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## BUREAU OF CONSUMER FINANCIAL PROTECTION

### 12 CFR Part 1083

[Docket No.: CFPB–2016–0028]

RIN 3170–AA62

#### Civil Penalty Inflation Adjustments

**AGENCY:** Bureau of Consumer Financial Protection.

**ACTION:** Interim final rule with request for public comment.

**SUMMARY:** The Bureau of Consumer Financial Protection (Bureau) is publishing for public comment an interim final rule to adjust the civil monetary penalties within the Bureau's jurisdiction for inflation, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (the Inflation Adjustment Act or the Act), as amended by the Debt Collection Improvement Act of 1996 and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act).

**DATES:** This rule is effective on July 14, 2016. Comments must be received on or before July 14, 2016.

**ADDRESSES:** You may submit comments, identified by Docket No. CFPB–2016–0028 or RIN 3170–AA62, by any of the following methods:

- **Email:** [FederalRegisterComments@cfpb.gov](mailto:FederalRegisterComments@cfpb.gov). Include Docket No. CFPB–2016–0028 or RIN 3170–AA62 in the subject line of the email.
- **Electronic:** <http://www.regulations.gov>. Follow the instructions for submitting comments.
- **Mail:** Monica Jackson, Office of the Executive Secretary, Consumer Financial Protection Bureau, 1700 G Street NW., Washington, DC 20552.
- **Hand Delivery/Courier:** Monica Jackson, Office of the Executive Secretary, Consumer Financial

Protection Bureau, 1275 First Street NE., Washington, DC 20002.

**Instructions:** All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1275 First Street NE., Washington, DC 20002, on official business days between the hours of 10 a.m. and 5 p.m. eastern time. You can make an appointment to inspect the documents by telephoning (202) 435–7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments generally will not be edited to remove any identifying or contact information.

**FOR FURTHER INFORMATION CONTACT:** Kristin Bateman, Counsel, Legal Division, Consumer Financial Protection Bureau, at (202) 435–7700.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Inflation Adjustment Act, as amended by the 2015 Act, requires Federal agencies to adjust the civil penalty amounts within their jurisdiction for inflation by July 1, 2016, and then by January 15 every year thereafter.<sup>1</sup> Agencies must make the initial 2016 adjustments through an interim final rulemaking published in the **Federal Register**.<sup>2</sup> Under the amended Act, any increase in a civil

penalty made under the Act will apply to penalties assessed after the increase takes effect, including penalties whose associated violation predated the increase.<sup>3</sup> The inflation adjustments mandated by the Act serve to maintain the deterrent effect of civil penalties and to promote compliance with the law.

##### II. Method of Calculation

The Inflation Adjustment Act prescribes a specific method for calculating the inflation adjustments.<sup>4</sup> As amended by the 2015 Act, the Act provides that the maximum (and minimum, if applicable) amounts for each civil penalty must be increased by the “cost-of-living adjustment,” a term that the Act defines. For purposes of the initial adjustments that agencies must make by July 1, 2016, the “cost-of-living adjustment” is defined as the percentage increase in the Consumer Price Index between (1) October of the calendar year during which the civil penalty amount was established or adjusted under a provision of law other than the Inflation Adjustment Act and (2) October 2015. The Consumer Price Index to be used for purposes of this calculation is the Consumer Price Index for all urban consumers (CPI–U) published by the Department of Labor.<sup>5</sup> The Office of Management and Budget (OMB) has published guidance for implementing this requirement.<sup>6</sup> OMB's guidance memorandum provides multipliers that agencies should use to adjust penalty amounts based on the year the penalty was established or last adjusted under authority other than the Inflation Adjustment Act.

To determine the new penalty amount, the agency must apply the multiplier reflecting the “cost-of-living adjustment”<sup>7</sup> to the penalty amount as it was most recently established or adjusted under a provision of law other

<sup>1</sup> See 28 U.S.C. 2461 note.

<sup>2</sup> The statute also provides that, for the initial 2016 adjustment, an agency may adjust a civil penalty by less than the otherwise required amount if (1) it determines, after publishing a notice of proposed rulemaking and providing an opportunity for comment, that increasing the civil penalty by the otherwise required amount would have a negative economic impact or that the social costs of increasing the civil penalty by the otherwise required amount outweigh the benefits, and (2) the Director of the Office of Management and Budget concurs with that determination. Inflation Adjustment Act section 4(c), *codified at* 28 U.S.C. 2461 note. The Bureau has chosen not to make use of this exception.

<sup>3</sup> Inflation Adjustment Act section 6, *codified at* 28 U.S.C. 2461 note.

<sup>4</sup> Inflation Adjustment Act section 5, *codified at* 28 U.S.C. 2461 note.

<sup>5</sup> U.S. Dep't of Labor, Bureau of Labor Statistics, CPI Tables, <http://www.bls.gov/cpi/#tables>.

<sup>6</sup> Memorandum from Shaun Donovan, Director, Office of Management and Budget, to the Heads of Executive Departments and Agencies (Feb. 24, 2016), <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf>.

<sup>7</sup> The multipliers reflecting the “cost-of-living adjustment” that OMB provides are rounded to five decimal places. The Bureau has used the OMB multipliers in calculating its civil penalty adjustments.

than the Inflation Adjustment Act. The agency must then round that amount to the nearest dollar.<sup>8</sup> The increase made by this initial adjustment may not exceed 150 percent of the penalty amount in effect on the date the 2015 Act was enacted, November 2, 2015.

**III. Description of the Interim Final Rule**

This interim final rule establishes the inflation-adjusted maximum amounts for each civil penalty within the Bureau's jurisdiction. The following

table lists the civil penalties within the Bureau's jurisdiction and summarizes the relevant information needed to calculate the inflation adjustments pursuant to the statutory method.

Law	Penalty description	Penalty amount as established or last adjusted under a provision other than the inflation adjustment act	Year penalty established or last adjusted under a provision other than the inflation adjustment act	Penalty amount in effect on November 2, 2015
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(A).	Tier 1 penalty .....	\$5,000	<sup>9</sup> 2010	<sup>10</sup> \$5,000
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(B).	Tier 2 penalty .....	25,000	<sup>11</sup> 2010	<sup>12</sup> 25,000
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(C).	Tier 3 penalty .....	1,000,000	<sup>13</sup> 2010	<sup>14</sup> 1,000,000
Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2).	Per violation .....	1,000	<sup>15</sup> 1989	<sup>16</sup> 1,000
Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2).	Annual cap .....	1,000,000	<sup>17</sup> 1989	<sup>18</sup> 1,000,000
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1).	Per failure .....	50	<sup>19</sup> 1990	<sup>20</sup> 50
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1).	Annual cap .....	100,000	<sup>21</sup> 1990	<sup>22</sup> 100,000
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(2)(A).	Per failure, where intentional.	100	<sup>23</sup> 1990	<sup>24</sup> 100
SAFE Act, 12 U.S.C. 5113(d)(2) .....	Per violation .....	25,000	<sup>25</sup> 2008	<sup>26</sup> 25,000
Truth in Lending Act, 15 U.S.C. 1639e(k)(1) .....	First violation .....	10,000	<sup>27</sup> 2010	<sup>28</sup> 10,000
Truth in Lending Act, 15 U.S.C. 1639e(k)(2) .....	Subsequent violations .....	20,000	<sup>29</sup> 2010	<sup>30</sup> 20,000

The Bureau followed the procedure outlined above in part II to calculate the adjusted civil penalty amounts. In accordance with the statutory requirements and OMB guidance, the Bureau multiplied each penalty amount as established or last adjusted under a

provision other than the Inflation Adjustment Act by the OMB multiplier corresponding to the appropriate year, and then rounded that amount to the nearest dollar, to calculate the new, inflation-adjusted civil penalty amount. The Bureau then confirmed that the amount by which each civil penalty

increased did not exceed 150 percent of the corresponding civil penalty level in effect on November 2, 2015. None of the increases exceeded this 150-percent threshold. The following chart summarizes the results of these calculations:

Law	Penalty description	Penalty amount as established or last adjusted under a provision other than the inflation adjustment act	Year penalty established or last adjusted under a provision other than the inflation adjustment act	OMB "cost-of-living adjustment" multiplier	New penalty amount
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(A).	Tier 1 penalty .....	\$5,000	2010	1.08745	\$5,437
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(B).	Tier 2 penalty .....	25,000	2010	1.08745	27,186

<sup>8</sup> In rounding to the nearest dollar, the Bureau has rounded down where the digit immediately following the decimal point is less than 5 and has rounded up where the digit immediately following the decimal point is 5 or greater.

<sup>9</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, section 1055(c)(2)(A), 124 Stat. 1376, 2030 (2010).

<sup>10</sup> 12 U.S.C. 5565(c)(2)(A) (2015).

<sup>11</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, section 1055(c)(2)(B), 124 Stat. 1376, 2030 (2010).

<sup>12</sup> 12 U.S.C. 5565(c)(2)(B) (2015).

<sup>13</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, section 1055(c)(2)(C), 124 Stat. 1376, 2030 (2010).

<sup>14</sup> 12 U.S.C. 5565(c)(2)(C) (2015).

<sup>15</sup> Department of Housing and Urban Development Reform Act, Public Law 101-235, section 111, 103 Stat. 1987, 2014 (1989).

<sup>16</sup> 15 U.S.C. 1717a(a)(2) (2015).

<sup>17</sup> Department of Housing and Urban Development Reform Act, Public Law 101-235, section 111, 103 Stat. 1987, 2014 (1989).

<sup>18</sup> 15 U.S.C. 1717a(a)(2) (2015).

<sup>19</sup> Cranston-Gonzalez National Affordable Housing Act, Public Law 101-625, section 942(a)(2), 104 Stat. 4079, 4412 (1990).

<sup>20</sup> 12 U.S.C. 2609(d)(1) (2015).

<sup>21</sup> Cranston-Gonzalez National Affordable Housing Act, Public Law 101-625, section 942(a)(2), 104 Stat. 4079, 4412 (1990).

<sup>22</sup> 12 U.S.C. 2609(d)(1) (2015).

<sup>23</sup> Cranston-Gonzalez National Affordable Housing Act, Public Law 101-625, section 942(a)(2), 104 Stat. 4079, 4412 (1990).

<sup>24</sup> 12 U.S.C. 2609(d)(2)(A) (2015).

<sup>25</sup> Housing and Economic Recovery Act of 2008, Public Law 110-289, section 1514(d)(2), 122 Stat. 2654, 2823 (2008).

<sup>26</sup> 12 U.S.C. 5113(d)(2) (2015).

<sup>27</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, section 1472(a), 124 Stat. 1376, 2189 (2010).

<sup>28</sup> 15 U.S.C. 1639e(k)(1) (2015).

<sup>29</sup> Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, section 1472(a), 124 Stat. 1376, 2190 (2010).

<sup>30</sup> 15 U.S.C. 1639e(k)(2) (2015).

Law	Penalty description	Penalty amount as established or last adjusted under a provision other than the inflation adjustment act	Year penalty established or last adjusted under a provision other than the inflation adjustment act	OMB "cost-of-living adjustment" multiplier	New penalty amount
Consumer Financial Protection Act, 12 U.S.C. 5565(c)(2)(C).	Tier 3 penalty .....	1,000,000	2010	1.08745	1,087,450
Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2).	Per violation .....	1,000	1989	1.89361	1,894
Interstate Land Sales Full Disclosure Act, 15 U.S.C. 1717a(a)(2).	Annual cap .....	1,000,000	1989	1.89361	1,893,610
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1).	Per failure .....	50	1990	1.78156	89
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(1).	Annual cap .....	100,000	1990	1.78156	178,156
Real Estate Settlement Procedures Act, 12 U.S.C. 2609(d)(2)(A).	Per failure, where intentional.	100	1990	1.78156	178
SAFE Act, 12 U.S.C. 5113(d)(2) .....	Per violation .....	25,000	2008	1.09819	27,455
Truth in Lending Act, 15 U.S.C. 1639e(k)(1).	First violation .....	10,000	2010	1.08745	10,875
Truth in Lending Act, 15 U.S.C. 1639e(k)(2).	Subsequent violations.	20,000	2010	1.08745	21,749

This rule codifies these civil penalty amounts by adding new part 1083 to title 12 of the CFR and new § 1083.1 therein.

#### IV. Legal Authority and Effective Date

The Bureau issues this rule under the Federal Civil Penalties Inflation Adjustment Act of 1990,<sup>31</sup> as amended by the Debt Collection Improvement Act of 1996,<sup>32</sup> and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,<sup>33</sup> which requires the Bureau to adjust the civil penalties within its jurisdiction for inflation according to a statutorily prescribed formula.

The Administrative Procedure Act (APA) generally requires an agency to publish a rule at least 30 days before its effective date.<sup>34</sup> This rule satisfies that requirement.

#### V. Request for Comment

Although notice and comment rulemaking procedures are not required, the Bureau invites comments on this notice. Commenters are specifically encouraged to identify any technical issues raised by the rule.

#### VI. Regulatory Requirements

##### Notice and Comment

Under the APA, notice and opportunity for public comment are not required if the Bureau finds that notice and public comment are impracticable, unnecessary, or contrary to the public

interest.<sup>35</sup> This interim final rule adjusts the civil penalty amounts within the Bureau's jurisdiction for inflation, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The amendments in this interim final rule are technical, and they merely apply the statutory method for adjusting civil penalty amounts. For these reasons, the Bureau has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment are unnecessary. Moreover, the statute expressly requires the Bureau to make these initial adjustments through an interim final rulemaking to be published by July 1, 2016,<sup>36</sup> and OMB's guidance confirms that agencies need not complete a notice-and-comment process before promulgating the rule.<sup>37</sup> Therefore, the amendments are adopted in final form.

##### Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the Regulatory Flexibility Act does not require an initial or final regulatory flexibility analysis.<sup>38</sup>

<sup>35</sup> 5 U.S.C. 553(b)(B).

<sup>36</sup> Inflation Adjustment Act, section 4(b)(1)(A), codified at 28 U.S.C. 2461 note.

<sup>37</sup> Memorandum from Shaun Donovan, Director, Office of Management and Budget, to the Heads of Executive Departments and Agencies 3 (Feb. 24, 2016), <https://www.whitehouse.gov/sites/default/files/omb/memoranda/2016/m-16-06.pdf>.

<sup>38</sup> 5 U.S.C. 603(a), 604(a).

##### Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995,<sup>39</sup> the Bureau reviewed this interim final rule. No collections of information pursuant to the Paperwork Reduction Act are contained in the interim final rule.

##### List of Subjects in 12 CFR Part 1083

Administrative practice and procedure, Consumer protection, Penalties.

##### Authority and Issuance

For the reasons set forth in the preamble, the Bureau adds part 1083 to chapter X in title 12 of the Code of Federal Regulations to read as set forth below:

#### PART 1083—CIVIL PENALTY ADJUSTMENTS

Sec.  
1083.1 Adjustments of civil penalty amounts.

**Authority:** 12 U.S.C. 2609(d); 12 U.S.C. 5113(d)(2); 12 U.S.C. 5565(c); 15 U.S.C. 1639e(k); 15 U.S.C. 1717a(a); 28 U.S.C. 2461 note.

##### § 1083.1 Adjustments of civil penalty amounts.

(a) The maximum amount of each civil penalty within the jurisdiction of the Consumer Financial Protection Bureau to impose is adjusted in accordance with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 and further amended by the Federal

<sup>39</sup> 44 U.S.C. 3506; 5 CFR 1320.

<sup>31</sup> Public Law 101-410, 104 Stat. 890 (1990).

<sup>32</sup> Public Law 104-134, section 31001(s)(1), 110 Stat. 1321, 1321-373 (1996).

<sup>33</sup> Public Law 114-74, section 701, 129 Stat. 584, 599 (2015).

<sup>34</sup> See 5 U.S.C. 553(d).

Civil Penalties Inflation Adjustment Act Improvements Act of 2015, (28 U.S.C. 2461 note) as follows:

U.S. code citation	Civil penalty description	Adjusted maximum civil penalty amount
12 U.S.C. 5565(c)(2)(A)	Tier 1 penalty	\$5,437
12 U.S.C. 5565(c)(2)(B)	Tier 2 penalty	27,186
12 U.S.C. 5565(c)(2)(C)	Tier 3 penalty	1,087,450
15 U.S.C. 1717a(a)(2)	Per violation	1,894
15 U.S.C. 1717a(a)(2)	Annual cap	1,893,610
12 U.S.C. 2609(d)(1)	Per failure	89
12 U.S.C. 2609(d)(1)	Annual cap	178,156
12 U.S.C. 2609(d)(2)(A)	Per failure, where intentional	178
12 U.S.C. 5113(d)(2)	Per violation	27,455
15 U.S.C. 1639e(k)(1)	First violation	10,875
15 U.S.C. 1639e(k)(2)	Subsequent violations	21,749

(b) The adjustments in paragraph (a) of this section shall apply to civil penalties assessed after July 14, 2016, regardless of when the violation for which the penalty is assessed occurred.

Dated: June 7, 2016.

**Richard Cordray,**

*Director, Bureau of Consumer Financial Protection.*

[FR Doc. 2016-14031 Filed 6-13-16; 8:45 am]

**BILLING CODE 4810-AM-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Parts 1, 11, 121, 125, and 135**

**Office of the Secretary**

**14 CFR Part 382**

[Docket No.: FAA-2014-0554; Amdt. Nos. 1-69; 11-60; 121-374, 125-65, 135-133]

RIN 2120-AK32

**Acceptance Criteria for Portable Oxygen Concentrators Used On Board Aircraft; Correction**

**AGENCY:** Federal Aviation Administration (FAA) and the Office of the Secretary (OST), Department of Transportation (DOT).

**ACTION:** Final rule; correction.

**SUMMARY:** This final rule replaces the existing process by which the Federal Aviation Administration (Agency or FAA) approves portable oxygen concentrators (POC) for use on board aircraft in air carrier operations, commercial operations, and certain other operations using large aircraft. The FAA currently assesses each POC make and model on a case-by-case basis and if the FAA determines that a particular POC is safe for use on board an aircraft, the FAA conducts rulemaking to

identify the specific POC model in an FAA regulation. This final rule replaces the current process and allows passengers to use a POC on board an aircraft if the POC satisfies certain acceptance criteria and bears a label indicating conformance with the acceptance criteria. The labeling requirement only affects POCs intended for use on board aircraft that were not previously approved for use on aircraft by the FAA. Additionally, this rulemaking will eliminate redundant operational requirements and paperwork requirements related to the physician's statement. As a result, this rulemaking will reduce burdens for POC manufacturers, passengers who use POCs while traveling, and affected aircraft operators. This final rule also makes conforming amendments to the Department of Transportation's (Department or DOT) rule implementing the Air Carrier Access Act (ACAA) to require carriers to accept all POC models that meet FAA acceptance criteria as detailed in this rule.

**DATES:** This correction will become effective on June 23, 2016.

**FOR FURTHER INFORMATION CONTACT:** For technical questions concerning this action, contact DK Deaderick, 121 Air Carrier Operations Branch, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, AFS-220, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-7480; email [dk.deaderick@faa.gov](mailto:dk.deaderick@faa.gov). For questions regarding the Department's disability regulation (14 CFR part 382), contact Clereece Kroha, Senior Attorney, Office of Aviation Enforcement and Proceedings, Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-9041; email [clereece.kroha@dot.gov](mailto:clereece.kroha@dot.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

On May 24, 2016, the FAA published a final rule entitled, "Acceptance Criteria for Portable Oxygen Concentrators Used On Board Aircraft" (81 FR 33098).

This final rule affects the use of POCs on board aircraft in operations conducted under title 14 of the Code of Federal Regulations (14 CFR) parts 121, 125, and 135, by replacing the existing FAA case-by-case approval process for each make and model of POC in Special Federal Aviation Regulation (SFAR) No. 106, with FAA acceptance criteria. Under SFAR No. 106, each time the FAA approves a specific model of POC for use on board aircraft, the agency updates the list of approved POCs in the SFAR.

This final rule removes SFAR No. 106 and replaces it with POC acceptance criteria and specific labeling requirements to identify POCs that conform to the acceptance criteria. POCs that conform to the final rule acceptance criteria will be allowed on board aircraft without additional FAA review and rulemaking.

As with existing requirements for FAA approval of POCs that may be used on aircraft, the final rule acceptance criteria and labeling requirement only apply to POCs intended for use on board aircraft. Table 1 provides a comparison of the final rule acceptance criteria and labeling requirement with related SFAR No. 106.

However, the final rule was published with an incorrect amendment number, "11-59," which is the same amendment number as the rule entitled "Administrative Practices and Procedures, Reporting and Recordkeeping Requirements" (81 FR 13969), published on March 16, 2016. The correct amendment number for this rule should be "11-60."