination of a bond amount sufficient to cover the cost of destruction of any consumer product or substance regulated under the CPSA or any other Act enforced by the Commission. The Conferees direct the GAO to conduct a study to determine the feasibility of requiring the posting of an escrow, proof of insurance, or security sufficient in amount to cover the cost of destruction of a domestically-produced product or substance regulated by any Act enforced by the Commission. The GAO is also directed to study the feasibility of posting an escrow, proof of insurance, or security sufficient in amount to cover the effective recall of a domestically-produced or imported product or substance regulated by any Act enforced by the Commission.

Section 225. Study and Report on Effectiveness of Authorities Relating to Safety of Imported Consumer Products.

The House bill and the Senate amendment included language to assess the effectiveness of the Commission's authority in preventing unsafe products from entering the United States. The House receded to the Senate amendment with minor modifications.

SUBTITLE D—MISCELLANEOUS PROVISIONS AND CONFORMING AMENDMENTS

Section 231. Preemption.

The Conferees agreed to language that combines provisions from the House bill and the Senate amendment with modifications. The Conference Report contains a provision reiterating the intentions of sections 25 and 26 of the CPSA, section 18 of the FHSA, section 16 of the FFA, and section 7 of the PPPA. The Conferees recog-

nized that the Commission frequently explains the scope of Commission rules and standards and that this is appropriate in order to give guidance to the States and the State attorneys general. Furthermore, it is not the intention of the Conferees to supersede the otherwise lawful and appropriate preemption of State laws and regulations. As section 26(a) of the CPSA makes clear, "whenever a consumer product safety standard under this Act is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging, or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal standard." Given this language, States may not prescribe additional safety standards that go further than Commission regulations when it has been determined that State regulations are preempted, except as provided in sections 18(b)(2)-(4) of the FHSA, sections 26(b) and (c) of the CPSA, sections 16(b) and (c) of the FFA, and sections 7(b) and (c) of the PPPA of 1970. The Conferees also agreed to the preservation of certain State laws.

The Conferees included language intended to clarify that the requirements under the Conference Report and the FHSA shall not be construed to preempt or affect State warning requirements under State laws, such as California's Proposition 65, that were enacted prior to August 31, 2003.

Section 232. All-Terrain Vehicles.

The House receded to the Senate amendment with modifications.

Section 233. Cost-Benefit Analysis Under the Poison Packaging Prevention Act of 1970.

The House receded to the Senate amendment with a technical modification.

Section 234. Study on Use of Formaldehyde in Manufacturing of Textile and Apparel Articles.

The House receded to the Senate amendment with a modification that the GAO shall conduct the study instead of the Commission.

Section 235. Technical and Conforming Changes.

The Conferees agreed to conforming changes throughout the CPSA.

The Senate receded to the House bill and agreed to include the House position that a children's product means a consumer product designed or intended primarily for children 12 years of age or younger.

Section 236. Expedited Judicial Review.

The Conferees agreed to language that would streamline the judicial review of rules promulgated under certain Acts enforced by the Commission.

Section 237. Repeal.

The Conferees agreed to the identical provisions in the House bill and the Senate amendment to repeal section 30(d) of the CPSA.

Section 238. Pool and Spa Safety Act Technical Amendments.

The Conferees agreed to technical amendments to the Virginia Graeme Baker Pool and Spa Safety Act (15 U.S.C. 8001 et seq.).

Section 239. Effective Dates and Severability.

The Conferees agreed to language regarding the effective date of the Conference Report and the effective dates of the amendments to all the Acts under the Commission's jurisdiction as established by the Conference Report. The Conferees also agreed to language with regard to the severability of the Conference Report.

5. SPECIAL ISSUES

The Senate amendment contained several single-product issues that Senate Members believed important for the Commission to address. The House bill contained no title relating to single-product issues because the House Members believed consumers were better served by keeping the House bill focused on the task of reforming the Commission. Many of these issues were raised by Members of the House Committee on Energy and Commerce in colloquies or discussions of amendments that were offered and withdrawn.

While the Conference Report addresses certain single-product issues, other single-product issues from the Senate amendment were not included. Nevertheless, the Conferees believe certain single-product issues require heightened regulatory scrutiny and greater attention.

The Conferees believe the Commission must take additional action to reduce the number of preventable deaths and serious injuries resulting from accidental carbon monoxide poisoning. To that end, the Conferees direct the Commission to expeditiously issue a final rule in its proceeding entitled "Portable Generators" for which the Commission issued an Advance Notice of Proposed Rulemaking on December 12, 2006 (71 Fed. Reg. 74472). The Conferees also direct the Commission to review the effectiveness of its labeling requirements for charcoal briquettes (16 CFR 150014(b)(6)) given the events that occurred during the windstorm that struck the Pacific Northwest beginning on December 14, 2006; identify any specific challenges faced by non-English speaking populations with use of the current standards; and make recommendations, if warranted, for improving the labels on bags of charcoal briquettes.

The Conferees support carbon monoxide devices being installed in all residential dwelling units and support the efforts of individual States that have enacted legislation requiring the installation of carbon monoxide devices in homes and other dwelling places. The Conferees believe the Commission should consider the adoption of the American National Standards Institute/Underwriters Laboratories standards ANSI/UL 2034 and ANSI/US 2075 for carbon monoxide devices sold in the United States. The Conferees also direct the Commission to conduct a public awareness campaign to educate consumers about carbon monoxide poisoning

and the importance of residential carbon monoxide alarms including recommendations for the effective use and maintenance of carbon monoxide alarms.

The Conferees direct the Commission to conduct a public awareness campaign to educate consumers about the importance of residential smoke alarms and improved smoke detector technology, including the difference between ionization type and photoelectric type alarms. The campaign should include recommendations for effective use and maintenance of smoke alarms.

The Conferees direct the Commission to issue a final rule in its proceeding entitled, "Safety Standard for Cigarette Lighters" for which the Commission issued an Advance Notice of Proposed Rule-making on April 11, 2005 (70 Fed Reg 18339).

The Conferees believe that the Commission must take strong action to reduce the number of preventable fatal traumatic brain injuries resulting from inadequate equestrian helmets. The Conferees direct the Commission to consider establishing a mandatory consumer product safety rule for equestrian helmets that is consistent with current voluntary standards, such as the ASTM standard designated as F 1163 and the Snell Memorial Foundation standard designated as E2001, to the extent such standards would increase safety.

The Conferees believe that the Commission must take action to prevent deaths and serious injuries resulting from garage door entrapment. To that end, the Conferees direct the Commission, in consultation with interested parties consistent with Commission practices, to expeditiously review, revise, and consider the adoption of standards as necessary to ensure the safety and effectiveness of both inherent and external secondary entrapment protection devices that cause the garage door to reverse, including contact and non-contact sensors.

The Conferees believe the Commission should take appropriate action with respect to lead included in any ceramic product within its jurisdiction.

The Conferees direct the Commission to examine its current authority with respect to toys intended for use by household pets, especially those that could become children's play things. If the Commission determines that it has the appropriate authority to regulate such products, the Conferees direct the Commission to consider the adoption of limits regarding the use of lead and lead paint in household pet toys.

The Conferees are aware of tipping dangers presented by furniture, ovens, other large appliances, and television sets that have resulted in serious injuries. In order to help stem preventable accidents and injuries, the Conferees direct the Commission to examine these matters, and, where appropriate, to require stabilizing mechanisms such as braces and clear and conspicuous warning labels, and to make available on its Internet website recommendations on tip-over prevention.

The Conferees intend for the Commission to give priority to the timely and effective implementation of this Conference Report. Nonetheless, the Conferees request that these special issues be given consideration. The Commission's House and Senate authorizing committees intend to review the status of these issues at ap-

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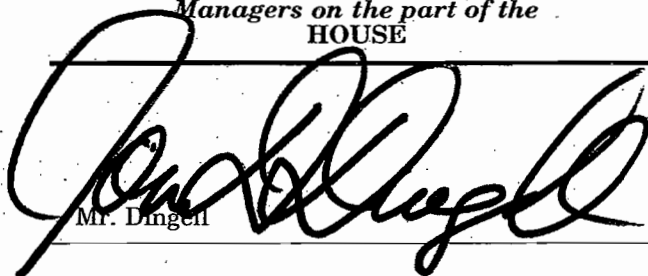
proprate intervals to make sure that they are addressed with reasonable diligence.

July 28, 2008 (6:53 p.m.)

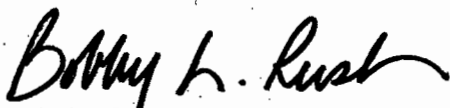
H.R. 4040

Managers on the part of the
HOUSE

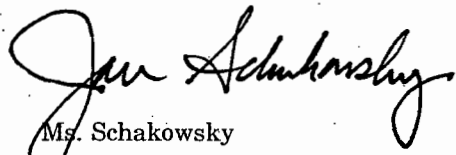
Managers on the part of the
SENATE


Mr. Dingell


Mr. Waxman

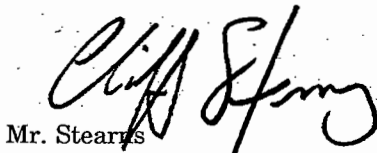

Mr. Rush


Ms. DeGette


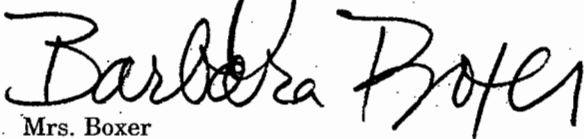

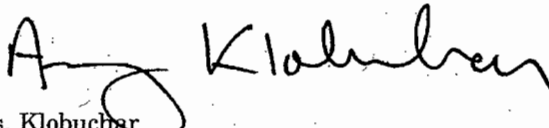


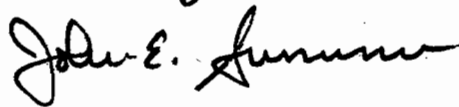

Ms. Schakowsky


Mr. Barton of Texas


Mr. Whitfield


Mr. Stearns

H.R. 4040—Continued

<i>Managers on the part of the HOUSE</i>	<i>Managers on the part of the SENATE</i>
	 Mr. Inouye
	 Mrs. Boxer
	 Mr. Pryor
	 Ms. Klobuchar
	 Mr. Stevens
	 Mrs. Hutchison
	 Mr. Sununu