

Consumer Product Safety Commission

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resolved by an agreement containing a consent order. Additionally, such a proposal may be made to the Commission staff by such person or firm.

(d) Upon receiving an executed agreement, the Commission may:

(1) Provisionally accept it;

(2) Reject it and issue the complaint (in which case the matter will be scheduled for hearing in accordance with the Commission's Rules of Practice for Adjudicative Proceedings, 16 CFR part 1025, June 21, 1977 or as amended) and/or

(3) Take such other action as it may deem appropriate.

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

(f) If no requests are received, the agreement shall be deemed finally accepted by the Commission on the 16th calendar day after the date of the announcement in the FEDERAL REGISTER. Notice of final acceptance will be given and the order issued within a reasonable time.

(g) If the Commission receives one or more requests that it not finally accept an agreement, it shall, within a reasonable time, either finally accept or reject the agreement after considering the requests. The Commission shall promptly issue and serve an order indicating its decision.

(1) If the agreement is accepted, the Commission shall issue the complaint and order. The order is a final order in disposition of the proceeding and is effective immediately upon its service on the consenting party under these rules. The consenting party shall thereafter be bound by and take immediate action in accordance with the final order.

(2) If the agreement is rejected, the order so notifying the consenting party shall constitute withdrawal of the Commission's provisional acceptance.

The Commission may then issue its complaint, may order further investigation, or may take any action it considers appropriate.

(h) An agreement that has been finally accepted may be vacated or modified upon petition of any party or the Commission's own initiative. The petition shall state the proposed changes in the agreement and the reasons for granting the petition. The Commission may modify or vacate where (1) false statements were relied upon in accepting the agreement or (2) there are changed conditions of fact or law. In deciding whether to grant a petition, the Commission shall consider the public interest. A petitioner, or the Commission when acting on its own initiative, shall serve a copy of the petition or notice of reconsideration, respectively, on all parties. Parties affected by the petition or notice of reconsideration may file a response within 10 calendar days. No replies shall be accepted. The Commission shall decide the petition or notice of reconsideration within a reasonable time and, by order, shall indicate its decision and its reasons.

PART 1119—CIVIL PENALTY FACTORS

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§ 1119.1 Purpose.

This part sets forth the Consumer Product Safety Commission's (Commission) interpretation of the statutory factors considered in determining the amount of civil penalties that the Commission may seek or compromise. The policies behind, and purposes of, civil penalties include the following: Deterring violations; providing just punishment; promoting respect for the law; promoting full compliance with

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the law; reflecting the seriousness of the violation; and protecting the public.

§ 1119.2 Applicability.

This part applies to all civil penalty determinations the Commission may seek or compromise under the Consumer Product Safety Act (CPSA) (15 U.S.C. 2051-2089), the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261-1278), and the Flammable Fabrics Act (FFA) (15 U.S.C. 1191-1204). Any person who knowingly violates section 19 of the CPSA, section 4 of the FHSA, or section 5(e) of the FFA, is subject to a civil penalty.

§ 1119.3 Definitions.

For purposes of this rule, the following definitions apply:

(a) *Product defect* means a defect as referenced in the CPSA and defined in Commission regulations at 16 CFR 1115.4.

(b) *Violation* means a violation committed knowingly, as the term “knowingly” is defined in section 19 of the CPSA, section 4 of the FHSA, or section 5 of the FFA.

(c) *Person* means any manufacturer (including importer), distributor, or retailer, as those terms are defined in the CPSA, FHSA, or FFA, and any other legally responsible party.

§ 1119.4 Factors considered in determining civil penalties.

(a) *Statutory Factors.* (1) Section 20(b) of the CPSA, section 5(c)(3) of the FHSA, and section 5(e)(2) of the FFA, specify factors considered by the Commission in determining the amount of a civil penalty to be sought upon commencing an action for knowing violations of each act. These factors are:

(i) *CPSA (15 U.S.C. 2069(b)).* The nature, circumstances, extent, and gravity of the violation, including:

(A) The nature of the product defect;
(B) The severity of the risk of injury;
(C) The occurrence or absence of injury;

(D) The number of defective products distributed;

(E) The appropriateness of such penalty in relation to the size of the business of the person charged, including

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how to mitigate undue adverse economic impacts on small businesses; and

(F) Such other factors as appropriate.

(ii) *FHSA (15 U.S.C. 1264 (c)(3)).* The nature, circumstances, extent, and gravity of the violation, including:

(A) The nature of the substance;

(B) Severity of the risk of injury;

(C) The occurrence or absence of injury;

(D) The amount of substance distributed;

(E) The appropriateness of such penalty in relation to the size of the business of the person charged, including how to mitigate undue adverse economic impacts on small businesses; and

(F) Such other factors as appropriate.

(iii) *FFA (15 U.S.C. 1194 (e)(2)).* The nature, circumstances, extent, and gravity of the violations:

(A) The severity of the risk of injury;

(B) The occurrence or absence of injury;

(C) The appropriateness of such penalty in relation to the size of the business of the person charged; and

(D) Such other factors as appropriate.

(2) *The nature, circumstances, extent, and gravity of the violation.* Under this factor, the Commission will consider the totality of the circumstances and all other facts concerning a violation. The Commission will consider the enumerated statutory factors, as well as the factors described in paragraph (b) of this section.

(3) *Nature of the product defect.* The Commission will consider the nature of the product defect associated with a CPSA violation. This consideration will include, for example, whether the defect arises from the product’s design, composition, contents, construction, manufacture, packaging, warnings, or instructions, and will include consideration of conditions or circumstances in which the defect arises. The Commission will also consider the nature of the substance associated with an FHSA violation. Two of the statutory factors in the CPSA civil penalty factors include the terms “product defect” or “defective products.” However, certain violations of the CPSA, for example, failing to supply a required certificate that the product complies with an applicable consumer product safety rule,