



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
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CHAIRMAN INEZ M. TENENBAUM

**STATEMENT OF CHAIRMAN INEZ M. TENENBAUM
ON THE INTERIM FINAL RULE INTERPRETING FACTORS
TO BE CONSIDERED WHEN SEEKING CIVIL PENALTIES**

August 18, 2009

On August 14, 2009, new and substantially higher maximum civil penalty amounts specified in the CPSIA went into effect. Under the CPSIA, the Commission is required to issue a final rule interpreting the factors it considers when determining an appropriate civil penalty amount. The determination of the amount of any civil penalty to seek and/or compromise should allow for maximum flexibility within an identified framework. The Commission has chosen to issue an *interim* final rule, in order to provide immediate guidance to industry while also providing a comment period for interested parties prior to issuance of the final rule.

As a basis for understanding the Commission's interpretation of the civil penalty factors, it is important to understand at what point in time these factors are used by the Commission. Not every violation of the CPSA and other Acts enforced Commission results in the Commission's pursuit of civil penalties. Under the law, the Commission seeks civil penalties only when a firm "knowingly" commits a violation. Whether a firm acted "knowingly" is examined and evaluated prior to the decision to seek civil penalties. It is important to recognize that the factors set forth in the interim final rule are not used to determine whether or not to seek a civil penalty, the factors are utilized after a decision has been made to pursue a civil penalty.

Many of the statutory factors used to determine an appropriate civil penalty amount have been codified in previously enacted statutes enforced by the Commission. Our interpretation of those statutory factors reflects and clarifies the Commission's well established interpretations of those factors.

The CPSIA added the following three factors: the nature, circumstances, extent and gravity of the violation; how to mitigate undue adverse economic impacts on small businesses; and other factors as appropriate. Under the factor "nature, circumstances, extent and gravity of the violation," the Commission will consider the totality of the circumstances surrounding a violation, including how many provisions of law were violated. With respect to the factor "how to mitigate undue adverse economic impacts on small businesses," the Commission recognizes that civil penalties may have an adverse impact on small businesses, and will consider how to mitigate if it believes the adverse

impact is undue. What the Commission considers to be undue will vary based upon the alleged violator's business size and financial condition as well as the nature, circumstances, extent, and gravity of the violation.

Congress recognized that in addition to the factors enumerated in the statute, the Commission may consider other factors where the Commission believes it is appropriate. The interim final rule provides four examples of "other factors" that have been important considerations in past cases and may be considered in individual cases going forward. As we made clear in the rule, both the Commission and the alleged violator may raise any additional appropriate factors for consideration in an individual case. The "other factors" identified in the rule do not constitute an exhaustive list, nor do we believe it helpful to potential violators to try and identify every conceivable "other factor" that may be relevant in a given case. Each case is different and the "other factors" applicable in one case may not be applicable in another case. Therefore, in every case, when and if the Commission considers "other factors" not enumerated in the statute, whether they were raised by the alleged violator or by the Commission, those factors will be made known and discussed with the alleged violator.