

**AMENDMENT IN THE NATURE OF A SUBSTITUTE  
TO H.R. 1939**

**OFFERED BY \_\_\_\_\_**

Strike all after the enacting clause and insert the following:

**1 SECTION 1. SHORT TITLE.**

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

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

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

8 (1) by striking “intended primarily for chil-  
9 dren” and inserting “primarily intended for use by  
10 children”; and

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

13 (b) TECHNICAL AMENDMENT.—Section 101(a)(1) of  
14 the Consumer Product Safety Improvement Act of 2008  
15 (15 U.S.C. 1278a(a)(1)) is amended by striking “(as de-  
16 fined in section 3(a)(16) of the Consumer Product Safety  
17 Act (15 U.S.C. 2052(a)(16)))” and inserting “(as defined

1 in section 3(a) of the Consumer Product Safety Act (15  
2 U.S.C. 2052(a))”.

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

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

7 (1) in subparagraph (A), by striking “600 parts  
8 per million” both places it appears and inserting  
9 “0.06 percent”;

10 (2) by striking subparagraphs (B) and (C) and  
11 inserting the following:

12 “(B) 0.03 PERCENT BY WEIGHT.—Except  
13 as provided in subparagraphs (C), (D), (F) and  
14 (G), beginning August 14, 2009, the lead limit  
15 referred to in paragraph (1) is 0.03 percent  
16 total lead content by weight for any part of a  
17 children’s product.

18 “(C) 0.01 PERCENT BY WEIGHT.—Except  
19 as provided in subparagraphs (D) and (G), be-  
20 ginning on the date that is 4 years after the  
21 date of enactment of this Act, for any part of  
22 a children’s product that—

23 “(i) is designed or intended primarily  
24 for use by a child 6 years of age or young-  
25 er and can be placed in a child’s mouth, or

1                   “(ii) is a metal part of a piece of chil-  
2                   dren’s jewelry designed or intended for use  
3                   by a child 9 years of age or younger,  
4                   the lead limit referred to in paragraph (1) is  
5                   0.01 percent total lead content by weight, un-  
6                   less the Commission determines that a limit of  
7                   0.01 percent is not technologically feasible.”;

8                   (3) in subparagraph (D)—

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

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

13                  (C) by striking “300 parts per million”  
14                  both places it appears and inserting “0.03 per-  
15                  cent”; and

16                  (D) by striking “3 years” and inserting “4  
17                  years”;

18                  (4) by redesignating subparagraph (E) as sub-  
19                  paragraph (G) and inserting after subparagraph (D)  
20                  the following:

21                         “(E) DETERMINATION GUIDELINES.—For  
22                         purposes of subparagraphs (C)(ii) and (D) and  
23                         subsection (b)(1)(A)(ii), a children’s product  
24                         can be placed in a child’s mouth if any part of  
25                         the children’s product can actually be brought

1 to the mouth and kept in the mouth by a child  
2 so that it can be sucked and chewed. If the chil-  
3 dren’s product can only be licked, it is not re-  
4 garded as able to be placed in the mouth. If a  
5 toy or part of a toy in one dimension is smaller  
6 than 5 centimeters, it can be placed in the  
7 mouth.

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

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

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

24 “(3) APPLICATION.—Each limit set forth in  
25 paragraph (2) (except for the limit set forth in sub-

1 paragraphs (A) and (B)) shall apply only to a chil-  
2 dren’s product (as defined in section 3(a) of the  
3 Consumer Product Safety Act (15 U.S.C. 2052(a)))  
4 that is manufactured after the effective date of such  
5 respective limit.”.

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

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

11 “(1) FUNCTIONAL PURPOSE EXCEPTION.—

12 “(A) IN GENERAL.—The Commission, on  
13 its own initiative or upon petition by an inter-  
14 ested party, shall grant an exception to the pro-  
15 hibition in subsection (a) for a specific product,  
16 class of product, material, or component part if  
17 the Commission, after notice and comment in  
18 accordance with subparagraph (B), determines  
19 that—

20 “(i) the product, class of product, ma-  
21 terial, or component part requires the in-  
22 clusion of lead because it is not practicable  
23 or not technologically feasible to manufac-  
24 ture such product, class of product, mate-  
25 rial, or component part, as the case may

1 be, in accordance with subsection (a) by  
2 removing the excessive lead or by making  
3 the lead inaccessible;

4 “(ii) the product, class of product,  
5 material, or component part is not likely to  
6 be placed in the mouth or ingested, taking  
7 into account normal and reasonably fore-  
8 seeable use and abuse of such product,  
9 class of product, material, or component  
10 part by a child; and

11 “(iii) an exception for the product,  
12 class of product, material, or component  
13 part will have no measurable adverse effect  
14 on public health or safety, taking into ac-  
15 count normal and reasonably foreseeable  
16 use and abuse.

17 For purposes of clause (iii), there is no measur-  
18 able adverse effect on public health or safety if  
19 the exception described in this subparagraph  
20 will result in no measurable increase in blood  
21 lead levels.

22 “(B) PROCEDURES FOR GRANTING EXCEP-  
23 TION.—

24 “(i) NOTICE AND COMMENT PE-  
25 RIOD.—Before granting an exception under

1           subparagraph (A), the Commission shall  
2           allow not fewer than 60 days for public  
3           comment after publishing the notice of the  
4           proposed exception.

5           “(ii) BURDEN OF PROOF.—A party  
6           seeking an exception under subparagraph  
7           (A) has the burden of demonstrating that  
8           it meets the requirements of such subpara-  
9           graph.

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

18          “(iv) ADMISSIBLE EVIDENCE.—In  
19          demonstrating that it meets the require-  
20          ments of subparagraph (A), a party seek-  
21          ing an exception under such subparagraph  
22          may rely on any nonproprietary informa-  
23          tion submitted by any other party seeking  
24          such an exception and such information  
25          shall be considered part of the record pre-

1                   sented by the party that relies on that in-  
2                   formation.

3                   “(v) SCOPE OF EXCEPTION.—If an ex-  
4                   ception is sought for an entire product, the  
5                   burden is on the petitioning party to dem-  
6                   onstrate that the criteria in subparagraph  
7                   (A) are met with respect to every acces-  
8                   sible component or accessible material of  
9                   the product.

10                  “(C) LIMITATION ON EXCEPTION.—If the  
11                  Commission grants an exception for a product,  
12                  class of product, material, or component part  
13                  under subparagraph (A), the Commission may,  
14                  as necessary to protect public health or safe-  
15                  ty—

16                  “(i) establish a lead limit that such  
17                  product, class of product, material, or com-  
18                  ponent part may not exceed; or

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

1           “(D) APPLICATION OF EXCEPTION.—An  
2           exception under subparagraph (A) for a prod-  
3           uct, class of product, material, or component  
4           part shall apply regardless of the date of manu-  
5           facture unless the Commission expressly pro-  
6           vides otherwise.

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

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

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

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

1           “(A) METAL COMPONENT PARTS.—In lieu  
2 of the lead limits established in subsection  
3 (a)(2), the limits set forth for each respective  
4 material in section 1500.88 of title 16, Code of  
5 Federal Regulations (as in effect on January  
6 20, 2010) shall apply to metal component parts  
7 made of such materials in children’s products  
8 (other than apparel or children’s products sub-  
9 ject to the mandatory standard in effect under  
10 section 106) intended primarily for outdoor rec-  
11 reational use, regardless of the date on which  
12 such products were manufactured.

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

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

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

23           “(B) DEFINITION.—The term ‘used chil-  
24 dren’s product’ means a children’s product that  
25 was obtained by the seller for use and not for

1 the purpose of resale or was obtained by the  
2 seller, either directly or indirectly, from a per-  
3 son who obtained such children’s product for  
4 use and not for the purpose of resale. Such  
5 term also includes a children’s product that was  
6 donated to the seller for charitable distribution  
7 or resale to support charitable purposes. Such  
8 term shall not include—

- 9 “(i) children’s metal jewelry;  
10 “(ii) any children’s product for which  
11 the donating party or the seller has actual  
12 knowledge that the product is in violation  
13 of the lead limits in this section; or  
14 “(iii) any other children’s product  
15 that the Commission determines, by rule,  
16 presents an unreasonable risk to children’s  
17 health.

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

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

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

1 (B) by striking “the first promulgation of  
2 a of a regulation under this subsection” and in-  
3 serting “the date of enactment of the Enhanc-  
4 ing CPSC Authority and Discretion Act of  
5 2011,”.

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

8 (a) **APPLICABLE CHILDREN’S PRODUCTS.**—Section  
9 14(a) of the Consumer Product Safety Act (15 U.S.C.  
10 2063(a)) is amended—

11 (1) in paragraph (2)—

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

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

18 (C) by striking the flush sentence following  
19 subparagraph (B); and

20 (2) in paragraph (3)—

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

24 (B) by amending subparagraph (B)(vi) to  
25 read as follows:

1                   “(vi) OTHER DURABLE NURSERY  
2                   PRODUCTS.—The Commission shall publish  
3                   notice of the requirements for accreditation  
4                   of third party conformity assessment bod-  
5                   ies to assess conformity with other rules  
6                   promulgated under section 104 of the Con-  
7                   sumer Product Safety Improvement Act of  
8                   2008 not later than 90 days before such  
9                   rules or revisions take effect.”.

10           (b) THIRD PARTY TESTING REQUIREMENTS.—

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

14                   “(b) TESTING PROGRAMS.—

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

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

1 graph (3), requires testing by an independent third  
2 party for—

3 “(A) a particular rule, regulation, stand-  
4 ard, ban;

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

7 “(C) a particular class of products.

8 “(3) REQUIREMENTS FOR TESTING BY AN  
9 INDEPENDENT THIRD PARTY.—

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

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

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

1 “(iii) established, by rule, exemptions  
2 or alternative testing procedures for the  
3 certification of works of art and other one-  
4 of-a-kind products and of specialty prod-  
5 ucts for the disabled, and products that  
6 are produced in small quantities such that  
7 the cost of testing by an independent third  
8 party is not economically practicable; and

9 “(iv) made a reasoned determina-  
10 tion—

11 “(I) that the benefits from re-  
12 quiring third-party testing justify the  
13 costs; and

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

20 “(B) PRODUCED IN SMALL QUANTITIES  
21 DEFINED.—For purposes of subparagraph  
22 (A)(iii), the term ‘produced in small quantities’  
23 means that not more than 10,000 units of the  
24 same product (or substantially similar products)  
25 are produced in one year by a manufacturer

1 and any affiliated manufacturer. A manufac-  
2 turer may not subdivide the production of such  
3 manufacturer into small quantities in order to  
4 evade third party testing requirements.

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

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

15 “(B) REVIEW.—The Commission may  
16 modify any other testing requirement it has  
17 adopted to provide additional flexibility or to  
18 eliminate unnecessary burdens.”.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21                 “(3) APPLICATION.—

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

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

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

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

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

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

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

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

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

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

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

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

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

11 “(c) APPLICATION.—

12 “(1) ACCESSIBLE COMPONENT PARTS.—Effec-  
13 tive on the date of enactment of this Act, sub-  
14 sections (a) and (b)(1) and any rule promulgated  
15 under subsection (b)(3) shall apply to any accessible  
16 component part of a children’s toy or child care arti-  
17 cle that is made of plastic or any other material de-  
18 termined by the Commission to contain any of the  
19 phthalates specified in this section.

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

1 section (b)(3) where the Commission determines that  
2 compliance with any such prohibition is not nec-  
3 essary to protect children’s health.”.

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

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

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

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

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

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

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

1 (c) DEFINITIONS.—Section 108(f) of the Consumer  
2 Product Safety Improvement Act of 2008 (15 U.S.C.  
3 2057c(f)) (as redesignated by subsection (a)) is amend-  
4 ed—

5 (1) in paragraph (1)—

6 (A) in subparagraph (B), by striking “con-  
7 sumer product” and all that follows and insert-  
8 ing “children’s product that is subject to the  
9 mandatory standard in effect under section  
10 106”;

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

14 (C) in subparagraph (D)—

15 (i) by striking “consumer product”  
16 and inserting “children’s product”;

17 (ii) by striking “section 3(a)(1)” and  
18 inserting “section 3(a)”; and

19 (iii) by striking “2052(a)(1)” and in-  
20 serting “2052(a)”; and

21 (2) by amending paragraph (2) to read as fol-  
22 lows:

23 “(2) DETERMINATION GUIDELINES.—For pur-  
24 poses of this section, a toy can be placed in a child’s  
25 mouth if any part of the toy can actually be brought

1 to the mouth and kept in the mouth by a child so  
2 that it can be sucked and chewed. If the children’s  
3 product can only be licked, it is not regarded as able  
4 to be placed in the mouth. If a toy or part of a toy  
5 in one dimension is smaller than 5 centimeters, it  
6 can be placed in the mouth.”.

7 **SEC. 8. EXEMPTION AUTHORITY FOR TRACKING LABELS**  
8 **REQUIREMENT.**

9 Section 14(a)(5) of the Consumer Product Safety Act  
10 (15 U.S.C. 2063(a)(5)) is amended—

11 (1) by striking “Effective 1 year” and inserting

12 “(A) Effective 1 year”;

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

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

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

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

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

5 (1) in paragraph (1)(A)—

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

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

17 (2) in paragraph (2)(B)—

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

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

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

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

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

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

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

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

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

14 “(iii) submit other comments to the  
15 Commission on the information contained  
16 in such report, including reasons that the  
17 report may not qualify for public disclosure  
18 in the database.”; and

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

22 “(B) ACTION BY THE COMMISSION.—

23 “(i) INSUFFICIENT PRODUCT IDENTI-  
24 FICATION.—If a manufacturer notifies the  
25 Commission of the insufficiency of the

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

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

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

1                   “(II) Investigating the incident  
2                   giving rise to the report in order to  
3                   correct any such inaccuracy.

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

8                   “(iii) STAY ON PUBLIC DISCLOSURE  
9                   IN DATABASE.—The Commission shall not  
10                  make public in the database a report de-  
11                  scribed in clauses (i) or (ii) until the prod-  
12                  uct is specifically identified and any mate-  
13                  rial inaccuracy corrected.”.

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

20                  **SEC. 10. SUBPOENA AUTHORITY.**

21                  Section 27(b) of the Consumer Product Safety Act  
22                  (15 U.S.C. 2076(b)) is amended—

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

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

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

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

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

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

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

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

1 **SEC. 12. TECHNICAL AMENDMENT.**

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

5 **SEC. 13. EFFECTIVE DATE.**

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

