



**UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
BETHESDA, MD 20814**

This document has been electronically
approved and signed.

DATE: November 10, 2016

TO: The Commission
Todd A. Stevenson, Secretary

THROUGH: Mary T. Boyle, General Counsel
Patricia H. Adkins, Executive Director

FROM: Melissa V. Hampshire, Assistant General Counsel, EID
Patricia Pollitzer, Assistant General Counsel, RAD
Dennis C. Kacoyanis, Attorney, OGC

SUBJECT: Notice of Adjusted Civil Penalty Maximum Amounts

BALLOT VOTE DUE Thursday, November 17, 2016

The Office of the General Counsel (OGC) is forwarding to the Commission a briefing package recommending that the Commission approve inflation adjustments for civil penalties, pursuant to the statutory requirements set forth in section 20(a)(3)(A) of the Consumer Product Safety Act (CPSA), 15 U.S.C. § 2069(a)(3)(A). The adjustment must be published in the *Federal Register* no later than December 1, 2016. The notice announces that the maximum amounts will apply to violations occurring after January 1, 2017. See section 20(a)(3)(B) of the CPSA, 15 U.S.C. § 2069(a)(3)(B). The amounts are adjusted pursuant to the statutory formula set forth in section 20(a)(3)(C) of the CPSA, 15 U.S.C. § 2069(a)(3)(C).

Please indicate your vote on the following options:

- I. Approve publication of the attached document in the *Federal Register*, as drafted.

(Signature)

(Date)

II. Approve publication of the attached document in the *Federal Register*, with changes.

(Signature)

(Date)

III. Do not approve publication of the attached document in the *Federal Register*.

(Signature)

(Date)

IV. Take other action. (Please specify.)

(Signature)

(Date)

Attachment: Draft *Federal Register* Notice of Adjusted Civil Penalty Maximum Amounts.

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[Billing Code 6355-01-P]

CONSUMER PRODUCT SAFETY COMMISSION

Civil Penalties; Notice of Adjusted Maximum Amounts

AGENCY: Consumer Product Safety Commission

ACTION: Notice of Adjusted Maximum Civil Penalty Amounts.

SUMMARY: In 1990, Congress enacted statutory amendments that provided for periodic adjustments to the maximum civil penalty amounts authorized under the Consumer Product Safety Act, the Federal Hazardous Substances Act, and the Flammable Fabrics Act. On August 14, 2009, the Consumer Product Safety Improvement Act of 2008 (CPSIA) increased the maximum civil penalty amounts to \$100,000 for each violation and \$15,000,000 for any related series of violations. The CPSIA also revised the starting date, from December 1, 1994 to December 1, 2011, and December 1 of each fifth calendar year thereafter, on which the Commission must prescribe and publish in the Federal Register, the schedule of maximum authorized penalties. As calculated in accordance with the amendments, the new amounts are \$110,000 for each violation, and \$16,025,000 for any related series of violations.

DATES: The new amounts will become effective on January 1, 2017.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Attorney, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7587; email dkacoyanis@cpsc.gov.

SUPPLEMENTARY INFORMATION: The Consumer Product Safety Improvement Act of 1990 (Improvement Act), Public Law 101-608, 104 Stat. 3110 (November 16, 1990), and the Consumer Product Safety Improvement Act of 2008 (CPSIA), Public Law 110-314, 122 Stat. 3016 (August 14, 2008), amended the Consumer Product Safety Act (CPSA), the Federal Hazardous Substances Act (FHSA), and the Flammable Fabrics Act (FFA). The Improvement Act added civil penalty authority to the FHSA and FFA, which previously contained only criminal penalties. 15 U.S.C. 1264(c) and 1194(e). The Improvement Act also increased the maximum civil penalty amounts applicable to civil penalties under the CPSA and set the same maximum amounts for the newly created FHSA and FFA civil penalties. 15 U.S.C. 2069(a)(1), 1264(c)(1) and 1194(e)(1).

The Improvement Act directed the Commission to adjust the maximum civil penalty amounts periodically for inflation:

- (A) The maximum penalty amounts authorized in paragraph (1) shall be adjusted for inflation as provided in this paragraph.
- (B) Not later than December 1, 1994, and December 1 of each fifth calendar year thereafter, the Commission shall prescribe and publish in the Federal Register a schedule of maximum authorized penalties that shall apply for violations that occur after January 1 of the year immediately following such publication.
- (C) The schedule of maximum authorized penalties shall be prescribed by increasing each of the amounts referred to in paragraph (1) by the cost-of-living adjustment for the preceding 5 years. Any increase determined under the preceding sentence shall be rounded to—

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- (i) in the case of penalties greater than \$1,000 but less than or equal to \$10,000, the nearest multiple of \$1,000;
 - (ii) in the case of penalties greater than \$10,000 but less than or equal to \$100,000, the nearest multiple of \$5,000;
 - (iii) in the case of penalties greater than \$100,000 but less than or equal to \$200,000, the nearest multiple of \$10,000; and
 - (iv) in the case of penalties greater than \$200,000, the nearest multiple of \$25,000.
- (D) For purposes of this subsection:
- (i) The term “Consumer Price Index” means the Consumer Price Index for all-urban consumers published by the Department of Labor.
 - (ii) The term “cost-of-living adjustment for the preceding five years” means the percentage by which—
 - (I) the Consumer Price Index for the month of June of the calendar year preceding the adjustment; exceeds
 - (II) the Consumer Price Index for the month of June preceding the date on which the maximum authorized penalty was last adjusted. 15 U.S.C. 2069(a)(3), 1264(c)(6), and 1194(e)(5).

The CPSIA amended the CPSA, FHSA, and FFA to increase the maximum civil penalty amounts to \$100,000 for each violation, and \$15,000,000 for any related series of violations. 15 U.S.C. 2069(a)(1), 1264(c)(1), and 1194(e)(1). The CPSIA also revised

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the starting date from December 1, 1994, and every fifth year thereafter, to no later than December 1, 2011, and every fifth year thereafter, as the date on which “the Commission shall prescribe and publish in the Federal Register a schedule of maximum authorized penalties that shall apply for violations that occur after January 1 of the year immediately following such publication.”

The Commission’s Directorate for Economics has calculated that the cost-of-living adjustment increases the maximum civil penalty amounts to \$105,722 for each violation, and to \$16,016,580 for any related series of violations. Rounding off these numbers in accordance with the statutory directions, the adjusted maximum amounts are \$110,000 for each violation, and \$16,025,000 for any related series of violations. These new amounts will apply to violations that occur after January 1, 2017.

Dated:

Todd A. Stevenson

Secretary, Consumer Product Safety Commission



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4330 EAST WEST HIGHWAY
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TO : The Commission
Todd A. Stevenson, Secretary

THROUGH: Mary T. Boyle, General Counsel

Patricia H. Adkins, Executive Director

George A. Borlase, Assistant Executive Director
Office of Hazard Identification and Reduction

Gregory B. Rodgers, Associate Executive Director
Directorate for Economic Analysis

FROM: Robert Franklin, Senior Staff Coordinator
Directorate of Economic Analysis

SUBJECT: Adjustment of Civil Penalties for Inflation

The Consumer Product Safety Act (CPSA) requires that the maximum civil penalties applicable to various violations of safety standards be adjusted periodically, based upon changes in the Consumer Price Index, All Urban Consumers (CPI-U), published by the U.S. Department of Labor. According to the CPSA, the adjusted penalties are to be prescribed and published in the Federal Register no later than December 1 of every fifth calendar year from 2011. The adjusted penalties are to be rounded, based upon their size. Penalties between \$100,000 and \$200,000 are rounded to the nearest multiple of \$10,000; and penalties greater than \$200,000 are rounded to the nearest multiple of \$25,000.

The maximum authorized civil penalties were last adjusted in November 2011. The adjusted maximum penalty for a single violation adjusted to \$100,000, and the maximum civil penalty for a related series of violations adjusted to \$15,150,000, after rounding as described above. These adjustments were made based on the percentage difference between the CPI-U of June 2009 and that of June 2010.

The CPSA states that the adjustments are to be based upon the percentage by which the CPI-U for the month of June of the *calendar year* preceding the adjustment exceeds the CPI-U for the month of June preceding the date on which the maximum authorized penalty was last adjusted. The CPSA requires the adjustment to be made and published in

the Federal Register by December 1, 2016. The June of the *calendar year preceding the adjustment* is June 2015. Because the maximum penalties were last adjusted in November 2011, *the June preceding the date of the last adjustment* is June 2011.

CPI-U's for 2011 and 2015

Year	June CPI-U
2011	225.722
2015	238.638

The table above gives the relevant CPI-U's for the current adjustment. The CPI-U for June 2015 was 5.72 percent greater than that of June 2011. Therefore, the adjusted maximum civil penalties, which should be effective on January 1, 2017, are as follows:

- The maximum civil penalty for a single violation (currently \$100,000) adjusts to \$105,722 and rounds to \$110,000.
- The maximum penalty for a related series of violations (currently \$15,150,000) adjusts to \$16,016,580 and rounds to \$16,025,000

These adjustments are based on the text of the CPSA. The CPI-U to be used as the numerator in making the adjustment is the one for June of the *calendar year* preceding the adjustment. However, the term *calendar year* is not used in identifying the denominator for the calculation. Consequently, although the CPSA refers to: “the cost-of-living adjustment for the preceding 5 years,” following the CPSA procedure results in an adjustment for only 4 years of the inflation that occurred since the last adjustment. In the current case, although the penalties were last adjusted using the CPI-U for June 2010, the current adjustment is based only on the inflation between June 2011 and June 2015. The inflation between June 2010 and June 2011 is not considered.

As the maximum authorized civil penalties are adjusted in later years, this discrepancy will be cumulative. For example when the penalties are adjusted again in 2021, the starting point will June 2016. The inflation between June 2015 and June 2016 will not be considered. Accordingly, the adjusted authorized maximum penalties in 2021 will not account for 2 years of inflation: from June 2010 to June 2011 and from June 2015 to June 2016.

In summary, the adjusted maximum authorized penalties, effective January 2017, will be \$110,000 for a single violation and \$16,025,000 for a related series of violations. These adjusted values are made according to the procedure set forth in the CPSA and account for the inflation between June 2011 and June 2015. The inflation between June 2010 (on which the previous adjustment was based) and June 2011 is not considered. This appears to be the same procedure used when the maximum allowable penalties were adjusted in 2004.