

**THE U.S. CONSUMER PRODUCT SAFETY COMMISSION MAY
REVISE INTERPRETIVE RULE FOR REPORTING PRODUCT HAZARDS**

In a recently released draft Federal Register notice, the United States Consumer Product Safety Commission (CPSC) proposes several revisions to the interpretive rule on how to comply with Section 15(b) of the Consumer Product Safety Act, 15 U.S.C. 2064(b). CPSC's draft notice proposes revisions to the interpretive rule that clarify possible substantial product hazard reporting requirements for manufacturers, distributors, and retailers of consumer products. The proposed interpretive rule revisions: (1) identify four additional factors to consider when assessing whether a product is defective or not; (2) recognize product risk may decline as product use decreases; and (3) explain that the CPSC will take into consideration compliance with the voluntary or mandatory product safety standards in evaluating Section 15(b) obligations.

In the first proposed revision, the CPSC seeks to clarify the definition of "defect" within 16 CFR 1115.4 by adding four additional criteria CPSC should use to evaluate whether a product is defective. In determining whether a product is defective under the current rule, the CPSC considers: 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. The proposed revision adds the following factors: (1) the obviousness of such risk; (2) the adequacy of warnings and instructions to mitigate such risk;

(3) the role of consumer misuse of the product; and (4) the foreseeability of such misuse.

The CPSC also proposes revising 16 CFR 1115.12(g)(1)(ii) to recognize the risk of injury involving a particular consumer product may decline over time as the number of products being used by consumers decreases. Notwithstanding other factors, the CPSC is considering this factor when evaluating the impact of the number of defective products distributed in commerce.

Finally, the CPSC proposal adds a new section, 16 CFR 1115.8, and advises manufacturers, distributors, and retailers of consumer products that compliance with voluntary and mandatory standards will be considered in the Commission's exercise of its authorities under Section 15(b). Compliance with voluntary standards will be considered in determining whether a substantial product hazard exists. Within the context of mandatory standards, compliance will be considered, not only in determining whether a hazard exists, but also in determining whether and to what extent corrective action is necessary, including the assessment of civil penalties under Section 20 of the Act, 15 U.S.C. 2069(b)(c).

If the draft Federal Register notice currently under consideration is approved by the CPSC, the proposed revisions will be published in the Federal Register with a 30-day comment period. The 30-day comment period will provide manufacturers, distributors, and retailers of consumer products an opportunity to comment on the proposed revisions.

