In the Senate of the United States,

March 6, 2008.

Resolved, That the bill from the House of Representatives (H.R. 4040) entitled ''An Act to establish consumer product safety standards and other safety requirements for children's products and to reauthorize and modernize the Consumer Product Safety Commission.'', do pass with the following

AMENDMENT:

Strike out all after the enacting clause and insert:

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

2 *(a) SHORT TITLE.—This Act may be cited as the*

3 *''CPSC Reform Act''.*

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

Sec. 1. Short title; table of contents.
Sec. 2. Amendment of Consumer Product Safety Act.
Sec. 3. Reauthorization.
Sec. 4. Personnel.
Sec. 5. Full Commission requirement; interim quorum.
Sec. 6. Submission of copy of certain documents to Congress.
Sec. 7. Public disclosure of information.
Sec. 8. Rulemaking.
Sec. 9. Prohibition on stockpiling under other Commission-enforced statutes.
Sec. 10. Third party certification of children's products.
Sec. 11. Tracking labels for products for children.
Sec. 12. Substantial product hazard reporting requirement.
Sec. 13. Corrective action plans.
Sec. 14. Identification of manufacturer by importers, retailers, and distributors.
Sec. 15. Prohibited acts.
Sec. 16. Penalties.
Sec. 17. Preemption.
Sec. 18. Sharing of information with Federal, State, local, and foreign government agencies.
Sec. 19. Financial responsibility.
Sec. 20. Enforcement by State attorneys general.
Sec. 21. Whistleblower protections.
Sec. 22. Ban on children's products containing lead; lead paint rule.
Sec. 23. Alternative measures of lead content.
Sec. 24. Study of preventable injuries and deaths of minority children related to certain consumer products.
Sec. 25. Cost-benefit analysis under the Poison Prevention Packaging Act of 1970.
Sec. 26. Inspector general reports.
Sec. 27. Public internet website links.
Sec. 28. Child-resistant portable gasoline containers.
Sec. 29. Toy safety standard.
Sec. 30. All-terrain vehicle safety standard.
Sec. 31. Garage door opener standard.
Sec. 32. Reducing deaths and injuries from carbon monoxide poisoning.
Sec. 33. Completion of cigarette lighter rulemaking.
Sec. 34. Consumer product registration forms and standards for durable infant or toddler products.
Sec. 35. Repeal.
Sec. 36. Consumer Product Safety Commission presence at National Targeting Center of U.S. Customs and Border Protection.
Sec. 37. Development of risk assessment methodology to identify shipments of consumer products that are likely to contain consumer products in violation of safety standards.
Sec. 38. Seizure and destruction of imported products in violation of consumer product safety standards.
Sec. 39. Database of manufacturing facilities and suppliers involved in violations of consumer product safety standards.
Sec. 40. Ban on certain products containing specified phthalates.
Sec. 41. Equestrian helmets.
Sec. 42. Requirements for recall notices.

Sec. 43. Study and report on effectiveness of authorities relating to safety of imported consumer products.
Sec. 44. Ban on importation of toys made by certain manufacturers.
Sec. 45. Consumer product safety standards use of formaldehyde in textile and apparel articles.

SEC. 2. AMENDMENT OF CONSUMER PRODUCT SAFETY ACT.

Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Consumer Product Safety Act (15 U.S.C. 2051 et seq.).

SEC. 3. REAUTHORIZATION.

(a) IN GENERAL.—Section 32 (15 U.S.C. 2081) is amended—

(1) by redesignating subsection (c) as subsection (e); and

(2) by striking subsections (a) and (b) and inserting the following:

"(a)(1) There are authorized to be appropriated to the Commission for the purpose of carrying out the provisions of this Act and any other provision of law the Commission is authorized or directed to carry out—

"(A) $88,500,000 for fiscal year 2009;

"(B) $96,800,000 for fiscal year 2010;

"(C) $106,480,000 for fiscal year 2011;

"(D) $117,128,000 for fiscal year 2012;

"(E) $128,841,000 for fiscal year 2013;

"(F) $141,725,000 for fiscal year 2014; and

"(G) $155,900,000 for fiscal year 2015.

"(2) From amounts appropriated pursuant to paragraph (1), there shall shall be made available, for each of fiscal years 2009 through 2015, up to $1,200,000 for travel, subsistence, and related expenses incurred in furtherance of the official duties of Commissioners and employees with respect to attendance at meetings or similar functions, which shall be used by the Commission for such purposes in lieu of acceptance of payment or reimbursement for such expenses from any person—

"(A) seeking official action from, doing business with, or conducting activities regulated by, the Commission; or

"(B) whose interests may be substantially affected by the performance or nonperformance of the Commissioner's or employee's official duties.

"(b) There are authorized to be appropriated to the Commission for the Office of Inspector General—

"(1) $1,600,000 for fiscal year 2009;

"(2) $1,770,000 for fiscal year 2010;

"(3) $1,936,000 for fiscal year 2011;

"(4) $2,129,600 for fiscal year 2012;

"(5) $2,342,560 for fiscal year 2013;

"(6) $2,576,820 for fiscal year 2014; and

"(7) $2,834,500 for fiscal year 2015.

"(c) There are authorized to be appropriated to the Commission for the purpose of renovation, repair, construction, equipping, and making other necessary capital improvements to the Commission's research, development, and testing facility (including bringing the facility into compliance with applicable environmental, safety, and accessibility standards), $40,000,000 for fiscal years 2009 and 2010.

"(d) There are authorized to be appropriated to the Commission for research, in cooperation with the National Institute of Science and Technology, the Food and Drug Administration, and other relevant Federal agencies into safety issues related to the use of nanotechnology in consumer products, $1,000,000 for fiscal years 2009 and 2010.".

SEC. 4. PERSONNEL.

(a) PROFESSIONAL STAFF.—

(1) IN GENERAL.—The Consumer Product Safety Commission shall increase the number of fulltime personnel employed by the Commission to at least 500 by October 1, 2013, subject to the availability of appropriations.

(2) PORTS OF ENTRY; OVERSEAS INSPECTORS.—The Consumer Product Safety Commission shall hire at least 50 additional personnel to be assigned to duty

stations at United States ports of entry, or to inspect overseas production facilities, by October 1, 2010, subject to the availability of appropriations.

(b) PROFESSIONAL CAREER PATH.—The Commission shall develop and implement a professional career development program for professional staff to encourage retention of career personnel and provide professional development opportunities for Commission employees.

(c) TRAINING STANDARDS.—

(1) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Consumer Product Safety Commission shall—

(A) develop standards for training product safety inspectors and technical staff employed by the Commission; and

(B) submit to Congress a report on such standards.

(2) CONSULTATIONS.—The Commission shall develop the training standards required under paragraph (1) in consultation with a broad range of organizations with expertise in consumer product safety issues.

SEC. 5. FULL COMMISSION REQUIREMENT; INTERIM QUORUM.

(a) NUMBER OF COMMISSIONERS.—

(1) IN GENERAL.—The Congress finds that it is necessary, in order for the Consumer Product Safety Commission to function effectively and carry out the purposes for which the Consumer Product Safety Act was enacted, for the full complement of 5 members of the Commission to serve and participate in the business of the Commission and urges the President to nominate members to fill any vacancy in the membership of the Commission as expeditiously as practicable.

(2) REPEAL OF LIMITATION.—Title III of Public Law 102–389 is amended by striking the first proviso in the item captioned "CONSUMER PRODUCT SAFETY COMMISSION, SALARIES AND EXPENSES" (15 U.S.C. 2053 note).

(b) TEMPORARY QUORUM.—Notwithstanding section 4(d) of the Consumer Product Safety Act (15 U.S.C. 2053(d)), 2 members of the Consumer Product Safety Commission, if they are not affiliated with the same political party, shall constitute a quorum for the transaction of business for the 9-month period beginning on the date of enactment of this Act.

SEC. 6. SUBMISSION OF COPY OF CERTAIN DOCUMENTS TO CONGRESS.

(a) IN GENERAL.—Notwithstanding any rule, regulation, or order to the contrary, the Commission shall comply with the requirements of section 27(k) of the Consumer Product Safety Act (15 U.S.C. 2076(k)) with respect to budget recommendations, legislative recommendations, testimony, and comments on legislation submitted by the Commission to the President or the Office of Management and Budget after the date of enactment of this Act.

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

(1) by striking "or" after the semicolon in paragraph (31);

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

(3) by inserting after paragraph (31) the following:

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

SEC. 7. PUBLIC DISCLOSURE OF INFORMATION.

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

(1) by inserting "A manufacturer or private labeler shall submit any such mark within 15 calendar days after the date on which it receives the Commis-

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

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

(3) by striking "finds that the public" in subsection (b)(1) and inserting "publishes a finding that the public";

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

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

(6) by striking "finds that the public" in subsection (b)(2) and inserting "publishes a finding that the public";

(7) by striking "notice and publishes such a finding in the Federal Register." in subsection (b)(2) and inserting "notice.";

(8) in subsection (b)—

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

(B) by adding at the end thereof the following:

"(B) If the Commission determines that the public health and safety requires expedited consideration of an ac-

tion brought under subparagraph (A), the Commission may file a request with the District Court for such expedited consideration. If the Commission files such a request, the District Court shall—

"(i) assign the matter for hearing at the earliest possible date;

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

"(iii) expedite consideration of the matter to the greatest extent practicable; and

"(iv) grant or deny the requested injunction within 30 days after the date on which the Commission's request was filed with the court.";

(9) by striking "section 19 (related to prohibited acts);" in subsection (b)(4) and inserting "any consumer product safety rule or provision of this Act or similar rule or provision of any other Act enforced by the Commission;";

(10) by striking "or" after the semicolon in subsection (b)(5)(B);

(11) by striking "disclosure." in subsection (b)(5)(C) and inserting "disclosure; or";

(12) by inserting in subsection (b)(5) after subparagraph (C) the following:

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

(13) in the matter following subparagraph (D) of subsection (b)(5) (as added by paragraph (12) of this section), by striking "section 19(a)," and inserting "any consumer product safety rule or provision under this Act or similar rule or provision of any other Act enforced by the Commission,"; and

(14) by adding at the end of subsection (b) the following:

"(9) PUBLICLY AVAILABLE DATABASE OF REPORTED DEATHS, INJURIES, ILLNESS, AND RISK OF SUCH INCIDENTS.—

"(A) IN GENERAL.—Not later than 1 year after the date of enactment of the CPSC Reform Act, the Commission shall establish and maintain a publicly available searchable database accessible on the Commission's web site. The database shall include any reports of injuries, illness, death, or risk of such injury, illness, or death related to the use of consumer products received by the Commission from—

"(i) consumers;

"(ii) local, State, or Federal government agencies;

"(iii) health care professionals, including physicians, hospitals, and coroners;

"(iv) child service providers;

"(v) public safety entities, including police and fire fighters; and

"(vi) other non-governmental sources, other than information provided to the Commission by retailers, manufacturers, or private labelers pursuant to a voluntary or required submission under section 15 or other mandatory or voluntary program.

"(B) ADDITIONAL CONTENTS.—In addition to the reports described in subparagraph (A), the Commission may include in the database any additional information it determines to be in the public interest.

"(C) ORGANIZATION OF DATABASE.—The Commission shall categorize the information available on the database by date, product, manufacturer, the model of the product, and any other category the Commission determines to be in the public interest.

"(D) TIMING.—The Commission shall make such reports available on the Commission website no later

than 15 days after the date on which they are received.

"(E) REMOVAL OF INACCURATE OR INCORRECT INFORMATION.—If the Commission determines, after investigation, that information made available on the database is incorrect the Commission shall promptly remove it from the database.

"(F) MANUFACTURER COMMENTS.—A manufacturer, private labeler, or retailer shall be given an opportunity to comment on any information involving a product manufactured by that manufacturer, or distributed by that private labeler or retailer, as the case may be. Any such comments may be included in the database alongside the information involving such product if requested by the manufacturer, private labeler, or retailer.

"(G) DISCLOSURE.—The Commission may not disclose the names or addresses of consumers pursuant to its authority under this subsection.

"(H) APPLICATION WITH OTHER PROVISIONS.—Subsection (a) and the preceding paragraphs of this subsection do not apply to the public disclosure of information received by the Commission under subparagraph (A) of this paragraph.".

SEC. 8. RULEMAKING.

(a) ANPR REQUIREMENT.—

(1) IN GENERAL.—Section 9 (15 U.S.C. 2058) is amended—

(A) by striking "shall be commenced" in subsection (a) and inserting "may be commenced";

(B) by striking "in the notice" in subsection (b) and inserting "in a notice";

(C) by striking "unless, not less than 60 days after publication of the notice required in subsection (a), the" in subsection (c) and inserting "unless the";

(D) by striking "an advance notice of proposed rulemaking under subsection (a) relating to the product involved," in the third sentence of subsection (c) and inserting "the notice,"; and

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

(2) CONFORMING AMENDMENT.—Section 5(a)(3) (15 U.S.C. 2054(a)(3)) is amended by striking "an advance notice of proposed rulemaking or".

(b) RULEMAKING UNDER FEDERAL HAZARDOUS SUBSTANCES ACT.—

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

"(a) RULEMAKING.—

"(1) IN GENERAL.—Whenever in the judgment of the Commission such action will promote the objectives of this Act by avoiding or resolving uncertainty as to its application, the Commission may by regulation declare to be a hazardous substance, for the purposes of this Act, any substance or mixture of substances, which it finds meets the requirements of section 2(f)(1)(A).

"(2) PROCEDURE.—Proceedings for the issuance, amendment, or repeal of regulations under this subsection and the admissibility of the record of such proceedings in other proceedings, shall be governed by the provisions of subsections (f) through (i) of this section.".

(2) PROCEDURE.—Section 2(q)(2) of the Federal Hazardous Substances Act (15 U.S.C. 1261(q)(2)) is amended by striking "Proceedings for the issuance, amendment, or repeal of regulations pursuant to clause (B) of subparagraph (1) of this paragraph shall be governed by the provisions of sections 701(e),

(f), and (g) of the Federal Food, Drug, and Cosmetic Act: Provided, That if" and inserting "Proceedings for the issuance, amendment, or repeal of regulations pursuant to clause (B) of subparagraph (1) of this paragraph shall be governed by the provisions of subsections (f) through (i) of section 3 of this Act, except that if".

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

(A) by striking "shall be commenced" in subsection (f) and inserting "may be commenced";

(B) by striking "in the notice" in subsection (g)(1) and inserting "in a notice"; and

(C) by striking "unless, not less than 60 days after publication of the notice required in subsection (f), the" in subsection (h) and inserting "unless the".

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

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

"(c) The term 'Commission' means the Consumer Product Safety Commission.";

(B) by striking "Secretary" each place it appears and inserting "Commission" except—

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

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

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

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

(D) by striking "he" and "his" each place they appear in reference to the Secretary and inserting "it" and "its", respectively;

(E) by striking "Secretary of Health, Education, and Welfare" each place it appears in section 10(b) (15 U.S.C. 1269(b)) and inserting "Commission";

(F) by striking "Secretary of Health, Education, and Welfare" each place it appears in section 14 (15 U.S.C. 1273) and inserting "Commission";

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

(H) by striking "Consumer Product Safety Commission" each place it appears and inserting "Commission";

(I) by striking "(hereinafter in this section referred to as the 'Commission')" in section 14(d) (15 U.S.C. 1273(d)) and section 20(a)(1) (15 U.S.C. 1275(a)(1)); and

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

(c) RULEMAKING UNDER FLAMMABLE FABRICS ACT.—

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

(A) by striking "shall be commenced" in subsection (g) and inserting "may be commenced by a notice of proposed rulemaking or"; and

(B) by striking "unless, not less than 60 days after publication of the notice required in subsection (g), the" in subsection (i) and inserting "unless the".

(2) OTHER CONFORMING AMENDMENTS.—The Flammable Fabrics Act (15 U.S.C. 1193) is amended—

(A) by striking paragraph (i) of section 2 (15 U.S.C. 1191(i)) and inserting the following: "(i) The term 'Commission' means the Consumer Product Safety Commission.";

(B) by striking "Secretary of Commerce" each place it appears and inserting "Commission";

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

(D) by striking "he" and "his" each place they appear in reference to the Secretary and inserting "it" and "its", respectively;

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

(F) by striking "Consumer Product Safety Commission (hereinafter in this section referred to as the 'Commission')" in section 15 (15 U.S.C. 1202) and inserting "Commission";

(G) by striking section 16(d) (15 U.S.C. 1203(d)) and inserting the following:

"(d) In this section, a reference to a flammability standard or other regulation for a fabric, related material, or product in effect under this Act includes a standard of

flammability continued in effect by section 11 of the Act of December 14, 1967 (Public Law 90–189).''; and

(H) by striking ''Consumer Product Safety Commission'' in section 17 (15 U.S.C. 1204) and inserting ''Commission''.

SEC. 9. PROHIBITION ON STOCKPILING UNDER OTHER COMMISSION-ENFORCED STATUTES.

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

(1) by inserting ''or to which a rule under any other law enforced by the Commission applies,'' after ''applies,''; and

(2) by striking ''consumer product safety'' the second, third, and fourth places it appears.

SEC. 10. THIRD PARTY CERTIFICATION OF CHILDREN'S PRODUCTS.

(a) IN GENERAL.—Section 14(a) (15 U.S.C. 2063(a)) is amended—

(1) by redesignating paragraph (2) as paragraph (5);

(2) by striking ''Every manufacturer'' in paragraph (1) and inserting ''Except as provided in paragraph (2), every manufacturer'';

(3) by designating the second and third sentences of subsection (a) as paragraphs (3) and (4), respectively;

(4) by inserting after paragraph (1) the following:

"(2) Beginning 60 days after the date on which the Commission publishes notice of an interim procedure designated under subsection (d)(2) of this section, every manufacturer, or its designee, of a children's product (and the private labeler, or its designee, of such product if it bears a private label) manufactured or imported after such 60th day that is subject to a children's product safety standard shall—

"(A) have the product tested by a third party laboratory qualified to perform such tests or testing programs; and

"(B) issue a certification which shall—

"(i) certify that such product meets that standard; and

"(ii) specify the applicable children's product safety standard.";

(5) by striking "Such certificate shall" in paragraph (3) as redesignated by paragraph (1) and inserting "A certificate required under this subsection shall"; and

(6) in paragraph (5), as redesignated by paragraph (1)—

(A) by striking "required by paragraph (1) of this subsection," and inserting "required by paragraph (1) or (2) (as the case may be),"; and

(B) by striking "requirement under paragraph (1)" and inserting "requirement under paragraph (1) or (2) (as the case may be)".

(b) TESTING PROGRAMS.—Section 14(b) (15 U.S.C. 2063(b)) is amended—

(1) by inserting "(1)" before the first sentence;

(2) by designating the second sentence as paragraph (2); and

(3) in paragraph (2), as so designated, by striking "Any test or" and inserting "Except as provided in subsection (a)(2), any test or".

(c) CHILDREN'S PRODUCTS; TESTING BY INDEPENDENT THIRD LABORATORIES; CERTIFICATION.—Section 14 (15 U.S.C. 2063) is amended by adding at the end the following:

"(d) APPLICATION TO OTHER CONSUMER PRODUCTS; CERTIFIER STANDARDS; AUDIT.—

"(1) IN GENERAL.—The Commission—

"(A) within 1 year after the date of enactment of the CPSC Reform Act shall by rule—

"(i) establish protocols and standards—

"(I) for acceptance of certification or continuing guarantees of compliance by manufacturers under this section; and

"(II) for verifying that products tested by third party laboratories comply with applicable standards under this Act and other Acts enforced by the Commission;

"(ii) prescribe standards for accreditation of third party laboratories, either by the Commission or by 1 or more independent standard-setting organizations to which the Commission delegates authority, to engage in certifying compliance under subsection (a)(2) for children's products or products to which the Commission extends the certification requirements of that subsection;

"(iii) establish requirements, or delegate authority to 1 or more independent standard-setting organizations, for third party laboratory testing, as the Commission determines to be necessary to ensure compliance with any applicable rule or order, of

random samples of products certified under this section to determine whether they meet the requirements for certification;

"(iv) establish requirements for periodic audits of third party laboratories by an independent standard-setting organization as a condition for accreditation of such laboratories under this section; and

"(v) establish a program by which manufacturers may label products as compliant with the certification requirements of subsection (a)(2); and

"(B) may by rule extend the certification requirements of subsection (a)(2) to other consumer products or to classes or categories of consumer products.

"(2) INTERIM PROCEDURE.—Within 30 days after the date of enactment of the CPSC Reform Act, the Commission shall—

"(A) consider existing laboratory testing certification procedures established by independent standard-setting organizations; and

"(B) designate an existing procedure, or existing procedures, for manufacturers of children's

products to follow until the Commission issues a final rule under paragraph (1)(A).

"(e) DEFINITIONS.—In this section:

"(1) CHILDREN'S PRODUCT.—The term 'children's product' means a consumer product designed or intended for use by, or care of, a child 7 years of age or younger that is introduced into the interstate stream of commerce. In determining whether a product is intended for use by a child 7 years of age or younger, the following factors shall be considered:

"(A) A statement by a manufacturer about the intended use of such product, including a label on such product, if such statement is reasonable.

"(B) Whether the product is represented in its packaging, display, promotion, or advertising as appropriate for children 7 years of age or younger.

"(C) Whether the product is commonly recognized by consumers as being intended for use by a child 7 years of age or younger.

"(D) The Age Determination Guidelines issued by the Commission in September 2002 and any subsequent version of such Guideline.

"(2) CHILDREN'S PRODUCT SAFETY STANDARD.—The term 'children's product safety standard' means a consumer product safety rule or standard under this Act or any other Act enforced by the Commission, or a rule or classification under this Act or any other Act enforced by the Commission declaring a consumer product to be a banned hazardous product or substance.

"(3) THIRD PARTY LABORATORY.—

"(A) IN GENERAL.—The term 'third party laboratory' means a testing entity that—

"(i) is designated by the Commission, or by an independent standard-setting organization to which the Commission qualifies as capable of making such a designation, as a testing laboratory that is competent to test products for compliance with applicable safety standards under this Act and other Acts enforced by the Commission; and

"(ii) except as provided in subparagraph (C), is a non-governmental entity that is not owned, managed, or controlled by the manufacturer or private labeler.

"(B) TESTING AND CERTIFICATION OF ART MATERIALS AND PRODUCTS.—A certifying orga-

nization (as defined in appendix A to section 1500.14(b)(8) of title 16, Code of Federal Regulations) meets the requirements of subparagraph (A)(ii) with respect to the certification of art material and art products required under this section or by regulations issued under the Federal Hazardous Substances Act.

"(C) FIREWALLED PROPRIETARY LABORATORIES.—Upon request, the Commission may certify a laboratory that is owned, managed, or controlled by the manufacturer or private labeler as a third party laboratory if the Commission—

"(i) finds that certification of the laboratory would provide equal or greater consumer safety protection than the manufacturer's use of an independent third party laboratory;

"(ii) establishes procedures to ensure that the laboratory is protected from undue influence, including pressure to modify or hide test results, by the manufacturer or private labeler; and

"(iii) establishes procedures for confidential reporting of allegations of undue influence to the Commission.

"(D) PROVISIONAL CERTIFICATION.—

"(i) IN GENERAL.—Upon application made to the Commission less than 1 year after the date of enactment of the CPSC Reform Act, the Commission may provide provisional certification of a laboratory described in subparagraph (C) of this paragraph, or a laboratory described in subparagraph (A) of this paragraph, upon a showing that the laboratory—

"(I) is certified under laboratory testing certification procedures established by an independent standard-setting organization; or

"(II) provides consumer safety protection that is equal to or greater than that which would be provided by use of an independent third party laboratory.

"(ii) DEADLINE.—The Commission shall grant or deny any such application within 45 days after receiving the completed application.

"(iii) EXPIRATION.—Any such certification shall expire 90 days after the date on

which the Commission publishes final rules under subsections (a)(2) and (d).

"(iv) ANTI-GAP PROVISION.—Within 45 days after receiving a complete application for certification under the final rule prescribed under subsections (a)(2) and (d) of this section from a laboratory provisionally certified under this subparagraph, the Commission shall grant or deny the application if the application is received by the Commission no later than 45 days after the date on which the Commission publishes such final rule.

"(E) DECERTIFICATION.—The Commission, or an independent standard-setting organization to which the Commission has delegated such authority, may decertify a third party laboratory (including a laboratory certified as a third party laboratory under subparagraph (B) of this paragraph) if it finds, after notice and investigation, that a manufacturer or private labeler has exerted undue influence on the laboratory.".

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

(1) by striking "consumer products which are subject to consumer product safety standards" and inserting "a consumer product that is subject to a consumer product safety standard, a children's product that is subject to a children's product safety standard, or either such product that is subject to any other rule under this Act (or a similar rule under any other Act enforced by the Commission)"; and

(2) by striking ", at the option of the person required to certify the product," and inserting "be required by the Commission to".

(e) LABEL AND CERTIFICATION.—Not later than 1 year after the date of enactment of this Act, the Consumer Product Safety Commission shall prescribe a rule in accordance with section 14(a)(5) and (d) of the Consumer Product Safety Act (15 U.S.C. 2063(a)(5) and (d)) for children's products (as defined in subsection (e) of such section).

(f) PROHIBITION ON IMPORTS OF CHILDREN'S PRODUCTS WITHOUT THIRD PARTY TESTING CERTIFICATION.—Section 17(a) (15 U.S.C. 2066(a)) is amended—

(1) by striking "or" at the end of paragraph (4);

(2) by striking "(g)." in paragraph (5) and inserting a "(g); or"; and

(3) by adding at the end the following:

"(6) is a children's product, as that term is defined in section 14(e), or a product for which the Commission, under section 14(d)(1), has required certification under section 14(a)(2), that is not accompanied by a certificate from a third party as required by section 14(a)(2).".

(g) CPSC CONSIDERATION OF EXISTING REQUIREMENTS.—In establishing standards for laboratories certified to perform testing under section 14 of the Consumer Product Safety Act, as amended by this section, the Consumer Product Safety Commission may consider standards and protocols for certification of such laboratories by independent standard-setting organizations that are in effect on the date of enactment of this Act, but shall ensure that the final rule prescribed under subsections (a)(2) and (d) of that section incorporates, as the standard for certification, the most current scientific and technological standards and techniques available.

SEC. 11. TRACKING LABELS FOR PRODUCTS FOR CHILDREN.

(a) LABELING REQUIREMENT FOR INTERNET AND CATALOGUE ADVERTISING OF CERTAIN TOYS AND GAMES.—Section 24 of the Federal Hazardous Substances Act (15 U.S.C. 1278) is amended—

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

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

"(c) INTERNET, CATALOGUE, AND OTHER ADVERTISING.—

"(1) REQUIREMENT.—

"(A) CAUTIONARY STATEMENT.—Any advertisement that provides a direct means of purchase posted by a manufacturer, retailer, distributor, private labeler, or licensor for any toy, game, balloon, small ball, or marble that requires a cautionary statement under subsections (a) and (b), including any advertisement on Internet websites or in catalogues or other distributed materials, shall include the appropriate cautionary statement required under such subsections in its entirety displayed on or immediately adjacent to such advertisement. A manufacturer, distributor, private labeler, or licensor that uses a retailer to advertise a product shall inform the retailer of any cautionary statement that may apply to such products in any communication to the retailer that contains information about the products to be advertised. The requirement imposed

by the preceding sentence shall only apply to advertisements by the retailer if the manufacturer, importer, distributor, private labeler, or licensor affirmatively informs the retailer that such cautionary statement is required for the product.

"(B) DISPLAY.—The cautionary statement described in subparagraph (A) shall be prominently displayed—

"(i) in the primary language used in the advertisement, catalogue, or Internet website;

"(ii) in conspicuous and legible type in contrast by typography, layout, or color with other material printed or displayed in such advertisement; and

"(iii) in a manner consistent with part 1500 of title 16, Code of Federal Regulations.

"(C) DEFINITIONS.—In this paragraph, the terms 'manufacturer, retailer, distributor, private labeler, and licensor'—

"(i) mean any individual who, by such individual's occupation holds himself or herself out as having knowledge or skill peculiar to consumer products, including any

person who is in the business of manufacturing, selling, distributing, labeling, licensing, or otherwise placing in the stream of commerce consumer products; but

"(ii) do not include an individual whose selling activity is intermittent and does not constitute a trade or business.

"(2) ENFORCEMENT.—The requirement under paragraph (1) shall be treated as a consumer product safety standard promulgated under section 7 of the Consumer Product Safety Act (15 U.S.C. 2056). The publication or distribution of any advertisement that is not in compliance with paragraph (1) shall be treated as a prohibited act under section 19 of such Act (15 U.S.C. 2068).".

(b) TRACKING LABELS FOR PRODUCTS FOR CHILDREN.—Section 14(a) of the Consumer Product Safety Act (15 U.S.C. 2063(a)), as amended by section 10(a) of this Act, is further amended by adding at the end thereof the following:

"(6) Effective 1 year after the date of enactment of the CPSC Reform Act, the manufacturer of a children's product or other consumer product (as may be required by the Commission in its discretion after a rulemaking proceeding) shall place distinguishing

marks on the product and its packaging, to the extent practicable, that will enable the ultimate purchaser to ascertain the manufacturer, production time period, and cohort (including the batch, run number, or other identifying characteristic) of production of the product by reference to those marks.".

(c) ADVERTISING, LABELING, AND PACKAGING REPRESENTATION.—Section 14(c) (15 U.S.C. 2063(c)) is amended—

(1) by striking "(c) The" and inserting "(c)(1) The";

(2) by striking "rule)—" and inserting "rule):";

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

(4) by indenting the sentence beginning "Such labels" and inserting "(2)" before "Such labels"; and

(5) by adding at the end thereof the following:

"(4) If an advertisement, label, or package contains a reference to a consumer product safety standard, a statement with respect to whether the product meets all applicable requirements of that standard.".

SEC. 12. SUBSTANTIAL PRODUCT HAZARD REPORTING REQUIREMENT.

Section 15(b) (15 U.S.C. 2064(b)) is amended—

(1) by striking "consumer product distributed in commerce," and inserting "consumer product (or other product or substance over which the Commission has jurisdiction under this or any other Act, except for motor vehicle equipment as defined in section 30102(a)(7) of title 49, United States Code) distributed in commerce,";

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

(3) by inserting after paragraph (1) the following:

"(2) fails to comply with any rule or standard promulgated by the Commission under this or any other Act;".

SEC. 13. CORRECTIVE ACTION PLANS.

Section 15(d) (15 U.S.C. 2064(d)) is amended—

(1) by inserting "(1)" after "(d)";

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

(3) by striking "more (A)" in subparagraph (C), as redesignated, and inserting "more (i)";

(4) by striking "or (B)" in subparagraph (C), as redesignated, and inserting "or (ii)";

(5) by striking "whichever of the following actions the person to whom the order is directed elects:"

and inserting "any one or more of the following actions it determines to be in the public interest:";

(6) by indenting the sentence beginning "An order" and inserting "(2)" before "An order";

(7) by striking "satisfactory to the Commission," and inserting "for approval by the Commission,";

(8) by striking "described in paragraph (3)." and inserting "described in paragraph (1)(C)."; and

(9) by adding at the end the following:

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

"(B) If the Commission finds that an approved action plan is not effective, or that the manufacturer, retailer, or distributor is not executing an approved action plan effectively, the Commission may by order amend, or require amendment of, the action plan.

"(C) If the Commission determines, after notice and opportunity for comment, that a manufacturer, retailer, or distributor has failed to comply substantially with its obligations under its action plan, the Commission may revoke its approval of the action plan. The manufacturer, retailer, or distributor to which the action plan applies may not distribute the product to which the action plan relates in commerce after receipt of notice of a revocation of the action plan.".

SEC. 14. IDENTIFICATION OF MANUFACTURER BY IMPORTERS, RETAILERS, AND DISTRIBUTORS.

Section 16 (15 U.S.C. 2065) is amended by adding at the end thereof the following:

"(c) Upon request by an officer or employee duly designated by the Commission—

"(1) every importer, retailer, or distributor of a consumer product (or other product or substance over which the Commission has jurisdiction under this or any other Act) shall identify the manufacturer of that product by name, address, or such other identifying information as the officer or employee may request to the extent that the information is known, or can be determined, by the importer, retailer, or distributor; and

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

"(A) each retailer or distributor to which it directly supplied a given consumer product (or other product or substance over which the Commission has jurisdiction under this or any other Act);

"(B) each subcontractor involved in the production or fabrication of such product or substance; and

"(C) each subcontractor from which it obtained a component thereof.".

SEC. 15. PROHIBITED ACTS.

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

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

"(1) sell, offer for sale, manufacture for sale, distribute in commerce, or import into the United States any consumer product, or other product or substance that is regulated under this Act or any other Act enforced by the Commission, that is—

"(A) not in conformity with an applicable consumer product safety standard under this Act, or any similar rule under any such other Act;

"(B) subject to voluntary corrective action taken by the manufacturer, in consultation with the Commission, of which action the Commission has notified the public, but only if the seller, distributor, or manufacturer knew or should have known of such voluntary corrective action; or

"(C) subject to an order issued under section 12 or 15 of this Act, designated a banned

hazardous substance under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.);";

(2) by striking "or" after the semicolon in paragraph (7);

(3) by striking "and" after the semicolon in paragraph (8);

(4) by striking "insulation)." in paragraph (9) and inserting "insulation);"; and

(5) by striking "18(b)." in paragraph (10) and inserting "18(b); or".

(b) EXPORT OF RECALLED PRODUCTS.—

(1) IN GENERAL.—Section 18 (15 U.S.C. 2067) is amended by adding at the end thereof the following:

"(c) Notwithstanding any other provision of law, the Commission may prohibit a person from exporting from the United States for purpose of sale any consumer product, or other product or substance that is regulated under this Act of any other Act enforced by the Commission, that the Commission determines, after notice to the manufacturer—

"(1) is not in conformity with an applicable consumer product safety standard under this Act or with a similar rule under any such other Act and does not violate applicable safety standards established by the importing country;

"(2) is subject to an order issued under section 12 or 15 of this Act or designated as a banned hazardous substance under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.); or

"(3) is subject to voluntary corrective action taken by the manufacturer, in consultation with the Commission, of which action the Commission has notified the public and that would have been subject to mandatory corrective action under this Act or any other Act enforced by the Commission if voluntary corrective action had not been taken by the manufacturer, except that the Commission may permit such a product to be exported if it meets applicable safety standards established by the importing country.".

(2) PENALTY.—Section 19(a) (15 U.S.C. 2068(a)), as amended by subsection (a) of this section, is further amended—

(A) by striking "or" after the semicolon in paragraph (10);

(B) by striking "37." in paragraph (11) and inserting "37; or"; and

(C) by adding at the end thereof the following:

"(12) violate an order of the Commission under section 18(c).".

(3) CONFORMING AMENDMENTS TO OTHER ACTS.—

(A) FEDERAL HAZARDOUS SUBSTANCES ACT.—Section 5(b)(3) of the Federal Hazardous Substances Act (15 U.S.C. 1264(b)(3)) is amended by striking "substance presents an unreasonable risk of injury to persons residing in the United States," and inserting "substance is prohibited under section 18(c) of the Consumer Product Safety Act,".

(B) FLAMMABLE FABRICS ACT.—Section 15 of the Flammable Fabrics Act (15 U.S.C. 1202) is amended by adding at the end thereof the following:

"(d)(1) Notwithstanding any other provision of law, except as provided in paragraph (2), the Consumer Product Safety Commission may prohibit a person from exporting from the United States for purpose of sale any fabric, related material, or product that the Commission determines, after notice to the manufacturer—

"(A) is not in conformity with an applicable consumer product safety standard under the Consumer Product Safety Act or with a rule under this Act;

"(B) is subject to an order issued under section 12 or 15 of the Consumer Product Safety Act or designated as a banned hazardous substance under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.); or

"(C) is subject to voluntary corrective action taken by the manufacturer, in consultation with the Commission, of which action the Commission has notified the public and that would have been subject to mandatory corrective action under this or another Act enforced by the Commission if voluntary corrective action had not been taken by the manufacturer.

"(2) The Commmission may permit the exportation of a fabric, related material, or product described in paragraph (1) if it meets applicable safety standards of the country to which it is being exported.".

(c) FALSE CERTIFICATION OF COMPLIANCE WITH TESTING LABORATORY STANDARD.—Section 19(a) (15 U.S.C. 2068(a)), as amended by subsection (b)(2) of this section, is further amended—

(1) by striking "or" after the semicolon in paragraph (11);

(2) by striking "18(c)." in paragraph (12) and inserting "18(c); or"; and

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

"(13) sell, offer for sale, distribute in commerce, or import into the United States any consumer product bearing a registered safety certification mark owned by an accredited conformity assessment body, which mark is known, or should have been known, by such person to be used in a manner unauthorized by the owner of that certification mark.".

(d) MISREPRESENTATION OF INFORMATION IN INVESTIGATION.—Section 19(a) (15 U.S.C. 2068(a)), as amended by subsection (c) of this section, is further amended—

(1) by striking "or" after the semicolon in paragraph (12);

(2) by striking "false." in paragraph (13) and inserting "false; or"; and

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

"(14) misrepresent to any officer or employee of the Commission the scope of consumer products subject to an action required under section 12 or 15, or to make a material misrepresentation to such an officer or employee in the course of an investigation under this Act or any other Act enforced by the Commission.".

(e) CERTIFICATES OF COMPLIANCE WITH MANDATORY STANDARDS.—Section 19(a)(6) (15 U.S.C. 2068(a)(6)) is amended to read as follows:

"(6) fail to furnish a certificate required by this Act or any other Act enforced by the Commission, or to issue a false certificate if such person in the exercise of due care has reason to know that the certificate is false or misleading in any material respect; or to fail to comply with any rule under section 14(c);".

(f) UNDUE INFLUENCE ON THIRD PARTY LABORATORIES.—Section 19(a) (15 U.S.C. 2068(a)), as amended by subsection (d) of this section, is further amended—

(1) by striking "or" after the semicolon in paragraph (13);

(2) by striking "Commission." in paragraph (14) and inserting "Commission; or"; and

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

"(15) exercise, or attempt to exercise, undue influence on a third party laboratory (as defined in section 14(e)(2)) with respect to the testing, or reporting of the results of testing, of any product for compliance with a standard under this Act or any other Act enforced by the Commission.".

SEC. 16. PENALTIES.

(a) CIVIL PENALTIES.—

(1) IN GENERAL.—Section 20(a) (15 U.S.C. 2069(a)) is amended—

(A) by striking "$5,000" and inserting "$250,000";

(B) by striking "$1,250,000" each place it appears and inserting "$20,000,000"; and

(C) by striking "December 1, 1994," in paragraph (3)(B) and inserting "December 1, 2011,".

(2) FEDERAL HAZARDOUS SUBSTANCES ACT.—Section 5(c) of the Federal Hazardous Substances Act (15 U.S.C. 1264(c)) is amended—

(A) by striking "$5,000" in paragraph (1) and inserting "$250,000";

(B) by striking "$1,250,000" each place it appears in paragraph (1) and inserting "$20,000,000"; and

(C) by striking "December 1, 1994," in paragraph (6)(B) and inserting "December 1, 2011,".

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

(A) by striking "$5,000" in paragraph (1) and inserting "$250,000";

(B) by striking "$1,250,000" in paragraph (1) and inserting "$20,000,000"; and

(C) by striking "December 1, 1994," in paragraph (5)(B) and inserting "December 1, 2011,".

(4) MAXIMUM PENALTY FOR CERTAIN VIOLATIONS.—Section 20(a)(1) (15 U.S.C. 2069(a)), section 5(c)(1) of the Federal Hazardous Substances Act (15 U.S.C. 1264(c)), and section 5(e)(1) of the Flammable Fabrics Act (15 U.S.C. 1194(e)) are each amended by inserting "The Commission shall impose civil penalties exceeding $10,000,000 under this paragraph only when issuing a finding of aggravated circumstances." after "violations.".

(b) CRIMINAL PENALTIES.—

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

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

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

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

"(3) both.".

(2) DIRECTORS, OFFICERS, AND AGENTS.—Section 21(b) (15 U.S.C. 2070(b)) is amended by striking "19, and who has knowledge of notice of noncompli-

ance received by the corporation from the Commission," and inserting "19".

(3) UNDER THE FEDERAL HAZARDOUS SUBSTANCES ACT.—Section 5(a) of the Federal Hazardous Substances Act (15 U.S.C. 1264(a)) is amended by striking "one year, or a fine of not more than $3,000, or both such imprisonment and fine." and inserting "5 years, a fine determined under section 3571 of title 18, United States Code, or both.".

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

"PENALTIES

"SEC. 7. Violation of section 3 or 8(b) of this Act, or failure to comply with section 15(c) of this Act, is punishable by—

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

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

"(3) both.".

(c) CIVIL PENALTY CRITERIA.—Within 1 year after the date of enactment of this Act, the Consumer Product Safety Commission shall initiate a rulemaking in accordance with section 553 of title 5, United States Code, to establish additional criteria for the imposition of civil pen-

alties under section 20 of the Consumer Product Safety Act (15 U.S.C. 2069) and any other Act enforced by the Commission, including factors to be considered in establishing the amount of such penalties, such as repeat violations, the precedential value of prior adjudicated penalties, the factors described in section 20(b) of the Consumer Product Safety Act (15 U.S.C. 2069(b)), and other circumstances. Section 20 (15 U.S.C. 2069) is amended—

(1) by striking "charged." in subsection (b) and inserting "charged, including how to mitigate undue adverse economic impacts on small businesses."; and

(2) by striking "charged," in subsection (c) and inserting "charged (including how to mitigate undue adverse economic impacts on small businesses),".

(d) CRIMINAL PENALTIES TO INCLUDE ASSET FORFEITURE.—Section 21 (15 U.S.C. 2070) is amended by adding at the end thereof the following:

"(c)(1) In addition to the penalties provided by subsection (a), the penalty for a criminal violation of this Act or any other Act enforced by the Commission may include the forfeiture of assets associated with the violation.

"(2) In this subsection, the term 'criminal violation' means a violation of this Act or any other Act enforced by the Commission for which the violator is sentenced to pay a fine, be imprisoned, or both.".

SEC. 17. PREEMPTION.

The provisions of sections 25 and 26 of the Consumer Product Safety Act (15 U.S.C. 2074 and 2075, respectively)), section 18 of the Federal Hazardous Substances Act (15 U.S.C. 1261 note), section 16 of the Flammable Fabrics Act (15 U.S.C. 1203), and section 7 of the Poison Packaging Prevention Act of 1970 (15 U.S.C. 1476) establishing the extent to which those Acts preempt, limit, or otherwise affect any other Federal, State, or local law, any rule, procedure, or regulation, or any cause of action under State or local law may not be expanded or contracted in scope, or limited, modified or extended in application, by any rule or regulation thereunder, or by reference in any preamble, statement of policy, executive branch statements, or other matter associated with the publication of any such rule or regulation.

SEC. 18. SHARING OF INFORMATION WITH FEDERAL, STATE, LOCAL, AND FOREIGN GOVERNMENT AGENCIES.

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

"(f)(1) The Commission may make information obtained by the Commission under section 6 available to any Federal, State, local, or foreign government agency upon the prior certification of an appropriate official of any such agency, either by a prior agreement or memorandum of understanding with the Commission or by other written cer-

tification, that such material will be maintained in confidence and will be used only for official law enforcement or consumer protection purposes, if—

"(A) the agency has set forth a bona fide legal basis for its authority to maintain the material in confidence;

"(B) the materials are to be used for purposes of investigating, or engaging in enforcement proceedings related to, possible violations of—

"(i) laws regulating the manufacture, importation, distribution, or sale of defective or unsafe consumer products, or other practices substantially similar to practices prohibited by any law administered by the Commission;

"(ii) a law administered by the Commission, if disclosure of the material would further a Commission investigation or enforcement proceeding; or

"(iii) with respect to a foreign law enforcement agency, with the approval of the Attorney General, other foreign criminal laws, if such foreign criminal laws are offenses defined in or covered by a criminal mutual legal assistance treaty in force between the government of the United

States and the foreign law enforcement agency's government; and

"(C) the foreign government agency is not from a foreign state that the Secretary of State has determined, in accordance with section 6(j) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)), has repeatedly provided support for acts of international terrorism, unless and until such determination is rescinded pursuant to section 6(j)(4) of that Act (50 U.S.C. App. 2405(j)(4)).

"(2) Except as provided in paragraph (3) of this subsection, the Commission shall not be required to disclose under section 552 of title 5, United States Code, or any other provision of law—

"(A) any material obtained from a foreign government agency, if the foreign government agency has requested confidential treatment, or has precluded such disclosure under other use limitations, as a condition of providing the material;

"(B) any material reflecting a consumer complaint obtained from any other foreign source, if the foreign source supplying the material has requested confidential treatment as a condition of providing the material; or

"(C) any material reflecting a consumer complaint submitted to a Commission reporting mechanism sponsored in part by foreign government agencies.

"(3) Nothing in this subsection shall authorize the Commission to withhold information from the Congress or prevent the Commission from complying with an order of a court of the United States in an action commenced by the United States or the Commission.

"(4) The Commission may terminate a memorandum of understanding or other agreement with another agency if it determines that the other agency has not handled information made available by the Commission under paragraph (1) or has failed to maintain confidentiality with respect to the information.

"(5) In this subsection, the term 'foreign government agency' means—

"(A) any agency or judicial authority of a foreign government, including a foreign state, a political subdivision of a foreign state, or a multinational organization constituted by and comprised of foreign states, that is vested with law enforcement or investigative authority in civil, criminal, or administrative matters; and

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

SEC. 19. FINANCIAL RESPONSIBILITY.

(a) IN GENERAL.—The Act (15 U.S.C. 2051 et seq.) is amended by adding at the end thereof the following:

"FINANCIAL RESPONSIBILITY

"SEC. 39. (a) The Commission, in a rulemaking proceeding, may establish procedures to require the posting of an escrow, proof of insurance, or security acceptable to the Commission by—

"(1) a person that has committed multiple significant violations of this Act or any rule or Act enforced by the Commission;

"(2) the manufacturer or distributor of a category or class of consumer products; or

"(3) the manufacturer or distributor of any consumer product or any product or substance regulated under any other Act enforced by the Commission.

"(b) AMOUNT.—The escrow, proof of insurance, or security required by the Commission under subsection (a) shall be in an amount sufficient—

"(1) to cover the costs of an effective recall of the product or substance; or

"(2) to cover the costs of holding the product and the destruction of the product should such action be

required by the Commission under this Act or any other act enforced by the Commission.".

(b) CONFORMING AMENDMENTS.—

(1) The table of contents is amended by striking the item relating to section 10 and inserting the following:

"Sec. 10. [Repealed].".

(2) The table of contents is amended by inserting after the item relating to section 34 the following:

"Sec. 35. Interim cellulose insulation safety standard.
"Sec. 36. Congressional veto of consumer product safety rules.
"Sec. 37. Information reporting.
"Sec. 38. Low-speed electric bicycles.
"Sec. 39. Financial responsibility.".

SEC. 20. ENFORCEMENT BY STATE ATTORNEYS GENERAL.

(a) IN GENERAL.—The Act (15 U.S.C. 2051 et seq.) is amended by inserting after section 26 the following:

"ENFORCEMENT BY STATE ATTORNEYS GENERAL

"SEC. 26A. (a) Except as provided in subsection (f), whenever the attorney general of a State has reason to believe that the interests of the residents of that State have been, or are being, threatened or adversely affected by a violation of any consumer product safety rule, regulation, standard, certification or labeling requirement, or order prescribed under this Act or any other Act enforced by the Commission (including the sale of a voluntarily or mandatorily recalled product or of a banned hazardous substance or product), the State, as parens patriae, may bring

a civil action on behalf of its residents in an appropriate district court of the United States to obtain injunctive relief provided under such Act.

"(b) The State shall serve written notice to the Commission of any civil action under subsection (a) at least 60 days prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide notice immediately upon instituting such civil action.

"(c) Upon receiving the notice required by subsection (b), the Commission may intervene in such civil action and upon intervening—

"(1) be heard on all matters arising in such civil action; and

"(2) file petitions for appeal of a decision in such civil action.

"(d) Nothing in this section shall prevent the attorney general of a State from exercising the powers conferred on the attorney general, or other authorized State officer, by the laws of such State. Nothing in this section shall prohibit the attorney general of a State, or other authorized State officer, from proceeding in State or Federal court on the basis of an alleged violation of any civil or criminal statute of that State.

"(e) In a civil action brought under subsection (a)—

"(1) the venue shall be a judicial district in which—

"(A) the manufacturer, distributor, or retailer operates; or

"(B) the manufacturer, distributor, or retailer is authorized to do business;

"(2) process may be served without regard to the territorial limits of the district or of the State in which the civil action is instituted; and

"(3) a person who participated with a manufacturer, distributor, or retailer in an alleged violation that is being litigated in the civil action may be joined in the civil action without regard to the residence of the person.

"(f) If the Commission has instituted a civil action or an administrative action for violation of this Act or any other Act enforced by the Commission, no State attorney general, or other official or agency of a State, may bring an action under this section during the pendency of that action against any defendant named in the complaint of the Commission for any violation of this Act alleged in the complaint.

"(g) If the attorney general of the State prevails in any civil action under subsection (a), it can recover reason-

able costs and attorney fees from the manufacturer, distributor, or retailer. Any attorney's fees recovered pursuant to this subsection shall be reviewed by the court to ensure that those fees are consistent with section 2060(f) of this title.

"(h) If private counsel is retained to assist in any civil action under subsection (a), the private counsel retained to assist the State may not share with participants in other private civil actions that arise out of the same operative facts any information that is—

(1) subject to a litigation privilege; and

(2) was obtained during discovery in the action under subsection (a).

The private counsel retained to assist the State may not use any information that is subject to a litigation privilege and that was obtained while assisting the State in the action under subsection (a) in any other private civil actions that arise out of the same operative facts.".

(b) CONFORMING AMENDMENT.—The table of contents is amended by inserting after the item relating to section 26 the following:

"Sec. 26A. Enforcement by state attorneys general.".

SEC. 21. WHISTLEBLOWER PROTECTIONS.

(a) IN GENERAL.—The Act (15 U.S.C. 2051 et seq.), as amended by section 19, is further amended by adding at the end the following:

"WHISTLEBLOWER PROTECTION

"SEC. 40. (a) No manufacturer, private labeler, distributor, or retailer, nor any Federal, State, or local government agency, may discharge an employee or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee, whether at the employee's initiative or in the ordinary course of the employee's duties (or any person acting pursuant to a request of the employee)—

"(1) provided, caused to be provided, or is about to provide or cause to be provided to the employer, the Federal Government, or the attorney general of a State information relating to any violation of, or any act or omission the employee reasonably believes to be a violation of an order, regulation, rule, or other provision of this Act or any other Act enforced by the Commission;

"(2) testified or is about to testify in a proceeding concerning such violation;

"(3) assisted or participated or is about to assist or participate in such a proceeding; or

"(4) objected to, or refused to participate in, any activity, policy, practice, or assigned task that the employee (or other such person) reasonably believed to be in violation of an order, regulation, rule, or other

provision of this Act or any other Act enforced by the Commission.

"(b)(1) A person who believes that he or she has been discharged or otherwise discriminated against by any person in violation of subsection (a) may, not later than 180 days after the date on which such violation occurs, file (or have any person file on his or her behalf) a complaint with the Secretary of Labor alleging such discharge or discrimination and identifying the person responsible for such act. Upon receipt of such a complaint, the Secretary shall notify, in writing, the person named in the complaint of the filing of the complaint, of the allegations contained in the complaint, of the substance of evidence supporting the complaint, and of the opportunities that will be afforded to such person under paragraph (2).

"(2)(A) Not later than 60 days after the date of receipt of a complaint filed under paragraph (1) and after affording the complainant and the person named in the complaint an opportunity to submit to the Secretary a written response to the complaint and an opportunity to meet with a representative of the Secretary to present statements from witnesses, the Secretary shall initiate an investigation and determine whether there is reasonable cause to believe that the complaint has merit and notify, in writing, the complainant and the person alleged to have committed a viola-

tion of subsection (a) of the Secretary's findings. If the Secretary concludes that there is reasonable cause to believe that a violation of subsection (a) has occurred, the Secretary shall accompany the Secretary's findings with a preliminary order providing the relief prescribed by paragraph (3)(B). Not later than 30 days after the date of notification of findings under this paragraph, either the person alleged to have committed the violation or the complainant may file objections to the findings or preliminary order, or both, and request a hearing on the record. The filing of such objections shall not operate to stay any reinstatement remedy contained in the preliminary order. Any such hearing shall be conducted expeditiously. If a hearing is not requested in such 30-day period, the preliminary order shall be deemed a final order that is not subject to judicial review.

"(B)(i) The Secretary shall dismiss a complaint filed under this subsection and shall not conduct an investigation otherwise required under subparagraph (A) unless the complainant makes a prima facie showing that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

"(ii) Notwithstanding a finding by the Secretary that the complainant has made the showing required under clause (i), no investigation otherwise required under sub-

paragraph (A) shall be conducted if the employer demonstrates, by clear and convincing evidence, that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

"(iii) The Secretary may determine that a violation of subsection (a) has occurred only if the complainant demonstrates that any behavior described in paragraphs (1) through (4) of subsection (a) was a contributing factor in the unfavorable personnel action alleged in the complaint.

"(iv) Relief may not be ordered under subparagraph (A) if the employer demonstrates by clear and convincing evidence that the employer would have taken the same unfavorable personnel action in the absence of that behavior.

"(3)(A) Not later than 120 days after the date of conclusion of any hearing under paragraph (2), the Secretary shall issue a final order providing the relief prescribed by this paragraph or denying the complaint. At any time before issuance of a final order, a proceeding under this subsection may be terminated on the basis of a settlement agreement entered into by the Secretary, the complainant, and the person alleged to have committed the violation.

"(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) has occurred, the Secretary shall order the person who committed such violation—

"(i) to take affirmative action to abate the violation;

"(ii) to reinstate the complainant to his or her former position together with compensation (including back pay) and restore the terms, conditions, and privileges associated with his or her employment; and

"(iii) to provide compensatory damages to the complainant.

If such an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

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

"(4) If the Secretary has not issued a final decision within 210 days after the filing of the complaint, or within 90 days after receiving a written determination, the complainant may bring an action at law or equity for review

in the appropriate district court of the United States with jurisdiction, which shall have jurisdiction over such an action without regard to the amount in controversy, and which action shall, at the request of either party to such action, be tried by the court with a jury. The proceedings shall be governed by the same legal burdens of proof specified in paragraph (2)(B). The court shall have jurisdiction to grant all relief necessary to make the employee whole, including injunctive relief and compensatory damages, including—

"(A) reinstatement with the same seniority status that the employee would have had, but for the discharge or discrimination;

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

"(C) compensation for any special damages sustained as a result of the discharge or discrimination, including litigation costs, expert witness fees, and reasonable attorney fees.

"(5)(A) Any person adversely affected or aggrieved by a final order issued under paragraph (3) may obtain review of the order in the United States Court of Appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred or the circuit in which the complainant resided on the date of such violation. The petition for review must be filed not later than 60 days

after the date of the issuance of the final order of the Secretary. Review shall conform to chapter 7 of title 5, United States Code. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the order.

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

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

"(7)(A) A person on whose behalf an order was issued under paragraph (3) may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

"(B) The court, in issuing any final order under this paragraph, may award costs of litigation (including reasonable attorneys' and expert witness fees) to any party whenever the court determines such award is appropriate.

"(8) Notwithstanding paragraphs (1) through (7), a Federal employee shall be limited to the remedies available under chapters 12 and 23 of title 5, United States Code, for any violation of this section.

"(c) Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28, United States Code.

"(d) Subsection (a) shall not apply with respect to an employee of a manufacturer, private labeler, distributor, or retailer who, acting without direction from such manufacturer, private labeler, distributor, or retailer (or such person's agent), deliberately causes a violation of any requirement relating to any violation or alleged violation of any order, regulation, or consumer product safety standard under this Act or any other law enforced by the Commission.".

(b) CONFORMING AMENDMENT.—The table of contents, as amended by section 19 of this Act, is further amended by inserting after the item relating to section 39 the following:

"Sec. 40. Whistleblower protection.".

SEC. 22. BAN ON CHILDREN'S PRODUCTS CONTAINING LEAD; LEAD PAINT RULE.

(a) IN GENERAL.—Beginning on the date that is 1 year after the date of enactment of this Act, any children's product (as defined in section 14(e) of the Consumer Product Safety Act (15 U.S.C. 2063(e))) that contains lead shall be treated as a banned hazardous substance under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.).

(b) TRACE AMOUNTS OF LEAD.—

(1) INITIAL STANDARD.—For purposes of subsection (a), a children's product shall be considered to contain lead if any part of the product contains lead or lead compounds and the lead content of such part (calculated as lead metal) is greater than 0.03 percent by weight of the total weight of such part (or such lesser amount as may be established by the Commission by regulation).

(2) REDUCED THRESHOLD.—

(A) IN GENERAL.—Beginning on the date that is 3 years after the date of enactment of this Act, paragraph (1) shall be applied by substituting "0.01 percent" for "0.03 percent" unless the Consumer Product Safety Commission determines that a standard of 0.01 percent is not technologically feasible. The Commission may make such a determination only after notice and

a hearing and after analyzing the public health protections associated with substantially reducing lead in children's products.

(B) ALTERNATIVE REDUCTION.—If the Commission determines under subparagraph (A) that the 0.01 percent standard is not technologically feasible, the Commission shall, by regulation, establish a lesser amount that is the lowest amount of lead, lower than 0.03 percent by weight, the Commission determines to be technologically feasible to achieve. The amount of lead established by the Commission under the preceding sentence shall be substituted for the 0.03 percent standard under paragraph (1) beginning on the date that is 3 years after the date of enactment of this Act.

(c) EXCEPTIONS.—

(1) INACCESSIBLE COMPONENTS.—

(A) IN GENERAL.—Subsection (a) does not apply to a component of a children's product that is not accessible to a child because it is not physically exposed by reason of a sealed covering or casing and will not become physically exposed through normal and reasonably foreseeable use and abuse of the product.

(B) INACCESSIBILITY PROCEEDING.—Within 2 years after the date of enactment of this Act, the Commission shall promulgate a rule providing guidance with respect to what product components, or classes of components, will be considered to be inaccessible for purposes of subparagraph (A).

(C) APPLICATION PENDING CPSC GUIDANCE.—Until the Commission promulgates a rule pursuant to subparagraph (B), the determination of whether a product component is inaccessible to a child shall be made in accordance with the requirements of subparagraph (A) for considering a component to be inaccessible to a child.

(D) CERTAIN BARRIERS DISQUALIFIED.—For purposes of this paragraph, paint, coatings, or electroplating may not be considered to be a barrier that would render lead in the substrate inaccessible to a child through normal and reasonably foreseeable use and abuse of the product.

(2) ELECTRONICS.—If the Commission determines that it is not feasible for certain electronic devices, including batteries, to comply with subsection

(a) at the time the regulations take effect, the Commission shall, by regulation—

(A) issue standards to reduce the exposure of and accessibility to lead in such electronic devices; and

(B) establish a schedule by which such electronic devices shall be in full compliance with the regulations prescribed under subsection (a).

(3) LEAD CRYSTAL.—The Commission may by rule provide that subsection (a) does not apply to lead crystal if the Commission determines, after notice and a hearing, that the lead content in lead crystal will neither—

(A) result in the absorption of lead into the human body; nor

(B) have an adverse impact on public health and safety.

(d) REGULATIONS.—Notwithstanding the provisions of subsection (b), the Commission may by regulation establish such lower thresholds for lead content in children's products than those set forth in subsection (b) as the Commission finds to be technologically feasible.

(e) PAINT STANDARD FOR ALL PRODUCTS.—Effective on the date that is 1 year after the date of enactment of this Act, the Consumer Product Safety Commission shall

modify section 1303.1 of its regulations (16 C.F.R. 1303.1) by substituting "0.009 percent" for "0.06 percent" in subsection (a) of that section.

(f) APPLICATION WITH ASTM F963.—To the extent that any standard or rule promulgated by the Consumer Product Safety Commission under this section (or any section of the Consumer Product Safety Act or any other Act enforced by the Commission, as such Acts are affected by this section) is inconsistent with the ASTM F963 standard, such promulgated standard or rule shall supersede the ASTM F963 standard to the extent of the inconsistency.

SEC. 23. ALTERNATIVE MEASURES OF LEAD CONTENT.

The Consumer Product Safety Commission, in cooperation with the National Academy of Sciences and the National Institute of Standards and Technology, shall study the feasibility of establishing a measurement standard based on a units-of-mass-per-area standard (similar to existing measurement standards used by the Department of Housing and Urban Development and the Environmental Protection Agency to measure for metals in household paint and soil, respectively) that is statistically comparable to the parts-per-million measurement standard currently used in laboratory analysis.

SEC. 24. STUDY OF PREVENTABLE INJURIES AND DEATHS OF MINORITY CHILDREN RELATED TO CERTAIN CONSUMER PRODUCTS.

(a) IN GENERAL.—Within 90 days after the date of enactment of this Act, the Government Accountability Office shall initiate a study to assess disparities in the risks and incidence of preventable injuries and deaths among children of minority populations, including Black, Hispanic, American Indian, Alaskan Native, Native Hawaiian, and Asian/Pacific Islander children in the United States.

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

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Comptroller General shall report the findings to the Senate Commerce, Science, and Transportation Committee and the House of Representatives Energy and Commerce Committee. The report shall include—

(1) the Government Accountability Office's findings on the incidence of preventable risks of injury and death among children of minority populations and recommendations for minimizing such increased risks;

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

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

SEC. 25. COST-BENEFIT ANALYSIS UNDER THE POISON PREVENTION PACKAGING ACT OF 1970.

Section 3 of the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1472) is amended by adding at the end thereof the following:

"(e) Nothing in this Act shall be construed to require the Secretary, in establishing a standard under this section, to prepare a comparison of the costs that would be incurred in complying with such standard with the benefits of such standard.".

SEC. 26. INSPECTOR GENERAL REPORTS.

(a) IMPLEMENTATION BY THE COMMISSION.—

(1) IN GENERAL.—The Inspector General of the Consumer Product Safety Commission shall conduct reviews and audits of implementation of the Consumer Product Safety Act by the Commission, including—

(A) an assessment of the ability of the Commission to enforce subsections (a)(2) and (d) of section 14 of the Act (15 U.S.C. 2063), as

amended by section 10 of this Act, including the ability of the Commission to enforce the prohibition on imports of children's products without third party testing certification under section 17(a)(6) of the Act (15 U.S.C. 2066)(a)(6), as added by section 10 of this Act;

(B) an assessment of the ability of the Commission to enforce section 14(a)(6) of the Act (15 U.S.C. 2063(a)(6)), as added by section 11 of this Act, and section 16(c) of the Act, as added by section 14 of this Act; and(C) an audit of the Commission's capital improvement efforts, including construction of a new testing facility.

(2) ANNUAL REPORT.—The Inspector General shall submit an annual report, setting forth the Inspector General's findings, conclusions, and recommendations from the reviews and audits under paragraph (1), for each of fiscal years 2009 through 2015 to the Commission, the Senate Committee on Commerce, Science, and Transportation, and the House of Representatives Committee on Energy and Commerce.

(b) EMPLOYEE COMPLAINTS.—

(1) IN GENERAL.—Within 1 year after the date of enactment of this Act, the Inspector General shall conduct a review of—

(A) complaints received by the Inspector General from employees of the Commission about failures of other employees to properly enforce the rules or regulations of the Consumer Product Safety Act or any other Act enforced by the Commission, including the negotiation of corrective action plans in the recall process; and

(B) the process by which corrective action plans are negotiated by the Commission, including an assessment of the length of time for these negotiations and the effectiveness of the plans.

(2) REPORT.—The Inspector General shall submit a report, setting forth the Inspector General's findings, conclusions, and recommendations, to the Commission, the Senate Committee on Commerce, Science, and Transportation, and the House of Representatives Committee on Energy and Commerce.

(c) LEAKS.—

(1) IN GENERAL.—Within 1 year after the date of enactment of this Act, the Inspector General shall—

(A) conduct a review of whether, and to what extent, there have been unauthorized and unlawful disclosures of information by Members, officers, or employees of the Commission to persons regulated by the Commission that are not authorized to receive such information; and

(B) to the extent that such unauthorized and unlawful disclosures have occurred, determine—

(i) what class or kind of information was most frequently involved in such disclosures; and

(ii) how frequently such disclosures have occurred.

(2) REPORT.—The Inspector General shall submit a report, setting forth the Inspector General's findings, conclusions, and recommendations, to the Commission, the Senate Committee on Commerce, Science, and Transportation, and the House of Representatives Committee on Energy and Commerce.

SEC. 27. PUBLIC INTERNET WEBSITE LINKS.

Not later than 30 days after the date of enactment of this Act, the Consumer Product Safety Commission shall establish and maintain—

(1) a direct link on the homepage of its Internet website to the Internet website of the Commission's Office of Inspector General; and

(2) a mechanism on the homepage of the Office of Inspector General's Internet website by which individuals may anonymously report cases of waste, fraud, or abuse with respect to the Commission.

SEC. 28. CHILD-RESISTANT PORTABLE GASOLINE CONTAINERS.

(a) CONSUMER PRODUCT SAFETY RULE.—

(1) ESTABLISHMENT.—There is established, as a consumer product safety rule promulgated by the Commission in accordance with section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), a requirement that each portable gasoline container for sale in the United States shall conform to the child-resistance requirements for closures on portable gasoline containers specified in the standard ASTM F2517–05, issued by ASTM International.

(b) REVISION OF RULE.—

(1) IN GENERAL.—Except as provided in paragraph (2), if, after the date of the enactment of this Act, ASTM International proposes to revise the child resistance requirements of ASTM F2517–05—

(A) ASTM International shall notify the Commission of the proposed revision; and

(B) the proposed revision shall be incorporated in the consumer product safety rule established by subsection (a).

(2) EXCEPTION.—If, not later than 60 days after the date of the notice described in paragraph (1)(A), the Commission notifies ASTM International that the Commission has determined that such revision is inconsistent with subsection (a), the requirement of paragraph (1)(B) shall not apply.

(c) IMPLEMENTING REGULATIONS.—With respect to the promulgation of any regulations by the Commission to implement the requirements of this section—

(1) section 553 of title 5, United States Code, shall apply; and

(2) sections 7 and 9 of the Consumer Product Safety Act (15 U.S.C. 2056 and 2058) shall not apply.

(d) REPORT.—Not later than 2 years after the date of enactment of this Act, the Commission shall submit to the Senate Committee on Commerce, Science, and Transportation and the House of Representatives Committee on Energy and Commerce a report on—

(1) the degree of industry compliance with the consumer product safety rule established by subsection (a);

(2) any enforcement actions brought by the Commission to enforce such rule; and

(3) incidents involving children interacting with portable gasoline containers (including both those that are and are not in compliance with the rule established by subsection (a)).

(e) DEFINITIONS.—In this section:

(1) COMMISSION.—The term "Commission" means the Consumer Product Safety Commission.

(2) PORTABLE GASOLINE CONTAINER.—The term "portable gasoline container" means any portable gasoline container intended for use by consumers.

(f) EFFECTIVE DATE.—The rule established by subsection (a) shall apply to portable gasoline containers manufactured on or after the date that is 6 months after the date of enactment of this Act.

SEC. 29. TOY SAFETY STANDARD.

(a) IN GENERAL.—Beginning 60 days after the date of enactment of this Act, ASTM International Standard F963–07, Consumer Safety Specifications for Toy Safety, as it exists on the date of enactment of this Act shall be considered to be a consumer product safety rule issued by

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

(b) REVISIONS.—If more than 60 days after the date of enactment of this Act, ASTM International proposes to revise Standard F963–07, Consumer Safety Specifications for Toy Safety, or a successor standard, it shall notify the Commission of the proposed revision and the proposed revision shall be incorporated in the consumer product safety rule. The revised standard shall be considered to be a consumer product safety rule issued by the Consumer Product Safety Commission under section 9 of the Consumer Product Safety Act (15 U.S.C. 2058), effective 30 days after the date on which ASTM International notifies the Commission of the revision unless, within 60 days after receiving that notice, the Commission notifies ASTM International that it has determined that the proposed revision does not improve the safety of the consumer product covered by the standard. If the Commission so notifies ASTM International with respect to a proposed revision of the standard, the existing standard shall continue to be considered to be a consumer product safety rule without regard to the proposed revision.

SEC. 30. ALL-TERRAIN VEHICLE SAFETY STANDARD.

(a) IN GENERAL.—The Act (15 U.S.C. 2051 et seq.), as amended by section 21 of this Act, is further amended by adding at the end thereof the following:

"ALL-TERRAIN VEHICLE SAFETY STANDARD

"SEC. 41. (a) IN GENERAL.—

"(1) MANDATORY STANDARD.—Notwithstanding any other provision of law, within 90 days after the date of enactment of the CPSC Reform Act the Commission shall publish in the Federal Register as a mandatory consumer product safety standard the American National Standard for Four Wheel All-Terrain Vehicles Equipment Configuration, and Performance Requirements developed by the Specialty Vehicle Institute of America (American National Standard ANSI/SVIA–1–2007). The standard shall take effect 150 days after it is published.

"(2) COMPLIANCE WITH STANDARD.—After the standard takes effect, it shall be unlawful for any manufacturer or distributor to import into or distribute in commerce in the United States any new assembled or unassembled all-terrain vehicle unless—

"(A) the vehicle complies with each applicable provision of the standard;

"(B) the vehicle is subject to an ATV action plan filed with the Commission before the date of

enactment of the CPSC Reform Act, or subsequently filed with and approved by the Commission, and bears a label certifying such compliance and identifying the manufacturer, importer or private labeler and the ATV action plan to which it is subject; and

"(C) the manufacturer or distributor is in compliance with all provisions of the applicable ATV action plan.

"(3) VIOLATION.—The failure to comply with any requirement of paragraph (2) shall be deemed to be a failure to comply with a consumer product safety rule under this Act and subject to all of the penalties and remedies available under this Act.

"(4) COMPLIANT MODELS WITH ADDITIONAL FEATURES.—Paragraph (2) shall not be construed to prohibit the distribution in interstate commerce of new all-terrain vehicles that comply with the requirements of that paragraph but also incorporate characteristics or components that are not covered by those requirements. Any such characteristics or components shall be subject to the requirements of section 15 of this Act.

"(b) MODIFICATION OF ALL-TERRAIN VEHICLE SAFETY STANDARD.—

"(1) ANSI REVISIONS.—If the American National Standard ANSI/SVIA–1–2007 is revised through the applicable consensus standards development process after the date on which the product safety standard for all-terrain vehicles is published in the Federal Register, the American National Standards Institute shall notify the Commission of the revision.

"(2) COMMISSION ACTION.—Within 120 days after it receives notice of such a revision by the American National Standards Institute, the Commission shall issue a notice of proposed rulemaking in accordance with section 553 of title 5, United States Code, to amend the product safety standard for all-terrain vehicles to include any such revision that the Commission determines is reasonably related to the safe performance of all-terrain vehicles, and notify the Institute of any provision it has determined not to be so related. The Commission shall promulgate an amendment to the standard for all-terrain vehicles within 180 days after the date on which the notice of proposed rulemaking for the amendment is published in the Federal Register.

"(3) UNREASONABLE RISK OF INJURY.—Notwithstanding any other provision of this Act, the Commission may, pursuant to sections 7 and 9 of this Act,

amend the product safety standard for all-terrain vehicles to include any additional provision that the Commission determines is reasonably necessary to reduce an unreasonable risk of injury associated with the performance of all-terrain vehicles.

"(4) CERTAIN PROVISIONS NOT APPLICABLE.—Sections 7, 9, 11, and 30(d) of this Act shall not apply to promulgation of any amendment of the product safety standard under paragraph (2). Judicial review of any amendment of the standard under paragraph (2) shall be in accordance with chapter 7 of title 5, United States Code.

"(c) REQUIREMENTS FOR 3-WHEELED ALL-TERRAIN VEHICLES.—Until a mandatory consumer product safety rule applicable to 3-wheeled all-terrain vehicles promulgated pursuant to this Act is in effect, new 3-wheeled all-terrain vehicles may not be imported into or distributed in commerce in the United States. Any violation of this subsection shall be considered to be a violation of section 19(a)(1) of this Act and may also be enforced under section 17 of this Act.

"(d) FURTHER PROCEEDINGS.—

"(1) DEADLINE.—The Commission shall issue a final rule in its proceeding entitled 'Standards for All

Terrain Vehicles and Ban of Three-wheeled All Terrain Vehicles'.

"(2) CATEGORIES OF YOUTH ATVS.—In the final rule, the Commission may provide for a multiple factor method of categorization that, at a minimum, takes into account—

"(A) the weight of the vehicle;

"(B) the maximum speed of the vehicle;

"(C) the velocity at which a vehicle of a given weight is traveling at the maximum speed of the vehicle;

"(D) the age of children for whose operation the vehicle is designed or who may reasonably be expected to operate the vehicle; and

"(E) the average weight of children for whose operation the vehicle is designed or who may reasonably be expected to operate the vehicle.

"(e) DEFINITIONS.—In this section:

"(1) ALL-TERRAIN VEHICLE OR ATV.—The term 'all-terrain vehicle' or 'ATV' means—

"(A) any motorized, off-highway vehicle designed to travel on 3 or 4 wheels, having a seat designed to be straddled by the operator and handlebars for steering control; but

"(B) does not include a prototype of a motorized, off-highway, all-terrain vehicle or other motorized, off-highway, all-terrain vehicle that is intended exclusively for research and development purposes unless the vehicle is offered for sale.

"(2) ATV ACTION PLAN.—The term 'ATV action plan' means a written plan or letter of undertaking that describes actions the manufacturer or distributor agrees to take to promote ATV safety, including rider training, dissemination of safety information, age recommendations, other policies governing marketing and sale of the vehicles, the monitoring of such sales, and other safety related measures, and that is substantially similar to the plans described under the heading The Undertakings of the Companies in the Commission Notice published in the Federal Register on September 9, 1998 (63 FR 48199–48204).".

(b) GAO STUDY.—The Comptroller General shall conduct a study of the utility, recreational, and other benefits of all-terrain vehicles to which section 38 of the Consumer Product Safety Act (15 U.S.C. 2085) applies, and the costs associated with all-terrain vehicle-related accidents and injuries.

(c) CONFORMING AMENDMENT.—The table of contents, as amended by section 21 of this Act, is further amended by inserting after the item relating to section 40 the following:

"Sec. 41. All-terrain vehicle safety standard.".

(d) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect 90 days after the date of enactment of this Act.

SEC. 31. GARAGE DOOR OPENER STANDARD.

(a) IN GENERAL.—Notwithstanding section 203(b) of the Consumer Product Safety Improvement Act of 1990 (15 U.S.C. 2056 note) or any amendment by the American National Standards Institute and Underwriters Laboratories, Inc. of its Standards for Safety-UL 325, all automatic residential garage door operators that directly drive the door in the closing direction that are manufactured more than 6 months after the date of enactment of this Act shall include an external secondary entrapment protection device that does not require contact with a person or object for the garage door to reverse.

(b) EXCEPTION.—Except as provided in subsection (c), subsection (a) does not apply to the manufacture of an automatic residential garage door operator without a secondary external entrapment protection device that does not require contact by a company that manufactured such an operator before the date of enactment of this Act if Underwriters Lab-

oratory, Inc., certified that automatic residential garage door operator as meeting its Standards for Safety-UL 325 before the date of enactment of this Act.

(c) REVIEW AND REVISION.—

(1) IN GENERAL.—Within 1 year after the date of enactment of this Act, the Consumer Product Safety Commission shall review, and if necessary revise, its automatic residential garage door operator safety standard, including the requirement established by subsection (a), to ensure that the standard provides maximum protection for public health and safety.

(2) REVISED STANDARD.—The exception provided by subsection (b) shall not apply to automatic residential garage door operators manufactured after the effective date of any such revised standard if that standard adopts the requirement established by subsection (a).

SEC. 32. REDUCING DEATHS AND INJURIES FROM CARBON MONOXIDE POISONING.

(a) IN GENERAL.—The Consumer Product Safety Commission shall 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), no later than 18 months after the date of enactment of this Act.

(b) REPORT.—Not later than 120 days after the date of enactment of this Act, the Consumer Product Safety Commission shall submit a report to the Senate Committee on Commerce, Science, and Transportation that—

(1) reviews the effectiveness of its labeling requirements for charcoal briquettes (16 C.F.R. 1500.14(b)(6)) during the windstorm that struck the Pacific Northwest beginning on December 14, 2006;

(2) identifies any specific challenges faced by non-English speaking populations with use of the current standards; and

(3) contains recommendations for improving the labels on charcoal briquettes.

SEC. 33. COMPLETION OF CIGARETTE LIGHTER RULEMAKING.

The Consumer Product Safety Commission shall issue a final rule mandating general safety standards for cigarette lighters in its proceedings entitled "Safety Standard for Cigarette Lighters" for which the Commission issued an advance notice of proposed rulemaking on April 11, 2005 (68 Fed. Reg. 11339) no later than 24 months after the date of enactment of this Act.

SEC. 34. CONSUMER PRODUCT REGISTRATION FORMS AND STANDARDS FOR DURABLE INFANT OR TODDLER PRODUCTS.

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

(b) SAFETY STANDARDS.—

(1) IN GENERAL.—The Commission shall—

(A) in consultation with representatives of consumer groups, juvenile product manufacturers, and independent child product engineers and experts, examine and assess the effectiveness of any voluntary consumer product safety standards for durable infant or toddler product; and

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

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

(ii) are more stringent than such voluntary standards, if the Commission determines that more stringent standards would further reduce the risk of injury associated with such products.

(c) REQUIREMENTS FOR CRIBS.—

(1) MANUFACTURE, SALE, RESALE AND LEASE OF CRIBS.—It shall be unlawful for any commercial

user to manufacture, sell, contract to sell or resell, lease, sublet, offer or provide for use or otherwise place in the stream of commerce any new or used full-size or non-full size crib, including a portable crib and a crib-pen, that is not in compliance with the mandatory rule promulgated in section (b)(1) and (b)(2).

(2) Commercial users include but are not limited to hotel, motel or similar transient lodging facilities and day care centers.

(3) DEFINITION OF COMMERCIAL USER.—

(A) IN GENERAL.—In this subsection, the term "commercial user" means—

(i) any person that manufactures, sells, or contracts to sell full-size cribs or non-full-size cribs; or

(ii) any person that deals in full-size or non-full-size cribs that are not new or that otherwise, based on the person's occupation, holds oneself out as having knowledge or skill peculiar to full-size cribs or non-full-size cribs, including child care facilities and family child care homes; or

(iii) is in the business of contracting to sell or resell, lease, sublet, or otherwise plac-

ing in the stream of commerce full-size cribs or non-full-size cribs that are not new.

(4) TIMETABLE FOR RULEMAKING.—Not later than 1 year after the date of the enactment of this Act, the Commission shall commence the rulemaking required under paragraph (1) and shall promulgate rules for no fewer than 2 categories of durable infant or toddler products every 6 months thereafter, beginning with the product categories that the Commission determines to be of highest priority, until the Commission has promulgated standards for all such product categories. Thereafter, the Commission shall periodically review and revise the rules set forth under this subsection to ensure that such rules provide the highest level of safety for such products that is feasible.

(d) CONSUMER PRODUCT REGISTRATION FORMS.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Commission shall, pursuant to its authority under section 16(b) of the Consumer Product Safety Act (15 U.S.C. 2065(b)), promulgate final consumer product safety rules that require manufacturers of durable infant or toddler products—

(A) in accordance with paragraph (2), to provide consumers with postage-paid consumer registration forms with each such product;

(B) in accordance with paragraph (5), to maintain a record of the names, addresses, e-mail addresses, and other contact information of consumers who register their ownership of such products with the manufacturer in order to improve the effectiveness of manufacturer campaigns to recall such products; and

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

(2) REQUIREMENTS FOR REGISTRATION FORMS.—

(A) IN GENERAL.—The registration forms required by paragraph (1)(A) shall provide space sufficiently large to permit easy, legible recording of the information specified in subparagraph (B)(i).

(B) ELEMENTS.—Such forms shall include the following:

(i) Spaces for a consumer to provide the following:

(I) The consumer's name.

(II) The consumer's postal address.

(III) The consumer's telephone number.

(IV) The consumer's e-mail address.

(ii) The manufacturer's name.

(iii) The model name and number for the product.

(iv) The date of manufacture of the product.

(v) A message that—

(I) explains the purpose of the registration; and

(II) is designed to encourage consumers to complete the registration.

(vi) A statement that information provided by the consumer shall not be used for any purpose other than to facilitate a recall of or safety alert regarding that product.

(vii) A message that explains the option to register via the Internet, as required by paragraph (4).

(C) PLACEMENT.—Such form shall be attached to the surface of each durable infant or toddler product so that, as a practical matter, the consumer will notice and handle the form after purchasing the product.

(3) TEXT AND FORMAT OF REGISTRATION FORMS.—In promulgating regulations under paragraph (1), the Commission may prescribe the exact text and format of such form.

(4) INTERNET REGISTRATION.—In promulgating regulations under paragraph (1), the Commission shall require manufacturers of durable infant or toddler products to provide a mechanism for consumers to submit to the manufacturer via the Internet electronic versions of the registration forms required by paragraph (1)(A).

(5) RECORD KEEPING AND NOTIFICATION REQUIREMENTS.—

(A) IN GENERAL.—The rules promulgated under paragraph (1) shall require each manufacturer of a durable infant or toddler product—

(i) to maintain a record of consumers who register for such product that includes all of the information provided by such consumers; and

(ii) to use such information to notify such consumers in the event of a voluntary or involuntary recall of, or safety alert regarding, such product.

(B) PERIOD OF MAINTENANCE.—Such rules shall require such manufacturers of durable infant or toddler products to maintain the records described in subparagraph (A)(i) for a period of not less than 6 years after the date of manufacture of the product concerned.

(C) LIMITATION ON USE OF INFORMATION COLLECTED.—The rules promulgated under paragraph (1) shall prohibit manufacturers from using or disseminating to any other party the information collected by the manufacturer under this subsection for any purpose other than notification to the consumer concerned in the event of a product recall or safety alert regarding the product concerned.

(D) RESERVATION.—Nothing in this section requires a manufacturer to collect, retain, or use any information unless it is provided by the consumer.

(e) REPORT AND STUDY.—Not later than 4 years after the date of enactment of this Act, the Commission shall—

(1) conduct a study on the effectiveness of the rules promulgated under subsection (a) in facilitating product recalls; and

(2) submit to Congress a report on the findings of the Commission with respect to the study required by paragraph (1).

(f) USE OF ALTERNATIVE RECALL NOTIFICATION TECHNOLOGY.—

(1) IN GENERAL.—If the Commission determines that a recall notification technology can be used by a manufacturer of durable infant or toddler products and such technology is as effective or more effective in facilitating recalls of durable infant or toddler products as the registration forms required by subsection (a)—

(A) the Commission shall submit to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Energy and Commerce of the House of Representatives a report on such determination; and

(B) a manufacturer of durable infant or toddler products that uses such technology in lieu of such registration forms to facilitate recalls of durable infant or toddler products shall be considered in compliance with the regulations pro-

mulgated under such subsection with respect to subparagraphs (A) and (B) of paragraph (1) of such subsection.

(2) STUDY AND REPORT.—Not later than 1 year after the date of the enactment of this Act and periodically thereafter as the Commission considers appropriate, the Commission shall—

(A) for a period of not less than 6 months and not more than 1 year—

(i) conduct a review of recall notification technology; and

(ii) assess, through testing and empirical study, the effectiveness of such technology in facilitating recalls of durable infant or toddler products; and

(B) submit to the committees described in paragraph (1)(A) a report on the review and assessment required by subparagraph (A).

(3) REGULATIONS.—The Commission shall prescribe regulations to carry out this subsection.

(g) DEFINITIONS.—In this section:

(1) COMMISSION.—The term "Commission" means the Consumer Product Safety Commission.

(2) DURABLE INFANT OR TODDLER PRODUCT.—The term "durable infant or toddler product" means

a durable product intended for use by, or that may be reasonably expected to be used by, children younger than the age of 5 years, including the following:

(A) Full-size cribs and nonfull-size cribs.

(B) Toddler beds.

(C) High chairs, booster chairs, and hook-on chairs.

(D) Bath seats.

(E) Gates and other enclosures for confining a child.

(F) Play yards.

(G) Stationary activity centers.

(H) Infant carriers.

(I) Strollers.

(J) Walkers.

(K) Swings.

(L) Bassinets and cradles.

SEC. 35. REPEAL.

Section 30 (15 U.S.C. 2079) is amended by striking subsection (d) and redesignating subsections (e) and (f) as subsections (d) and (e), respectively.

SEC. 36. CONSUMER PRODUCT SAFETY COMMISSION PRESENCE AT NATIONAL TARGETING CENTER OF U.S. CUSTOMS AND BORDER PROTECTION.

(a) IN GENERAL.—Except as provided in subsection (c), not later than 6 months after the date of the enactment of this Act, the Consumer Product Safety Commission shall enter into a memorandum of understanding with the Secretary of Homeland Security for the assignment by the Commission of not less than 1 full-time equivalent personnel to work at the National Targeting Center of U.S. Customs and Border Protection.

(b) RESPONSIBILITIES.—Any personnel assigned under subsection (a) shall, in cooperation with other personnel working at the National Targeting Center, identify products, before such products are imported into the customs territory of the United States, that—

(1) are intended for importation into such customs territory; and

(2) pose a high risk to consumer safety.

(c) WAIVER.—The Consumer Product Safety Commission may waive the requirement of subsection (a) if the Commission determines that an assignment under subsection (a) would not improve the effectiveness of the Commission in identifying products described in subsection (b) before such products are imported into the customs territory of the United States.

SEC. 37. DEVELOPMENT OF RISK ASSESSMENT METHODOLOGY TO IDENTIFY SHIPMENTS OF CONSUMER PRODUCTS THAT ARE LIKELY TO CONTAIN CONSUMER PRODUCTS IN VIOLATION OF SAFETY STANDARDS.

(a) IN GENERAL.—Not later than 1 year after the date of the enactment of this Act, the Consumer Product Safety Commission shall develop a risk assessment methodology for identification of shipments of consumer products that are—

(1) intended for import into the customs territory of the United States; and

(2) are likely to include consumer products that would be refused admission into such customs territory under section 17(a) of the Consumer Product Safety Act (15 U.S.C. 2066(a)).

(b) USE OF INTERNATIONAL TRADE DATA SYSTEM.—The methodology developed under subsection (a) shall, as far as practicable, use the International Trade Data System (ITDS) established under section 411(d) of the Tariff Act of 1930 (19 U.S.C. 1411) to evaluate and assess information about shipments of consumer products intended for import into the customs territory of the United States before such shipments enter such customs territory.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 38. SEIZURE AND DESTRUCTION OF IMPORTED PRODUCTS IN VIOLATION OF CONSUMER PRODUCT SAFETY STANDARDS.

(a) LIST OF PRODUCT DEFECTS THAT CONSTITUTE A SUBSTANTIAL PRODUCT HAZARD.—

(1) IN GENERAL.—Not later than 6 months after the date of the enactment of this Act, the Consumer Product Safety Commission shall publish a list of product defects that constitute a substantial product hazard (as defined in section 15 of the Consumer Product Safety Act (15 U.S.C. 2064)).

(2) UPDATES.—The Consumer Product Safety Commission shall, as the Commission considers appropriate—

(A) update the list required by paragraph (1); and

(B) provide a copy of the updated list to the Secretary of Homeland Security.

(b) DESTRUCTION OF NONCOMPLIANT IMPORTED PRODUCTS.—Section 17(e) (15 U.S.C. 2066(e)) is amended to read as follows:

"(e) PRODUCT DESTRUCTION.—The Secretary of Homeland Security shall ensure the destruction of any product refused admission into the customs territory of the United States under this section unless such product is exported, under regulations prescribed by the Secretary or the

Commission, as appropriate, within 90 days of the date of notice of such refusal or within such additional time as may be permitted pursuant to such regulations.".

(c) INSPECTION AND RECORDKEEPING REQUIREMENTS AS CONDITIONS ON IMPORTATION.—Section 17(g) (15 U.S.C. 2066(g)) is amended by striking "Commission may" and inserting "Commission shall".

(d) PROVISION OF INFORMATION TO COOPERATING AGENCIES.—Section 17(h)(2) (15 U.S.C. 2066(h)(2)) is amended by striking "Commission may" and inserting "Commission shall".

(e) CONSTRUCTION.—Section 17 (15 U.S.C. 2066) is amended by adding at the end the following:

"(i) CONSTRUCTION.—Nothing in this section shall be construed to prevent the Secretary of Homeland Security from prohibiting entry or directing the destruction or export of a consumer product under any other provision of law.".

(f) CONFORMING AMENDMENTS.—Such section 17 is further amended—

(1) in subsection (a), by striking "Any consumer" and inserting "REFUSAL OF ADMISSION.—Any consumer";

(2) in subsection (b), by striking "The" in the first sentence and inserting "SAMPLES.—The";

(3) in subsection (c), by striking "If" and inserting "MODIFICATION.—If";

(4) in subsection (d), by striking "All actions" in the first sentence and inserting "SUPERVISION OF MODIFICATIONS.—All actions";

(5) in subsection (f), by striking "All expenses" in the first sentence and inserting "PAYMENT OF EXPENSES OCCASIONED BY REFUSAL OF ADMISSION.—All expenses";

(6) in subsection (g), by striking "The Commission" and inserting "IMPORTATION CONDITIONED UPON MANUFACTURER'S COMPLIANCE.—The Commission";

(7) in subsection (h), by striking "(h)(1) The Commission" and inserting "(h) PRODUCT SURVEILLANCE PROGRAM.—(1) The Commission".

(g) TECHNICAL AMENDMENTS.—Such section 17 is further amended—

(1) by striking "Secretary of the Treasury" each place it occurs and inserting "Secretary of Homeland Security"; and

(2) by striking "Department of the Treasury" each place it occurs and inserting "Department of Homeland Security".

1 ***SEC. 39. DATABASE OF MANUFACTURING FACILITIES AND***
2 ***SUPPLIERS INVOLVED IN VIOLATIONS OF***
3 ***CONSUMER PRODUCT SAFETY STANDARDS.***

4 *(a) DOCUMENTATION OF ACTS AND OMISSIONS.—If the*
5 *Consumer Product Safety Commission discovers evidence*
6 *that a violation of a consumer product safety rule was the*
7 *result of an act or omission by a manufacturing facility*
8 *or supplier, the Commission shall document the following:*

9 *(1) The date on which the violation occurred.*

10 *(2) A description of the violation and the cir-*
11 *cumstances that led to the violation.*

12 *(3) Details of the act or omission and the rela-*
13 *tion of such act or omission to the violation.*

14 *(4) Identifying information about the manufac-*
15 *turing facility or supplier, including the name and*
16 *address of such manufacturing facility or supplier.*

17 *(b) DATABASE.—The Consumer Product Safety Com-*
18 *mission shall establish and maintain a database that con-*
19 *tains the following:*

20 *(1) All of the information documented under sub-*
21 *section (a).*

22 *(2) Any information submitted under subsection*
23 *(d).*

24 *(c) NOTICE.—The Commission shall take reasonable*
25 *steps to provide notice to each manufacturing facility or*
26 *supplier documented in the database required by subsection*

(b) of the inclusion of such manufacturing facility or supplier in such database and the reasons for such inclusion.

(d) COMMENTS.—The Commission shall establish a process by which a manufacturing facility or supplier included in the database required by subsection (b) for an act or omission described in subsection (a) may submit information to the Commission for inclusion in the database. Such information may consist of—

(1) evidence refuting evidence contained in the database that a violation described in subsection (a) was the result of an act or omission by such manufacturing facility or supplier; and

(2) evidence of remedial measures taken by such manufacturing facility or supplier to correct such act or omission.

Information submitted under this subsection shall be treated the same as information in the database for purposes of subsections (g) and (h).

(e) AVAILABILITY OF DATABASE TO U.S. CUSTOMS AND BORDER PROTECTION.—The Consumer Product Safety Commission shall make the database established under subsection (b) available on a real-time basis to the Commissioner responsible for the U.S. Customs and Border Protection of the Department of Homeland Security.

(f) USE OF DATABASE BY U.S. CUSTOMS AND BORDER PROTECTION.—The Commissioner responsible for the U.S. Customs and Border Protection of the Department of Homeland Security shall use the information stored in the database required by subsection (b) in determining—

(1) whether a container being imported into the United States contains consumer products that are in violation of a consumer product safety standard of the Commission; and

(2) whether action should be taken with respect to any consumer products in such container under section 17 of the Consumer Product Safety Act (15 U.S.C. 2066).

(g) LIMITATION ON DISCLOSURE OF INFORMATION IN DATABASE.—

(1) IN GENERAL.—The Consumer Product Safety Commission and the Commissioner responsible for the U.S. Customs and Border Protection of the Department of Homeland Security shall not disclose any information contained in or provide access to the database required by subsection (b) to any person except as provided in paragraph (2), provided that this limitation does not apply to the disclosure of information that was collected, received, or maintained by the

Commission for purpose other than inclusion in the database.

(2) EXCEPTION FOR LAW ENFORCEMENT AND NATIONAL SECURITY.—The Consumer Product Safety Commission and the Commissioner responsible for the U.S. Customs and Border Protection of the Department of Homeland Security may disclose information contained in and provide access to the database required by subsection (b) to a law enforcement agency or an intelligence agency of the United States if the Commission or the Commissioner determine that such disclosure is necessary—

(A) to prevent a crime; or

(B) to detect, prevent, or respond to a threat to national security.

(3) EXEMPTION FROM FREEDOM OF INFORMATION ACT DISCLOSURE REQUIREMENTS.—The database required by subsection (b) shall not be subject to the disclosure requirements of section 552 or 552A of title 5, United States Code.

(h) LIMITATION ON USE OF INFORMATION IN DATABASE FOR CERTAIN CIVIL OR CRIMINAL PENALTIES.—

(1) PROHIBITION ON IMPOSITION BY CONSUMER PRODUCT SAFETY COMMISSION OF PENALTIES SOLELY ON BASIS OF DATABASE.—The Consumer Product

Safety Commission may not impose any penalty under section 20 or 21 of the Consumer Product Safety Act (15 U.S.C. 2069, 2070) on any person solely on the inclusion of information on a person in the database required by subsection (b).

(2) PROHIBITION ON IMPOSITION BY U.S. CUSTOMS AND BORDER PROTECTION OF PENALTIES SOLELY ON BASIS OF DATABASE.—Notwithstanding any other provision of law, the Commissioner responsible for the U.S. Customs and Border Protection of the Department of Homeland Security may not impose any civil or criminal penalty on any person solely on the inclusion of information on a person in the database required by subsection (b).

(i) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 40. BAN ON CERTAIN PRODUCTS CONTAINING SPECIFIED PHTHALATES.

(a) BANNED HAZARDOUS SUBSTANCE.—Effective January 1, 2009, any children's product or child care article that contains a specified phthalate shall be treated as a banned hazardous substance under the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.) and the prohibi-

tions contained in section 4 of such Act shall apply to such product or article.

(b) PROHIBITION ON USE OF CERTAIN ALTERNATIVES TO SPECIFIED PHTHALATES IN CHILDREN'S PRODUCTS AND CHILD CARE ARTICLES.—

(1) IN GENERAL.—If a manufacturer modifies a children's product or child care article that contains a specified phthalate to comply with the ban under subsection (a), such manufacturer shall not use any of the prohibited alternatives to specified phthalates described in paragraph (2).

(2) PROHIBITED ALTERNATIVES TO SPECIFIED PHTHALATES.—The prohibited alternatives to specified phthalates described in this paragraph are the following:

(A) Carcinogens rated by the Environmental Protection Agency as Group A, Group B, or Group C carcinogens.

(B) Substances described in the List of Chemicals Evaluated for Carcinogenic Potential of the Environmental Protection Agency as follows:

(i) Known to be human carcinogens.

(ii) Likely to be human carcinogens.

(iii) Suggestive of being human carcinogens.

(C) Reproductive toxicants identified by the Environmental Protection Agency that cause any of the following:

(i) Birth defects.

(ii) Reproductive harm.

(iii) Developmental harm.

(c) PREEMPTION.—Nothing in this section or section 18(b)(1)(B) of the Federal Hazardous Substances Act (15 U.S.C. 1261 note) shall preclude or deny any right of any State or political subdivision thereof to adopt or enforce any provision of State or local law that—

(1) applies to a phthalate that is not described in subsection (d)(3);

(2) applies to a phthalate described in subsection (d)(3) that is not otherwise regulated under this section;

(3) with respect to any phthalate, requires the provision of a warning of risk, illness, or injury; or

(4) prohibits the use of alternatives to phthalates that are not described in subsection (b)(2).

(d) DEFINITIONS.—In this section:

(1) CHILDREN'S PRODUCT.—The term "children's product" means a toy or any other product de-

signed or intended by the manufacturer for use by a child when the child plays.

(2) CHILD CARE ARTICLE.—The term "child care article" means all products designed or intended by the manufacturer to facilitate sleep, relaxation, or the feeding of children, or to help children with sucking or teething.

(3) CHILDREN'S PRODUCT OR CHILD CARE ARTICLE THAT CONTAINS A SPECIFIED PHTHALATE.—The term "children's product or child care article that contains a specified phthalate" means—

(A) a children's product or a child care article any part of which contains any combination of di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), or benzyl butyl phthalate (BBP) in concentrations exceeding 0.1 percent; and

(B) a children's product or a child care article intended for use by a child that—

(i) can be placed in a child's mouth; and

(ii)(I) contains any combination of diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate

(DnOP), in concentrations exceeding 0.1 percent; or

(II) contains any combination of di-(2-ethylhexyl) phthalate (DEHP), dibutyl phthalate (DBP), benzyl butyl phthalate (BBP), diisononyl phthalate (DINP), diisodecyl phthalate (DIDP), or di-n-octyl phthalate (DnOP), in concentrations exceeding 0.1 percent.

SEC. 41. EQUESTRIAN HELMETS.

(a) STANDARDS.—

(1) IN GENERAL.—Every equestrian helmet manufactured on or after the date that is 9 months after the date of the enactment of this Act shall meet—

(A) the interim standard specified in paragraph (2), pending the establishment of a final standard pursuant to paragraph (3); and

(B) the final standard, once that standard has been established under paragraph (3).

(2) INTERIM STANDARD.—The interim standard for equestrian helmets is the American Society for Testing and Materials (ASTM) standard designated as F 1163.

(3) FINAL STANDARD.—

(A) REQUIREMENT.—Not later than 60 days after the date of the enactment of this Act, the Consumer Product Safety Commission shall begin a proceeding under section 553 of title 5, United States Code—

(i) to establish a final standard for equestrian helmets that incorporates all the requirements of the interim standard specified in paragraph (2);

(ii) to provide in the final standard a mandate that all approved equestrian helmets be certified to the requirements promulgated under the final standard by an organization that is accredited to certify personal protection equipment in accordance with ISO Guide 65; and

(iii) to include in the final standard any additional provisions that the Commission considers appropriate.

(B) INAPPLICABILITY OF CERTAIN LAWS.—Sections 7, 9, and 30(d) of the Consumer Product Safety Act (15 U.S.C. 2056, 2058, and 2079(d)) shall not apply to the proceeding under this subsection, and section 11 of such Act (15

U.S.C. 2060) shall not apply with respect to any standard issued under such proceeding.

(C) EFFECTIVE DATE.—The final standard shall take effect not later than 1 year after the date it is issued.

(4) FAILURE TO MEET STANDARDS.—

(A) FAILURE TO MEET INTERIM STANDARD.—Until the final standard takes effect, an equestrian helmet that does not meet the interim standard, required under paragraph (1)(A), shall be considered in violation of a consumer product safety standard promulgated under the Consumer Product Safety Act.

(B) STATUS OF FINAL STANDARD.—The final standard developed under paragraph (3) shall be considered a consumer product safety standard promulgated under the Consumer Product Safety Act.

(b) DEFINITIONS.—In this section:

(1) APPROVED EQUESTRIAN HELMET.—The term "approved equestrian helmet" means an equestrian helmet that meets—

(A) the interim standard specified in subsection (a)(2), pending establishment of a final standard under subsection (a)(3); and

(B) the final standard, once it is effective under subsection (a)(3).

(2) EQUESTRIAN HELMET.—The term "equestrian helmet" means a hard shell head covering intended to be worn while participating in an equestrian event or activity.

SEC. 42. REQUIREMENTS FOR RECALL NOTICES.

(a) IN GENERAL.—Section 15 (15 U.S.C. 2064) is amended by adding at the end the following:

"(i) REQUIREMENTS FOR RECALL NOTICES.—

"(1) IN GENERAL.—If the Commission determines that a product distributed in commerce presents a substantial product hazard and that action under subsection (d) is in the public interest, the Commission may order the manufacturer or any distributor or retailer of the product to distribute notice of the action to the public. The notice shall include the following:

"(A) A description of the product, including—

"(i) the model number or stock keeping unit (SKU) number of the product;

"(ii) the names by which the product is commonly known; and

"(iii) a photograph of the product.

"(B) A description of the action being taken with respect to the product.

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

"(D) A description of the substantial product hazard and the reasons for the action.

"(E) An identification of the manufacturers, importers, distributers, and retailers of the product.

"(F) The locations where, and Internet websites from which, the product was sold.

"(G) The name and location of the factory at which the product was produced.

"(H) The dates between which the product was manufactured and sold.

"(I) The number and a description of any injuries or deaths associated with the product, the ages of any individuals injured or killed, and the dates on which the Commission received information about such injuries or deaths.

"(J) A description of—

"(i) any remedy available to a consumer;

"(ii) any action a consumer must take to obtain a remedy; and

"(iii) any information a consumer needs to take to obtain a remedy or information about a remedy, such as mailing addresses, telephone numbers, fax numbers, and email addresses.

"(K) Any other information the Commission determines necessary.

"(2) NOTICES IN LANGUAGES OTHER THAN ENGLISH.—The Commission may require a notice described in paragraph (1) to be distributed in a language other than English if the Commission determines that doing so is necessary to adequately protect the public.".

(b) PUBLICATION OF INFORMATION ON RECALLED PRODUCTS.—Beginning not later than 1 year after the date of the enactment of this Act, the Consumer Product Safety Commission shall make the following information available to the public as the information becomes available to the Commission:

(1) Progress reports and incident updates with respect to action plans implemented under section 15(d) of the Consumer Product Safety Act (15 U.S.C. 2064(d)).

(2) Statistics with respect to injuries and deaths associated with products that the Commission deter-

mines present a substantial product hazard under section 15(c) of the Consumer Product Safety Act (15 U.S.C. 2064(c)).

(3) The number and type of communication from consumers to the Commission with respect to each product with respect to which the Commission takes action under section 15(d) of the Consumer Product Safety Act (15 U.S.C. 2064(d)).

SEC. 43. STUDY AND REPORT ON EFFECTIVENESS OF AUTHORITIES RELATING TO SAFETY OF IMPORTED CONSUMER PRODUCTS.

Not later than 180 days after the date of the enactment of this Act, the Comptroller General of the United States shall—

(1) conduct a study of the authorities and provisions of the Consumer Product Safety Act (15 U.S.C. 2051 et seq.) to assess the effectiveness of such authorities and provisions in preventing unsafe consumer products from entering the customs territory of the United States;

(2) develop a plan to improve the effectiveness of the Consumer Product Safety Commission in preventing unsafe consumer products from entering such customs territory; and

(3) submit to Congress a report on the findings of the Comptroller General with respect to paragraphs (1) through (3), including legislative recommendations related to—

(A) inspection of foreign manufacturing plants by the Consumer Product Safety Commission; and

(B) requiring foreign manufacturers to consent to the jurisdiction of United States courts with respect to enforcement actions by the Consumer Product Safety Commission.

SEC. 44. BAN ON IMPORTATION OF TOYS MADE BY CERTAIN MANUFACTURERS.

Section 17 (15 U.S.C. 2066) is amended—

(1) in subsection (a), as amended by section 10(f) of this Act—

(A) in paragraph (5), by striking "; or" and inserting a semicolon;

(B) in paragraph (6), by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following:

"(7) is a toy classified under heading 9503, 9504, or 9505 of the Harmonized Tariff Schedule of the United States that is manufactured by a company that the Commission has determined—

"(A) has shown a persistent pattern of manufacturing such toys with defects that constitute substantial product hazards (as defined in section 15(a)(2)); or

"(B) has manufactured such toys that present a risk of injury to the public of such a magnitude that the Commission has determined that a permanent ban on all imports of such toys manufactured by such company is equitably justified."; and

(2) by adding at the end the following:

"(i) Whenever the Commission makes a determination described in subsection (a)(7) with respect to a manufacturer, the Commission shall submit to the Secretary of Homeland Security information that appropriately identifies the manufacturer.

"(j) Not later than March 31 of each year, the Commission shall submit to Congress an annual report identifying, for the 12-month period preceding the report—

"(1) toys classified under heading 9503, 9504, or 9505 of the Harmonized Tariff Schedule of the United States that—

"(A) were offered for importation into the customs territory of the United States; and

"(B) the Commission found to be in violation of a consumer product safety standard; and

"(2) the manufacturers, by name and country, that were the subject of a determination described in subsection (a)(7)(A) and (B).".

SEC. 45. CONSUMER PRODUCT SAFETY STANDARDS USE OF FORMALDEHYDE IN TEXTILE AND APPAREL ARTICLES.

(a) STUDY ON USE OF FORMALDEHYDE IN MANUFACTURING OF TEXTILE AND APPAREL ARTICLES.—Not later than 2 years after the date of the enactment of this Act, the Consumer Product Safety Commission shall conduct a study on the use of formaldehyde in the manufacture of textile and apparel articles, or in any component of such articles, to identify any risks to consumers caused by the use of formaldehyde in the manufacturing of such articles, or components of such articles.

Attest:

Secretary.

110th CONGRESS
2d Session

H. R. 4040

AMENDMENT