



**TO:** The Commission  
Alberta E. Mills, Secretary

**DATE:** November 17,  
2021

**THROUGH:** Mary T. Boyle, Executive Director  
Pamela J. Stone, Acting General Counsel

**FROM:** Melissa V. Hampshire, Assistant General Counsel, EID  
Daniel R. Vice, Assistant General Counsel, RAD  
Amy S. Colvin, Attorney, EID  
Renee H. McCune, Attorney, EID

**SUBJECT:** Draft *Federal Register* Notice of Adjusted Maximum  
Authorized Civil Penalty Amounts

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**BALLOT VOTE DUE:** Nov. 23, 2021

The Office of the General Counsel (OGC) is forwarding to the Commission a briefing package recommending that the Commission approve an updated schedule of maximum authorized 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 CPSA requires that the maximum authorized penalties be adjusted for inflation, pursuant to the statutory direction set forth in section 20(a)(3)(C) of the CPSA, 15 U.S.C. § 2069(a)(3)(C). The CPSA also requires that the adjustment be published in the *Federal Register* no later than December 1, 2021. The draft notice announces that the new statutory maximum amounts apply, as per the CPSA direction, to violations occurring after January 1, 2022. See section 20(a)(3)(B) of the CPSA, 15 U.S.C. § 2069(a)(3)(B).

Please indicate your vote on the following options:

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



# Ballot Vote Sheet

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

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

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)

IV. Take other action specified below.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Date)



# Ballot Vote Sheet

Attachments:

1. Draft *Federal Register* Notice of Adjusted Maximum Authorized Civil Penalty Amounts.
2. Memorandum dated November 17, 2021 from Mark Bailey, Economist, Directorate of Economic Analysis, to the Commission, regarding Adjustment of Civil Penalties for Inflation.

# Attachment 1

**DRAFT**

**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 to adjust the maximum civil penalty amounts authorized under the Consumer Product Safety Act (CPSA), the Federal Hazardous Substances Act (FHSA), and the Flammable Fabrics Act (FFA). On August 14, 2008, 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 tied the effective date of the new amounts to the earlier of the date on which final regulations are issued under section 217(b)(2) of Pub. L. No. 110–314, or 1 year after August 14, 2008. Section 217(a)(4) of Pub. L. No. 110–314. The new amounts became effective on August 14, 2009. 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. On November 23, 2016, the CPSC published increased maximum authorized civil penalty amounts of \$110,000 for each violation and \$16,025,000 for any related series of violations. As calculated in accordance with the amendments, the new amounts are \$120,000 for each violation and \$17,150,000 for any related series of violations.

**DATES:** The new amounts will become effective after January 1, 2022.

**FOR FURTHER INFORMATION CONTACT:** Amy S. Colvin, Attorney, Office of the General Counsel, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504-7639; email acolvin@cpsc.gov.

**SUPPLEMENTARY INFORMATION:** The Consumer Product Safety Improvement Act of 1990 (Improvement Act), Pub. L. No. 101-608, 104 Stat. 3110 (Nov. 16, 1990), and the CPSIA, Pub. L. No. 110-314, 122 Stat. 3016 (Aug. 14, 2008), amended the CPSA, FHSA, and the 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 amended the CPSA, FHSA, and FFA to adjust the maximum civil penalty amounts periodically for inflation. 15 U.S.C. 2069(a)(3), 1264(c)(6), and 1194(e)(5). The Improvement Act required that the Commission “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” not later than December 1, 1994, and December 1 of each fifth calendar year thereafter and directed how the Commission must calculate the schedule. Section 115(a)-(c) of Pub. L. No. 101-608.

The CPSIA amended the CPSA, FHSA, and FFA to increase the maximum authorized 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 amended the starting date in the CPSA from not later than December 1, 1994, and December 1 of each fifth calendar year thereafter, to not later than December 1, 2011, and December 1 of each fifth calendar 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.” Section 217 (a)(1)-(3) of Pub. L. No. 110-314. The CPSIA tied the effective date of the new amounts to the earlier of the date on which final regulations are issued under section 217(b)(2) of Pub. L. No. 110–314, or 1 year after August 14, 2008. Section 217(a)(4) of Pub. L. No. 110–314. The new amounts became effective on August 14, 2009.

The Commission’s Directorate for Economics calculated the cost-of-living adjustment increases the maximum civil penalty amounts to \$117,656 for each violation, and to \$17,140,340 for any related series of violations. In accordance with statutory directions regarding rounding, the adjusted maximum amounts are \$120,000 for each violation, and \$17,150,000 for any related series of violations. These new amounts apply to violations that occur after January 1, 2022.

Dated:

Alberta E. Mills

Secretary, Consumer Product Safety Commission

# Attachment 2





## Memorandum

**TO:** The Commission  
Alberta E. Mills, Secretary

**THROUGH:** Mary T. Boyle, Executive Director

**DATE:** November 17, 2021

Pamela J. Stone, Acting General Counsel  
Office of the General Counsel

Duane E. Boniface, Assistant Executive Director  
Office of Hazard Identification and Reduction

**FROM:** Mark A. Bailey, Economist  
Directorate of Economic Analysis

**SUBJECT:** Adjustment of Civil Penalties for Inflation

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The Consumer Product Safety Act (CPSA) requires that the maximum civil penalties 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 Commission prescribed and published in the Federal Register on November 23, 2016, a notice explaining the then-new maximum authorized civil penalties. The adjusted maximum penalty for a single violation was adjusted to \$110,000, and the maximum civil penalty for a related series of violations was adjusted to \$16,025,000, after rounding, as described above. These adjustments were made based on the percentage difference between the CPI-U of June 2011, and that of June 2015. The adjusted maximum authorized penalty amounts became effective in January 2017.

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



## Memorandum

the Federal Register by December 1, 2021. The June of the *calendar year preceding the adjustment* is June 2020. Because the maximum penalties were last adjusted in November 2016, *the June preceding the date of the last adjustment* is June 2016.

**CPI-U's for 2016 and 2020**

Year	June CPI-U
2016	241.018
2020	257.797

The table above gives the relevant CPI-U's for the current adjustment. The CPI-U for June 2020 was 6.96 percent greater than that of June 2016. Therefore, the adjusted maximum civil penalties, which should be effective after January 1, 2022, are as follows:

- The maximum civil penalty for a single violation (currently \$110,000) adjusts to \$117,656 and rounds to \$120,000.
- The maximum penalty for a related series of violations (currently \$16,025,000) adjusts to \$17,140,340 and rounds to \$17,150,000.

In summary, the adjusted maximum authorized penalties, effective January 2022, will be \$120,000 for a single violation and \$17,150,000 for a related series of violations. These adjusted values are made according to the procedure set forth in the CPSA and only account for the inflation between June 2016 and June 2020.