[6355-01]

Title 16—Commercial Practice

CHAPTER II—CONSUMER PRODUCT SAFETY COMMISSION

SUBCHAPTER B—CONSUMER PRODUCT SAFETY ACT REGULATIONS

PART 1115—SUBSTANTIAL PRODUCT HAZARD REPORTS

PART 1116—POLICY AND PROCEDURES REGARDING SUBSTANTIAL PRODUCT HAZARDS

Interpretation, Policy, and Procedure for Substantial Product Hazards

AGENCY: Consumer Product Safety Commission.

ACTION: Statement of interpretation, policy, and procedure.

SUMMARY: In this document the Consumer Product Safety Commission sets forth its interpretation of the reporting requirement in section 15(b) of the Consumer Product Safety Act. Section 15(b) requires every manufacturer, distributor, and retailer of a consumer product who obtains information which reasonably supports the conclusion that the product either fails to comply with an applicable consumer product safety rule or contains a defect which could create a substantial product hazard immediately to inform the Commission, unless the manufacturer, distributor, or retailer has actual knowledge that the Commission is adequately informed of such failure to conform or of such defect. The Commission has also outlined its policy and procedure regarding remedial action and sanctions relating to the treatment of substantial product hazards and reports under section 15.

This regulation replaces and consolidates the Commission's existing policies and procedures for substantial product hazards. The purpose of this rule is to assist those subject to section 15(b) by clearly setting forth the Commission's interpretation, policy, and procedure regarding that section and by informing them of possible remedies and sanctions.

EFFECTIVE DATE: August 7, 1978.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

Background

On September 16, 1977, the Consumer Product Safety Commission (Commission) published proposed requirements, policies, and procedures for substantial product hazards in the FEDERAL REGISTER (42 FR 46720) to clarify the reporting requirements and remedial process under section 15 of the Consumer Product Safety Act, as amended (CPSA) (15 U.S.C. 2064). The Commission invited the public to submit written comments by October 31, 1977. On November 1, 1977, the Commission extended the comment period until November 30, 1977 (42 FR 57133).

At the urging of several commenters, the Commission scheduled a public hearing in Washington, D.C., on April 26, 1978 (43 FR 13393, March 30, 1978), to allow further comment on provisions of the proposal which were perceived by commenters to be unclear or controversial. A second public hearing was held in Seattle, Wash., on May 5, 1978 (43 FR 17972, April 27, 1978). In addition to these public hearings, the Commission invited additional written comments on the six issues specified in the FEDERAL REGISTER notices announcing the hearings.

The Commission received over 180 oral and written comments from businesses, trade associations, consumer groups, and others. Based on these comments the Commission has reorganized the rule and made several revisions in the rule as issued. Following is a discussion of the major comments received and the Commission's responses to them.

Discussion of Comments

A. Need for Revision of 16 CFR Parts 1115 and 1116

1. The Commission has received strong support for the proposed rule from consumer groups, consumers, and some members of the business community.

Many commenters agreed that the Commission should inform the public of its interpretation of the law it administers and clarify the obligations which the law imposes. Some business commenters, however, questioned the need to revise the current regulations under section 15 of the CPSA, at 16 CFR Parts 1115 and 1116 (1977), and suggested that the Commission withdraw its proposed revision. Several of these commenters felt this rule would impose a new and heavy burden on the business community and, therefore, the Commission should more clearly demonstrate the need for the revision. Many of these commenters suggested that the Commission use civil penalty actions as the primary means of defining the reporting requirements of section 15(b) of the CPSA.

The Commission continues to believe that this rule interpreting section 15(b) is necessary and desirable in order to clarify subject firms' reporting obligations under section 15(b) of the CPSA and to inform members of the public of the possible remedies and sanctions available. The reporting obligations of section 15(b) have been imposed by Congress. The Commission's duty is to interpret and enforce, not to justify, the law Congress enacted. This can best be done through regulations and statements of policy. The Commission does not believe that it should interpret the law primarily through civil penalty actions brought to assess penalties for failure to comply with the reporting requirements of section 15(b) of the CPSA. Most subject firms want to comply with the law and will do so if their obligations are made clear; this regulation offers guidance to these firms. Moreover, litigation is time consuming, is expensive, and informs the business community and other members of the public only after the law has been violated. This does not serve the public interest, which is best served by prompt reporting and elimination of potentially hazardous products. The Commission concludes, therefore, that issuance of this regulation is fairer, more efficient, and more effective than defining section 15 through civil penalty cases.

2. Several commenters suggested that the Commission can and should obtain sufficient information on potential substantial hazards through the NEISS hospital injury reporting system and other Commission sources and, therefore, that there is no need to issue a rule interpreting section 15 so as to encourage more widespread reporting.

The Commission does not agree. The Commission uses its other sources of information about product-related incidents (such as the NEISS system, search of death certificates, review of newspaper clippings, and consumer calls to the "Hotline") in an attempt to identify substantial product hazards. These sources, however, are not substitutes for reporting by manufacturers, importers, distributors, and retailers.

As several commenters pointed out, in section 15(b) of the CPSA, Congress has required that a report be made when a manufacturer, distributor, or retailer obtains information which reasonably supports the conclusion that a product is noncomplying or contains a defect which could create a substantial product hazard; thus, a report must be made before a detailed hazard analysis is completed. As these commenters note, the intention of Congress was to encourage widespread reporting of potential hazards. Such

reports could, according to one consumer commenter, unearth not only substantial product hazards but also risks of injury that the Commission might seek to prevent through educational campaigns, safety labeling, product standards, product bans, or other appropriate action.

The Commission has, in fact, found reporting to be invaluable since manufacturers, distributors, and retailers often receive safety-related information long before the Commission does and before injuries have occurred. Therefore, the Commission believes it is important to issue this rule that clearly encourages subject firms to comply with the law and to report both noncomplying products and defects in products which could create substantial product hazards.

3. A few commenters suggested that the effectiveness of remedial action taken by subject firms in order to comply with section 15 and the impact of such action on industry and the Commission should be analyzed to determine whether or not this rule and section 15 itself provide reasonably fair, effective, and efficient methods of reducing injuries to consumers.

Congress has provided equitable, effective, and reasonable methods for reducing substantial risks of injury to the public. After a firm has had an opportunity for a hearing and after the Commission has made the appropriate determinations, sections 15(c) and 15(d) of the CPSA set out these congressionally established methods of remedying substantial risks of injury. They are: Compulsory public and individual notice about the substantial product hazard, and the repair of, replacement of, or refund for a product which has been determined to present a substantial product hazard. The Commission continually evaluates the effectiveness of remedial action pursuant to section 15 in individual cases and seeks ways to improve its effectiveness. The Commission believes that vigorous reporting as encouraged by this rule and mandated by Congress will help reduce injuries by identifying a greater number of potentially hazardous products. The Commission will continue to study the effectiveness of this approach, the desirability of increasing or decreasing the use of section 15, and its other regulatory options.

B. APPLICATION OF REPORTING REQUIREMENTS TO THE TRANSFERRED ACTS, § 1115.2(D) AND PROPOSED § 1115.10(C), FINAL § 1115.10(A)

1. Several trade associations and manufacturers of products subject to the transferred acts (that is, the Federal Hazardous Substances Act (FHSA), the Poison Prevention Packaging Act (PPPA), and the Flammable Fabrics Act (FFA)) and the Refrigerator Safety Act (RSA) questioned the validity of § 1115.2(d) and proposed § 1115.10(c), now § 1115.10(a), which state that manufacturers, distributors, and retailers of consumer products subject to regulation by the Commission under the transferred acts must report to the Commission under section 15(b) of the CPSA if they obtain information which reasonably supports the conclusion that their product contains a defect which could create a substantial product hazard. One manufacturer questioned whether the Commission had complied with section 30(d) of the CPSA since it had not made a "public interest" finding after affording the public an opportunity for notice and comment.

When the Commission first issued rules under section 15(b) on February 19, 1974 (39 FR 6061), there was a finding under section 30(d) of the CPSA as it existed then that the Commission cannot eliminate or reduce, to a sufficient extent, in a timely manner, risks of injury associated with consumer products regulatable under the transferred acts, unless the Commission is notified under section 15(b). That finding is summarized in § 1115.1(b) of the existing section 15(b) regulations, and it applies to all consumer products. In the September 16, 1977, proposal, the Commision reaffirmed this finding. It also explained that under section 30(d) of the CPSA, as amended, the Commission must find, by rule, that it is in the public interest to regulate under the CPSA consumer products subject to the transferred acts only if risks of injury associated with them can be adequately regulated under those acts. Thus, there is no need to make a public interest finding. The Commission's position on this issue is also contained in §§ 1115.2(d) and 1115.10(a) of this final regulation.

The Commission reaffirms its section 30(d) finding that manufacturers, distributors, and retailers of products subject to the transferred acts are required to report pursuant to section 15(b) of the CPSA.

2. One commenter suggested that the Commission should state clearly its intention to regulate products subject to the FFA, FHSA, or PPPA only under those acts. The Commission has already found that risks of injury to the public from consumer products subject to regulation under the FFA, the FHSA, and the PPPA cannot be eliminated or reduced to a sufficient extent in a timely fashion under those acts. As to substantive regulations, the Commission is unwilling to make such a restrictive statement of policy because the Commission believes it is important to look at each product subject to its jurisdiction on a case-by-case basis to determine the most appropriate manner of insuring the public health and safety.

Thus the Commission could determine, in accordance with section 30(d) of the CPSA, that the risk of injury associated with a product subject to the FFA, FHSA, or PPPA should be addressed under the CPSA. The Commission will make such determinations on a case-by-case basis when it is necessary to do so in order to protect the public.

C. JURISDICTIONAL ISSUES

1. A trade association questioned whether the Commission has jurisdiction over rental activity and whether it has authority to require reports as to such activity under section 15(b). The commenter suggested that the Commission has jurisdiction only when a renter sells a product that person also rents, or sells expendables with the product (e.g., floor wax accompanying a floor waxing machine). The Commission believes this view is erroneous.

A consumer product is defined by section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1), to include products "for sale to * * * or for the personal use, consumption, or enjoyment of a consumer in or around a permanent household or residence, a school, in recreation, or otherwise." The CPSA specifically includes products rented or leased to consumers in its definition of consumer products (H. Rept. 92-1153, 92d Cong., 2d sess. 27 (1972)). In *Consumer Product Safety Commission* v. *Chance Manufacturing Company, Inc.*, 441 F. Supp. 228 (D.D.C. 1977), a Federal district court ruled that amusement rides that are owned and operated for commercial purposes are consumer products because they are used by consumers even though such use does not entail a transfer of title or of possession of the entire amusement ride. Similarly, a product that is rented out and may be used by a consumer in or around a household or residence, a school, in recreation or otherwise, is a consumer product.

The person who rents out the consumer product is a retailer or distributor under the CPSA. Congress stated that those in the chain of distribution "to whom a consumer product is delivered or sold for purposes of sale to or distribution by such person to a consumer" are retailers, section 3(a)(6) of the CPSA, 15 U.S.C. 2052(a)(6). Congress defined distributors as persons "to whom a consumer product is delivered or sold for purposes of distribution in commerce, except that such term does not include a manufacturer or retailer of such product," section 3(a)(5) of the CPSA, 15 U.S.C. 2052(a)(5). As retailers or distributors, those who rent out consumer products

are subject to the reporting obligations outlined in section 15(b) of the CPSA.

2. Another trade association asked whether doctors and hospitals are retailers within the meaning of section 3(a)(6) of the CPSA and thus whether they are subject to the reporting requirements of section 15(b). The Commission believes they are, to the extent they distribute or sell consumer products to consumers. Depending on the context doctors and hospitals may also be distributors within the meaning of section 3(a)(5) of the CPSA.

3. Several commenters asked how to handle reporting for consumer products which are subject to reporting obligations under more than one Federal statute (for example, a defect in a toxic substance in a consumer product is reportable to the Commission and, depending upon its use, may also be reportable to the Environmental Protection Agency and the Department of Housing and Urban Development).

Whenever the Commission receives a report about a product that is also subject to a reporting requirement of another agency, it attempts to communicate with the other agency to establish how to address the situation and the potential safety hazard presented. The other agencies do the same. The Commission believes this procedure is adequate and provides sufficient guidance to the subject firms involved, once they have reported. However, if it appears necessary, the Commission will attempt to establish interagency procedures regarding reporting obligations where jurisdiction is overlapping or unclear, will notify the public if interagency procedures are established, and will amend this regulation accordingly. Meanwhile, the section 15(b) reporting requirements apply to consumer products, even if the reporting requirements of another agency also apply.

D. SUBSTANTIVE OR INTERPRETIVE RULE

1. The written comments in response to the September publication of proposed Part 1115 indicated that the proposed rule was confusing as to its intended effect. The stated purpose of the rule is to "interpret" section 15 of the CPSA and to set forth the Commission's policy and procedure in enforcing this interpretation. Yet, as the commenters pointed out, the rule also stated that remedial actions would be taken and sanctions sought for violations "of this Part." These commenters said that such comments indicated that the rule was substantive in effect.

The confusion in the proposed rule has been eliminated. The Commission considered the difference between promulgating the rule as substantive or interpretive, sought public comment on the issue at the public hearings in April and May of 1978, and has decided to promulgate the rule as interpretive.

A substantive rule has the force and effect of law. Thus, a violation of a substantive rule issued under the CPSA is equivalent to a violation of the CPSA. In contrast, an interpretive rule offers guidance as to what a law means, but does not itself have the force and effect of law. A violation of an interpretive rule is not necessarily a violation of law; the failure to comply with an interpretive rule *is* a violation of the law under which it is issued only if the rule reasonably interprets that law. In issuing these rules under section 15 of the CPSA, the Commission believes it has reasonably interpreted the provisions and obligations of that section. However, a firm charged with violating section 15 through acts which are contrary to these rules will always have an opportunity to urge the reasonableness of its actions under the circumstances, thereby defeating the accusation.

The Commission agrees with the consumer commenters who stated that the Commission could address the issues of its authority and the desirability of issuing a substantive regulation at a later date. They indicated that an interpretive regulation will serve a dual purpose: It will put subject firms fairly on notice of the Commission's view of the law, and it will give the Commission an opportunity to assess the reasonableness and effectiveness of this rule. The Commission agrees and is, therefore, issuing this rule as an interpretation of section 15.

2. Several commenters were unsure as to when civil and/or criminal penalties might be or could be assessed for failure to comply with section 15(b) of the CPSA.

Section 20 of the CPSA allows the Commission to obtain civil penalties against any person who knowingly fails to furnish information required by section 15(b) or who knowingly fails to comply with an order issued under section 15(c) or (d). Section 21 of the CPSA allows the Commission to obtain criminal penalties against any person who knowingly and willfully violates section 15 (b), (c), or (d) after having recieved notice of noncompliance from the Commission. The Commission's interpretation of section 15, embodied in this rule, will guide it in determining which actions to pursue and sanctions to seek as well as which persons to name as defendants. This interpretive rule should also guide subject firms and their officers in discharging their responsibilities under section 15.

E. DEFECT, PROPOSED § 1115.3(b)(3), FINAL § 1115.4

In is proposal of this part, the Commission provided the following definition of the term defect:

A "defect" within the meaning of section 15 of the CPSA is any aspect of a product which creates an unnecessary risk of injury. Such aspects include, but are not limited to the following: Performance, composition, contents, design, construction, finish, packaging, warnings, and instructions. A product presents an unnecessary risk if the aspect which creates the risk is not necessary for the product to perform its functional purpose. A risk is also unnecessary if the benefits (including recreational and aesthetic benefits) to be gained from use of the product do not justify the risk of injury. A product defect within the meaning of section 15 includes both unintended manufacturing errors and/or imperfections and intended product aspects.

This definition provoked a multitude of comments from industry and from consumers and occasioned considerable discussion within the Commission. The Commission has considered this and several other definitions of defect in developing this interpretive rule. What it wishes to do is put members of the public, especially subject firms, fairly on notice that a product may contain a defect even if it is designed, manufactured, and marketed exactly as intended. Therefore, after considering the written and oral comments which addressed the proposed definition of defect, the Commisssion has withdrawn that definition. The Commission has chosen to discuss its interpretation of defect and to offer guidance to subject firms in that discussion, which is found in § 1115.4 of the final regulation.

The Commission has followed the recommendations of several commenters that there be no specific definition of defect, that the Commission provide guidance, and that the Commission offer examples of products which contain defects as the Commission interprets that word. The final § 1115.4 does these things. Thus, as set forth in § 1115.4, if a metalized kite is capable of conducting electricity from air to ground and can come within reach of the ground when entangled in powerlines, it is defective even if it is made more beautiful because of the thin coating of metal and even if it handles better in the air because of the slight added weight of the metal. The kite is designed, manufactured, and marketed exactly as intended; it presents an unjustified risk of injury; and it contains a defect within the meaning of section 15(b).

On the other hand, an ordinary kitchen knife is also capable of seriously injuring someone. It too is designed, manufactured, and marketed exactly as intended. Yet the Commission does not consider the knife to

contain a defect within the meaning of section 15(b) of the CPSA because the sharp edge which is capable of causing injury is necessary if the knife is to function properly and the risk of injury created by the sharp edge is outweighed by the usefulness of the knife which, in turn, is made possible by the sharp edge which presents the risk of injury. The final rule then discusses defect so as to include the metalized kite but not include the knife.

1. The proposed regulation defined defect in terms of "unnecessary risk." Several business and consumer commenters felt that the term unnecessary had no accepted judicial meaning. Many suggested that the term "unreasonable risk" be substituted since it has common legal acceptance and is understood by many to present an objective legal test.

The Commission considered incorporating the term unreasonable risk but on balance rejected the commenters suggestion. Within this agency the term unreasonable risk has taken on a special meaning in the agency's proceedings under sections 7 and 8 of the CPSA to promulgate CPSA standards and bans. The Commission does not want to give the impression that the extensive cost/benefit analysis in which it engages before promulgating a standard or ban should be undertaken by subject firms before reporting under section 15(b) of the CPSA. Thus though the Commission rejects the term unreasonable risk in this rule, it does agree with the commenters that products which present unreasonable risks, as that term is commonly accepted and/or judicially determined, would be defective within the meaning of section 15(b) of the CPSA.

2. Several business commenters objected to the kinds of "aspects" of consumer products which the Commission felt could be defective. Some questioned whether such aspects should include design characteristics, instructions, and warnings. As some consumer commenters pointed out, however, such aspects have been found to constitute product defects in product liability suits. Thus those aspects of products which are accepted by the courts as presenting unreasonable risks, as well as those discussed specifically in § 1115.4, would be defective within the meaning of section 15 of the CPSA. Of course, neither the regulation nor judicial determinations constitute the definitive statement as to which aspects of consumer products may be found to be defective. Such a determination is made on a case-by-case basis.

3. Many commenters objected to the benefit/risk balancing implicit in the sentence: "A risk is also unnecessary if the benefits (including recreational and esthetic benefits) to be gained from use of the product do not justify the risk of injury."

Although this sentence has been deleted from final § 1115.4, the Commission believes that some kind of balancing is implicit in the concept of defect. It cautions subject firms, however, not to engage in lengthy analysis before reporting. The balancing test involved in this definition is intended to eliminate only the most obvious cases: The knife, for example. The Commission emphasizes that the benefit/risk analysis will rarely come up and advises firms to report if in doubt.

4. Some commenters suggested the Commission not adopt a definition of defect but instead rely upon the statutory language and allow a definition to evolve on a case-by-case basis. Federal and State cases dealing with the term defect could be used, they suggest, in Commission determinations.

This idea has merit because the Commission interprets the term defect as used in section 15(b) to include the broadest meaning found in Federal and State statutes and judicial pronouncements. However, the Commission is also sensitive to its obligation to provide guidance to subject firms so that they might understand the statutory requirements. Therefore, the Commission has included final § 1115.4, not as a definition of defect, but as a discussion of the Commission's interpretation of the statutory term.

5. Commenters expressed concern over the effect of a broad, encompassing definition of defect on product liability lawsuits, apparently believing that courts would adopt the Commission's definition in cases where it might not be applicable and thus increase the liability of subject firms. The Commission considered this at great length. Although the Commission does not believe that its definition of defect would be used inappropriately in product liability cases, this additional language was incorporated into § 1115.4:

> Defect, as discussed in this section and as used by the Commission and staff, pertains only to interpreting and enforcing the Consumer Product Safety Act. The criteria and discussion in this section are not intended to apply to any other areas of the law.

This language clearly establishes the intention of the Commission that nothing in the discussion should be interpreted as applying outside the Consumer Product Safety Act.

6. The Commission discusses its interpretation of defect in § 1115.4 to assist subject firms in determining whether a defect exists. However, subject firms are reminded that, given the Commission's broad and inclusive interpretation of defect, they should report if in doubt as to whether a defect exists which could create a substantial product hazard. The staff or, ultimately, the Commission will make the determination as to the existence of a defect and a substantial product hazard. To insure the fullest public protection, subject firms should report; § 1115.4 is to encourage such reporting.

F. EVALUATING A SUBSTANTIAL RISK OF INJURY, PROPOSED § 1115.11(D), FINAL § 1115.12(F)

1. Many of the commenters noted that proposed § 1115.11(d), "Defects which create substantial product hazards," did not clearly differentiate between a defect and the substantial risk of injury it could create. In addition, proposed part 1115 did not address the issue of how the Commission will determine that a failure to comply with a CPSA standard or ban presents a substantial risk of injury and, therefore, substantial product hazard.

The Commission clarifies this point and gives additional guidance to subject firms in § 1115.12(f) of this part. Subject firms are cautioned not to await a determination that a substantial product hazard exists before reporting. However, they are informed in an expanded section of how the Commission and its staff will attempt to determine the substantiality of a hazard. Some of the factors the Commission and its staff consider are set forth in the regulation.

G. ADEQUATELY INFORMED, PROPOSED § 1115.3(b)(1), FINAL § 1115.3(a)

Several commenters including a number of retailers and trade associations stated that the proposed definition of "adequately informed" was excessively burdensome. The term was defined to mean that the Commission staff "has received all the information required under § 1115.12 (Full Report)." Some of the distributors and retailers stated that the Commission was requiring them to supply information not reasonably available and information which was more readily accessible to a manufacturer. Some manufacturers stated that they should not have to submit a full report until the staff had made a preliminary determination of hazard.

Final § 1115.3(a) has been amended to indicate that the Commission staff will be "adequately informed" when supplied with information which is "reasonably available." In addition the revised definition permits the staff to inform a subject firm that the staff is "adequately informed." Thus, sometimes a manufacturer or other subject firm may have to submit a full report in order for the staff to make a hazard determination. At other times less than a full report will "adequately inform" the staff.

H. SUBJECT FIRM, PROPOSED § 1115.3(b)(5), FINAL § 1115.3(f)

In the interest of clarity, one trade association and one manufacturer requested that the Commission delete the term "private labeler" in the proposed definition of subject firm since private labelers are either manufacturers, importers, distributors, and/or retailers and as such are already included in the definition and subject to the reporting obligations under section 15(b).

The Commission agrees and has deleted the term.

I. INVESTIGATION, PROPOSED §§ 1115.3(b)(6) AND 1115.22(c)

The Commission has deleted the definition of "investigation" and the subsection dealing with sanctions for failure to permit inspections because separate regulations dealing with inspection procedures under the CPSA will be proposed.

J. REPORTING BY MANUFACTURERS, DISTRIBUTORS, AND RETAILERS, PROPOSED § 1115.10, FINAL §§ 1115.10, 1115.12, AND 1115.13

1. Many commenters found the reporting requirement outlined in subsections (a) and (b) of proposed § 1115.10 to be vague. They were troubled by the admonition in proposed § 1115.10(b) that subject firms "should not await complete or accurate risk estimates before reporting under section 15(b) of CPSA * * *."

The Commission believes that Congress purposely required reports when a manufacturer, distributor, or retailer obtains information which *reasonably supports the conclusion* that a product does not comply with a consumer product safety rule or contains a defect which *could create* a substantial product hazard, in order to encourage broad reporting. Congress intended that the Commission receive reports when a subject firm had sufficient reason to believe that a consumer product was noncomplying. Also, Congress intended that subject firms report defects which they had sufficient reason to believe *could create* a substantial product hazard. Congress did not expect subject firms to make a complete hazard analysis; it left that job to the Commission.

The Commission is proposed § 1115.10, and now in §§ 1115.10, 1115.12, and 1115.13, as issued, encourages subject firms to make reports quickly, and to do so before they make final and complete hazard determinations. It is the Commission's role, established by statute, to determine whether the noncompliance or defect does in fact present a substantial product hazard within the meaning of section 15 of the CPSA.

Though the structure and wording of the regulation have been changed to clarify who must report, when the report must be made, and what should be reported, the Commission's intent to encourage prompt and broad reporting remains unchanged.

2. Many commenters objected to the 5-day time period for imputation to a subject firm of information received by its employee. This imputation was found in proposed § 1115.10(d). Though commenters recognized that the Commission was encouraging firms to set up an internal procedure for processing and evaluating product safety information and many approved of this goal, they questioned whether the Commission had legal authority to take this action. In particular commenters questioned whether the proposed section was supported by the CPSA and whether the Commission had sufficient evidence to support the reasonableness of the 5-day limit.

The concept of imputation of knowledge is firmly established in the Consumer Product Safety Act and in common-law agency principles. Section 20(c) of the CPSA, 15 U.S.C. 2069(c), incorporates the concept of imputing knowledge when it defines "knowingly," as used in section 20(a) of the CPSA, in part as "the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations." Moreover, common-law agency principles impute to the principal the knowledge of the agent where that agent has actual or apparent authority to act on behalf of the principal. Section 1115.11 does no more and, therefore, is legally sound.

The Commission believes that the 5-day time period in the proposed regulation, adopted as a guideline in § 1115.14(b) of the final rule, is adequate in most cases. Though several commenters stated that 5 days will not be enough time for large diversified firms with many unsophisticated employees, others recognized that the 5-day provision is a guideline in the context of an interpretive rule and that the reasonableness and due diligence of a subject firm, given the circumstances of a particular case, will be determinative, not the language of the rule. The Commission agrees that, as an interpretive rule, § 1115.14(b) simply establishes what the Commission believes to be a reasonable time for transmitting information. As a result, it is unnecessary to enlarge or otherwise change the time period; and the Commission has not done so.

Several commenters expressed concern that a disgruntled employee might seek to harm a subject firm by withholding hazard-related information, thus exposing the firm and its officers to civil and/or criminal penalties. The Commission believes that the amended regulation, together with the statutory language, operate to make this a remote possibility.

Civil penalties can be assessed only where a person "knowingly" violates section 19 of the CPSA. "Knowingly" is defined by section 20(c) of the CPSA, 15 U.S.C. 2069(c), as "the having of actual knowledge, or the presumed having of knowledge deemed to be possessed by a reasonable man who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations." If a subject firm faced with a civil penalty action for failure to report could show that an employee intentionally refused to pass relevant information to the subject firm and if the Commission based its case upon the subject firm's having actual knowledge of that same information from that particular employee, the Commission could not rely upon the first portion of section 20(c), that is, the having of actual knowledge. The Commission would then have to prove that the information otherwise available to the subject firm irrespective of the withheld information, was sufficient to put a reasonable person in the position of the subject firm on notice of the information. The net result of the failure of the employee to pass the information on would be to increase the burden on the Commission and to provide the subject firm with a possible defense in a civil penalty action.

Criminal penalties can be assessed only where a person "knowingly and willfully violates section 19 (of the CPSA) after having received notice of noncompliance from the Commission (,)" section 21(a) of the CPSA, 15 U.S.C. 2070(a). Thus, the fact that a disgruntled employee did not pass on information could not alone form the basis of a criminal prosecution because there must be both an initial violation of section 19(a)(4) of the CPSA (i.e., a failure to furnish information required by section 15(b)), and a violation (or failure) after receipt of specific notice of the previous failure to furnish the information. It is this continuing failure to report which is the basis for the criminal action, and such a failure would weigh heavily against a subject firm, notwithstanding that the initial failure to report was due entirely to the disgruntled employee.

The Commission would consider the failure of the employee to pass on hazard-related information as a mitigating circumstance in an appropriate case (although, as stated above, the continuing violation after receipt of a notice of noncompliance would weigh heavily against a subject firm). In ad-

dition, the regulation has been amended to reflect that the reportable information must reach an employee capable of understanding its significance; thus, if the disgruntled employee were a cashier or stocker, there would be less likelihood that the Commission would deem that person capable of appreciating the significance of the information than if the person were the product safety officer of the subject firm or some other presumptively responsible corporate official.

Several commenters suggested that the language of proposed 1115.10(d) be changed so that the imputation would only apply when the safety-related information was received by a "responsible employee" or one who was "capable of appreciating the significance of the information." In § 1115.14(b) of this part, the Commission adopts the suggestion, thus conforming the regulation to similar reporting regulations of other agencies.

3. Some commenters expressed concern that proposed 1115.10(e) would require all retailers and distributors to make full reports to the Commission because they would be unaware as to whether the Commission was adequately informed. The Commission believes that the burden on retailers and distributors is alleviated by the new definition of "adequately informed" and by the modified reporting obligation set forth in §§ 1115.13(b) and 1115.13(d). A retailer or distributor with knowledge of a reportable noncompliance or defect should contact the Commission staff if it is unaware that the staff has already been contacted by another firm (see 1115.13(b)). However, once the retailer or distributor reports to the Commission's Product Defect Correction Division and supplies the information detailed in § 1115.13(c) insofar as it is known to the reporting firm, the reporting obligation has been satisfied unless the Commission staff requests further information. See §§ 1115.13(b) and 1115.13(d) of the regulation. This modified reporting is not available to a retailer or distributor who is also an importer or manufacturer of the consumer product about which the report is made; this person is regarded as a manufacturer and must fulfill the requirements set forth in § 1115.13(d).

K. PRESUMPTIVELY REPORTABLE INFORMATION, PROPOSED § 1115.11(a)

Many commenters criticized the presumption contained in proposed 1115.11(a) that a subject firm obtains information which reasonably supports the conclusion that a product either fails to comply with a consumer product safety rule or contains a defect which could create a substantial product hazard when it receives information involving that product in a death or grievous bodily injury unless it has clear evidence that the injury was not caused by the noncompliance or defect. Many felt that the presumption went beyond the plain meaning of the reporting requirement since it equated "involvement" of the product in a death or grievous bodily injury with a noncompliance or a defect that could create a substantial risk of injury. The commenters stated that the element of causality was missing and that the "clear evidence" requirement shifted to the subject firm the burden to show the nonexistence of a noncompliance or a defect. Thus, they argued, reports would be required even if the information did not reasonably suggest a defect or noncompliance. The commenters pointed out that this was exacerbated by the short time frame (i.e., 10 days) allowed for investigation pror to determining whether to report.

The Commission has considered these comments and has eliminated the presumption in proposed 1115.11(a). Rather, the Commission has expressed its position that information indicating that a noncompliance or a defect in a consumer product has caused, may have caused or contributed to the causing, or could cause or contribute to the causing of a death or grievous bodily injury must be reported or investigated and the information found not to be reportable. See § 1115.12(c) of this rule. If the subject firm is able to establish through a reasonably diligent investigation that its product was not causally related to a death or grievous bodily injury or the potential for a death or grievous bodily injury, no report is necessary.

However, the Commission notes that a subject firm has an obligation to exercise reasonable diligence to determine whether it has obtained information which reasonably supports the conclusion that a reportable noncompliance or defect exists. If a subject firm cannot determine within a reasonable period of time (that is, 10 days; 1115.14(d)) that the product does not contain a reportable noncompliance or defect, the Commission expects the firm to make a section 15(b) report. In recognition that subject firms may have to report unconfirmed information, § 1115.12(a) permits reports to be made with disclaimers.

L. INFORMATION WHICH SHOULD BE STUDIED AND EVALUATED, PROPOSED § 1115.11(b), FINAL §§ 1115.12(d) AND 1115.12(e)

1. Many commenters objected to proposed 1115.11(b) because it imposed an unreasonable obligation to investigate information which could indicate the existence of a reportable defect or noncompliance. The commenters observed that this provision created a particularly heavy burden in light of the limited time within which such information was to be studied and evaluated; that this section placed an unrealistic burden on subject firms, whether they decided to investigate or to report; and that the Commission would be unable to handle the paperwork that would be created by the ensuing "defensive" reports.

The Commission disagrees with these comments and therefore has not changed the substance of proposed § 1115.11(b). However, the form of the proposed section has been changed somewhat for clarity, and it is now §§ 1115.12(d) and 1115.12(e).

The Commission believes that the obligation to study and evaluate the information which a firm obtains is clear from the statute. A reasonably diligent firm would not merely collect data on potential safety problems and file them away; it would seek to determine whether or not a reportable defect or noncompliance exists. Sections 1115.12(d) and 1115.12(e) simply illustrate by way of guidance the types of information the Commission believes a reasonable and prudent subject firm should consider when deciding whether to report. The Commission will evaluate the conduct of the subject firm in light of these guidelines, together with the reasonableness of the subject firm's behavior under the circumstances, when it considers whether a violation of section 19(a)(4) of the CPSA has occurred and, if so, what remedy to seek.

2. Many commenters complained that the investigation scheme for deaths and grievous bodily injury and for information which should be studied and evaluated encouraged broader reporting, which, in turn, would have an adverse effect on the product liability stance of subject firms. The commenters indicated that a report under section 15(b) could be construed as an admission of the existence of a defect which could be used against the reporting subject firm in private product liability suits.

At the outset, the Commission concurs with the commenters that this regulation is more comprehensive than the regulations in effect since 1974 and, in that sense, "broader." In this regulation the Commission sets out clearly and simply what the Commission sees as the congressionally mandated reporting obligations of subject firms, the role of subject firms in making determinations as to the existence of reportable noncomplying products or defects, and the role of the Commission and its staff in making determinations as to the existence of substantial product hazards. The Commission disagrees, however, with those who state that this regulation exceeds the bounds of the CPSA.

The Commission believes that this regulation correctly interprets the statute and is well within its authority.

It is the Commission's position that the broader reporting which this regulation will generate, the addition of language to § 1115.12(a) explicitly stating that a report may contain an express disclaimer, together with the addition of § 1115.15(a) stating that the Commission does not routinely make reports available to the public (that is, the reports will not be available in the Commission's public reading room and the contents of reports will not be disclosed absent a formal request) until the staff has made its preliminary hazard determination, greatly dilute the potentially adverse impact of a report feared by the commenters. The Commission believes that the subject firms are adequately protected and declines to change the regulation.

M. CONTENT AND FORM OF REPORTS, PROPOSED § 1115.12, FINAL § 1115.13

1. Many commenters felt that the language in proposed § 1115.12(c) requiring that a report be made "immediately" and defining immediately as "in no event later than twenty-four (24) hours" was unclear and in conflict with the time periods allowed for transmission of information within a firm and for investigations. The Commission has clarified this requirement in § 1115.14 of this final rule. Here, all time computations are grouped in one section. Firms are more clearly informed that the obligation to report "immediately" may arise at the conclusion of a reasonably expeditious investigation conducted in order to evaluate the reportability of information.

2. Several commenters expressed the view that the information required by proposed § 1115.12 exceeds the statutory authority and requirements of section 15(b). The Commission believes that this provision, which repeated virtually unchanged the provision in operation during the past four years and which is included here as § 1115.13, is a proper interpretation of the reporting requirement in section 15(b). Without such basic information as identification of the product, injury data, information on the nature of the defect or noncompliance, information on distribution, and data on the use characteristics of the product, a report under section 15 would be useless in assisting the Commission to protect the public, which is its primary function. A report under section 15(b) was intended by Congress to give the Commission a clear picture of the nature of the potential hazard. The information requested by the Commission is necessary to ascertain whether a substantial product hazard exists and whether further action to protect the public should be undertaken.

In addition the Commission needs to know whether and what remedial actions are being or will be taken by a subject firm in order to determine what remedial action it will seek. Therefore, the Commission believes that it is correct and necessary to include in section 15(b) reports the information outlined in final § 1115.13(d)(10), (11), and (12).

3. Several commenters expressed concern that retailers or distributors would not be able to supply much of the information required by proposed § 1115.12(d) for a full report. The Commission has attempted to address this issue by providing an abbreviated reporting mechanism for distributors and retailers. This provision is discussed above and is set forth in § 1115.13(b) of the final rule.

Other commenters suggested that a full report should not be required even of manufacturers and importers until a preliminary determination of hazard is made. Since the Commission staff may need the information contained in the full report to make its preliminary hazard determination, the Commission will not as a matter of policy dispense with a manufacturer's or importer's obligation to submit a full report prior to a hazard determination. The Commission may, however, under the provisions of § 1115.13(d), terminate a firm's obligation to make a full report if the staff preliminarily determines, based on the information it has, that there is no substantial product hazard.

4. Several commenters questioned the requirement that the Chief Executive Officer or his designee sign documents submitted as reports to the Commission pursuant to section 15(b) of the CPSA. Many felt this placed an unreasonable burden on the Chief Executive Officer's time or that this practice would cause delays in large firms.

The Chief Executive Officer of a subject firm may designate someone else as the person responsible for signing reports submitted to the Commission by sending a Delegation of Authority to the Product Defect Correction Division either prior to or simultaneous with a section 15(b) report (see § 1115.13(a) of the final regulation). Thus, it is not necessary for the Chief Executive Officer to be personally involved in each report. In addition, the delegation of authority is frequently made to the product safety officer of a subject firm whose job usually includes a liaison function with government agencies in the area of product safety. This individual is the logical choice as designee because this person has information sources valuable to both the Commission and the subject firm in addressing any potential hazard. In the Commission's nearly 4 years of experience working with the delegation system, the system has been a valuable tool in establishing contact with the employees of subject firms who can move quickly to identify and correct hazards. The Commission has considered the comments and finds no reason to change the delegation system at this time.

5. Several commenters objected that proposed § 1115.12(d)(6), now § 1115.13(d)(6), which requires that a subject firm submit information on the manner in which information indicating the existence of a defect or nonconformity was obtained by the firm, places an additional paperwork burden on the reporting firm and diverts effort away from whatever investigative or corrective action the firm is undertaking. The Commission disagrees. This information should in most cases be available to the subject firm at the time it makes its report; to the extent it is not reasonably available, it may be supplied later under the language of § 1115.13(d). In addition, by supplying the information at the outset, a subject firm may convince the Commission that there is no reason to investigate whether the subject firm made an immediate (i.e., timely) report to the Commission.

6. Several commenters objected to including in a full report such information as technical drawings, test results, customer names, and other information they consider to be confidential commercial information and trade secrets. Information that a firm believes is trade secret or confidential commerical or financial information may be designated as such in the full report. See § 1115.15(b) of the regulation. The provisions of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)), the Commission's FOIA regulation (16 CFR 1015), the Government in the Sunshine Act (5 U.S.C. 552b), the Commission's Open Meetings regulation (16 CFR 1012); and section 6(a) of the CPSA (15 U.S.C. 2055(a)) govern disclosure of such information.

7. One commenter indicated that the Commission does not need the names of consumers since it has no right to contact them. This objection is incorrect both as a practical and a legal matter.

The Commission believes that the names of ultimate consumers, where known, are necessary in order to assess the hazard and to monitor the effectiveness of any corrective action. The subject firm which wishes to offer a corrective action plan to or to enter into a consent order agreement with the Commission cannot object to Commission monitoring of the firm's corrective action. Moreover, the Commission could, if necessary, compel disclo-

sure of the names of distributors, retailers, and purchasers (including consumers) during proceedings under section 15 or section 12 or by compulsory process under section 27(b) of the CPSA.

It should be noted that the information about distributors, retailers, and purchasers (including consumers) must be reported only upon request; there is no obligation that subject firms automatically supply this information to the Commission. In addition, this information, like all other information requested under § 1115.13(d), need only be provided if it is reasonably available. There is no requirement that manufacturers or importers comb the records of their distributors or retailers to discover names; of course, if the distributors or retailers are part of the same corporation or belong to the same parent company, there might exist an obligation to search their records. In addition, distributors or retailers may themselves be required to furnish customer lists to the Commission. To be acceptable, however, every corrective action plan must include an acknowledgment that the subject firm will furnish information, including customer lists in individual cases, in order that the Commission may monitor the corrective action. Finally, a request for confidential treatment could be made to insure that the information would be treated in accordance with applicable statutory and regulatory provisions. For these reasons; the Commission believes that it has the right to request the names of customers, distributors, and retailers under § 1115.13.

8. Other commenters questioned the Commission's need to know how many products a firm has in inventory, the retail price of the product, and its identifying marks, at least where serial numbers and other identification are available. This information is requested as part of both the initial report and the full report to the Commission (see § 1115.13 (c) and (d)).

The Commission believes that the number of products in inventory is an important part of the composite picture of the whereabouts of the product in the distribution chain. In order to assess the hazard and monitor compliance with remedial action, the Commission needs to know where the products can be found. Retail price is also important since it may be a factor in assessing the risk and in determining whether one form of remedial action is more equitable and effective than another.

The Commission believes that the public should be able to identify products which are potentially hazardous. To achieve this goal, the Commission provides as much information as possible. Because model and serial numbers and date codes may be insufficient to achieve this, any identifying marks and their location on the product are useful and will be made known to the public.

9. One commenter suggested that it may be appropriate for a subject firm engaged in corrective action to submit to the Commission drafts of letters, press releases, or warnings rather than "copies" as required in proposed § 1115.12(d)(11). The Commission concurs and has incorporated this language into § 1115.13(d)(11) of the final regulation. In many situations a draft would be preferable and may be submitted. This would permit the staff to comment upon the efficacy and overall acceptability of the proposed letters, press releases, warning labels, and/or any other written materials before the subject firm has issued them. Allowing the staff to comment in advance would, in most cases, prevent a later Commission rejection of a proposed corrective action plan or consent order agreement for insufficient notice.

10. Some commenters had the impression that the proposed rule required a firm to report by telephone and did not permit reporting by letter or telegram. This impression is incorrect, and the Commission has clarified this in § 1115.13(c) of the final rule. An initial report may be made by any means (including letter); but if it is *not* in writing, it should be confirmed in writing within 48 hours of the initial report.

11. One commenter indicated that since a corrective action plan is not always necessary when a section 15(b) report is made, proposed §§ 1115.12(d)(10)–(13) may be inapplicable. The commenter suggested the Commission indicate in § 1115.12(d) that information in a full report need be submitted only where available and applicable. This change has been incorporated in the final regulation in § 1115.13(d). In addition, the staff may inform the firm that its reporting obligation has been fulfilled.

12. One commenter suggested that only retailers should be required to supply information regarding the number of products in consumers' hands. Although a retailer has an obligation to report and should supply this information to the extent it is known to the retailer (see § 1115.13 (b)), a manufacturer or distributor who reports should supply this information to the extent it is available. (See discussion in paragraph M.8 above.)

N. CONFIDENTIALITY, PROPOSED § 1115.13, FINAL § 1115.15

Several commenters indicated that they believed that all information reported to the Commission pursuant to section 15(b) should be kept confidential. They stated that this would encourage more widespread reporting since firms would not then be afraid that their reports, some of which will necessarily be based on incomplete or inaccurately assessed information, would be made public. If this information were kept confidential, many argued, a subject firm's reputation and products liability position would be protected. The Commission does not routinely make reports available to the public until the staff has made a preliminary hazard determination. Thus copies of reports will not be available to the public in the Commission's public reading room, and information contained in reports will not ordinarily be disclosed to the public absent a formal request. (See § 1115.15(a).) For the reasons stated below the Commission cannot accede to the request for blanket confidentiality.

Some of the commenters argued that, under section 6(b) of the CPSA, 15 U.S.C. 2055(b), the Commission could not release information obtained through a section 15(b) report, even in response to an FOIA request, unless the Commission followed the notice provisions of section 6(b). The Commission believes that this view is incorrect and that release of information in response to an FOIA request is not an "affirmative" release subject to the notice provisions of section 6(b). Moreover, even if the Commission were to interpret section 6(b) as applying to FOIA requests, as well as "affirmative" releases of information, the Commission may release information in fewer than 30 days and/or without notice to the manufacturer or private labeler where the Commission finds out that the public health and safety require a lesser period of notice and/or where notice is not practicable under the circumstances.

Many commenters suggested that information in a section 15(b) report, including the fact of the report itself, could be protected from disclosure under exemptions 4 and 7 to the FOIA, 5 U.S.C. 552(b) (4) and (7). Exemption 4 protects trade secrets and commercial or financial information which is privileged or confidential and exemption 7 protects investigatory records compiled for law enforcement purposes.

The Commission does not believe that exemption 7 is available as a basis for withholding information because production of the information contained in a section 15(b) report would not, in the opinion of the Commission, interfere with enforcement proceedings, deprive a person of a right to a fair trial or impartial adjudication, constitute an unwarranted invasion of personal privacy, disclose the identity

of a confidential source, disclose investigative techniques and procedures, or endanger law enforcement personnel. See 5 U.S.C. 552(b)(7). In addition, section 15(b) of the CPSA contains a mandatory reporting obligation; and the Commission interprets case law under the FOIA as denying exemption 7 coverage to statutorily mandated reports such as these.

Exemption 4 applies to trade secrets and commercial or financial information that is privileged or confidential. To sustain an exemption for confidential commercial information, there must be a showing that disclosure of the information will cause substantial competitive harm. To the extent that a reporting firm believes that its identity should not be disclosed, or that the fact that it has submitted a report under section 15(b) is confidential commercial information, it should, at the time it reports, submit a request or indicate that it will be submitting a request to exempt its information from disclosure in accordance with the Commission's Freedom of Information Act regulations (16 CFR part 1015). At the time the request for exemption is made, the firm should describe in detail the reasons it believes it will suffer substantial competitive harm.

As a matter of policy the Commission will not routinely make available to the public either the fact of a report or the substance of a report until the staff has made its preliminary hazard determination. However, once that determination has been made, whether or not the staff preliminarily determines that a substantial product hazard exists, the Commission will not honor requests for exempt status for the identity of the reporting firm, the identity of the consumer product, and the nature of the reported alleged defect or noncompliance. As a matter of policy the Commission believes that the public interest in knowing the dispositions of reports and the reasons for each disposition outweighs the potential harm to the reporting firms. The Commission further believes that proper characterization of the staff's preliminary hazard determination will prevent or minimize any potential harm. Any public disclosure of a report will include the staff's preliminary hazard determination. As to all other information for which exempt status is requested, under § 1115.15(b) of the final regulation, the Commission will analyze requests for confidential treatment of 15(b) reports in accordance with its normal FOIA procedures (see 16 CFR 1015) and will determine on a case-by-case basis whether all or part of the information submitted by a firm is subject to release under FOIA.

O. VOLUNTARY REMEDIAL ACTION, § 1115.20

1. One commenter suggested the Commission should never accept corrective action plans but should always seek consent order agreements and issue orders. The Commission disagrees. The Commission has found during the past 4 years that corrective action plans are, for the most part, efficient and effective methods of dealing with potential hazards. By offering and accepting a corrective action plan, the subject firm and the Commission save considerable time and effort that would otherwise be devoted to negotiating the more complex details of and completing the paperwork necessary for a consent order agreement. As a result, the hazard is remedied faster, and the consumer is protected earlier. In addition, the Commission has found that most companies fulfill their obligations under the corrective action plans. For those few subject firms which do not satisfy their corrective action plan obligations, the Commission has two options under the final regulation: a consent order agreement (see § 1115.20(b)) or commencement of adjudicative proceedings (see § 1115.21).

The Commission believes that the current system provides it with more flexibility in dealing with the many different kinds of hazard situations which arise under section 15 of the CPSA. The Commission believes that corrective action plans provide a fast and economical solution to potentially serious hazard situations and, in most cases, that the positive aspects of this procedure far outweigh the need to obtain legally enforceable consent order agreements. Thus the Commission declines to incorporate this commenter's suggestion.

2. One commenter suggested that corrective action plans be exempted from monitoring and investigation. The commenter was particularly concerned about eliminating the paperwork burden on the firm involved in remedial action pursuant to a corrective action plan.

The Commission believes that close monitoring is necessary in order to establish and insure the effectiveness of the corrective action plan as a remedial option. A recent GAO report ("The Consumer Product Safety Commission Has No Assurance That Product Defects Are Being Reported And Corrected," HRD-78-48, Feb. 14, 1978) suggested that the Commission take steps to increase the effectiveness of its monitoring effort. As noted above, there is even some sentiment for eliminating corrective action plans completely and insisting upon consent order agreements.

While the Commission believes elimination of corrective action plans would be a mistake, it recognizes that close Commission scrutiny of implementation of the plans both motivates compliance and increases the Commission's knowledge of the effectiveness of various kinds of remedial action and of notice to the public. The Commission believes that subject firms offering a corrective action plan should be willing to cooperate with the Commission by allowing it to monitor the corrective action in return for the Commission's acceptance of the plan.

Finally, the primary purpose of a corrective action plan is to protect the public from a substantial risk of injury presented by a consumer product and to do so as quickly as possible. It is for this reason that the Commission encourages submission of corrective action plans by subject firms. Monitoring a corrective action plan is the mechanism by which the Commission determines whether this public protection purpose is being or has been achieved. If monitoring reveals that this purpose is not being or has not been achieved by a corrective action plan, whatever the reason, the Commission is then able to consider its alternatives and to move rapidly to do what it considers necessary and appropriate to protect the public.

For these reasons, the Commission has not incorporated the requested change in the final regulation.

3. Several commenters requested explicit language assuring that entering into a consent order agreement, like entering into a corrective action plan, would not be read as an admission of the existence of a hazard. The Commission intended that this would be an available provision and, therefore, stated in proposed § 1115.20(b)(1)(xii) that a consent order agreement shall contain the elements of a corrective action plan set forth in § 1115.20(a)(1). (A typographical error in the FEDERAL REGISTER resulted in this section being referred to as § 1115.41(c).) Therefore, a consent order agreement, like a corrective action plan, may include a disclaimer of the reportable information and the hazard. See §§ 1115.20 (b)(1)(xii) and 1115.20 (a)(1)(xiii) of the final regulation. However, the notice to the public must inform of the hazard, disclaimer notwithstanding.

4. A few commenters suggested that the Commission's open meetings policy should be modified to allow subject firms to meet with the Commission or the staff in order to negotiate corrective action plans or consent order agreements in private. Though the Commission believes that where possible its business should be conducted in the public view, it recognizes that in certain circumstances closed meetings may be necessary in order to allow candid and uninhibited ex-

changes during negotiations. The Commission's open meeting regulation allows for such rare exchanges at 16 CFR 1012.5(b)(1)(B)(ii), which provides that there can be one closed meeting regarding a section 15(b) report, although all subsequent meetings are open to the public. The Commission's experience with this limited exception to the open meetings policy has been generally good. Although the question of possible expansion of the exception is now being studied, the Commission declines to broaden the exception at this time.

5. One commenter suggested that § 1115.20(a)(1)(i) state that voluntary corrective action plans shall contain a description of the "alleged" hazard rather than "the" hazard. The Commission has added the word "alleged" to the final version of § 1115.20(a)(1)(i).

In addition, the same commenter noted that proposed § 1115.20(a) limited the applicability of corrective action plans to defects. The commenter suggested the Commission should also seek corrective action plans to remedy noncompliance with consumer product safety rules. The Commission agrees and has amended § 1115.20(a) accordingly.

6. Another commenter suggested that in reserving its right to publicize a corrective action plan under proposed § 1115.20(a)(1)(x), the Commission should make clear that it will do so subject to section 6(a)(2) of the CPSA. The Commission believes that it will be able to reach agreement with a subject firm about the information which may be released and publicized as part of a corrective action plan, regardless of what claim for confidentiality may originally have been made. Final § 1115.20(a)(1)(xi) has been amended to state this more clearly. In the absence of agreement the Commission will adhere to the provisions of section 6 of the CPSA, the FOIA, regulations promulgated thereunder, and any other applicable Federal statute. Of course, the Commission reserves its right not to accept any offered corrective action plan which fails, in the opinion of the Commission, to inform and protect the public.

7. Commenters expressed a similar concern about information submitted pursuant to proposed §§ 1115.20 (a)(1)(vi) and 1115.20 (b)(1)(xii), now §§ 1115.20 (a)(1)(vi) and 1115.20 (b)(1)(xiii) of the final regulation, and questioned whether confidential commercial or trade secret information submitted under those sections would be released during the publication of a corrective action plan or consent order agreement. Unless an agreement is reached allowing the publication of the relevant confidential commercial or trade secret information, the Commission will release such information only in accordance with section 6 of the CPSA, the FOIA, regulations promulgated thereunder, and any othe applicable Federal statute. Of course the Commission reserves its right to reject any offered corrective action plan or consent order agreement which, in its opinion, fails to inform and protect the public.

8. One commenter suggested that rather than listing the factors the staff will consider in recommending to the Commission whether to accept a corrective action plan, the regulation should merely state that the staff will consider "appropriate factors." Other commenters expressed specific concern with the effect past performance in corrective action plans might have on Commission acceptance of a later corrective action plan. These commenters suggested that only prior irresponsible behavior which leads to the conclusion that a firm cannot be trusted should lead to the resolution of a potential hazard problem by consent order agreement.

The Commission believes that § 1115.20(a)(2), as written, provides guidance to subject firms and the public that would not be given under the suggested broader language. In addition, § 1115.20(a)(2) provides the staff with sufficient leeway to evaluate the past performance of a subject firm and to make its recommendation based, in part, on that past performance. The Commission believes that the "track record" of a subject firm is a reasonable, reliable, and valuable tool in assessing the likelihood that the public will be protected under a corrective action plan. Therefore, the Commission has retained the provision as written in this final rule.

9. One consumer group suggested that corrective action plans and consent order agreements include language indicating that the Commission will seek broader corrective action if it becomes aware of new facts or if the corrective action does not sufficiently protect the public. The Commission agrees and has included this language in § 1115.20(a) as applied to corrective action plans. Procedures for modification of a consent order agreement, after the Commission order has issued, are found in the Commission's rules of practice for adjudicative proceedings because a Commission order based on a consent order agreement is treated the same as any other Commission order. Therefore the additional language has not been added § 1115.20(b).

10. One commenter felt that § 1115.20(a)(3) should be changed to permit a subject firm to alter its plan in order to make it acceptable to the Commission rather than have the Commission issue a complaint if it finds the proffered plan to be unacceptable. The Commission feels that § 1115.20(a)(3)(iii) permits such action and has not amended the provisions of this section.

11. The Commission also received comments stating that a provision in consent order agreements preserving the Commission's right to seek sanctions for violations of the reporting obligation contained in section 15(b) of the CPSA and its right to take other appropriate legal action would make it difficult to obtain such agreements. In the Commission's experience with consent order agreements, inclusion of this reservation has not unduly hampered the obtaining of agreements and has been beneficial in making explicit the exact terms of the agreements. In addition, since the statement accurately reflects Commission policy, it should be retained to avoid any misunderstanding or unfairness. For these reasons the Commission has retained § 1115.20(b)(1)(v) in this final regulation.

12. Other commenters were concerned that proposed § 1115.20 (b)(1)(x), which acknowledges that private civil actions may be brought to enforce a consent order agreement, is undesirable. These commenters questioned whether a consent order agreement should have the same effect as a Commission order under sections 15 (c) and (d).

By its terms, a consent order agreement, once finally accepted by the Commission as detailed in § 1115.20(b)(5), is a final order issued pursuant to section 15 of the CPSA (see § 1115.20(b)(1)(iv) of final regulation). As such, the order is enforceable by the private right of action provided by section 24 of the CPSA (15 U.S.C. 2073). Section 1115.20(b)(1)(x) merely emphasizes this statutorily-granted right. Accordingly, the Commission has not modified this section.

13. Another commenter questioned whether the waiver of rights provision in proposed § 1115.20(b)(1)(ii) is too broad. Such a provision guarantees that the subject firm fully understands the legal ramifications and the extent of its waiver of its legal right to an administrative or judicial hearing and/or review. In addition it protects the Commission and the public against a subject firm's abandoning an agreed-to corrective action program and demanding an adjudication on the issue of hazard. It is a basic ingredient of the consent order agreement. The Commission will not accept a proposed consent order agreement without this waiver, does not consider this language to be too broad, and has not amended § 1115.20(b)(1)(ii) of this regulation.

14. One commenter suggested that the 15 days allowed for public comment on a provisionally accepted con-

sent order agreement after its publication in the FEDERAL REGISTER (see § 1115.20(b)(4)) should be applied to corrective action plans as well. Another commenter suggested that the comment periods for corrective action plans and consent order agreements should be extended when to do so would be in the public interest. Other commenters suggested improving the notice given to the public about the plan or agreement and encouraging further public comment after it has been accepted or rejected by the Commission.

The Commission has reconsidered these proposed procedures in the light of these comments and its own experience. The purpose of the section on public participation in corrective action plans is to give interested persons an opportunity to comment on a proposed plan before the Commission has voted to accept or reject. Experience suggests that routine corrective action plans involving prompt action by a subject firm to warn the public and to reduce the hazard generally would be the only plans that the public would have a chance to participate in—and these are not ones likely to interest the public. In these routine cases, the corrective action is often well underway even before the Commission has an opportunity to assess it.

The corrective action plans which would be of most interest to the public would be those wherein a firm refused to warn or recall until the Commission had accepted the plan. In such a case the need for fast action generally would preclude advance public notice by publication in the FEDERAL REGISTER and even in the Public Calendar. Additionally, many of these proposed corrective action plans involve consideration by the Commission of possible enforcement actions. The staff memoranda explaining the enforcement options and the meetings at which they were discussed would in many cases be restricted and closed.

Accordingly, the Commission has revised § 1115.20(a)(4) dealing with corrective action plans to include the phrases "when time permits" and "where practicable." To avoid delay, the Commission will not give public notice in the FEDERAL REGISTER but will give advance notice in the Public Calendar and make proposed corrective action plans available to the public insofar as practicable.

With regard to consent order agreements, at this time the Commission does not perceive the need to provide and extended comment period, although it believes that, where warranted, such an extension could be made under the inherent power of the Commission to conduct its business. In addition the Commission upon receiving an executed agreement may "take such other action as it may deem appropriate" (see § 1115.20(b)(3)). Thus the Commission believes the rule provides the Commission with sufficient flexibility to protect the public.

P. PROHIBITED ACTS AND SANCTIONS, § 1115.22

1. Many commenters pointed out that if these regulations are issued as interpretive, "violations" of the regulation would not be prohibited acts unless they were also violations of the statute. They suggested deleting the words "and this Part," and "and/or of this Part" from §§ 1115.22 (b) and (c), respectively. As noted earlier, the Commission has done so.

2. Several commenters stated that subjecting corporate officers to the civil and criminal sanctions of sections 20 and 21 of the CPSA, 15 U.S.C. 2069 and 2070, for violations of section 19 of the CPSA, 15 U.S.C. 2068, is unreasonable due to the size and complexity of some businesses and the number and complexity of the applicable Federal, State, and local statutes and regulations. The Commission believes that the CPSA and relevant case law both support holding officials of subject firms liable for the firm's actions. Where and when the Commission believes that there is a "knowing" or "knowing and willful" violation of the Consumer Product Safety Act (as those terms are used in sections 20 and 21 of the CPSA), appropriate sanctions will be sought against the responsible officers.

The Commission emphasizes, however, that criminal penalties under section 21 of the CPSA may be levied only against a person who "knowingly and willfully violates section 19 of this act ["Prohibited Acts"] after having received notice of noncompliance from the Commission."

Q. OTHER COMMENTS

A number of comments involved questions and issues not directly within the scope of this proposed regulation. A number, for example, had suggestions for staff procedures. The Commission soon will be issuing directives to the staff in connection with this regulation and will consider these suggestions then.

Other commenters were concerned about private issues like indemnification. One wished to know if the Commission could be held liable if its recall order was eventually overturned by a court. Some questioned the constitutionality of section 15 and of the Commission's inspection authority. The Commission believes that these are matters best left to the courts or discussed in other contexts.

FINDING AND PROMULGATION

Since this is a procedural and interpretive rule, the provisions of 5 U.S.C. 553(d) requiring publication of a rule 30 days before its effective date do not apply; and this rule is effective immediately upon publication in the FEDERAL REGISTER (August 7, 1978). However, even if the provisions of 5 U.S.C. 553(d) were found to apply in this instance, the Commission concludes that the need for a new regulation setting forth its interpretation, policy, and procedure with respect to section 15 of the CPSA is of sufficient urgency and of such benefit to the public that its promulgation should take effect upon publication. Therefore, in accordance with the provisions of 5 U.S.C. 553(d), the Commission, for good cause, finds that the rule issued below should become effective August 7, 1978.

Accordingly, pursuant to the provisions of the Consumer Product Safety Act (secs. 12, 15, 16, 17(a), 19, 20, 21, 22, 24, 27, and 30), 86 Stat. 1218, 1221-1227, 1231, as amended, 90 Stat. 508-510; 15 U.S.C. 2061, 2064, 2065, 2066(a), 2068-2071, 2073, 2076, 2079, the Commission amends Title 16, Chapter II, Subchapter B as follows: 1. by deleting the current provisions under Parts 1115 and 1116 and 2. by adding a new Part 1115.

Subpart A—General Interpretation

Subpart B—Remedial Actions and Sanction.

AUTHORITY: Secs. 12, 15, 16, 17(a), 19, 20, 21, 22, 24, 27, 30 of Pub. L. 92-573, as amended by Pub. L. 94-284; 86 Stat. 1218, 1221-1227, 1231, as amended, 90 Stat. 508-510 (15 U.S.C. 2061, 2064, 2065, 2066(a), 2068, 2069, 2070, 2071, 2073, 2076, 2079), unless otherwise noted.

Subpart A—General Interpretation

§ 1115.1 Purpose.

The purpose of this part 1115 is to set forth the Consumer Product Safety Commission's (Commission's) interpretation of the reporting requirements imposed on manufacturers

(including importers), distributors, and retailers by section 15(b) of the Consumer Product Safety Act, as amended (CPSA) (15 U.S.C. 2064(b)) and to indicate the actions and sanctions which the Commission may require or impose to protect the public from substantial product hazards, as that term is defined in section 15(a) of the CPSA.

§ 1115.2 Scope and finding.

(a) Section 15(a) of the CPSA (15 U.S.C. 2064(a)) defines "substantial product hazard" as either (1) a failure to comply with an applicable consumer product safety rule, which failure creates a substantial risk of injury to the public, or (2) a product defect which (because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise) creates a substantial risk of injury to the public.

(b) Section 15(b) of the CPSA requires every manufacturer (including an importer), distributor, or retailer of a consumer product distributed in commerce who obtains information which reasonably supports the conclusion that the product either fails to comply with an applicable consumer product safety rule or contains a defect which could create a substantial product hazard immediately to inform the Commission, unless the manufacturer (including an importer), distributor, or retailer has actual knowledge that the Commission has been adequately informed. This provision indicates that a broad spectrum of safety-related information should be reported under section 15(b) of the CPSA.

(c) Sections 15(c) and 15(d) of the CPSA (15 U.S.C. 2064 (c) and (d)) empower the Commission to order a manufacturer (including an importer), distributor, or retailer of a consumer product distributed in commerce that presents a substantial product hazard to give various forms of notice to the public of the defect or the failure to comply and/or to order the subject firm to elect either to repair, to replace, or to refund the purchase price of such product. However, information which should be reported under section 15(b) of the CPSA does not automatically indicate the presence of a substantial product hazard since what must be reported are failures to comply with consumer product safety rules and defects that could create a substantial product hazard. (See § 1115.12.)

(d) The provisions of this part 1115 deal with all consumer products (including imports) subject to regulation under the Consumer Product Safety Act, as amended (15 U.S.C. 2051-2081) (CPSA), and the Refrigerator Safety Act (15 U.S.C. 1211-1214) (RSA). In addition, the Commission has found that risks of injury to the public from consumer products subject to regulation under the Flammable Fabrics Act (15 U.S.C. 1191-1204) (FFA), the Federal Hazardous Substances Act (15 U.S.C. 1261-1274) (FHSA), and the Poison Prevention Packaging Act of 1970 (15 U.S.C. 1471-1476) (PPPA) cannot be eliminated or reduced to a sufficient extent in a timely fashion under those acts. Therefore, pursuant to section 30(d) of the CPSA (15 U.S.C. 2079(d)), manufacturers (including importers), distributors, and retailers of consumer products which are subject to regulation under provisions of the FFA, FHSA, and PPPA must comply with the reporting requirements of section 15(b).

§ 1115.3 Definitions.

In addition to the definitions given in section 3 of the CPSA (15 U.S.C. 2052), the following definitions apply:

(a) "Adequately informed" under section 15(b) of the CPSA means that the Commission staff has received the information requested under §§ 1115.12 and/or 1115.13 of this part insofar as it is reasonably available and applicable or that the staff has informed the subject firm that the staff is adequately informed.

(b) "Commission meeting" means the joint deliberations of at least a majority of the Commission where such deliberations determine or result in the conduct or disposition of official Commission business. This term is synonymous with "Commission meeting" as defined in the Commission's regulation issued under the Government in the Sunshine Act, 16 CFR 1012.

(c) "Noncompliance" means the failure of a consumer product to comply with an applicable consumer product safety rule issued under the CPSA.

(d) A "person" means a corporation, company, association, firm, partnership, society, joint stock company, or individual.

(e) "Staff" means the staff of the Consumer Product Safety Commission unless otherwise stated.

(f) "Subject firm" means any manufacturer (including an importer), distributor, or retailer of a consumer product.

§ 1115.4 Defect.

Section 15(b)(2) of the CPSA requires every manufacturer (including an importer), distributor, and retailer of a consumer product who obtains information which reasonably supports the conclusion that the product contains a defect which could create a substantial product hazard to inform the Commission of such defect. Thus, whether the information available reasonably suggests a defect is the first determination which a subject firm must make in deciding whether it has obtained information which must be reported to the Commission. In determining whether it has obtained information which reasonably supports the conclusion that its consumer product contains a defect, a subject firm may be guided by the criteria the Commission and staff use in determining whether a defect exists. At a minimum, defect includes the dictionary or commonly accepted meaning of the word. Thus, a defect is a fault, flaw, or irregularity that causes weakness, failure, or inadequacy in form or function. A defect, for example, may be the result of a manufacturing or production error; that is, the consumer product as manufactured is not in the form intended by, or fails to perform in accordance with, its design. In addition, the design of and the materials used in a consumer product may also result in a defect. Thus, a product may contain a defect even if the product is manufactured exactly in accordance with its design and specifications, if the design presents a risk of injury to the public. A design defect may also be present if the risk of injury occurs as a result of the operation or use of the product or the failure of the product to operate as intended. A defect can also occur in a product's contents, construction, finish, packaging, warnings, and/or instructions. With respect to instructions, a consumer product may contain a defect if the instructions for assembly or use could allow the product, otherwise safely designed and manufactured, to present a risk of injury. To assist subject firms in understanding the concept of defect as used in the CPSA, the following examples are offered:

(a) An electric appliance presents a shock hazard because, through a manufacturing error, its casing can be electrically charged by full-line voltage. This product contains a defect as a result of manufacturing or production error.

(b) Shoes labeled and marketed for long-distance running are so designed that they might cause or contribute to the causing of muscle or tendon injury if used for long-distance running. The shoes are defective due to the labeling and marketing.

(c) A kite made of electrically conductive material presents a risk of electrocution if it is long enough to become entangled in power lines and be within reach from the ground. The electrically conductive material contributes both to the beauty of the kite and the hazard it presents. The kite contains a design defect.

(d) A power tool is not accompanied by adequate instructions and safety warnings. Reasonably foreseeable consumer use or misuse, based in part on

the lack of adequate instructions and safety warnings, could result in injury. Although there are no reports of injury, the product contains a defect because of the inadequate warnings and instructions.

(e) An exhaust fan for home garages is advertised as activating when carbon monoxide fumes reach a dangerous level but does not exhaust when fumes have reached the dangerous level. Although the cause of the failure to exhaust is not known, the exhaust fan is defective because users rely on the fan to remove the fumes and the fan does not do so.

However, not all products which present a risk of injury are defective. For example, a knife has a sharp blade and is capable of seriously injuring someone. This very sharpness, however, is necessary if the knife is to function adequately. The knife does not contain a defect insofar as the sharpness of its blade is concerned, despite its potential for causing injury, because the risk of injury is outweighed by the usefulness of the product which is made possible by the same aspect which presents the risk of injury. In determining whether the risk of injury associated with a product is the type of risk which will render the product defective, the Commission and staff will consider, as appropriate: The utility of the product involved; the nature of the risk of injury which the product presents; the necessity for the product; the population exposed to the product and its risk of injury; the Commission's own experience and expertise; the case law interpreting Federal and State public health and safety statutes; the case law in the area of products liability; and other factors relevant to the determination. If the information available to a subject firm does not reasonably support the conclusion that a defect exists, the subject firm need not report. However, if the information does reasonably support the conclusion that a defect exists, the subject firm must then consider whether that defect could create a substantial product hazard. (See § 1115.12(f) for factors to be assessed in determining whether a substantial product hazard could exist.) If the subject firm determines that the defect could create a substantial product hazard, the subject firm must report to the Commission. Most defects could present a substantial product hazard if the public is exposed to significant numbers of defective products or if the possible injury is serious or is likely to occur. Since the extent of public exposure and/or the likelihood or seriousness of injury are ordinarily not known at the time a defect first manifests itself, subject firms are urged to report if in doubt as to whether a defect could present a substantial product hazard. On a case-by-case basis the Commission and the staff will determine whether a defect within the meaning of section 15 of the CPSA does, in fact, exist and whether that defect presents a substantial product hazard. Since a consumer product may be defective even if it is designed, manufactured, and marketed exactly as intended by a subject firm, subject firms should report if in doubt as to whether a defect exists. Defect, as discussed in this section and as used by the Commission and staff, pertains only to interpreting and enforcing the Consumer Product Safety Act. The criteria and discussion in this section are not intended to apply to any other area of the law.

§§ 1115.5–1115.9 [Reserved]

§ 1115.10 Persons who must report and where to report.

(a) Every manufacturer (including importer), distributor, or retailer of a consumer product that has been distributed in commerce who obtains information that such consumer product contains a defect which could create a substantial risk of injury to the public shall immediately notify the Product Defect Correction Division, Consumer Product Safety Commission, Washington, D.C. 20207 (telephone: 301-492-6608), or such other persons as may be designated. Manufacturers (including importers), distributors, and retailers of consumer products subject to regulation by the Commission under provisions of the FFA, FHSA, PPPA, as well as consumer products subject to regulation under the CPSA and RSA, must comply with this requirement.

(b) Every manufacturer (including importer), distributor, or retailer of a consumer product that has been distributed in commerce who obtains information that such consumer product fails to comply with an applicable consumer product safety standard or ban issued under the CPSA shall immediately notify the Commission's Product Defect Correction Division or such other persons as may be designated. A subject firm need not report a failure to comply with a standard or regulation issued under the provisions of the RSA, FFA, FHSA, or PPPA unless it can be reasonably concluded that the failure to comply results in a defect which could create a substantial product hazard. (See § 1115.10(a).)

(c) A distributor or retailer of a consumer product (who is neither a manufacturer nor an importer of that product) is subject to the reporting requirements of section 15(b) of the CPSA but may satisfy them by following the procedure detailed in § 1115.13(b).

(d) A manufacturer (including an importer), distributor, or retailer need not inform the Commission under section 15(b) of the CPSA if that person has actual knowledge that the Commission has been adequately informed of the defect or failure to comply. (See section 15(b) of the CPSA.)

§ 1115.11 Imputed knowledge.

(a) In evaluating whether or when a subject firm should have reported, the Commission will deem a subject firm to have obtained reportable information when the information has been received by an official or employee who may reasonably be expected to be capable of appreciating the significance of the information. (See § 1115.14(b).)

(b) In evaluating whether or when a subject firm should have reported, the Commission will deem a subject firm to know what a reasonable person acting in the circumstances in which the firm finds itself would know. Thus, the subject firm shall be deemed to know what it would have known if it had exercised due care to ascertain the truth of complaints or other representations. This includes the knowledge a firm would have if it conducted a reasonably expeditious investigation in order to evaluate the reportability of a death or grievous bodily injury or other information. (See § 1115.14.)

§ 1115.12 Information which should be reported; evaluating substantial product hazard.

(a) *General.* Subject firms should not delay reporting in order to determine to a certainty the existence of a noncompliance or a defect and the substantiality of a possible hazard. The obligation to report arises upon receipt of information from which one could reasonably conclude the existence of a noncompliance or of a defect which could create a substantial product hazard. Thus an obligation to report may arise when a subject firm receives the first information regarding a potential hazard or noncompliance. (See § 1115.14(c).) A subject firm in its report to the Commission need not admit or may specifically deny that the information it submits reasonably supports the conclusion that its consumer product is noncomplying or contains a defect which could create a substantial product hazard within the meaning of section 15(b) of the CPSA. After receiving the report, the staff will preliminarily determine whether the noncompliance or defect presents a substantial product hazard. This determination can be based on information supplied by a subject firm or from any other source. If the matter is adjudicated, the Commission will ultimately make the decision as to

substantial product hazard or will seek to have a court make the decision as to imminent product hazard.

(b) *Failure to comply.* Information indicating that a consumer product fails to comply with an applicable consumer product safety standard or ban issued under the CPSA must be reported.

(c) *Death or grievous bodily injury.* Information indicating that a noncompliance or a defect in a consumer product has caused, may have caused, or contributed to the causing, or could cause or contribute to the causing of a death or grievous bodily injury (e.g., mutilation, amputation/dismemberment, disfigurement, loss of important bodily functions, debilitating internal disorders, severe burns, severe electrical shocks, and injuries likely to require extended hospitalization) must be reported, unless the subject firm has investigated and determined that the information is not reportable.

(d) *Other information indicating a defect or noncompliance.* Even if there are no reports of a potential for or an actual death or grievous bodily injury, other information may indicate a reportable defect or noncompliance. In evaluating whether or when a subject firm should have reported, the Commission will deem a subject firm to know what a reasonable and prudent manufacturer (including an importer), distributor, or retailer would know. (See § 1115.11.)

(e) *Information which should be studied and evaluated.* The following are examples of information which a subject firm should study and evaluate in order to determine whether it is obligated to report under section 15(b) of the CPSA:

(1) Information about engineering, quality control, or production data suggesting the existence of a noncompliance or of a defect which could create a substantial product hazard.

(2) Information about safety-related production or design change(s) suggesting the existence of a noncompliance or of a defect which could create a substantial product hazard.

(3) Product liability suit(s) suggesting the existence of a noncompliance or of a defect which could create a substantial product hazard.

(4) Information from an independent testing laboratory suggesting the existence of a noncompliance or of a defect which could create a substantial product hazard.

(5) Complaint(s) from a consumer or consumer group indicating the existence of a noncompliance or of a defect which could create a substantial product hazard.

(6) Information received from the Commission or another governmental agency indicating the existence of a noncompliance or of a defect which could create a substantial product hazard.

(7) Information received from other firms, including requests to return a product or for replacement or credit, indicating the existence of a noncompliance or of a defect which could create a substantial product hazard. This includes both requests made by distributors and retailers to the manufacturer and requests from the manufacturer that products be returned.

(f) *Evaluating substantial risk of injury.* Information which should be or has been reported under section 15(b) of the CPSA does not automatically indicate the presence of a substantial product hazard. On a case-by-case basis the Commission and the staff will determine whether a defect or noncompliance exists and whether it results in a substantial risk of injury to the public. In deciding whether to report, subject firms may be guided by the following criteria the staff and the Commission use in determining whether a substantial product hazard exists:

(1) *Hazard created by defect.* Section 15(a)(2) of the CPSA lists factors to be considered in determining whether a defect creates a substantial risk of injury. These factors are set forth in the disjunctive. Therefore, the existence of any one of the factors could create a substantial product hazard. The Commission and the staff will consider some or all of the following factors, as appropriate, in determining the substantiality of a hazard created by a product defect:

(i) *Pattern of defect.* The Commission and the staff will consider whether the defect arises from the design, composition, contents, construction, finish, packaging, warnings, or instructions of the product or from some other cause and will consider the conditions under which the defect manifests itself.

(ii) *Number of defective products distributed in commerce.* Even one defective product can present a substantial risk of injury and provide a basis for a substantial product hazard determination under section 15 of the CPSA if the injury which might occur is serious and/or if the injury is likely to occur. However, a few defective products with no potential for causing serious injury and little likelihood of injuring even in a minor way will not ordinarily provide a proper basis for a substantial product hazard determination.

(iii) *Severity of the risk.* A risk is severe if the injury which might occur is serious and/or if the injury is likely to occur. In considering the likelihood of any injury the Commission and the staff will consider the number of injuries reported to have occurred, the intended or reasonably foreseeable use or misuse of the product, and the population group exposed to the product (e.g., children, elderly, handicapped).

(iv) *Other considerations.* The Commission and the staff will consider all other relevant factors.

(2) *Hazard presented by noncompliance.* Section 15(a)(1) of the CPSA states that a substantial product hazard exists when a failure to comply with an applicable consumer product safety rule creates a substantial risk of injury to the public. Therefore, the Commission and staff will consider whether the noncompliance is likely to result in injury when determining whether the noncompliance creates a substantial product hazard. As appropriate, the Commission and staff may consider some or all of the factors set forth in § 1115.12(f)(1) in reaching the substantial product hazard determination.

§ 1115.13 Content and form of reports; delegations of authority.

(a) *Written reports.* The chief executive officer of the subject firm should sign any written reports to the Commission under section 15(b) of the CPSA unless this responsibility has been delegated by filing a written delegation of authority with the Commission's Product Defect Correction Division. Delegations of authority filed with the Commission under section 1115.9 of the previous regulations interpreting section 15 of the CPSA will remain in effect until revoked by the chief executive officer of the subject firm. The delegation may be in the following form:

DELEGATION OF AUTHORITY

(Name of company) ———————.

I ——————— hereby certify that I am Chief Executive Officer of the above-named company and that as such I am authorized to sign documents and to certify on behalf of said company the accuracy and completeness of information in such documents.

Pursuant to the power vested in me, I hereby delegate all or, to the extent indicated below, a portion of that authority to the person listed below.

This delegation is effective until revoked in writing. Authority delegated to:

(Name) ———————

(Address) ———————

(Title) ———————

Extent of authority: ———————

———————

———————

Signed:

(Name) ———————

(Address) ———————

(Title) ———————

(b) *Distributors and retailers.* A distributor or retailer of a possibly defective or noncomplying consumer product (who is neither a manufacturer nor an importer of that product) satisfies the initial reporting requirements either by telephoning or writing the

Product Defect Correction Division, Consumer Product Safety Commission, Washington, D.C. 20207; by sending a letter describing the defective or noncomplying product to the manufacturer (or importer) of the product and sending a copy of the letter to the Commission's Product Defect Correction Division; or by forwarding to the Commission's Product Defect Correction Division reportable information received from another firm. A distributor or retailer who receives reportable information from a manufacturer (or importer) shall report to the Commission unless the manufacturer (or importer) informs the distributor or retailer that a report has been made to the Commission. A report under this subsection should contain the information detailed in § 1115.13(c) insofar as it is known to the distributor or retailer. Unless further information is requested by the staff, this action will constitute a sufficient report insofar as the distributor or retailer is concerned.

(c) *Initial report.* Immediately after a subject firm has obtained information which reasonably supports the conclusion that a product fails to comply with an applicable consumer product safety rule or contains a defect which could create a substantial risk of injury to the public, the subject firm should provide the Product Defect Correction Division, Consumer Product Safety Commission, Washington, D.C. 20207 (telephone: 301-492-6608), with an initial report containing the information listed below. This initial report may be made by any means; but if it is not in writing, it should be confirmed in writing within 48 hours of the initial report. (See § 1115.14 for time computations.) The initial report should contain, insofar as is reasonably available and/or applicable:

(1) An identification and description of the product.

(2) The name and address of the manufacturer (or importer) or, if the manufacturer or importer is not known, the names and addresses of all known distributors and retailers of the product.

(3) The nature and extent of the possible defect or the failure to comply with an applicable consumer product safety rule.

(4) The nature and extent of the injury or risk of injury associated with the product.

(5) The name and address of the person informing the Commission.

(6) To the extent such information is then reasonably available, the data specified in § 1115.13(d).

(d) *Full report.* Subject firms which file initial reports are required to file full reports in accordance with this subsection. Retailers and distributors may satisfy their reporting obligations in accordance with 1115.13(b). At any time after an initial report, the staff may modify the requirements detailed in this section with respect to any subject firm. If the staff preliminarily determines that there is no substantial product hazard, it may inform the firm that its reporting obligation has been fulfilled. However, a subject firm would be required to report if it later became aware of new information indicating a reportable defect or noncompliance, whether the new information related to the same or another consumer product. Unless modified by staff action, the following information, to the extent that it is reasonably available and/or applicable, constitutes a "full report," must be submitted to the staff, and must be supplemented or corrected as new or different information becomes known:

(1) The name, address, and title of the person submitting the "full report" to the Commission.

(2) The name and address of the manufacturer (or importer) of the product and the addresses of the manufacturing plants for that product.

(3) An identification and description of the product(s). Give retail prices, model numbers, serial numbers, and date codes. Describe any identifying marks and their location on the product. Provide a picture or a sample of the product.

(4) A description of the nature of the defect or failure to comply with an applicable consumer product safety rule. If technical drawings, test results, schematics, diagrams, blueprints, or other graphic depictions are available, attach copies.

(5) The nature of the injury or the possible injury associated with the product defect or failure to comply with an applicable consumer product safety rule.

(6) The manner in which and the date when the information about the defect or noncompliance (e.g., complaints, reported injuries, quality control testing) was obtained. If any complaints related to the safety of the product or any allegations or reports of injuries associated with the product have been received, copies of such complaints or reports (or a summary thereof) shall be attached. Give a chronological account of facts or events leading to the report under section 15(b) of the CPSA, beginning with receipt of the first information which ultimately led to the report. Also included may be an analysis of these facts or events.

(7) The total number of products and units involved.

(8) The dates when products and units were manufactured, imported, distributed, and sold at retail.

(9) The number of products and units in each of the following: in the possession of the manufacturer or importer, in the possession of private labelers, in the possession of distributors, in the possession of retailers, and in the possession of consumers.

(10) An explanation of any changes (e.g., designs, adjustments, additional parts, quality control, testing) that have been or will be effected to correct the defect or failure to comply and of the steps that have been or will be taken to prevent similar occurrences in the future together with the timetable for implementing such changes and steps.

(11) Information that has been or will be given to purchasers, including consumers, about the defect or noncompliance with a description of how this information has been or will be communicated. This shall include copies or drafts of any letters, press releases, warning labels, or other written information that has been or will be given to purchasers, including consumers.

(12) The details of and schedule for any contemplated refund, replacement, or repair actions, including plans for disposing of returned products (e.g., repair, destroy, return to foreign manufacturer).

(13) A detailed explanation and description of the marketing and distribution of the product from the manufacturer (including importer) to the consumer (e.g., use of sales representatives, independent contractors, and/or jobbers; installation of the product, if any, and by whom).

(14) Upon request, the names and addresses of all distributors, retailers, and purchasers, including consumers.

(15) Such further information necessary or appropriate to the functions of the Commission as is requested by the staff.

§ 1115.14 Time computations.

(a) *General.* Weekends and holidays are excluded from the computation of the time periods in this part.

(b) *Imputing knowledge.* In evaluating whether or when a firm should have reported, the Commission shall impute to the subject firm knowledge of product safety related information received by an official or employee of a subject firm capable of appreciating the significance of the information. Under ordinary circumstances, 5 days should be the maximum reasonable time for information to reach the Chief Executive Officer or the official or employee responsible for complying with the reporting requirements of section 15(b) of the CPSA. The Commission will impute knowledge possessed by the Chief Executive Officer or by the official or employee responsible for complying with the reporting requirements of section 15(b) of the

CPSA simultaneously to the subject firm.

(c) *Time when obligation to report arises.* The obligation to report under section 15(b) of CPSA may arise upon receipt by a subject firm of the first information regarding a noncompliance or a potential hazard presented by a product defect. Information giving rise to a reporting obligation may include, but is not limited to, complaints, injury reports, quality control and engineering data. A subject firm should not await complete or accurate risk estimates before reporting under section 15(b) of CPSA. However, if information is not clearly reportable, a subject firm may spend a reasonable time for investigation and evaluation. (See § 1115.14(d).)

(d) *Time for investigation and evaluation.* A subject firm may conduct a reasonably expeditious investigation in order to evaluate the reportability of a death or grievous bodily injury or other information. This investigation and evaluation should not exceed 10 days unless a firm can demonstrate that a longer period is reasonable. The Commission will deem that, at the end of 10 days, a subject firm has received and considered all information which would have been available to it had a reasonable, expeditious, and diligent investigation been undertaken.

(e) *Time to report.* Immediately, that is, within 24 hours, after a subject firm has obtained information which reasonably supports the conclusion that its consumer product fails to comply with an applicable consumer product safety rule or contains a defect which could create a substantial risk of injury to the public, the firm should report. (See § 1115.13.) If a firm elects to conduct an investigation in order to evaluate the existence of reportable information, the 24-hour period begins when the subject firm has information which reasonably supports the conclusion that its consumer product fails to comply with an applicable consumer product safety rule or contains a defect which could create a substantial product hazard. Thus, a firm could report to the Commission before the conclusion of a reasonably expeditious investigation and evaluation if the reportable information becomes known during the course of the investigation. In lieu of conducting an investigation, the firm may report the information immediately.

§ 1115.15 Confidentiality and disclosure of data.

(a) *General.* The Commission does not routinely make reports available to the public until the staff has made a preliminary hazard determination. Copies of reports will not be available to the public in the Commission's public reading room, and information contained in reports will not ordinarily be disclosed to the public in the absence of a formal request.

(b) *Freedom of Information Act.* Any person who submits information to the Commission who believes that any portion of the information is entitled to exemption from public disclosure under the provisions of the Freedom of Information Act, as amended (15 U.S.C. 552(b)), of the CPSA, as amended, or of another Federal statute must accompany the submission with a written request that the information be considered exempt from disclosure or indicate that a written request will be submitted within 10 working days of the submission. The request shall (1) identify the portions of the information for which exemption is claimed, which may include the identity of the reporting firm and the fact that it is making a report, and (2) state the facts and reasons which support the claimed exemption. After the staff has made its preliminary hazard determination, and regardless of whether or not the staff preliminarily determines that a product presents a substantial product hazard, the Commission will no longer honor requests for exempt status for the identity of the reporting firm, the identity of the consumer product, and the nature of the reported alleged defect or noncompliance. This information, together with the staff's preliminary hazard determination, will be made available to the public in the Commission's public reading room. Information for which exempt status is claimed (such as alleged trade secrets, confidential commercial or financial information, or information the disclosure of which would constitute an unwarranted invasion of personal privacy) shall not be released to the public except in accordance with the applicable statute or the Commission's Freedom of Information Act regulations (16 CFR 1015).

(c) *Section 6(b) of the CPSA.* The Commission believes that the first two sentences in section 6(b)(1) of the CPSA (15 U.S.C. 2055(b)(1)) apply to affirmative dissemination of information by the Commission (such as press releases or fact sheets distributed to the public) from which the public may ascertain readily the identity of the product's manufacturer and/or private labeler. Manufacturers and private labelers will ordinarily be given 30 days' notice before the Commission makes such affirmative disseminations. However, this 30-day notice will not apply if the Commission finds that a lesser notice period is required in the interest of public health and safety.

§§ 1115.16–1115.19 [Reserved]

Subpart B—Remedial Actions and Sanctions

§ 1115.20 Voluntary remedial actions.

As appropriate, the Commission will attempt to protect the public from substantial product hazards by seeking one or more of the following voluntary remedies:

(a) *Corrective action plans.* A corrective action plan is a document, signed by a subject firm, which sets forth the remedial action which the firm will voluntarily undertake to protect the public, but which has no legally binding effect. The Commission reserves the right to seek broader corrective action if it becomes aware of new facts or if the corrective action plan does not sufficiently protect the public.

(1) Corrective action plans shall include, as appropriate:

(i) A statement of the nature of the alleged hazard associated with the product, including the nature of the alleged defect or noncompliance and type(s) of injury or potential injury presented.

(ii) A detailed statement of the means to be employed to notify the public of the alleged product hazard (e.g., letter, press release, advertising), including an identification of the classes of persons who will receive such notice and a copy or copies of the notice or notices to be used.

(iii) A specification of model number and/or other appropriate descriptions of the product.

(iv) Any necessary instructions regarding use or handling of the product pending correction.

(v) An explanation of the specific cause of the alleged substantial product hazard, if known.

(vi) A statement of the corrective action which will be or has been taken to eliminate the alleged substantial product hazard. The firm should indicate whether it is repairing or replacing the product or refunding its purchase price. If products are to be returned to a subject firm, the corrective action plan should indicate their disposition (e.g., reworked, destroyed, returned to foreign manufacturer). Samples of replacement products and relevant drawings and test data for repairs or replacements should be available.

(vii) A statement of the steps that will be, or have been, taken to reasonably prevent recurrence of the alleged substantial product hazard in the future.

(viii) A statement of the action which will be undertaken to correct product units in the distribution chain, including a timetable and specific information about the number and location of such units.

(ix) The signatures of representatives of the subject firm.

(x) An acknowledgment by the subject firm that the Commission may monitor the corrective action and that the firm will furnish necessary information, including customer lists.

(xi) An agreement that the Commission may publicize the terms of the plan to the extent necessary to inform the public of the nature and extent of the alleged substantial product hazard and of the actions being undertaken to correct the alleged hazard presented.

(xii) Additional points of agreement, as appropriate.

(xiii) If desired by the subject firm, the following statement or its equivalent: "The submission of this corrective action plan does not constitute an admission by (the subject firm) that either reportable information or a substantial product hazard exists."

(xiv) An acknowledgment that the corrective action plan becomes effective only upon its final acceptance by the Commission.

(2) In determining whether to recommend to the Commission acceptance of a corrective action plan, the staff shall consider favorably both the promptness of the subject firm's reporting and any remedial actions taken by the subject firm in the interest of public safety. The staff also shall consider, insofar as possible, prior involvement by the subject firm in corrective action plans and Commission orders if such involvement bears on the likelihood that the firm will comply fully with the terms of the corrective action plan.

(3) Upon receipt of a corrective action plan and staff recommendation, the Commission may: (i) approve the plan; (ii) reject the plan and issue a complaint (in which case an administrative and/or judicial proceeding will be commenced); or (iii) take any other action necessary to insure that the plan is adequate.

(4) When time permits and where practicable in the interest of protecting the public, a summary of the plan shall be published in the Commission's Public Calendar. Those portions of the plan that are not restricted will be made available to the public in the Commission's public reading room as much in advance of the Commission meeting as practicable. Any interested person wishing to comment on the plan must file a Notice of Intent to Comment at least forty-eight (48) hours prior to the commencement of the Commission meeting during which the plan will be discussed. If no notices of intent are received, the Commission may take final action on the plan. If such notice is received within the time limits detailed above, the plan will, if practicable, be docketed for the following week's agenda. All comments must be in writing, and final written comments must be submitted at least forty-eight (48) hours before that session.

(b) *Consent Order Agreements Under Section 15 of CPSA.* The consent order agreement (agreement) is a document executed by a subject firm (Consenting Party) and a Commission staff representative which incorporates both a proposed complaint setting forth the staff's charges and a proposed order by which such charges are resolved.

(1) Consent order agreements shall include, as appropriate:

(i) An admission of all jurisdictional facts by the Consenting Party.

(ii) A waiver of any rights to an administrative or judicial hearing and of any other procedural steps, including any rights to seek judicial review or otherwise challenge or contest the validity of the Commission's Order.

(iii) A statement that the agreement is in settlement of the staff's charges.

(iv) A statement that the Commission's Order is issued under section 15 of the CPSA (15 U.S.C. 2064) and that a violation is a prohibited act within the meaning of section 19(a)(5) of the CPSA (15 U.S.C. 2068(a)(5)) and may subject a violator to civil and/or criminal penalties under sections 20 and 21 of the CPSA (15 U.S.C. 2069 and 2070).

(v) An acknowledgment that the Commission reserves its right to seek sanctions for any violations of the reporting obligations of section 15(b) of CPSA (15 U.S.C. 2064(b)) and its right to take other appropriate legal action.

(vi) An acknowledgment that the agreement becomes effective only upon its final acceptance by the Commission and its service upon the Consenting Party.

(vii) An acknowledgment that the Commission may disclose terms of the consent order agreement to the public.

(viii) A listing of the acts or practices from which the Consenting Party will refrain.

(ix) A statement that the Consenting Party shall perform certain acts and practices pursuant to the agreement.

(x) An acknowledgment that any interested person may bring an action pursuant to section 24 of the CPSA (15 U.S.C. 2073) in any U.S. district court for the district in which the Consenting Party is found or transacts business to enforce the order and to obtain appropriate injunctive relief.

(xi) A description of the alleged substantial product hazard.

(xii) If desired by the Consenting Party, the following statement or its equivalent: "The signing of this consent order agreement does not constitute an admission by (the Consenting Party) that either reportable information or a substantial product hazard exists."

(xiii) The elements of a corrective action plan as set forth in § 1115.20(a).

(2) At any time in the course of an investigation, the staff may propose to a subject firm which is being investigated that some or all of the allegations be resolved by a consent order agreement. Additionally, such a proposal may be made to the staff by a subject firm.

(3) Upon receiving an executed agreement, the Commission may: (i) provisionally accept it; (ii) reject it and issue a complaint (in which case an administrative and/or judicial proceeding will be commenced); or (iii) take such other action as it may deem appropriate.

(4) If the consent order agreement is provisionally accepted, the Commission shall place the agreement on the public record and shall announce provisional acceptance of the agreement in the Commission's public calendar and in the FEDERAL REGISTER. Any interested person may request the Commission not to accept the agreement by filing a written request in the Office of the Secretary. Such written request must be received in the Office of the Secretary no later than the close of business of the fifteenth (15th) calendar day following the date of announcement in the FEDERAL REGISTER.

(5) If the Commission does not receive any requests not to accept the agreement within the time period specified above, the consent order agreement shall be deemed finally accepted by the Commission on the twentieth (20th) calendar day after the date of announcement in the FEDERAL REGISTER, unless the Commission determines otherwise. However, if the Commission does receive a request not to accept the consent order agreement, then it will consider such request and vote on the acceptability of such agreement or the desirability of further action. After the consent order agreement is finally accepted, the Commission may then issue its complaint and order in such form as the circumstances may require. The order is a final order in disposition of the proceeding and is effective immediately upon its service upon the Consenting Party pursuant to the Commission's Rules of Practice for Adjudicative Proceedings (16 CFR 1025). The Consenting Party shall thereafter be bound by and take immediate action in accordance with such final order.

(6) If the Commission does not accept the consent order agreement on a final basis, it shall so notify the Consenting Party. Such notification constitutes withdrawal of the Commission's provisional acceptance unless the Commission orders otherwise. The Commission then may: (i) Issue a complaint, in which case an administrative

and/or judicial proceeding will be commenced; (ii) order further investigation; or (iii) take such other action as it may deem appropriate.

§ 1115.21 Compulsory remedial actions.

As appropriate, the Commission will attempt to protect the public from hazards presented by consumer products by seeking one or more of the following:

(a) *Adjudicated Commission Order.* An adjudicated Commission Order under section 15 (c) or (d) of the CPSA may be issued after parties and interested persons have had an opportunity for a hearing in accordance with section 554 of title 5, United States Code, and with section 15(f) of the CPSA. This hearing is governed by the Commission's Rules of Practice for Adjudicative Proceedings (16 CFR 1025).

(b) *Injunctive relief.* The Commission may apply to a U.S. district court in accordance with the provisions of section 15(g) of the CPSA for a preliminary injunction to restrain the distribution in commerce of a product it has reason to believe presents a substantial product hazard. The Commission may seek enforcement of its orders issued under sections 15 (c) and (d) of the CPSA in accordance with provisions of sections 22 and 27(b)(7) of the CPSA (15 U.S.C. 2071 and 2076(b)(7)).

(c) *Judicial determination of imminent hazard.* The Commission may file a complaint in a U.S. district court in accordance with the provisions of section 12 of the CPSA (15 U.S.C. 2061).

(d) *Orders of the Secretary of the Treasury.* The Commission staff may inform the Secretary of the Treasury that a consumer product offered for importation into the customs territory of the United States fails to comply with an applicable consumer product safety rule and/or has a product defect which constitutes a substantial product hazard. The Commission may request the Secretary of the Treasury under section 17 of the CPSA (15 U.S.C. 2066) to refuse admission to any such consumer product.

§ 1115.22 Prohibited acts and sanctions.

(a) *Statements generally.* Whoever knowingly and willfully falsifies, or conceals a material fact in a report under the CPSA and rules thereunder, is subject to criminal penalties under 18 U.S.C. 1001.

(b) *Timeliness and adequacy of reporting.* A failure to inform the Commission immediately and adequately, as required by section 15(b) of the CPSA, is a prohibited act within section 19(a)(4) of the CPSA (15 U.S.C. 2068(a)(4)).

(c) *Failure to make reports.* The failure or refusal to make reports or provide information as required under the CPSA is a prohibited act within the meaning of section 19(a)(3) of the CPSA (15 U.S.C. 2068(a)(3)).

(d) *Noncomplying products.* The manufacture for sale, offering for sale, distribution in commerce, and/or importation into the United States of a consumer product which is not in conformity with an applicable consumer product safety rule under CPSA is a prohibited act within the meaning of sections 19 (a)(1) and (a)(2) of the CPSA (15 U.S.C. 2068 (a)(1) and (a)(2)).

(e) *Orders issued under section 15 (c) and/or (d).* The failure to comply with an order issued under section 15 (c) and/or (d) of the CPSA is a prohibited act within the meaning of section 19(a)(5) of the CPSA (15 U.S.C. 2068(a)(5)).

(f) *Consequences of engaging in prohibited acts.* A knowing violation of section 19(a) of the CPSA subjects the violator to a civil penalty in accordance with section 20 of the CPSA (15 U.S.C. 2069). "Knowing," as defined in section 20(c) of the CPSA (15 U.S.C. 2069(c)), means the having of actual knowledge or the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations. A knowing and willful violation of section 19(a), after the violator has received notice of noncompliance, subjects the violator to criminal penalties in accordance with section 21 of the CPSA (15 U.S.C. 2070).

Dated: July 31, 1978.

SHELDON D. BUTTS,
Acting Secretary, Consumer Product Safety Commission.

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