



CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2023–0013]

Withdrawal of Final Guidance for Estimating Value per Statistical Life

AGENCY: U.S. Consumer Product Safety Commission.

ACTION: Notice of withdrawal.

SUMMARY: The U.S. Consumer Product Safety Commission (Commission or CPSC) is withdrawing its *Final Guidance for Estimating Value per Statistical Life*, published in the Federal Register on April 18, 2024. After further review, the Commission has determined that the methodology assigning a Value per Statistical Life (VSL) for individuals under 18 years of age at twice the VSL for adults creates significant legal, analytical, and policy issues. These issues include misalignment with prevailing federal guidance of VSL, methodological deficiencies in the supporting evidence, heightened litigation risk, and the appearance of improperly inflating benefits in order to support desired regulatory outcomes. The Commission is returning to its prior VSL methodology, which is consistent with methodologies used by other federal agencies, and committing to a process that is empirically supported, analytically rigorous, legally defensible, and publicly credible.

DATES: The *Final Guidance for Estimating Value per Statistical Life*, published April 18, 2024 at 89 FR 27740, is withdrawn as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

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SUPPLEMENTARY INFORMATION:

I. Background

The Value per Statistical Life is a widely used parameter in benefit-cost analysis, including regulatory analysis, that represents an individual's willingness to pay for a small reduction of their risk of fatality. On April 18, 2024, the Commission issued a notice of availability announcing the issuance of Final Guidance for CPSC's application of the VSL in the agency's analyses of benefits and costs and in particular for its regulatory analysis. 89 FR 27740-01, *Notice of Availability of Final Guidance for Estimating Value per Statistical Life* (NOA). The Final Guidance attempted to standardize the application of VSL in the Commission's regulatory benefit-cost analyses, specifying among other provisions that, for purposes of sensitivity analysis, the VSL for individuals under the age of 18 would be set at twice the adult VSL (the "double-VSL-for-minors" methodology).

Following publication of draft guidance on March 24, 2023 (88 FR 17826), stakeholders had raised substantial concerns regarding the empirical basis for the double-VSL-for-minors methodology, its legal sustainability, and policy implications.¹ These concerns were echoed in public comments, including from commenters who supported the concept,² and in economic literature surveying more than 60 VSL studies across multiple countries.

II. Basis for Withdrawal

Upon further review, the Commission has determined that the double-VSL-for-minors methodology is inconsistent with the VSL methodologies adopted by other government agencies, is based on a handful of stated-preference studies that provide only a slim empirical foundation for adopting such a novel approach, establishes arbitrary age cut-offs without sufficient

¹ See, e.g., W. Kip Viscusi, Vanderbilt U. Law Sch., Comment on Proposed Draft Guidance for Estimating Value per Statistical Life (May 25, 2023), <https://www.regulations.gov/comment/CPSC-2023-0013-0007> ("There is no sound rationale for CPSC's proposed approach.")

² See, e.g., Lisa Robinson, Ctr. For Health Decision Sci. & Ctr. For Risk Analysis, Harvard T.H. Chan Sch. Of Pub. Health, Comments on Proposed Draft Guidance for Estimating Value per Statistical Life (May 23, 2023), <https://www.regulations.gov/comment/CPSC-2023-0013-0006> ("For children, CPSC proposes to double the adult VSL estimates as part of its primary results, based on the findings of Industrial Economics (2018) and Robinson et al. (2019). However, both documents indicate that this ratio is uncertain due to the limitations of the available research.").

justification or empirical support, and would impose unnecessary legal risk for any CPSC rulemakings that relied upon the novel methodology.

1. Inconsistency with Other Federal Agencies

In the notice of availability announcing the issuance of the Final Guidance, the Commission noted that that the double-VSL-for-minors methodology “differs from other established VSL guidance,” and that “[o]ther government economists have applied a uniform VSL to all fatalities that fall within the scope of the regulation being assessed.” 89 FR 27740.³ The Commission acknowledged that this approach “has the advantage of simplicity.” *Id.*

The notice of availability noted that the Office of Management and Budget (OMB) and other executive branch agencies and departments have published guidelines on the application of VSL; the VSL parameters set forth in these guidelines are concentrated substantially below the \$26 million VSL (for minors) established in CPSC’s Final Guidance.⁴ However, the Commission asserted that “CPSC, as an independent agency, is not subject to these guidelines.” 89 FR 27740.

The Commission finds that this view is inconsistent with Article II of the U.S. Constitution that vests all executive power in the President and charges that he or she faithfully execute the laws.⁵ Moreover, even aside from whether the Commission is subject to guidelines provided by OMB and other executive branch agencies and departments, the justification offered in the notice of availability for the Commission establishing its own novel standard did not sufficiently account for the benefits of consistent application of principles across the whole of government. Continuing to apply the novel VSL methodology described in the Final Guidance is inconsistent with recent executive orders to restore accountability of regulatory agencies to the

³ See also Thomas J. Kniesner and W. Kip Viscusi, “Is a Child’s Life Twice as Valuable as an Adult’s?” Regulation, Summer 2023 (referenced in Comment ID CPSC-2023-0013-0007) (hereinafter, Kniesner & Viscusi) (“government agencies do not make distinctions related to differences in the VSL by age, but instead treat mortality risks symmetrically”).

⁴ For example, in OMB’s Circular A-4, the VSL range’s upper bound is \$10 million (in 2001 dollars, or roughly \$16 million in 2023 dollars).

⁵ U.S. Const. art II, § 1, cl. 1; U.S. Const. art II, § 2, cl. 5.

American people and promote the unified and coherent execution of Federal law.⁶ Therefore, the Commission finds that the Final Guidance improperly deviates from this long-standing interagency best practice without sufficient justification or compelling evidence to justify the departure.

2. Insufficient Empirical Basis

In comments provided in response to the publication of draft guidance, one commenter noted that the available evidence with respect to children is quite sparse, particularly when compared to the large volume of literature on VSL more generally, that the Commission based the VSL guidance on a review of only five stated preference articles that were based on four surveys, and that even if reliable, the studies “constitute a very slim empirical foundation for a major shift in benefit assessment practices.”⁷ Another commenter, a co-author of the report and journal article on which the Commission relied, noted that the number of studies that provide comparable estimates of the value of fatal risk reductions for adults and children remains relatively small and the validity of those results is unclear in many cases.⁸ The commenter stated that the magnitude of any difference between children and adults and the extent to which it varies by age of the child are both uncertain due to limitations in the available research, and that more research is needed to support adjustment factors that could be used in the primary results.⁹

The Commission finds that the available empirical evidence is insufficient to support adoption of a novel double-VSL-for-minors methodology. The underlying *Industrial Economics* (2018) report, which informed the work on the 2024 VSL Guidance, relied on only four stated-preference studies—several by the same authors—involving disparate, non-representative populations, such as parents in Milan, Italy, and Orlando, Florida, half of which were outside of

⁶ Exec. Order No. 14215, 90 Fed. Reg. 10447 (Feb. 24, 2025).

⁷ Kniesner & Viscusi, *supra* note 3.

⁸ Comment from Lisa Robinson, *supra* note 2.

⁹ *Id.*

the U.S.¹⁰ As one commenter noted, assessments of VSL vary greatly by country and the age-related differences in the relative value of risks to children may vary as well.¹¹ The *Industrial Economics* (2018) report itself acknowledged that some observed differentials between adult and child VSL are *not statistically significant*, meaning that those studies could not rule out that observed differences were the result of random chance. None of the cited studies examined product safety contexts or injury types relevant to CPSC’s jurisdiction. Rather, they involved illness deaths due to cancer, respiratory disease and foodborne illness.

3. Arbitrary Age Cut-Off

The Commission also finds that the Final Guidance is not sufficiently clear and specific and creates an arbitrary “cliff” or “cutoff” at age 18. First, the Final Guidance does not define the specific age cutoff for “child” versus “adult,” despite significant variation in relevant statutory and regulatory definitions (*e.g.*, Consumer Product Safety Act uses age 12; ASTM F963 uses under 14; legal adulthood for purposes of voting eligibility is 18; the standard drinking age is 21). Without a clear definition, the methodology is arbitrary and impedes reproducibility. Second, as commenters noted, the double-VSL-for-minors methodology creates an arbitrary “cliff” in which the value associated with small changes in risk to a person’s life decreases in half the day they turn 18.¹² Such a cliff is without empirical support or logic.

Even if a higher VSL for minors were empirically justified, applying the identical multiplier to all minors of any age—infants, toddlers, pre-teens, and adolescents—disregards material differences in life expectancy and risk valuation within this diverse population. A commenter noted that the reviews upon which CPSC based the double-VSL-for-minors methodology acknowledge that the extent with which the ratio of child-to-adult values varies

¹⁰ Kniesner & Viscusi, *supra* note 3.

¹¹ *Id.*

¹² *See, e.g.*, Comment from Lisa Robinson, *supra* note 2 (“[T]he CPSC approach assumes that the value of reducing mortality risks immediately drops substantially as an individual reaches age 18. . . . [I]t seems unrealistic to assume that values . . . suddenly halve on the child’s 18th birthday, then remain constant until the end of life.”); *see also id.* (“it is unclear why CPSC has rejected alternative, more commonly used approaches that . . . avoid the ‘cliff’ created by assuming a sharp decrease in values as an individual turns 18”).

depending on the age of the child is uncertain, and that it seems unrealistic to assume that values do not change as a child grows from birth to age 18.¹³

Finally, meta-analyses of labor, product, and housing market data indicate median U.S. VSL values of approximately \$7 million,¹⁴ with variation driven largely by income, risk type, and labor market characteristics—not age alone. The literature provides only limited and inconclusive support for a systematic doubling of VSL for minors.

At the other end of the age spectrum, the Commission finds that the “normative framework” adopted in the Final Guidance could result in the Commission inadvertently deprioritizing regulations intended to protect the lives of senior citizens—another group whose needs Congress specifically mandated the Commission consider.¹⁵

4. Heightened Litigation Risk

The Commission finds that the double-VSL-for-minors methodology imposes unnecessary risk for CPSC rulemakings that rely upon the novel methodology. Courts have recently vacated CPSC rules where deficiencies in benefit–cost methodology undermined the rule’s legal foundation, such as in *Window Covering Manufacturers Association v. CPSC*, No. 22-1300 (D.C. Cir. 2023) (“...the number of arithmetic mistakes undermines the Commission’s analysis and suggests that greater care is warranted on remand”). Introducing a novel and controversial multiplier without robust empirical support increases the likelihood of judicial invalidation, with the attendant loss of consumer protections. Moreover, applying a flat multiplier to all individuals under a certain age introduces the appearance that the agency is

¹³ *Id.*

¹⁴ W. Kip Viscusi & Joseph E. Aldy, *The Value of a Statistical Life: A Critical Review of Market Estimates Throughout the World*, Nat’l Bureau of Economic Research, Working Paper 9487, available at www.nber.org/papers/w9487.

¹⁵ Section 9(e) of the CPSA, 15 U.S.C. 2058(e) (“In the promulgation of such a rule the Commission shall also consider and take into account the special needs of elderly and handicapped persons to determine the extent to which such persons may be adversely affected by such rule . . .”); *see also* Kniesner & Viscusi, *supra* (“The Final Guidance suggested that the potential for using a lower VSL for seniors is an active area of research. . . . Adopting a lower VSL for senior citizens, it will once again use out-of-the-mainstream practices for regulatory analysis. Ever since the outcry that resulted when the Environmental Protection Agency used a “senior discount” to value mortality risks for people over age 65 in its 2003 analysis of the Clear Skies initiative, government agencies have steered clear of devaluing the lives of senior citizens.”).

artificially exaggerating the regulatory benefits of a policy, potentially biasing policy decisions toward over-regulation and distorting resource allocation. As noted in the economic literature, such inflation can undermine the credibility and defensibility of benefit-cost analyses.¹⁶

The Commission notes that the methodology the CPSC uses to calculate benefits of a proposed regulatory action is a distinct issue from the policy considerations that may animate the agency's choice of regulatory priorities. As one commenter noted, CPSC may pursue and prioritize policies that differ from what is implied purely by the results of benefit-cost analysis based on other policy considerations like the particular effects on certain vulnerable sub-population. The Commission notes its ability to pay special attention to specific subpopulations, including children, without the double-VSL-for-minors methodology. In specific instances, Congress has waived the cost-benefit analysis requirement altogether to facilitate rulemaking. Most recently, Congress waived these requirements in Reese's Law (Pub. L. 117-171), and it did so categorically in Sections 104 and 106 of the Consumer Product Safety Improvement Act of 2008 (Pub. L. 110-314). Where CPSC is required by law to conduct a cost-benefit analysis, it should accurately reflect the costs and benefits of proposed regulations. The Commission should not attempt to conceal those policy considerations by placing a thumb on the benefit-cost scale in favor of its preferred policy. Manipulating data, assigning arbitrary costs and benefits, or otherwise gaming the process to ensure a particular outcome places agency rules at significant risk and undermines public trust in the institution.

III. Effect of Withdrawal

Withdrawal of the VSL Guidance reinstates the Commission's prior practice of relying on a single VSL estimate applicable to all age groups, adjusted for inflation, and other relevant

¹⁶ Kniesner & Viscusi, *supra* note 3 (“Doubling the VSL for children boosts the apparent attractiveness of the regulation. . . .”); *see also id.* (“[T]he CPSC may advocate whatever VSL multiple is needed to create the illusion of a desirable policy in order to make undesirable regulations appear to be worthwhile.”); *see also id.* (“Any future efforts to improve the mortality risk calculations for government regulations affecting children or other demographic groups should be based on solid empirical evidence rather than an attempt to justify regulations that would not otherwise pass muster based on economic efficiency considerations.”).

economic factors, thus improving consistency with prevailing federal methodologies and OMB guidance (the latter of which CPSC is now subject to per EO 14215).

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Secretary,
Consumer Product Safety Commission

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