determine whether the incident was real. They contend this provision will lead to quicker reports. The consumer groups also argued that firms underreport under section 15(b) of the CPSA and argued against giving firms leeway to avoid reporting under this provision.

The Commission is skeptical about how much additional information a firm might obtain in even a ten day period. If the person notifying the firm of an incident is unreliable, it is difficult to see how the firm would obtain useful information within that timeframe. Sometimes, firms do not learn the full details of such incidents until months or years later and then, only after extensive discovery in litigation. An additional 10 days is not likely to greatly assist a firm in determining whether the statement made to it by a parent, attorney, physician, or other person is true.

Based on its experience with section 15(b) of the CPSA, the Commission believes an immediate report may save lives. As a report involves a minimal burden on the reporting firm and cannot be used against the firm as an admission, there is little reason not to provide an immediate report. Since this statutory reporting provision went into effect in June 1994, the Commission has received only a handful of reports. After examining these reports, the Commission does not share the concern of some industry commenters that the Commission will be deluged with spurious reports.

This provision does not require manufacturers, distributors and retailers to report incidents which they know were not caused by their product. However, if they are informed of an incident which allegedly involved their product they should report unless a reasonable person would conclude their product was not involved. While it is conceivable a parent, attorney, physician or other party might mistakenly notify a firm that its product caused a reportable choking incident, that is not likely to be a common event. Moreover, if a firm's product is so similar to the object that caused the choking incident that it is mistakenly identified, it may present the same risk. The public benefits if firms err on the side of reporting. For the reasons enumerated above, the Commission has not changed this provision.

Section 102 of the CSPA states that reports are due if the child choked and "ceased breathing for any length of time." [Emphasis added.] This language suggests that whether the cessation of breathing was momentary or prolonged, a report must be filed. Whether a parent or child succeeds in dislodging the time within a second, a minute, or never, the

incident is still reportable. The Commission staff has received questions about whether this requires firms to report a child swallowing something, sneezing, or hiccuping. As noted earlier, the intent of this provision is to obtain reports of choking incidents, not incidents where a child swallowed something, or hiccuped. The Commission believes the words "ceased breathing for any length of time" are unambiguous. It sees no reason to provide further definition than is provided by the statute.

## (f) Sections 1117.3 and 1117.4—Time for Filing a Report

A number of manufacturers, Members of Congress, trade associations, and industry consultants suggested the Commission give firms 10 days to route choking information to an appropriate corporate official, conduct a reasonable investigation, and assemble the information that must be reported. They point to the 10 day period for investigation of death and grievous bodily injury under 16 CFR 1115.12(d) and 1115.14(d) and the 30 days for law suit reporting allowed by section 37 of the CPSA as precedents. They also note that the statute did not specify a timeframe for reporting and, therefore, left the Commission with discretion to allow a longer time period. Many consumer groups and consumers supported the proposal's 24 hour requirement as an important lifesaving requirement.

If Congress did not expect immediate reporting it could have specified a time frame, such as the 30 days it provided in section 37 of the CPSA. It did not do so. Therefore, the Commission believes the legislative intent was to require immediate reporting. In the Commission's experience, immediate reporting may prevent additional choking incidents or deaths.

The 24 hour reporting requirement in this rule is consistent with the 24 hour requirement in the Commission's section 15(b) rules. The section 15(b) rules require firms to immediately report once they have obtained reportable information. Firms are given ten days to analyze whether an obligation to report exists under section 15(b) only when the obligation to report is not immediately clear. (Firms must report a death allegedly caused by a defect in their product if they cannot within a reasonably expeditioususually 10 day—investigation determine the defect that caused the death does not trip the "could create a substantial hazard" reporting trigger of Section 15(b).) Section 15(b) requires firms to evaluate a wide range of information to

determine whether the product contains a defect which could create a substantial risk or presents an unreasonable risk of serious injury or death. In contrast, the CSPA's choking reporting requirement is simple. A firm has either learned of an incident that meets the statutory criteria, or it hasn't. In addition, the content of a choking hazard report is limited compared to a "full report" under section 15(b) of the CPSA. For the reasons set forth above, the Commission declines to change the twenty four hour requirement.

In the event a firm obtains information indicating that a child choked, without any allegation of cessation of breathing, death or other triggering event, or without clear allegations that a small part, balloon, marble, or small ball was involved, the firm may investigate to determine whether a reportable incident has occurred. The firm does not have an obligation to report until it has learned that the choking incident did cause a death, cessation of breathing or other

triggering incident. The Commission has modified the final rule to adopt an imputation of knowledge provision identical to the one in its section 15 rules. This new provision is found at section 1117.4(b). 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. Section 1117.4(b) notes the Commission believes this process should usually occur within five days. However, if firms are capable of transmitting choking hazard data to a responsible official within a shorter timeframe, they should not wait five days.

## (g) Section 1117.5—Content of Reports

Proposed section 1117.5 describes the information that firms must report. The Commission proposal attempted to limit the reporting requirements to information necessary to give the Commission staff sufficient information to understand the nature and content of the choking incident and to determine whether corrective measures may be necessary. Nevertheless, several manufacturers and trade associations had questions or concerns about the information that must be submitted.

At the outset, it should be noted that much of the information that must be reported under section 1117.5(b) will be contained in the letter or other record of contact with the person notifying the