

August 7, 2006

CPSC Issues Proposed Rule on Factors to Determine Civil Penalty Amounts

On July 12, 2006, the Consumer Product Safety Commission ("CPSC") issued a proposed rule providing additional information on the factors it will use to determine civil penalty amounts under sections 20(b) and (c) of the Consumer Product Safety Act ("CPSA"). The CPSC is requesting comments by August 11, 2006.

BACKGROUND

Sections 20(b) and (c) of the CPSA authorize the CPSC to assign a civil penalty to any firm in violation of Section 19(a) of the Act. Section 19(a) prohibits several acts, including failing to furnish information required by Section 15(b) of the CPSA and manufacturing and distributing a banned, hazardous product (such as an infant toy containing small parts). Section 20(b) establishes five factors the Commission may consider when determining appropriateness and amount of these civil penalties: the nature of the product defect, the severity of the risk of injury, the number of defective products distributed, the occurrence or absence of injury, and the appropriateness of the penalty in relation to the size of the business of the person charged.

PROPOSED CIVIL PENALTY FACTORS

The proposed rule seeks to add seven additional factors to be considered by the CPSC in determining appropriate civil penalties. The Commission proposes the following new factors:

1) A firm's previous record of compliance with CPSA requirements.

In determining civil penalty, the Commission may take into account

whether the firm has had any previous safety or reporting violations, and if so, how those violations were addressed. Actions by the firm to improve compliance with CPSA standards may also be significant to the CPSC's decision.

2) Timeliness of a firm's response to relevant information.

The Commission may consider how rapidly a firm reported information relevant to the matter under review. The Commission also may factor in whether injuries could have been prevented by more timely reporting.

3) Safety and compliance monitoring.

The Commission may consider whether a firm has implemented a system of monitoring safety information and evaluating reporting requirements.

4) Cooperation and good faith.

The extent to which the firm has made a good faith effort to address product safety violations and comply to reporting obligations may influence the Commission's decisions.

5) Economic gain from any delay or non compliance with CPSC safety or reporting requirements.

The Commission will take into account any economic gain, profit, or other benefits that resulted from a delay in reporting to the CPSC.

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6) A product's failure rate.

The rate of failure over time that can be reasonably expected for the product in question may play a role in the Commission's decisions.

7) Any other pertinent factors.

The Commission reserves the right to take into consideration any other factors pertinent to the violation under consideration.

About the Consumer Product Safety Practice Group

Kelley Drye Collier Shannon's Consumer Product Safety practice members have a long and successful history representing clients before the CPSC. We have the experience to provide advice on the difficult issues of how and when potentially hazardous consumer products must be reported to the CPSC. If product recalls are necessary, we work with our clients and CPSC staff to quickly develop and implement cost-effective communications programs that satisfy product liability concerns and minimize potential penalties. When the CPSC threatens or brings enforcement actions, we advise our clients on appropriate strategies.

For More Information

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