



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

DEC - 6 2013

ASSISTANT ADMINISTRATOR  
FOR ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

**SUBJECT:** Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective December 6, 2013)

**FROM:** Cynthia Giles  
Assistant Administrator

**TO:** Regional Administrators  
Deputy Regional Administrators

The purpose of this memorandum is to amend the EPA's existing civil penalty policies to account for inflation. Specifically, with the exception of penalties assessed under expedited settlement agreement (ESA) programs, this memorandum amends all existing penalty policies to increase the initial gravity-based penalties by 4.87 percent for violations that occur after December 6, 2013, the effective date of the 2013 Civil Monetary Penalty Inflation Adjustment Rule (2013 Penalty Inflation Rule or Rule). The 4.87 percent represents the cost-of-living adjustment, calculated pursuant to the formula prescribed in Section 5(b) of the Debt Collection Improvement Act (DCIA),<sup>1</sup> which was applied in developing the 2013 Rule.

This memorandum also provides guidance on pleading civil penalties for violations that occur before and after the effective date of the Rule, and when to apply the new maximum civil penalty amounts that may be sought in certain administrative enforcement actions brought under the Clean Water Act (CWA), Certain Alaskan Cruise Ship Operations Act (CACSOA), Safe Drinking Water Act (SDWA), Clean Air Act (CAA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Emergency Planning and Community Right-to-Know Act (EPCRA).

**I. Background**

The DCIA requires each federal agency to issue regulations adjusting for inflation the statutory civil penalties that can be imposed under the laws administered by that agency. On November 6, 2013, the EPA promulgated the 2013 Penalty Inflation Rule pursuant to Section 4 of the DCIA; the Rule is effective December 6, 2013. (A copy of the Rule, as published at 78 Fed. Reg. 66643-48 (Nov. 6, 2013), is attached.) Under the Rule, only 20 out of 88 statutory penalty amounts are being increased for two reasons: (1) since 2008, when the last Penalty Inflation Adjustment Rule was promulgated, the rate of inflation has been low, resulting in a cost-of-living adjustment of only 4.87 percent for those penalties

<sup>1</sup> See the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701 note.

that were last adjusted in 2008; and (2) when the DCIA's mandatory rounding rules were applied to the inflation adjusted increment, the inflation adjusted amounts were, in most cases, insufficient to warrant an increase under the 2013 Rule. All violations occurring after December 6, 2013, the effective date of the Rule, are subject to the new, inflation-adjusted, statutory penalties.<sup>2</sup>

## II. The DCIA's Formula for Calculating Cost-of-Living Adjustments to Civil Penalties

Pursuant to the DCIA, each federal agency is required to issue regulations adjusting for inflation all statutory civil monetary penalties that can be imposed pursuant to such agency's statutes. The purpose of these inflation adjustments is to maintain the deterrent effect of civil penalties, thereby promoting compliance with the law. Section 5 of the DCIA requires each agency to apply a specific formula and statutorily prescribed rounding rules to determine whether and to what extent statutory civil penalties should be increased to account for any changes in the cost-of-living. Under the DCIA, the cost-of-living adjustment (COLA) is determined by calculating the percentage increase, if any, by which the Consumer Price Index for all-urban consumers (CPI-U) for the month of June of the calendar year preceding the current adjustment exceeds the CPI-U for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted. Accordingly, the COLA applied under the 2013 Rule equals the percentage by which the CPI-U for June 2012 (*i.e.*, June of the year preceding 2013, the year the Rule was published), exceeds the CPI-U for June of the year in which the amount of a specific penalty was last adjusted (*i.e.*, 2008, 2004 or 1996, as the case may be).

## III. Amendments to the EPA's Civil Penalty Policies

By this memorandum, the Office of Enforcement and Compliance Assurance (OECA) is amending the EPA's existing civil penalty policies to increase the initial gravity component of the penalty calculation by 4.87 percent for those violations subject to the new Rule, *i.e.*, violations occurring after December 6, 2013. As further discussed below, this memorandum does not increase penalty amounts that may be assessed under any of the EPA's ESA programs.

While not required specifically by the Act, we believe revising our civil penalty policies to account for inflation is consistent with the Congressional intent in passing the DCIA and is necessary to implement effectively the mandated penalty increases set forth in 40 C.F.R. Part 19. In addition, this is consistent with the practice we have been implementing since 1997, when we first amended the EPA's civil penalty policies to reflect the COLA applied under the 1996 Civil Monetary Penalty Inflation Adjustment Rule.<sup>3</sup> Accordingly, each non-ESA civil penalty policy is now modified to apply the appropriate guidelines set forth below. These new guidelines apply to civil penalty policies, regardless of whether the policy is used for determining a specific amount to plead in a complaint or for determining a bottom-line settlement amount.

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<sup>2</sup> Section 6 of the DCIA provides that "[a]ny increase under this Act in a civil monetary penalty shall apply only to violations that occur *after* the date the increase takes effect." [Emphasis added.]

<sup>3</sup> See Memorandum dated May 9, 1997, from Steven A. Herman, Assistant Administrator for Enforcement and Compliance Assurance (OECA), "Modifications to EPA Penalty Policies to Implement the Civil Monetary Penalty Inflation Adjustment Rule;" Memorandum dated September 21, 2004, from Thomas V. Skinner, Acting Assistant Administrator of OECA, "Modifications to EPA Penalty Policies to Implement the Civil Monetary Inflation Adjustment Rule" (2004 Memorandum); and Memorandum dated December 29, 2008, from Granta Y. Nakayama, Assistant Administrator for OECA, "Amendments to EPA Civil Penalty Policies to Implement the 2008 Civil Monetary Penalty Inflation Rule (Effective January 12, 2009)" (2008 Memorandum).

A complete list of all of the EPA's non-ESA penalty policies is provided at the end of this memorandum. Subsequent to the issuance of this memorandum, the division directors in the Office of Civil Enforcement and the Office of Site Remediation Enforcement may issue revised penalty matrices under program-specific penalty policies to reflect the following guidelines, as summarized in the chart at pages 5-6.

A. If all of the violations in a particular case occurred on or before the effective date of the 2013 Rule, penalty policy calculations should be consistent with the 2008 Memorandum.

B. For those judicial and administrative cases in which some or all of the violations occurred *after* the effective date of the 2013 Rule, the penalty policy calculations are modified by following these three steps:

1. Perform the economic benefit calculation for the entire period of the violation. Do not apply any mitigation for ability to pay or litigation considerations at this point.
2. Apply the gravity component of the penalty policy in the standard way for all violations according to the provisions of subparagraph 3 below. Do not apply any mitigation or adjustment factors at this point.
- 3.(a) ***For those penalty policies that were issued prior to January 31, 1997:*** Calculate the gravity component according to the penalty policy. For violations that occurred after January 30, 1997 through March 15, 2004, multiply the gravity component by 1.1, reflecting the 10% first-time adjustment. For violations that occurred after March 15, 2004 through January 12, 2009, multiply the gravity component by 1.2895, reflecting both the 10% first-time adjustment and the 17.23% COLA [ $1.10 \times 1.1723 = 1.2895$ ]. For violations that occur after January 12, 2009 through December 6, 2013, multiply the gravity component by 1.4163, reflecting the 10% first-time adjustment, the 17.23% and the 9.83% COLAs [ $1.10 \times 1.1723 \times 1.0983 = 1.4163$ ]. For violations that occur after December 6, 2013, multiply the gravity component by 1.4853, reflecting the 10% first-time adjustment, the 17.23%, the 9.83% and the 4.87% COLAs [ $1.10 \times 1.1723 \times 1.0983 \times 1.0487 = 1.4853$ ].

*Assume, for example, that under the applicable penalty policy, the initial gravity-based penalty is \$1,000 for each day of violation. If the violations occurred for a total of 10 days during the period after January 30, 1997 through March 15, 2004, the gravity inflation-adjusted penalty for those violations would be calculated as follows:  $10 \text{ days} \times \$1,000 = \$10,000 \times 1.1 = \$11,000$ . If the violations occurred for 10 days during the period after March 15, 2004 through January 12, 2009, the gravity inflation-adjusted penalty for those violations would be calculated as follows:  $10 \text{ days} \times \$1,000 = \$10,000 \times 1.2895 = \$12,895$ . If 10 days of the violations occurred after January 12, 2009 through December 6, 2013, the gravity inflation-adjusted penalty for those violations would be calculated as follows:  $10 \text{ days} \times \$1,000 = \$10,000 \times 1.4163 = \$14,163$ . If 10 days of the violations occurred after December 6, 2013, the gravity inflation-adjusted penalty for those violations would be calculated as follows:  $10 \text{ days} \times \$1,000 = \$10,000 \times 1.4853 = \$14,853$ .*

(b) **For those penalty policies that were issued or revised after January 30, 1997, through March 15, 2004:** Calculate the gravity component according to the penalty policy. For violations that occurred after January 30, 1997 through March 15, 2004, use the gravity component set forth in the penalty policy, as the 10% first-time adjustment is reflected in those policies. For violations that occurred after March 15, 2004 through January 12, 2009, multiply the gravity component by 1.1723, reflecting the 17.23% COLA. For violations occurring after January 12, 2009 through December 6, 2013, multiply the gravity component by 1.2875, reflecting both the 17.23% and the 9.83% COLAs [ $1.1723 \times 1.0983 = 1.2875$ ]. For violations that occur after December 6, 2013, multiply the gravity component by 1.3502, reflecting the 17.23% COLA, the 9.83% and the 4.87% COLAs [ $1.1723 \times 1.0983 \times 1.0487 = 1.3502$ ].

*Assume, for example, that under the applicable penalty policy, the initial gravity-based penalty is \$1,000 for each day of violation. If the violations occurred for 10 days during the period after March 15, 2004 through January 12, 2009, the gravity inflation-adjusted penalty for those violations would be calculated as follows: 10 days x \$1,000 = \$10,000 x 1.1723 = \$11,723. If 10 days of the violations occurred after January 12, 2009 through December 6, 2013, the gravity inflation-adjusted penalty for those violations would be calculated as follows: 10 days x \$1,000 = \$10,000 x 1.2875 = \$12,875. If 10 days of the violations occurred after December 6, 2013, the gravity inflation-adjusted penalty for those violations would be calculated as follows: 10 days x \$1,000 = \$10,000 x 1.3502 = \$13,502.*

(c) **For those penalty policies that were issued or revised after March 15, 2004, through January 12, 2009:** Calculate the gravity component according to the penalty policy. For violations that occurred after March 15, 2004 through January 12, 2009, use the gravity component set forth in the penalty policy, as the 10% first-time adjustment and 17.23% COLA are reflected in those policies. For violations occurring after January 12, 2009 through December 6, 2013, multiply the gravity component by 1.0983, reflecting the 9.83% COLA. For violations occurring after December 6, 2013, multiply the gravity component by 1.1518, reflecting both the 9.83% and the 4.87% COLAs [ $1.0983 \times 1.0487 = 1.1518$ ].

*Assume, for example, that under the applicable penalty policy, the initial gravity-based penalty is \$1,000 for each day of violation. If 10 days of the violations occurred after January 12, 2009 through December 6, 2013, the gravity inflation-adjusted penalty for those violations would be calculated as follows: 10 days x \$1,000 = \$10,000 x 1.0983 = \$10,983. If 10 days of the violations occurred after December 6, 2013, the gravity inflation-adjusted penalty for those violations would be calculated as follows: 10 days x \$1,000 = \$10,000 x 1.1518 = \$11,518.*

(d) **For those penalty policies that were issued or revised after January 12, 2009, through December 6, 2013:** Calculate the gravity component according to the penalty policy. For violations that occurred after January 12, 2009 through December 6, 2013, use the gravity component set forth in the penalty policy, as the 9.83% COLA is reflected in these policies. For violations occurring after December 6, 2013, multiply the gravity component by 1.0487, reflecting the 4.87% COLA. Assume, for example, that under the applicable penalty policy, the initial gravity-based penalty is \$1,000 for each day of violation. If 10 days of the violations occurred after December 6, 2013, the gravity inflation-adjusted penalty for those violations would be calculated as follows: 10 days x \$1,000 = \$10,000 x 1.0487 = \$10,487.

### Chart Reflecting Inflation Adjustment Multipliers

Penalty Policy Issued Prior to January 31, 1997		
Date(s) of violation	Inflation Adjustment Multiplier	Calculation Explanation
January 31, 1997 through March 15, 2004	1.1	This value reflects the 10% first-time adjustment ( <i>i.e.</i> , 1.1).
March 16, 2004 through January 12, 2009	1.2895	This value is adjusted by the COLA of 17.23% applied in the 2004 Memorandum ( <i>i.e.</i> , $1.1 \times 1.1723 = 1.2895$ ).
January 13, 2009 through December 6, 2013	1.4163	This value is adjusted by the COLA of 9.83% applied in the 2008 Memorandum ( <i>i.e.</i> , $1.1 \times 1.1723 \times 1.0983 = 1.4163$ ).
After December 6, 2013	1.4853	This value is adjusted by the COLA of 4.87% applied in this 2013 Memorandum ( <i>i.e.</i> , $1.1 \times 1.1723 \times 1.0983 \times 1.0487 = 1.4853$ ).
Penalty Policy Issued or Revised after January 30, 1997 through March 15, 2004		
Date(s) of violation	Inflation Adjustment Multiplier	Calculation Explanation
January 31, 1997 through March 15, 2004	None - use gravity component in penalty policy	There is no multiplier here because the 10% first-time adjustment is already reflected in the penalties.
March 16, 2004 through January 12, 2009	1.1723	This value reflects the COLA of 17.23% applied in the 2004 Memorandum, or 1.1723.
January 13, 2009 through December 6, 2013	1.2875	This value is adjusted by the COLA of 9.83% applied in the 2008 Memorandum ( <i>i.e.</i> , $1.1723 \times 1.0983 = 1.2875$ ).
After December 6, 2013	1.3502	This value is adjusted by the COLA of 4.87% applied in this 2013 Memorandum ( <i>i.e.</i> , $1.1723 \times 1.0983 \times 1.0487 = 1.3502$ ).

Penalty Policy Issued or Revised after March 15, 2004 through January 12, 2009		
Date(s) of violation	Inflation Adjustment Multiplier	Calculation Explanation
March 16, 2004 through January 12, 2009	None - use gravity component in penalty policy	There is no multiplier here because the 10% first-time adjustment and 17.23% COLA is already reflected in the penalties.
January 13, 2009 through December 6, 2013	1.0983	This value reflects the COLA of 9.83% applied in the 2008 Memorandum, or 1.0983.
After December 6, 2013	1.1518	This value is adjusted by the COLA of 4.87% applied in the 2013 Memorandum ( <i>i.e.</i> , $1.0983 \times 1.0487 = 1.1518$ ).
Penalty Policy Issued or Revised after January 12, 2009 through December 6, 2013		
Date(s) of violation	Inflation Adjustment Multiplier	Calculation Explanation
January 13, 2009 through December 6, 2013	None - use gravity component in penalty policy	There is no multiplier here because the COLA of 9.83% applied in the 2008 Memorandum is already reflected in the penalties.
After December 6, 2013	1.0487	This value reflects the COLA of 4.87% applied in this 2013 Memorandum.
All Violations Occurred after December 6, 2013		
Date of Penalty Policy Revision or Issuance	Inflation Adjustment Multiplier	Calculation Explanation
Issued Prior to January 31, 1997	1.4853	This value is adjusted by the COLA of 4.87% applied in this 2013 Memorandum ( <i>i.e.</i> , $1.1 \times 1.1723 \times 1.0983 \times 1.0487 = 1.4853$ ).
January 31, 1997 through March 15, 2004	1.3502	This value is adjusted by the COLA of 4.87% applied in this 2013 Memorandum ( <i>i.e.</i> , $1.1723 \times 1.0983 \times 1.0487 = 1.3502$ ).
March 16, 2004 through January 12, 2009	1.1518	This value is adjusted by the COLA of 4.87% applied in this 2013 Memorandum ( <i>i.e.</i> , $1.0983 \times 1.0487 = 1.1518$ ).
January 13, 2009 through December 6, 2013	1.0487	This value reflects the COLA of 4.87% applied in this 2013 Memorandum.

#### **IV. Penalty Pleading**

If all of the violations in a particular case occurred on or before the effective date of the 2013 Rule, the pleading practices set forth in the 2008 Memorandum should be applied. If some of the violations in a particular case occurred after the effective date of the 2013 Rule, then any penalty amount sought should reflect the newly adjusted civil penalty amounts for those violations.

For example, if a person tampered with a public water system on November 7, 2013, the maximum statutory penalty under SDWA Section 1432(c) would be \$1,100,000. The prayer for relief under such facts would be written as follows:

*Pursuant to Section 1432(c) of the Safe Drinking Water Act, 42 U.S.C. § 300i-1(c), and 40 C.F.R. Part 19, assess civil penalties against [name of Defendant] of not more than \$1,100,000 for tampering with the public water supply on November 7, 2013.*

If violations occur after the effective date of the 2013 Rule (*i.e.*, after December 6, 2013), then any penalty amount pled should use the newly adjusted maximum amount, if any. For example, if an act of tampering occurs on December 7, 2013, the prayer for relief in a civil judicial complaint alleging a violation of Section 1432(c) of the SDWA would be written as follows:

*Pursuant to Section 1432(c) of the Safe Drinking Water Act, 42 U.S.C. § 300i-1(c), and 40 C.F.R. Part 19, assess civil penalties against [name of Defendant] of not more than \$1,150,000 for tampering with the public water supply on December 7, 2013.*

#### **V. Administrative Penalty Caps for the CWA, CACSOA, SDWA, CAA, CERCLA and EPCRA**

The 2013 Rule increases the statutory penalty amounts that may be sought for individual violations in administrative enforcement actions, as well as the total amounts that may be sought in a single administrative enforcement action under the CWA, the CACSOA, the SDWA, the CAA, the CERCLA and the EPCRA (commonly called “penalty caps”).<sup>4</sup> For example, prior to the 2013 Rule, the EPA was authorized under CAA Section 205(c)(1) to assess administrative penalties not to exceed \$295,000 for tampering with a vehicle or engine. After the effective date of the 2013 Rule, the EPA may assess an administrative penalty not to exceed \$320,000 under CAA Section 205(c)(1). Note that the adjusted penalty caps apply if an action is filed or a complaint is amended after December 6, 2013, even if some or all of the violations occurred on or before December 6, 2013.

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<sup>4</sup> *E.g.*, the statutory maximum amount of administrative penalties that can be assessed under SDWA Section 1423(c)(1), 42 U.S.C. § 300h-2(c)(1), will increase from \$177,500 to \$187,500; the statutory maximum amount of administrative penalties that can be assessed under SDWA Section 1423(c)(2), 42 U.S.C. § 300h-2(c)(2), will increase from \$177,500 to \$187,500; the statutory maximum amount of administrative penalties that can be assessed under CAA Section 113(d)(1), 42 U.S.C. § 7413(d)(1), will increase from \$295,000 to \$320,000; the statutory maximum amount of administrative penalties that can be assessed under CAA Section 205(c)(1), 42 U.S.C. § 7524(c)(1), will increase from \$295,000 to \$320,000.

## **VI. Expedited Settlements**

Expedited settlements offer “real time” enforcement in situations where violations are corrected and a penalty is obtained in a short amount of time, generally within 30-45 days of the issuance of an expedited settlement offer. Expedited settlements serve to achieve compliance while reducing transaction costs for both the EPA and the violator, as long as the violator comes into compliance promptly and pays the expedited penalty amount. Rather than apply the inflation factors across the board to expedited penalty amounts at this time, national program managers within OECA should review expedited penalty amounts periodically to determine whether they need to be adjusted to reflect inflation.

## **VII. Challenges in the Course of Enforcement Proceedings**

If a respondent/defendant challenges the validity of any statutory maximum penalty amount, as adjusted in 40 C.F.R. Part 19, please notify the Special Litigation and Projects Division of the challenge, so that OECA, the Region and the U.S. Department of Justice, as appropriate, can coordinate our response before it is filed.

## **VIII. Further Information**

Any questions concerning the 2013 Rule and its implementation can be directed to Caroline Hermann of OCE’s Special Litigation and Projects Division at (202) 564-2876 or by email at [hermann.caroline@epa.gov](mailto:hermann.caroline@epa.gov).

## List of Existing Civil Penalty Policies Modified by this Memorandum

### General

- Policy on Civil Penalties and A Framework for Statute-Specific Approaches to Penalty Assessments (2/16/84)
- Guidance on Use of Penalty Policies in Administrative Litigation (12/15/95)

### Clean Air Act - Stationary Sources

- Clean Air Act Stationary Source Civil Penalty Policy (10/25/91)
- Clarifications to the October 25, 1991 Clean Air Act Stationary Source Civil Penalty Policy (1/17/92)
- Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68 (6/20/12)
- National Petroleum Refinery Initiative Implementation: Application of Clean Air Act Stationary Source Penalty Policy for Violations of Benzene Waste Operations NESHAP Requirements (11/08/07)
- Appendix I - Permit Requirements for the Construction or Modification of Major Stationary Sources of Air Pollution (Revised 3/25/87)
- Clarification of the Use of Appendix I of the Clean Air Act Stationary Source Civil Penalty Policy (7/23/95)
- Appendix II - Vinyl Chloride Civil Penalty Policy (Revised 2/8/85)
- Appendix III - Asbestos Demolition and Renovation Civil Penalty Policy (Revised 5/5/92)
- Appendix IV - Volatile Organic Compounds Where Reformulation of Low Solvent Technology is the Applicable Method of Compliance (Revised 3/25/87)
- Appendix V - Air Civil Penalty Worksheet (3/25/87)
- Appendix VI - Volatile Hazardous Air Pollutant Penalty Policy (Revised 9/12)
- Appendix VII - Residential Wood Heaters (5/18/99)
- Appendix VIII - Manufacture or Import of Controlled Substances in Amounts Exceeding Allowances Properly Held Under 40 C.F.R. Part 82: Protection of Stratospheric Ozone (11/2/90)
- Appendix IX - Penalty Policy Applicable to Persons Who Perform Service for Consideration on a Motor Vehicle Air Conditioner Involving the Refrigerant or Who Sell Small Containers of Refrigerant in Violation of 40 C.F.R. Part 82 (7/19/93)
- Appendix X - Clean Air Act Civil Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances Containing Refrigerant (6/1/94)
- Appendix XI - Clean Air Act Civil Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart C: Ban on Nonessential Products Containing Class I Substances and Ban on Nonessential Products Containing or Manufactured with Class II Substances (Not Dated)

### **Clean Air Act - Mobile Sources**

- Volatility Civil Penalty Policy (12/1/89)
- Interim Diesel Civil Penalty Policy (2/8/94)
- Clean Air Act Mobile Source Penalty Policy: Vehicle and Engine Emissions Certification Requirements (1/16/09)

### **Clean Water Act**

- Interim Clean Water Act Settlement Penalty Policy (3/1/95)
- Clean Water Act Section 404 Settlement Penalty Policy (12/21/01)
- Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act (8/1/98)
- Supplemental Guidance to the Interim Clean Water Act Settlement Penalty Policy (March 1, 1995) for Violations of the Construction Storm Water Requirements (2/5/08)

### **Comprehensive Environmental Response, Compensation, and Liability Act**

- Interim Policy on Settlement of CERCLA Section 106(b)(1) and Section 107(c)(3) -- Punitive Damage Claims for Noncompliance with Administrative Orders (9/30/97)
- Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (9/30/99)

### **Emergency Planning and Community Right-to-Know Act**

- Enforcement Response Policy for Sections 304, 311, and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation, and Liability Act (9/30/99)
- Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990) (Amended)(4/12/01)

### **Federal Insecticide, Fungicide, and Rodenticide Act**

- FIFRA Enforcement Response Policy (12/09)
- Enforcement Response Policy for FIFRA Section 7(c) (5/10)
- Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act: Good Laboratory Practice (GLP) Regulations (9/30/91)
- FIFRA Worker Protection Standard Penalty Policy – Enforcement Interim Final (9/97)
- Enforcement Response Policy for the FIFRA Pesticide Container/Containment Regulations (Appendix H)(3/12)

### **Resource Conservation and Recovery Act, Subtitle C**

- RCRA Civil Penalty Policy (6/23/03)
- Guidance on the Use of Section 7003 of RCRA (10/97)

### **RCRA, Subtitle I – UST**

- U.S. EPA Penalty Guidance for Violations of UST Regulations. OSWER Directive 9610.12 (November 14, 1990)
- Guidance of Federal Field Citation Enforcement, OSWER Directive 9610.16 (October 6, 1993)

### **Safe Drinking Water Act - UIC**

- Interim Final UIC Program Judicial and Administrative Order Settlement Penalty Policy - Underground Injection Control Guidance No. 79 (9/27/93)

### **Safe Drinking Water Act - PWS**

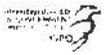
- New Public Water System Supervision Program Settlement Penalty Policy (5/25/94)

### **Toxic Substances Control Act**

- Guidelines for the Assessment of Civil Penalties Under Section 16 of TSCA (7/7/80) (Published in *Federal Register* on 9/10/80. Note that the first PCB penalty policy was published along with it, but the PCB policy is now obsolete.)
- Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12, and 13 (3/31/1999)
- PCB Penalty Policy (4/9/90)
- TSCA Section 5 Enforcement Response Policy (6/8/89), amended (7/1/93)
- TSCA Good Laboratory Practices Regulations Enforcement Response Policy (4/9/85)
- Enforcement Response Policy for Test Rules Under Section 4 of the Toxic Substances Control Act (5/28/1986)
- Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act (1/31/89)
- Enforcement Response Policy for Asbestos Abatement Projects; Worker Protection Rule (11/14/89)
- Section 1018 - Disclosure Rule Enforcement Response and Penalty Policy, December 2007
- Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule, Interim Final Policy, August 2010

Attachment (2013 Penalty Inflation Rule)

cc: (w/attachment)  
Steven Chester, OECA  
Lawrence Starfield, OECA  
Regional Counsel, Regions I - X  
Director, Office of Environmental Stewardship, Region I  
Director, Division of Enforcement and Compliance Assurance, Region II  
Director, Office of Enforcement, Compliance, and Environmental Justice, Region III  
Director, Office of Enforcement and Compliance Assurance, Region V  
Director, Compliance Assurance and Enforcement Division, Region VI  
Director, Office of Enforcement, Compliance and Environmental Justice, Region VIII  
Director, Enforcement Division, Region IX  
Director, Office of Civil Rights, Enforcement and Environmental Justice, Region X  
Regional Media Division Directors  
Regional Enforcement Coordinators, Regions I - X  
OECA  
W. Benjamin Fisherow, Chief, EES, DOJ  
Deputy and Assistant Chiefs, EES, DOJ



and amended citations in two provisions of the construction standards to show the correct incorporation-by-reference section.

In the DFR, OSHA stated that it would confirm the effective date of the DFR if it received no significant adverse comments. OSHA received eight favorable and no adverse comments on the DFR (see ID: OSHA-2013-0005-0008 thru -0015 in the docket for this rulemaking). Accordingly, OSHA is confirming the effective date of the final rule.

In addition to explicitly supporting the DFR, several of the commenters provided supplemental information. Mr. Charles Johnson of AltairStrickland stated that as a result of “[OSHA’s] incorporating both the 1968 and the [2011] versions of the ANSI Z535 standard by reference[,] both manufacturers and employers will likely migrate to the newer versions and the older versions will likely fade away as demand declines” (ID: OSHA-2013-0005-0011). Mr. Johnson also commented that “[h]ad OSHA deleted the reference to the ANSI Z35.1-1968 language, these signs would require replacement at considerable and unnecessary cost to employers.” *Id.*

A second commenter, Mr. Blair Brewster of MySafetySign.com, described several advantages and limitations of the updated ANSI signage standards, concluding that “[i]t would be arrogant to assume that a single standard is best. The ANSI Z535 designs, the traditional safety sign and tag designs, as well as the countless other designs to come, will all have their place and will all coexist” (ID: OSHA-2013-0005-0014).

A third commenter, Mr. Kyle Pitsor of the National Electrical Manufacturers Association (NEMA) stated that “[w]hile we would have preferred that the references to the outdated standards be removed entirely from OSHA’s regulations, NEMA agrees that giving employers the option of using signs and tags that meet either the 1967-1968 or the most recent versions of the standards will provide the greatest flexibility without imposing additional costs” (ID: OSHA-2013-0005-0013). Mr. Pitsor also helpfully noted that, contrary to proposed §§ 1910.6(e)(66) and (e)(67) and 1926.6(h)(28)-(h)(30), the International Safety Equipment Association (ISEA) is not authorized to sell the ANSI Z535 standards proposed for incorporation by reference, and these standards are not sold on the ISEA Web site, [www.safetysign.com](http://www.safetysign.com). In response to Mr. Pitsor’s comment, OSHA is correcting the incorporation-by-reference provisions in question in

29 CFR 1910.6 and 1926.6 in a separate Federal Register notice identifying the three locations where the public can purchase the updated ANSI Z535 standards.

Finally, OSHA received an email from Jonathan Stewart, Manager, Government Relations, NEMA, after the comment period ended (ID: OSHA-2013-0005-0015). In his email, Mr. Stewart mentioned NEMA’s earlier comments to the docket (ID: OSHA-2013-0005-0013), and stated that “[w]hile reflective of NEMA’s position, those comments did not include a clarification regarding the language that the NRPM used in Sec. 1926.200 Accident prevention signs and tags.” He further indicated that “[t]he language, while not inaccurate, was unclear regarding which figure(s) it intended to reference in the ANSI Z535.2-2011 standard.” Although this comment was late, OSHA considered it because it was a purely technical comment, pointing out an ambiguity in the cited provision’s reference to figures in the updated version of the national consensus standard, ANSI Z535.2-2011. OSHA finds that the comment has merit, and accordingly is clarifying the language in 29 CFR 1926.200(b) and (c) specifying which figures employers must follow in ANSI Z535.2-2011.

**List of Subjects in 29 CFR Parts 1910 and 1926**

Signage, Incorporation by reference, Occupational safety and health, Safety.

**Authority and Signature**

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of this final rule. OSHA is issuing this final rule pursuant to 29 U.S.C. 653, 655, and 657, 5 U.S.C. 553, Secretary of Labor’s Order 1-2012 (77 FR 3912), and 29 CFR part 1911.

Signed at Washington, DC, on October 30, 2013.

**David Michaels,**  
*Assistant Secretary of Labor for Occupational Safety and Health.*

[FR Doc. 2013-26336 Filed 11-5-13; 8:45 am]

**BILLING CODE 4510-26-P**

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 19**

[FRL-9901-98-OECA]

RIN 2020-AA49

**Civil Monetary Penalty Inflation Adjustment Rule**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** With this action, EPA is promulgating a final rule that amends the Civil Monetary Penalty Inflation Adjustment Rule. This action is mandated by the Debt Collection Improvement Act of 1996 (DCIA) to adjust for inflation certain statutory civil monetary penalties that may be assessed for violations of EPA-administered statutes and their implementing regulations. The Agency is required to review the civil monetary penalties under the statutes it administers at least once every four years and to adjust such penalties as necessary for inflation according to a formula prescribed by the DCIA. The regulations contain a list of all civil monetary penalty authorities under EPA-administered statutes and the applicable statutory amounts, as adjusted for inflation, since 1996.

**DATES:** This rule is effective December 6, 2013.

**FOR FURTHER INFORMATION CONTACT:** Caroline Hermann, Special Litigation and Projects Division (2248A), Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, (202) 564-2876.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

Pursuant to section 4 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the DCIA, 31 U.S.C. 3701 note, each federal agency is required to issue regulations adjusting for inflation the statutory civil monetary penalties<sup>1</sup> (“civil penalties” or “penalties”) that can be imposed under the laws administered by that agency. The purpose of these adjustments is to

<sup>1</sup> Section 3 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the DCIA, 31 U.S.C. 3701 note, defines “civil monetary penalty” to mean “any penalty, fine or other sanction that—(A)(i) is for a specific monetary amount as provided by federal law; or (ii) has a maximum amount provided for by federal law. . . .”

maintain the deterrent effect of civil penalties and to further the policy goals of the underlying statutes. The DCIA requires adjustments to be made at least once every four years following the initial adjustment. EPA's initial adjustment to each statutory civil penalty amount was published in the *Federal Register* on December 31, 1996 (61 FR 69360), and became effective on January 30, 1997 ("the 1996 Rule"). EPA's second adjustment to civil penalty amounts was published in the *Federal Register* on February 13, 2004 (69 FR 7121), and became effective on March 15, 2004 ("the 2004 Rule"). EPA's third adjustment to civil penalty amounts was published in the *Federal Register* on December 11, 2008 (73 FR 75340), as corrected in the *Federal Register* on January 7, 2009 (74 FR 626), and became effective on January 12, 2009 ("the 2008 Rule").

Where necessary under the DCIA, this rule, specifically Table 1 in 40 CFR 19.4, adjusts for inflation the maximum and, in some cases, the minimum amount of the statutory civil penalty that may be imposed for violations of EPA-administered statutes and their implementing regulations. Table 1 of 40 CFR 19.4 identifies the applicable EPA-administered statutes and sets out the inflation-adjusted civil penalty amounts that may be imposed pursuant to each statutory provision after the effective dates of the 1996, 2004 and 2008 rules. Where required under the DCIA formula, this rule amends the adjusted penalty amounts in Table 1 of 40 CFR 19.4 for those violations that occur after the effective date of this rule.

The formula prescribed by the DCIA for determining the inflation adjustment, if any, to statutory civil penalties consists of the following four-step process:

1. *Determine the Cost-of-Living Adjustment (COLA).* The COLA is determined by calculating the percentage increase, if any, by which the Consumer Price Index<sup>2</sup> for all-urban consumers (CPI-U) for the month of June of the calendar year preceding the adjustment exceeds the CPI-U for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted.<sup>3</sup> Accordingly, the COLA

applied under this rule equals the percentage by which the CPI-U for June 2012 (*i.e.*, June of the year preceding this year), exceeds the CPI-U for June of the year in which the amount of a specific penalty was last adjusted (*i.e.*, 2008, 2004 or 1996, as the case may be). Given that the last inflation adjustment was published on December 11, 2008, the COLA for most civil penalties set forth in this rule was calculated by determining the percentage by which the CPI-U for June 2012 (229.478) exceeds the CPI-U for June 2008 (218.815), resulting in a COLA of 4.87 percent. For those few civil penalty amounts that were last adjusted under the 2004 Rule, the COLA equals 20.97 percent, calculated by determining the percentage by which the CPI-U for June 2012 (229.478) exceeds the CPI-U for June 2004 (189.7). In the case of the maximum civil penalty that can be imposed under section 311(b)(7)(A) of the Clean Water Act, 33 U.S.C. 1321(b)(7)(A), which is the sole civil penalty last adjusted under the 1996 Rule, the COLA is 46.45 percent, determined by calculating the percentage by which the CPI-U for June 2012 (229.478) exceeds the CPI-U for June 1996 (156.7).

2. *Calculate the Raw Inflation Increase.* Once the COLA is determined, the second step is to multiply the COLA by the current civil penalty amount to determine the raw inflation increase.

3. *Apply the DCIA's Rounding Rule to the Raw Inflation Increase.* The third step is to round this raw inflation increase according to section 5(a) of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the DCIA, 31 U.S.C. 3701 note. The DCIA's rounding rules require that any increase be rounded to the nearest multiple of: \$10 in the case of penalties less than or equal to \$100; \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000; \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000; \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000; \$100,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; and \$25,000 in the case of penalties greater than \$200,000. (See section 5(a) of the Federal Civil Penalties Inflation Adjustment Act of

1990, 28 U.S.C. 2461 note, as amended by the DCIA, 31 U.S.C. 3701 note.)

4. *Add the Rounded Inflation Increase, if any, to the Current Penalty Amount.* Once the inflation increase has been rounded pursuant to the DCIA, the fourth step is to add the rounded inflation increase to the current civil penalty amount to obtain the new, inflation-adjusted civil penalty amount. For example, in this rule, the current statutory maximum penalty amounts that may be imposed under Clean Air Act (CAA) section 113(d)(1), 42 U.S.C. 7413(d)(1), and CAA section 205(c)(1), 42 U.S.C. 7524(c)(1), are increasing from \$295,000 to \$320,000. These penalty amounts were last adjusted with the promulgation of the 2008 Rule, when these penalties were adjusted for inflation from \$270,000 to \$295,000. Applying the COLA adjustment to the current penalty amount of \$295,000 results in a raw inflation increase of \$14,376 for both penalties. As stated above, the DCIA rounding rule requires the raw inflation increase to be rounded to the nearest multiple of \$25,000 for penalties greater than \$200,000. Rounding \$14,376 to the nearest multiple of \$25,000 equals \$25,000. That rounded increase increment of \$25,000 is then added to the \$295,000 penalty amount to arrive at a total inflation adjusted penalty amount of \$320,000. Accordingly, once this rule is effective, the statutory maximum amounts of these penalties will increase to \$320,000.

In contrast, this rule does not adjust those civil penalty amounts where the raw inflation amounts are not high enough to round up to the required multiple stated in the DCIA. For example, under section 3008(a)(3) of the Resource Conservation and Recovery Act, 42 U.S.C. 6928(a)(3), the Administrator may assess a civil penalty of up to \$37,500 per day of noncompliance for each violation. This penalty was last adjusted for inflation under the 2008 Rule. Multiplying the applicable 4.87 percent COLA to the statutory civil penalty amount of \$37,500, the raw inflation increase equals only \$1,827.40; the DCIA rounding rule requires a raw inflation increase increment to be rounded to the nearest multiple of \$5,000 for penalties greater than \$10,000 but less than or equal to \$100,000. Because this raw inflation increase is not sufficient to be rounded up to a multiple of \$5,000, in accordance with the DCIA's rounding rule, this rule does not increase the \$37,500 penalty amount. However, if during the development of EPA's next Civil Monetary Penalty Inflation Adjustment Rule, anticipated to be

<sup>2</sup> Section 3 of the DCIA defines "Consumer Price Index" to mean "the Consumer Price Index for all-urban consumers published by the Department of Labor." Interested parties may find the relevant Consumer Price Index, published by the Department of Labor's Bureau of Labor Statistics, on the Internet. To access this information, go to the CPI Home Page at: <http://ftp.bls.gov/pub/special.requests/cpi/cpiat.txt>.

<sup>3</sup> Section 5(b) of the DCIA defines the term "cost-of-living adjustment" to mean "the percentage (if

any) for each civil monetary penalty by which—(1) the Consumer Price Index for the month of June of the calendar year preceding the adjustment, exceeds (2) the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law."

promulgated in 2017, the raw inflation increase can be rounded up to the next multiple of \$5,000, statutory maximum penalty amounts currently at \$37,500 will be increased to \$42,500.

Because of the low rate of inflation since 2008, coupled with the application of the DCIA's rounding rules, only 20 of the 88 statutory civil penalty provisions implemented by EPA are being adjusted for inflation under this rule. Assuming there are no changes to the mandate imposed by the DCIA, EPA intends to review all statutory penalty amounts and adjust them as necessary to account for inflation in the year 2017 and every four years thereafter.

## II. Technical Revision to Table 1 of 40 CFR 19.4 To Break Out Each of the Statutory Penalty Authorities Under Section 325(b) of the Emergency Planning and Community Right-To-Know Act (EPCRA)

EPA is revising the row of Table 1 of 40 CFR 19.4, which lists the statutory maximum penalty amounts that can be imposed under section 325(b) of EPCRA, 42 U.S.C. 11045(b), to break out separately the three penalty authorities contained in subsection (b). Since 1996, EPA has been adjusting for inflation all of the statutory maximum penalty amounts specified under EPCRA section 325(b), 42 U.S.C. 11045(b). Under past rules, the Agency has grouped the maximum penalty amounts that may be assessed under section 325(b) under the heading of 42 U.S.C. 11045(b) in Table 1 of 40 CFR 19.4. For example, under the 2008 Rule, Table 1 of 40 CFR 19.4 reflects that the statutory maximum penalties that can be imposed under any subparagraph of EPCRA section 325(b) are \$37,500 and \$107,500. Consistent with how the other penalty authorities are displayed under Part 19.4, Table 1 now delineates, on a subpart-by-subpart basis, the penalty authorities enumerated under section 325(b) of EPCRA, 42 U.S.C. 11045(b) (*i.e.*, 42 U.S.C. 11045(b)(1)(A), (b)(2), and (b)(3)). That is, upon the effective date of this rule, the statutory maximum penalty that can be imposed under section 325(b)(1)(A) is \$37,500; the statutory maximum penalties that can be imposed under section 325(b)(2) are \$37,500 and \$117,500; and the statutory maximum penalties that can be imposed under section 325(b)(3) are \$37,500 and \$117,500.

## III. Effective Date

Section 6 of the DCIA provides that "any increase under [the DCIA] in a civil monetary penalty shall apply only to violations which occur after the date

the increase takes effect." (See section 6 of the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the DCIA, 31 U.S.C. 3701 note.) Thus, the new inflation-adjusted civil penalty amounts may be applied only to violations that occur after the effective date of this rule.

## IV. Good Cause

Section 553(b) of the Administrative Procedure Act (APA) provides that, when an agency for good cause finds that "notice and public procedure . . . are impracticable, unnecessary, or contrary to the public interest," the agency may issue a rule without providing notice and an opportunity for public comment. EPA finds that there is good cause to promulgate this rule without providing for public comment. The primary purpose of this final rule is merely to implement the statutory directive in the DCIA to make periodic increases in civil penalty amounts by applying the adjustment formula and rounding rules established by the statute. Because the calculation of the increases is formula-driven and prescribed by statute, EPA has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Accordingly, it would serve no purpose to provide an opportunity for public comment on this rule. Thus, notice and public comment is unnecessary.

In addition, EPA is making the technical revisions discussed above without notice and public comment. Because the technical revisions to Table 1 of 40 CFR 19.4 more accurately reflect the statutory provisions under each of the subparagraphs of section 325(b) (*i.e.*, under 42 U.S.C. 11045(b)(1)(A), (b)(2), and (b)(3)) and do not constitute substantive revisions to the rule, these changes do not require notice and comment.

## V. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a "significant regulatory action" under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993) and therefore is not subject to review under the Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011).

### B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the Paperwork Reduction

Act of 1995, 44 U.S.C. 3501–3521.

Burden is defined at 5 CFR 1320.3(b). This rule merely increases the amount of civil penalties that could be imposed in the context of a federal civil administrative enforcement action or civil judicial case for violations of EPA-administered statutes and their implementing regulations.

### C. Regulatory Flexibility Act

Today's final rule is not subject to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, which generally requires an agency to prepare a regulatory flexibility analysis for any rule that will have a significant economic impact on a substantial number of small entities. The RFA applies only to rules subject to notice and comment rulemaking requirements under the APA or any other statute. This rule is not subject to notice and comment requirements under the APA or any other statute because although the rule is subject to the APA, the Agency has invoked the "good cause" exemption under 5 U.S.C. 553(b), therefore it is not subject to the notice and comment requirements.

### D. Unfunded Mandates Reform Act

This action contains no federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for state, local, or tribal governments or the private sector. The action implements mandates specifically and explicitly set forth by Congress in the DCIA without the exercise of any policy discretion by EPA. By applying the adjustment formula and rounding rules prescribed by the DCIA, this rule adjusts for inflation the statutory maximum and, in some cases, the minimum, amount of civil penalties that can be assessed by EPA in an administrative enforcement action, or by the U.S. Attorney General in a civil judicial case, for violations of EPA-administered statutes and their implementing regulations. Because the calculation of any increase is formula-driven, EPA has no policy discretion to vary the amount of the adjustment. Given that the Agency has made a "good cause" finding that this rule is not subject to notice and comment requirements under the APA or any other statute (see Section IV of this notice), it is not subject to sections 202 and 205 of UMRA. EPA has also determined that this action is not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule merely increases

the amount of civil penalties that could conceivably be imposed in the context of a federal civil administrative enforcement action or civil judicial case for violations of EPA-administered statutes and their implementing regulations.

*E. Executive Order 13132 (Federalism)*

This action does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule merely increases the amount of civil penalties that could conceivably be imposed in the context of a federal civil administrative enforcement action or civil judicial case for violations of EPA-administered statutes and their implementing regulations. Thus, Executive Order 13132 does not apply to this rule.

*F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments*

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule merely increases the amount of civil penalties that could be imposed in the context of a federal civil administrative enforcement action or civil judicial case for violations of EPA-administered statutes and their implementing regulations. This final rule will not have substantial direct effects on tribal governments, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this action.

*G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks*

EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern health or safety risks, such that the analysis required under section 5-501 of the Executive Order has the potential to influence the regulation. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

*H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use*

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866.

*I. National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), 15 U.S.C. 272 note, directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. NTTAA directs EPA to provide Congress, through the U.S. Office of Management and Budget, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations*

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. EPA lacks the discretionary authority to address environmental justice in this final rulemaking. The primary purpose of this final rule is merely to apply the DCIA's inflation adjustment formula to make periodic increases in the civil penalties that may be imposed for violations of EPA-administered statutes and their implementing regulations. Thus, because calculation of the increases is formula-driven, EPA has no discretion in updating the rule to reflect the allowable statutory civil penalties derived from applying the formula.

Since there is no discretion under the DCIA in determining the statutory civil penalty amount, EPA cannot vary the amount of the civil penalty adjustment to address other issues, including environmental justice issues.

*K. Congressional Review Act*

The Congressional Review Act, 5 U.S.C. 801-808, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the *Federal Register*. A major rule cannot take effect until 60 days after it is published in the *Federal Register*. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

**List of Subjects in 40 CFR Part 19**

Environmental protection,  
Administrative practice and procedure,  
Penalties.

Dated: October 29, 2013

**Gina McCarthy,**

*Administrator, Environmental Protection Agency.*

For the reasons set out in the preamble, title 40, chapter I, part 19 of the Code of Federal Regulations is amended as follows:

**PART 19—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION**

- 1. The authority citation for part 19 continues to read as follows:

**Authority:** Pub. L. 101-410, 28 U.S.C. 2461 note; Public Law 104-134, 31 U.S.C. 3701 note.

- 2. Revise § 19.2 to read as follows:

**§ 19.2 Effective date.**

The increased penalty amounts set forth in the seventh and last column of Table 1 to § 19.4 apply to all violations under the applicable statutes and regulations which occur after December 6, 2013. The penalty amounts in the sixth column of Table 1 to § 19.4 apply to violations under the applicable statutes and regulations which occurred after January 12, 2009, through December 6, 2013. The penalty amounts in the fifth column of Table 1 to § 19.4 apply to all violations under the applicable statutes and regulations

which occurred after March 15, 2004, through January 12, 2009. The penalty amounts in the fourth column of Table 1 to § 19.4 apply to all violations under the applicable statutes and regulations

which occurred after January 30, 1997, through March 15, 2004.

■ 3. Revise § 19.4 to read as follows:

**§ 19.4 Penalty adjustment and table.**

The adjusted statutory penalty provisions and their applicable amounts are set out in Table 1. The last column in the table provides the newly effective statutory civil penalty amounts.

TABLE 1 OF SECTION 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code Citation	Environmental statute	Statutory penalties, as enacted	Penalties effective after January 30, 1997 through March 15, 2004	Penalties effective after March 15, 2004 through January 12, 2009	Penalties effective after January 12, 2009 through December 6, 2013	Penalties effective after December 6, 2013
7 U.S.C. 136l(a)(1)	FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA).	\$5,000	\$5,500	\$6,500	\$7,500	\$7,500
7 U.S.C. 136l(a)(2)	FIFRA	\$500/\$1,000	\$550/\$1,000	\$650/\$1,100	\$750/\$1,100	\$750/\$1,100
15 U.S.C. 2615(a)(1)	TOXIC SUBSTANCES CONTROL ACT (TSCA).	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
15 U.S.C. 2647(a)	TSCA	\$5,000	\$5,500	\$6,500	\$7,500	\$7,500
15 U.S.C. 2647(g)	TSCA	\$5,000	\$5,000	\$5,500	\$7,500	\$7,500
31 U.S.C. 3802(a)(1)	PROGRAM FRAUD CIVIL REMEDIES ACT (PFRA).	\$5,000	\$5,500	\$6,500	\$7,500	\$7,500
31 U.S.C. 3802(a)(2)	PFRA	\$5,000	\$5,500	\$6,500	\$7,500	\$7,500
33 U.S.C. 1319(d)	CLEAN WATER ACT (CWA).	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
33 U.S.C. 1319(g)(2)(A)	CWA	\$10,000/\$25,000	\$11,000/\$27,500	\$11,000/\$32,500	\$16,000/\$37,500	\$16,000/\$37,500
33 U.S.C. 1319(g)(2)(B)	CWA	\$10,000/\$125,000	\$11,000/\$137,500	\$11,000/\$157,500	\$16,000/\$177,500	\$16,000/\$187,500
33 U.S.C. 1321(b)(6)(B)(i)	CWA	\$10,000/\$25,000	\$11,000/\$27,500	\$11,000/\$32,500	\$16,000/\$37,500	\$16,000/\$37,500
33 U.S.C. 1321(b)(6)(B)(ii)	CWA	\$10,000/\$125,000	\$11,000/\$137,500	\$11,000/\$157,500	\$16,000/\$177,500	\$16,000/\$187,500
33 U.S.C. 1321(b)(7)(A)	CWA	\$25,000/\$1,000	\$27,500/\$1,100	\$32,500/\$1,100	\$37,500/\$1,100	\$37,500/\$2,100
33 U.S.C. 1321(b)(7)(B)	CWA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
33 U.S.C. 1321(b)(7)(C)	CWA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
33 U.S.C. 1321(b)(7)(D)	CWA	\$100,000/\$3,000	\$110,000/\$3,300	\$130,000/\$4,300	\$140,000/\$4,300	\$150,000/\$5,300
33 U.S.C. 1414b(d)(1)	MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT (MPRSA).	\$600	\$660	\$760	\$860	\$860
33 U.S.C. 1415(a)	MPRSA	\$50,000/\$125,000	\$55,000/\$137,500	\$65,000/\$157,500	\$70,000/\$177,500	\$75,000/\$187,500
33 U.S.C. 1901 note (see 1409(a)(2)(A)).	CERTAIN ALASKAN CRUISE SHIP OPERATIONS (CACSO)	\$10,000/\$25,000	\$10,000/\$25,000 <sup>2</sup>	\$10,000/\$25,000	\$11,000/\$27,500	\$11,000/\$27,500
33 U.S.C. 1901 note (see 1409(a)(2)(B)).	CACSO	\$10,000/\$125,000	\$10,000/\$125,000	\$10,000/\$125,000	\$11,000/\$137,500	\$11,000/\$147,500
33 U.S.C. 1901 note (see 1409(b)(1)).	CACSO	\$25,000	\$25,000	\$25,000	\$27,500	\$27,500
42 U.S.C. 300g-3(b)	SAFE DRINKING WATER ACT (SDWA).	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 300g-3(g)(3)(A).	SDWA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 300g-3(g)(3)(B).	SDWA	\$5,000/\$25,000	\$5,000/\$25,000	\$6,000/\$27,500	\$7,000/\$32,500	\$7,000/\$32,500
42 U.S.C. 300g-3(g)(3)(C).	SDWA	\$25,000	\$25,000	\$27,500	\$32,500	\$32,500
42 U.S.C. 300h-2(b)(1)	SDWA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 300h-2(c)(1)	SDWA	\$10,000/\$125,000	\$11,000/\$137,500	\$11,000/\$157,500	\$16,000/\$177,500	\$16,000/\$187,500
42 U.S.C. 300h-2(c)(2)	SDWA	\$5,000/\$125,000	\$5,500/\$137,500	\$6,500/\$157,500	\$7,500/\$177,500	\$7,500/\$187,500
42 U.S.C. 300h-3(c)	SDWA	\$5,000/\$10,000	\$5,500/\$11,000	\$6,500/\$11,000	\$7,500/\$16,000	\$7,500/\$16,000
42 U.S.C. 300i(b)	SDWA	\$15,000	\$15,000	\$16,500	\$16,500	\$21,500
42 U.S.C. 300i-1(c)	SDWA	\$20,000/\$50,000	\$22,000/\$55,000 <sup>3</sup>	\$100,000/ \$1,000,000	\$110,000/ \$1,100,000	\$120,000/ \$1,150,000
42 U.S.C. 300j(e)(2)	SDWA	\$2,500	\$2,750	\$2,750	\$3,750	\$3,750
42 U.S.C. 300j-4(c)	SDWA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 300j-6(b)(2)	SDWA	\$25,000	\$25,000	\$27,500	\$32,500	\$32,500
42 U.S.C. 300j-23(d)	SDWA	\$5,000/\$50,000	\$5,500/\$55,000	\$6,500/\$65,000	\$7,500/\$70,000	\$7,500/\$75,000
42 U.S.C. 4852d(b)(5)	RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT OF 1992.	\$10,000	\$11,000	\$11,000	\$16,000	\$16,000
42 U.S.C. 4910(a)(2)	NOISE CONTROL ACT OF 1972.	\$10,000	\$11,000	\$11,000	\$16,000	\$16,000
42 U.S.C. 6928(a)(3)	RESOURCE CONSERVATION AND RECOVERY ACT (RCRA).	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 6928(c)	RCRA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 6928(g)	RCRA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 6928(h)(2)	RCRA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 6934(e)	RCRA	\$5,000	\$5,500	\$6,500	\$7,500	\$7,500
42 U.S.C. 6973(b)	RCRA	\$5,000	\$5,500	\$6,500	\$7,500	\$7,500

TABLE 1 OF SECTION 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS—Continued

U.S. Code Citation	Environmental statute	Statutory penalties, as enacted	Penalties effective after January 30, 1997 through March 15, 2004	Penalties effective after March 15, 2004 through January 12, 2009	Penalties effective after January 12, 2009 through December 6, 2013	Penalties effective after December 6, 2013
42 U.S.C. 6991e(a)(3)	RCRA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 6991e(d)(1)	RCRA	\$10,000	\$11,000	\$11,000	\$16,000	\$16,000
42 U.S.C. 6991e(d)(2)	RCRA	\$10,000	\$11,000	\$11,000	\$16,000	\$16,000
42 U.S.C. 7413(b)	CLEAN AIR ACT (CAA)	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 7413(d)(1)	CAA	\$25,000/\$200,000	\$27,500/\$220,000	\$32,500/\$270,000	\$37,500/\$295,000	\$37,500/\$320,000
42 U.S.C. 7413(d)(3)	CAA	\$5,000	\$5,500	\$6,500	\$7,500	\$7,500
42 U.S.C. 7524(a)	CAA	\$2,500/\$25,000	\$2,750/\$27,500	\$2,750/\$32,500	\$3,750/\$37,500	\$3,750/\$37,500
42 U.S.C. 7524(c)(1)	CAA	\$200,000	\$220,000	\$270,000	\$295,000	\$320,000
42 U.S.C. 7545(d)(1)	CAA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 9604(e)(5)(B)	COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA).	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 9606(b)(1)	CERCLA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 9609(a)(1)	CERCLA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 9609(b)	CERCLA	\$25,000/\$75,000	\$27,500/\$82,500	\$32,500/\$97,500	\$37,500/\$107,500	\$37,500/\$117,500
42 U.S.C. 9609(c)	CERCLA	\$25,000/\$75,000	\$27,500/\$82,500	\$32,500/\$97,500	\$37,500/\$107,500	\$37,500/\$117,500
42 U.S.C. 11045(a)	EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA).	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 11045(b)(1)(A) <sup>1</sup>	EPCRA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 11045(b)(2)	EPCRA	\$25,000/\$75,000	\$27,500/\$82,500	\$32,500/\$97,500	\$37,500/\$107,500	\$37,500/\$117,500
42 U.S.C. 11045(b)(3)	EPCRA	\$25,000/\$75,000	\$27,500/\$82,500	\$32,500/\$97,500	\$37,500/\$107,500	\$37,500/\$117,500
42 U.S.C. 11045(c)(1)	EPCRA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 11045(c)(2)	EPCRA	\$10,000	\$11,000	\$11,000	\$16,000	\$16,000
42 U.S.C. 11045(d)(1)	EPCRA	\$25,000	\$27,500	\$32,500	\$37,500	\$37,500
42 U.S.C. 14304(a)(1)	MERCURY CONTAINING AND RECHARGEABLE BATTERY MANAGEMENT ACT (BATTERY ACT).	\$10,000	\$10,000	\$11,000	\$16,000	\$16,000
42 U.S.C. 14304(g)	BATTERY ACT	\$10,000	\$10,000	\$11,000	\$16,000	\$16,000

<sup>1</sup> Note that 33 U.S.C. 1414b (d)(1)(B) contains additional penalty escalation provisions that must be applied to the penalty amounts set forth in this Table. The amounts set forth in this Table reflect an inflation adjustment to the calendar year 1992 penalty amount expressed in section 104B(d)(1)(A), which is used to calculate the applicable penalty amount under MPRSA section 104B(d)(1)(B) for violations that occur in any subsequent calendar year.

<sup>2</sup> CACSO was passed on December 21, 2000 as part of Title XIV of the Consolidated Appropriations Act of 2001, Pub. L. 106-554, 33 U.S.C. 1901 note.

<sup>3</sup> The original statutory penalty amounts of \$20,000 and \$50,000 under section 1432(c) of the SDWA, 42 U.S.C. 300i-1(c), were subsequently increased by Congress pursuant to section 403 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002, Public Law No. 107-188 (June 12, 2002), to \$100,000 and \$1,000,000, respectively. EPA did not adjust these new penalty amounts in its 2004 Civil Monetary Penalty Inflation Adjustment Rule ("2004 Rule"), 69 FR 7121 (February 13, 2004), because they had gone into effect less than two years prior to the 2004 Rule.

<sup>4</sup> Consistent with how the EPA's other penalty authorities are displayed under Part 19.4, this Table now delineates, on a subpart-by-subpart basis, the penalty authorities enumerated under section 325(b) of EPCRA, 42 U.S.C. 11045(b) (i.e., 42 U.S.C. 11045(b)(1)(A), (b)(2), and (b)(3)).

[FR Doc. 2013-26648 Filed 11-5-13; 8:45 am]  
BILLING CODE 6560-50-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[EPA-R06-OAR-2010-0335; FRL-9902-50-Region 6]

**Approval and Promulgation of Implementation Plans; Texas; Procedures for Stringency Determinations and Minor Permit Revisions for Federal Operating Permits**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Withdrawal of direct final rule.

**SUMMARY:** On September 10, 2013, EPA published a direct final rule approving portions of three revisions to the Texas

State Implementation Plan (SIP) concerning the Texas Federal Operating Permits Program. The direct final action was published without prior proposal because EPA anticipated no adverse comments. EPA stated in the direct final rule that if we received relevant, adverse comments by October 10, 2013, EPA would publish a timely withdrawal in the *Federal Register*. EPA subsequently received timely adverse comments on the direct final rule. Therefore, EPA is withdrawing the direct final approval and will proceed to respond to all relevant, adverse comments in a subsequent action based on the parallel proposal published on September 10, 2013. As stated in the parallel proposal, EPA will not institute a second comment period on this action.

**DATES:** The direct final rule published on September 10, 2013 (78 FR 55221), is withdrawn as of November 6, 2013.

**FOR FURTHER INFORMATION CONTACT:** Ms. Adina Wiley (6PD-R), Air Permits Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue (6PD-R), Suite 1200, Dallas, TX 75202-2733. The telephone number is (214) 665-2115. Ms. Wiley can also be reached via electronic mail at [wiley.adina@epa.gov](mailto:wiley.adina@epa.gov).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 28, 2013.

**Ron Curry,**  
*Regional Administrator, Region 6.*

Accordingly, the amendments to 40 CFR 52.2270 published in the *Federal Register* on September 10, 2013 (78 FR



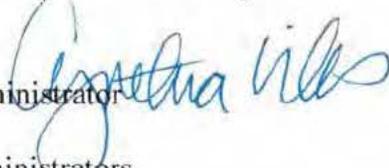
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUL 27 2016

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

**SUBJECT:** Amendments to the U.S. Environmental Protection Agency's Civil Penalty Policies to Account for Inflation (Effective August 1, 2016)

**FROM:** Cynthia Giles  
Assistant Administrator 

**TO:** Regional Administrators  
Deputy Regional Administrators

Attached is the 2016 Civil Monetary Penalty Inflation Adjustment Rule (2016 Rule), which was published on July 1, 2016, and is effective on August 1, 2016. 81 Fed. Reg. 43,091 (July 1, 2016). This memorandum amends our civil penalty policies to implement the 2016 Rule. Specifically, this memorandum:

- (1) supersedes previous inflation-based amendments to our penalty policies issued in 1997, 2004, and 2008, and partially supersedes our 2013 policy amendments;<sup>1</sup>
- (2) summarizes the Federal Civil Penalties Inflation Adjustment Act Improvement Act (2015 Act);<sup>2</sup>
- (3) describes how EPA is amending its civil penalty policies to increase penalties by the amount of inflation accrued since the effective date of the applicable penalty policy; and
- (4) provides guidance to case teams.

This memorandum does not modify EPA's Expedited Settlement Agreement penalty policies nor does it modify the non-penalty dollar amounts in civil penalty policies (such as the definition of what is an "insignificant" or "de minimis" economic benefit of noncompliance).

<sup>1</sup> As noted in Section I of this memorandum, EPA's 2013 guidance still applies to cases with violations occurring on or before November 2, 2015.

<sup>2</sup> 28 U.S.C. § 2461 note, Pub. L. 114-74 (see <https://www.congress.gov/114/plaws/publ/74/PLAW-114publ74.pdf>).

## I. Background and Effective Date

The 2015 Act was signed into law on November 2, 2015, in order to improve the effectiveness of statutory civil monetary penalties and to maintain their deterrent effect, thereby promoting compliance with the law. The 2015 Act requires an initial catch-up adjustment, which EPA is implementing through the attached 2016 Rule. Concurrent with the effective date of the 2016 Rule, this guidance is effective on August 1, 2016, as follows:

- In cases where the violations occurred entirely *on or before* November 2, 2015, enforcement practitioners should use the inflation adjustment policy and multipliers contained in the guidance memorandum dated December 6, 2013 (*see* <https://www.epa.gov/sites/production/files/2014-01/documents/guidancetoamendepapenaltypolicyforinflation.pdf>).
- In cases where the violations occurred entirely *after* November 2, 2015, enforcement practitioners should use only this inflation adjustment policy and its multipliers.
- In cases where violations occurred *both before and after* such date, enforcement practitioners should use the inflation adjustment policy and multipliers contained in the 2013 guidance memorandum for the violations that occurred on or before November 2, 2015, and should use this inflation adjustment policy and its multipliers for the violations that occurred after November 2, 2015.

In addition to the initial catch-up adjustment, the 2015 Act requires federal agencies to issue rules adjusting statutory penalty amounts for inflation by January 15<sup>th</sup> of each year. Concurrent with those annual statutory penalty adjustments, the Office of Enforcement and Compliance Assurance (OECA) expects to modify its penalty policies each year. For efficiency of administration, however, we do not plan to globally modify our penalty policies for inflation on January 15, 2017, when the statutory penalty amounts are first required to be adjusted annually for inflation. Instead, we intend to globally adjust the penalty policy amounts for inflation annually beginning on or shortly before January 15, 2018.

Note that some media enforcement programs may modify their penalty policies individually, and any such modifications may supersede application of this guidance for that program. Note also that any possible future statutory penalty increases do not automatically modify EPA's penalty policies, and that practitioners should rely on the multipliers in Table A until the applicable penalty policy is modified.

## II. Amendments to the EPA's Civil Penalty Policies

While not required by the 2015 Act, we believe that amending our civil penalty policies to account for inflation is consistent both with the purposes behind the 2015 Act, and with our past practice of adjusting our penalty policies for inflation. Accordingly, whether used in

administrative litigation or in settlement, all civil penalty policies other than EPA's Expedited Settlement Agreement penalty policies are now modified to apply the guidelines set forth below.

Inflation Adjustments Apply Only to the Gravity-Based Portion of Penalties: We are not modifying the long-standing approach of calculating economic benefit separately from the gravity-based amount, since economic benefit calculations already take inflation into account. The inflation adjustments in this guidance only impact the gravity-based portion of the penalty.

Which Civil Penalty Policies Are Applicable: Note that the penalty policies listed in Table A are the most recent narrative versions of each policy. The "narrative version" is the applicable media-specific penalty policy that comprehensively explains how to assess penalties for certain violations. Enforcement practitioners should apply the Inflation Adjustment Multipliers in the attached Table A only to the penalty amounts originally adopted as part of the policies listed in Table A. The Inflation Adjustment Multipliers should not be applied to any subsequent addenda that merely adjusted the penalty amounts for inflation.

How the Inflation Multipliers Are Derived: For most of the penalty policies, the multipliers are based on Consumer Price Index (CPI) data for the year that the narrative version of the penalty policy was issued.<sup>3</sup> In a few instances, where EPA published revised penalty matrices after issuance of the most recent narrative penalty policy, applying such CPI multipliers to the most recent narrative version of the penalty policy would have yielded a maximum penalty amount lower than the amounts specified in the revised penalty matrices. To avoid this result, we adjusted the applicable multipliers upward to reflect an appropriate inflation-related increase.<sup>4</sup> Also, in a few instances, we adjusted the applicable multipliers in order to harmonize the penalty amounts under several penalty policies that were issued on different dates, either because they cover similar violations<sup>5</sup> or for other important reasons.<sup>6</sup>

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<sup>3</sup> EPA is using the same table of OMB-approved CPI multipliers that the 2015 Act required federal agencies to use in calculating inflation-adjusted statutory maximum penalties in the 2016 Rule. But, the particular CPI multiplier that EPA is applying to any given *penalty policy* is generally smaller than the *statutory maximum* penalty multiplier because the 2015 Act directs the use of a multiplier that is based on the year that the relevant *statutory* penalty provision was enacted or last amended by Congress. For example, EPA issued the *Interim Clean Water Act (CWA) Settlement Penalty Policy* in 1995. EPA, therefore, is applying the 1.54742 CPI multiplier for 1995 to violations enforced pursuant to CWA § 309. As applied to the \$25,000 CWA penalty policy maximum amount in effect in 1995, the multiplier yields a newly adjusted CWA § 309 *penalty policy* maximum amount of \$38,686. For purposes of this policy, this is a reasonable inflation-related increase as compared to the \$37,500 CWA maximum amount in effect since 2013, particularly given recent low inflation. This penalty policy maximum amount is lower than the CWA *statutory maximum* penalty of \$51,570 because the statutory penalty amount was last modified in a 1987 law, and the 2015 Act directs the use of the higher 1987 CPI multiplier of 2.06278 in the 2016 Rule to calculate the statutory maximum.

<sup>4</sup> See *infra* note 13 (RCRA civil penalty policy), and note 16 (EPCRA § 313 Enforcement Response Policy).

<sup>5</sup> See *infra* note 21 (regarding the 2007 and 2010 TSCA lead-based paint penalty policies).

<sup>6</sup> See *infra* notes 17 (FIFRA enforcement response policies) and 18 (core TSCA penalty policies).

How to Calculate the Penalties: For each violation occurring after November 2, 2015, calculate the gravity-based penalty using the applicable penalty policies in Table A, then multiply such gravity-based penalties by the corresponding inflation multiplier(s) and round the inflation-adjusted amount to the nearest dollar. Then, add in any possible gravity-based penalty for each violation occurring on or before November 2, 2015, using the guidance memorandum dated December 6, 2013. Apply any appropriate upward or downward adjustments to the gravity-based penalties, based on applicable aggravating or mitigating factors (history of violations, ability to pay, cooperation, etc.). Finally, add in any economic benefit of noncompliance to get the total penalty.<sup>7</sup>

### **III. Penalty Pleading in Administrative Litigation**

Where EPA decides to cite the statutory penalty amount in an administrative pleading (such as in an administrative complaint), the applicable statutory maximum penalty amount in effect for the violations should be used.<sup>8</sup> EPA should cite the statutory penalty provisions and 40 C.F.R. § 19.4, along with the applicable inflation-adjusted penalty maximum levels set forth in 40 C.F.R. § 19.4. Particularly where violations have occurred both after November 2, 2015, and before such date, case teams also may find it helpful to state that the statutory maximum civil penalty level has been adjusted over time as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (28 U.S.C. § 2461 note; Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996, and most recently, by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (28 U.S.C. § 2461 note; Pub. L. 114-74, Section 701).

### **IV. Administrative Penalty Caps**

Note that, effective August 1, 2016, where EPA seeks administrative penalties in a complaint, amended complaint, or through a 40 C.F.R. § 22.18 settlement, the increased administrative

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<sup>7</sup> If application of the inflation multipliers results in a total gravity-based penalty amount that is greater than the statutory maximum amount, the statutory maximum amount would apply. Similarly, the entire penalty sought (including economic benefit) in an administrative enforcement action cannot exceed any applicable administrative penalty caps as outlined below in Section IV. Note that penalty amounts greater than those calculated using EPA penalty policies and this guidance may be appropriate in limited circumstances. For example, in a formal administrative enforcement context, EPA may seek, and presiding officers or the Environmental Appeals Board may assess, higher penalties provided such amounts do not exceed the statutory maximum, are in accordance with statutory civil penalty factors, and consider applicable civil penalty guidelines, and provided that any deviations from applicable penalty policies are persuasively and convincingly explained. *See, e.g.*, 40 C.F.R. § 22.27(b) and *In Re Morton L. Friedman & Schmitt Construction Company*, 11 E.A.D. 302 (EAB 2004).

<sup>8</sup> If a respondent/defendant challenges the validity of any statutory maximum penalty amount, as adjusted in 40 C.F.R. Part 19, please notify the Office of Civil Enforcement of the challenge, so that OECA, the Region and the U.S. Department of Justice, as appropriate, can coordinate our response before it is filed.

penalty caps in Table 2 of § 19.4 in the attached 2016 Rule apply if *some or all* of the violations occurred after November 2, 2015. If *all* violations occurred on or before November 2, 2015, the lower administrative penalty caps in Table 1 of § 19.4 in the attached 2016 Rule apply.

## V. Impact on Pending Cases

Case Team Discretion: If the time period between seeking a penalty (through settlement or litigation) and the final penalty assessment<sup>9</sup> covers more than one penalty-adjustment cycle (for example, where a complaint is filed on December 15, 2016, but the final penalty order is not filed with Hearing Clerk until April 1, 2018), the case team would have discretion to modify the penalty amount sought (for example, to be consistent with the penalty amounts in the most recent annual inflation adjustment rule or guidance). But such modifications would *not* be expected where doing so would be:

- a. unnecessary to achieve sufficient deterrence; and
- b. *either* inappropriately disruptive<sup>10</sup> *or* contrary to principles of judicial economy (for example, where the case has already gone to hearing based on previous penalty amounts).

In a settlement context, if defendants or respondents have signed a consent decree or consent agreement, EPA would not expect the case team to renegotiate the penalty amount due to subsequent inflation adjustments. Prior to any such formal written settlement commitment (for example, where the parties may have reached an agreement in principle), case teams have discretion to decide whether to modify their penalty demand due to subsequent inflation adjustments (for example, depending on how far along the negotiations have progressed, the likely impact of an increased penalty on negotiations, the case team's evaluation of the likelihood that any informal agreements will not be consummated, and/or other factors).

## VI. Further Information

We believe that the penalty policy modifications in this guidance are faithful to the spirit of the 2015 Act's purpose in maintaining deterrence, should be easy to implement, and will not unduly

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<sup>9</sup> Note that enforcement personnel can only *seek* penalties. *Assessment* of penalties is effective in a formal administrative action once a final penalty order is filed with the Hearing Clerk, 40 C.F.R. §§ 22.31 and 22.6, or in civil judicial cases once the court enters a consent decree or issues a judgment awarding penalties.

<sup>10</sup> Such disruption could be to settlement negotiations, or to other case efforts such as creating an undue burden on EPA's resources. If EPA has not made a penalty demand or offer, a disruptive impact on negotiations is less likely where the penalty is recalculated to be consistent with the most recent inflation-adjustment amounts. It is possible, however, that a recalculation would be unduly burdensome and disruptive to the case team's efforts where, for example, there are an extremely large number of violations, the penalty calculation is complex, and/or where contractor resources are needed to perform such a calculation. In such circumstances, the case team would have discretion to determine that recalculating the penalty is not warranted even though EPA has not yet made a penalty demand or offer.

disrupt ongoing enforcement cases. Any questions concerning this guidance can be directed to Gary Jones of the Office of Civil Enforcement at (202) 564-4002 or by email at [jonesi.gary@epa.gov](mailto:jonesi.gary@epa.gov).

cc: Shari Wilson, Deputy Assistant Administrator, OECA  
Lawrence Starfield, Principal Deputy Assistant Administrator, OECA  
Regional Counsel  
Director, Office of Environmental Stewardship, Region I  
Director, Division of Enforcement and Compliance Assurance, Region II  
Director, Office of Enforcement, Compliance, and Environmental Justice, Region III  
Director, Office of Enforcement and Compliance Assurance, Region V  
Director, Compliance Assurance and Enforcement Division, Region VI  
Director, Office of Enforcement, Compliance and Environmental Justice, Region VIII  
Director, Enforcement Division, Region IX  
Director, Office of Civil Rights, Enforcement and Environmental Justice, Region X  
Regional Media Division Directors  
Regional Superfund Enforcement Directors  
Regional Enforcement Coordinators  
All OECA Employees  
Tom Mariani, Acting Chief, EES, DOJ  
Deputy and Assistant Chiefs, EES, DOJ  
Kathie Stein, Environmental Appeals Judge  
Susan Biro, Chief Administrative Law Judge  
Regional Judicial Officers

Attachments (2)

1. Table A: Chart Reflecting Inflation Adjustment Multipliers
2. Rule promulgated in *Federal Register* on July 1, 2016

**Table A: Chart Reflecting Penalty Policy Inflation Adjustment Multipliers**

Applicable Penalty Policy	Year Issued	Inflation Adjustment Multiplier as of August 1, 2016
<b>CWA</b>		
<u>Interim Clean Water Act Settlement Penalty Policy</u>	1995	1.54742
<u>Civil Penalty Policy for Section 311(b)(3) and Section 311(j) of the Clean Water Act</u>	1998	1.45023 <sup>11</sup>
<u>CWA Section 404 Settlement Penalty Policy</u>	2001	1.33842
<u>Supplemental Guidance to the Interim Clean Water Act Settlement Penalty Policy (March 1, 1995) for Violations of the Construction Stormwater Requirements</u>	2008	1.09819
<b>SDWA</b>		
<u>UIC Program Judicial and Administrative Order Settlement Penalty Policy</u>	1993	1.63238
<u>New Public Water System Supervision Program Settlement Penalty Policy</u>	1994	1.59089
<b>CAA – Accidental Release Prevention/Risk Management Program</b>		
<u>Final Combined Enforcement Policy for Clean Air Act Sections 112(r)(1), 112(r)(7), and 40 C.F.R. Part 68</u>	2012	1.02819
<b>CAA – Stationary Source</b>		
<u>Clean Air Act Stationary Source Civil Penalty Policy</u>	1991	1.73099

<sup>11</sup> Case teams should apply the 1990 CPI multiplier of 1.78156 to the per-barrel discharge penalty amounts in the last column of the penalty matrix on page 11. This is an appropriate multiplier because such civil penalties under CWA § 311(b)(7)(A) & (D) concern environmental exposure (*i.e.*, the discharge of oil and hazardous substances), and because this 1998 penalty policy based the per-barrel penalty matrix column on the statutory maximum penalty amounts in effect when this penalty authority was enacted in 1990. It is important for the penalty matrix to retain a maximum per-barrel penalty policy amount that equals the current statutory maximum and to increase the other penalty policy matrix cells proportionally by the same inflation adjustment multiplier.

<u>Appendix I – Penalty Policy for Violation of Permit Requirements</u>	1987	2.06278
<u>Appendix II - Vinyl Chloride Civil Penalty Policy</u>	1985	2.18802
<u>Appendix III - Asbestos Demolition and Renovation Civil Penalty Policy</u>	1992	1.67728
<u>Appendix IV - Clean Air Act Penalty Policy as Applied to Stationary Sources of Volatile Organic Compounds (VOC) Where Reformulation of Low Solvent Technology is the Applicable Method of Compliance</u>	1987	1.73099 <sup>12</sup>
<u>Appendix VI - Leak Detection and Repair Penalty Policy</u>	2012	1.02819
<u>Appendix VII – Penalty Policy for New Residential Wood Heaters</u>	1989	1.89361
<u>Appendix VIII - Clean Air Act Civil Penalty Policy Applicable to Persons Who Manufacture or Import Controlled Substances in Amounts Exceeding Allowances Properly Held Under 40 C.F.R. Part 82: Protection of Stratospheric Ozone</u>	1990	1.78156
<u>Appendix IX - Clean Air Act Civil Penalty Policy Applicable to Persons Who Perform Service for Consideration on a Motor Vehicle Air Conditioner Involving the Refrigerant or Who Sell Small Containers of Refrigerant in Violation of 40 C.F.R. Part 82, Protection of the Stratospheric Ozone, Subpart B: Servicing of Motor Vehicle Air Conditioners</u>	1993	1.63238
<u>Appendix X - Clean Air Act Civil Penalty Policy for Violations of 40 C.F.R. Part 82, Subpart F: Maintenance, Service, Repair, and Disposal of Appliances Containing Refrigerant</u>	1994	1.59089
<u>Appendix XI - National Petroleum Refinery Initiative Implementation: Application of Clean Air Action Stationary Source Penalty Policy for Violations of Benzene Waste Operations NESHAP Requirements</u>	2007	1.13833

<sup>12</sup> For violations governed by Appendix IV, EPA is using the same multiplier that applies to the 1991 “*Clean Air Act Stationary Source Civil Penalty Policy*” because the gravity-based component of such violations is calculated using the 1991 policy.

<u>EPA Region 10's Civil Penalty Guidelines for the Federal Implementation Plans under the Clean Air Act for Indian Reservations in Idaho, Oregon, and Washington. 40 C.F.R. Part 49</u>	2008	1.09819
<b>CAA – Mobile Source</b>		
<u>Clean Air Act Mobile Source Civil Penalty Policy - Vehicle and Engine Certification Requirements</u>	2009	1.10020
<u>Clean Air Act Mobile Source Fuels Civil Penalty Policy Title II of the Clean Air Act --40 C.F.R. Part 80 Fuels Standards Requirements</u>	2016	1.00000
<u>North American and U.S. Caribbean Sea Emissions Control Areas Penalty Policy for Violations by Ships of the Sulfur in Fuel Standard and Related Provisions</u>	2015	1.00000
<u>Civil Penalty Policy for Administrative Hearings</u>	1993	1.63238
<b>RCRA</b>		
<u>RCRA Civil Penalty Policy</u>	2003	1.48287 <sup>13</sup>
<u>Guidance on the Use of Section 7003 of RCRA</u>	1997	2.54964 <sup>14</sup>

<sup>13</sup> EPA last modified the RCRA civil penalty policy amounts in a memorandum dated April 6, 2010, but did not revise the 2003 RCRA civil penalty policy. The 2003 RCRA civil penalty policy contains the applicable narrative text that practitioners should continue to use (enforcement practitioners should no longer use the April 2010 memorandum in calculating penalties). But, applying the 2003 CPI inflation multiplier of 1.28561 to the \$27,500 maximum penalty amount in the 2003 policy would have yielded a penalty policy maximum amount of \$35,354, which is *lower* than the current penalty policy maximum amount of \$37,500. EPA believes it would be inappropriate to reduce RCRA penalty policy amounts, particularly given that the 2016 Rule increases RCRA statutory maximum amounts from \$37,500 to \$93,750 pursuant to the 2015 Act's inflation adjustment methodology. To avoid a reduction in the RCRA penalty policy amounts, we used the 2010 RCRA penalty policy amounts as a baseline and determined that using the 2010 CPI multiplier of 1.08745 would yield a maximum penalty policy amount of \$40,779. For purposes of this policy, this is an appropriate upward inflation adjustment from the \$37,500 amount because it reflects inflation since 2010 as measured by the CPI. In order to arrive at that penalty amount using the 2003 RCRA policy, we increased the RCRA penalty policy multiplier to 1.48287.

<sup>14</sup> For RCRA section 7003(b) penalties, EPA is applying this multiplier in order to ensure appropriate inflation-adjusted deterrence amounts for such serious violations, *i.e.*, the penalty policy maximum equals the statutory maximum of \$14,023.

<u>Guidance for Federal Field Citation Enforcement</u>	1993	1.63238
<u>U.S. EPA Penalty Guidance for Violations of UST Regulations</u>	1990	1.78156
<b>CERCLA</b>		
<u>Interim Policy on Settlement of CERCLA Section 106(b)(1) Penalty Claims and Section 107(c)(3) Punitive Damages Claims for Noncompliance with Administrative Orders</u>	1997	1.96025 <sup>15</sup>
<b>CERCLA &amp; EPCRA</b>		
<u>Enforcement Response Policy for Sections 304, 311 and 312 of the Emergency Planning and Community Right-to-Know Act and Section 103 of the Comprehensive Environmental Response, Compensation and Liability Act</u>	1999	1.41402
<b>EPCRA</b>		
<u>Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986) and Section 6607 of the Pollution Prevention Act (1990)</u>	2001	1.63116 <sup>16</sup>
<b>FIFRA</b>		
<u>FIFRA Enforcement Response Policy (FIFRA ERP)</u>	2009	1.10020 <sup>17</sup>

<sup>15</sup> For CERCLA section 106(b)(1) penalties. EPA is applying this multiplier in order to ensure appropriate inflation-adjusted deterrence amounts for such serious violations. *i.e.*, the penalty policy maximum equals the statutory maximum of \$53,907.

<sup>16</sup> EPA last adjusted the EPCRA § 313 penalty matrices in a memorandum dated April 6, 2010, but did not revise the 2001 EPCRA § 313 Enforcement Response Policy (ERP). The 2001 EPCRA § 313 ERP contains the applicable narrative text that practitioners should continue to use (enforcement practitioners should no longer use the April 2010 memorandum in calculating penalties). But, applying the 2001 CPI inflation multiplier of 1.33842 to the \$25,000 maximum penalty amount in the 2001 EPCRA § 313 ERP would have yielded a penalty policy maximum amount of \$33,461, which is *lower* than the current penalty policy maximum amount of \$37,500. EPA believes it would be inappropriate to reduce EPCRA § 313 penalty policy amounts, particularly given that the 2016 Rule increases EPCRA § 313 statutory maximum penalties from \$37,500 to \$53,907 pursuant to the 2015 Act's inflation adjustment methodology. To avoid a reduction in the EPCRA § 313 penalty policy amounts, we used the 2010 EPCRA § 313 penalty policy amounts as a baseline and determined that using the 2010 CPI multiplier of 1.08745 would yield a maximum penalty policy amount of \$40,779. For purposes of this policy, this is an appropriate upward inflation adjustment from the \$37,500 amount because it reflects inflation since 2010 as measured by the CPI. In order to arrive at that penalty amount using the 2001 EPCRA § 313 ERP, we increased the EPCRA § 313 ERP multiplier to 1.63116.

Note also that, the 2001 EPCRA § 313 ERP contains not only the original 2001 penalty matrix with a maximum penalty amount of \$27,500, but also a penalty matrix added in 2004 that has an inflation-adjusted maximum of \$32,500, and a penalty matrix added in 2009 with an inflation-adjusted maximum of \$37,500. The multiplier in Table A applies only to the original 2001 penalty matrix. The other matrices should no longer be used.

<sup>17</sup> EPA issued Appendices E, F, G, and H to the FIFRA ERP during different years, but penalties for violations governed by any

<u>Appendix E to FIFRA ERP - Enforcement Response Policy for FIFRA Section 7(c): Establishment Reporting Requirements</u>	2010	Use the 2009 FIFRA ERP and multiplier
<u>Appendix F to FIFRA ERP - Interim Final Penalty Policy for the Worker Protection Standard</u>	1997	Use the 2009 FIFRA ERP and multiplier
<u>Appendix G to FIFRA ERP - Enforcement Response Policy for the Federal Insecticide, Fungicide and Rodenticide Act Good Laboratory Practice (GLP) Regulations</u>	1991	Use the 2009 FIFRA ERP and multiplier
<u>Appendix H to the FIFRA ERP - Enforcement Response Policy for the FIFRA Pesticide Container/Containment Regulations</u>	2012	Use the 2009 FIFRA ERP and multiplier
<b>TSCA</b>		
<u>Guidelines for Assessment of Civil Penalties Under Section 16 of the Toxic Substance Control Act</u>	1980	1.50000 <sup>18</sup>
<u>Enforcement Response Policy for Reporting and Recordkeeping Rules and Requirements for TSCA Sections 8, 12, and 13</u>	1999	1.50000 <sup>19</sup>
<u>Amendment to the TSCA Section 5 Enforcement Response Policy – Penalty Limit for Untimely NOC Submissions</u>	1993	1.50000
<u>Enforcement Response Policy for TSCA §4 Test Rules</u>	1986	1.50000
<u>Final TSCA GLP Enforcement Response Policy</u>	1985	1.50000

of those Appendices are assessed using the 2009 FIFRA ERP and, therefore, all should use the 2009 FIFRA ERP multiplier of 1.10020.

<sup>18</sup> We harmonized seven TSCA penalty policy multipliers because all such policies implement the TSCA § 16 penalty authority and the statutory penalty maximum amount for all penalties sought pursuant to TSCA § 16 was amended to be \$37,500 on June 22, 2016. P.L. No: 114-182. Since \$37,500 is 150% of the \$25,000 maximum penalty in the 1980 TSCA § 16 penalty assessment guidance, the harmonized multiplier is 1.50000.

<sup>19</sup> The “Penalty Matrix For Violations Occurring After January 30, 1997” on page 8 of this policy should be ignored. For all violations governed by this policy, the multiplier should be applied to the penalty amounts in the “Penalty Matrix For Violations Occurring On or Before January 30, 1997” found on the same page.

<b>TSCA – Asbestos</b>		
<u>Enforcement Response Policy for the Asbestos Model Accreditation Plan (MAP) – Addendum to the AHERA ERP</u>	1998	1.45023
<u>Interim Final Enforcement Response Policy for the Asbestos Hazard Emergency Response Act</u>	1989	1.89361
<u>Enforcement Response Policy for Asbestos Abatement Projects: Worker Protection Rule</u>	1989	1.50000
<b>TSCA – Lead-Based Paint</b>		
<u>Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education (PRE) Rule; Renovation, Repair and Painting (RRP) Rule; and Lead-Based Paint Activities (LBPA) Rule</u>	2010	1.00000 <sup>20</sup>
<u>Section 1018 – Disclosure Rule Enforcement Response and Penalty Policy</u>	2007	1.52482 <sup>21</sup>
<b>TSCA – PCBs</b>		
<u>Polychlorinated Biphenyls (PCB) Penalty Policy</u>	1990	1.50000

<sup>20</sup> This 1.00000 multiplier applies only to the RRP and LBPA penalty amounts in this policy, and is adopted because the existing penalty matrices in this recently-issued policy are appropriately proportional and already provide sufficient deterrence.

<sup>21</sup> The 2010 “*Consolidated Enforcement Response and Penalty Policy for the Pre-Renovation Education Rule; Renovation, Repair and Painting Rule; and Lead-Based Paint Activities Rule*” and the 2007 “*Section 1018 – Disclosure Response and Penalty Policy*” both penalize violators who fail to provide certain information related to the presence or risk of lead-based paint. Instead of having differing penalty amounts for essentially the same type of deficiency, we have adopted the penalty matrix from the 2007 Section 1018 Disclosure Rule penalty policy in the Pre-Renovation Education Rule component of the 2010 Consolidated Lead-Based Paint penalty. Applying the 2007 CPI inflation multiplier of 1.13833 to the \$11,000 maximum penalty amount in the 2007 policy would have yielded a penalty policy maximum amount of \$12,522, which is *lower* than the current Section 1018 penalty policy maximum amount of \$16,000. EPA believes it would be inappropriate to reduce lead-based paint penalty policy amounts. To avoid a reduction in the lead-based paint penalty policy amounts and arrive at consistent penalty amounts in the two policies, we increased the penalty multiplier for the 2007 penalty policy to 1.52482 (which yields a maximum penalty policy amount equal to the \$16,773 statutory maximum).

**FURTHER INFORMATION CONTACT** section above.

#### E. *Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. *Environment*

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting less than 2 hours that will prohibit entry 300 feet from the left descending bank into the Ohio River from mile 42.5 to mile 43.0. It is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### G. *Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### List of Subjects in 33 CFR Part 165

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1

■ 2. Add § 165.T08–0335 to read as follows:

#### § 165.T08–0335 Safety Zone; Ohio River Mile 42.5 to Mile 43.0, Chester, WV.

(a) *Location.* The following area is a safety zone: All waters extending 300 feet from the left descending bank into the Ohio River from mile 42.5 to mile 43.0.

(b) *Definitions.* As used in this section designated representative means a Coast Guard Patrol Commander, including a Coast Guard coxswain, petty officer, or other officer operating a Coast Guard vessel and a Federal, State, and local officer designated by or assisting the Captain of the Port Pittsburgh (COTP) in the enforcement of the safety zone.

(c) *Regulations.* (1) Under the general safety zone regulations in § 165.23, you may not enter the safety zone described in paragraph (a) of this section unless authorized by the COTP or the COTP's designated representative.

(2) To seek permission to enter, contact the COTP or the COTP's representative at 412–221–0807. Those in the safety zone must comply with all lawful orders or directions given to them by the COTP or the COTP's designated representative.

(d) *Enforcement period.* This section will be enforced from 9:30 p.m. to 11:00 p.m. on July 4, 2016.

(e) *Informational broadcasts.* The COTP or a designated representative will inform the public through broadcast notices to mariners of the enforcement period for the safety zone as well as any changes in the dates and times of enforcement.

L. McClain, Jr.

Commander, U.S. Coast Guard, Captain of the Port Pittsburgh.

(FR Doc. 2016–15680 Filed 6–30–16; 8:45 am)

**BILLING CODE 9110–04–P**

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 19

[FRL–9948–48–OECA]

RIN 2020–AA51

#### Civil Monetary Penalty Inflation Adjustment Rule

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Interim final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is promulgating this interim final rule to adjust the level of statutory civil monetary penalty amounts for the statutes that the agency administers. This action is mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through 2015 (“the 2015 Act”), which prescribes a formula for adjusting statutory civil penalties to reflect inflation, maintain the deterrent effect of statutory civil penalties, and promote compliance with the law. The rule does not necessarily revise the penalty amounts that EPA chooses to seek pursuant to its civil penalty policies in a particular case. EPA’s civil penalty policies, which guide enforcement personnel in how to exercise EPA’s statutory penalty authorities, take into account a number of fact-specific considerations, e.g., the seriousness of the violation, the violator’s good faith efforts to comply, any economic benefit gained by the violator as a result of its noncompliance, and a violator’s ability to pay.

**DATES:** This interim final rule is effective on August 1, 2016.

**FOR FURTHER INFORMATION CONTACT:** Susan O’Keefe, Office of Civil Enforcement, Office of Enforcement and Compliance Assurance, Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460, telephone number: (202) 564–4021; [skeefe.susan@epa.gov](mailto:skeefe.susan@epa.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Since 1990, Federal agencies have been required to issue regulations adjusting for inflation the statutory civil penalties<sup>1</sup> that can be imposed under

<sup>1</sup> The Federal Civil Penalties Inflation Adjustment Act of 1990 (Public Law 101–410, 28 U.S.C. 2461 note, d) defines “civil monetary penalty” as “any penalty, fine, or other sanction that—(A) is for a specific monetary amount as provided by Federal law, or (B) has a maximum amount provided for by Federal law; and (B) is assessed or enforced by an agency pursuant to Federal law, and (C) is assessed

(continued)

the laws administered by that agency. The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996 (DCIA), required agencies to review their statutory civil penalties every 4 years, and to adjust the statutory civil penalty amounts for inflation if the increase met the DCIA's adjustment methodology. In accordance with the DCIA, EPA reviewed and, as appropriate, adjusted the civil penalty levels under each of the statutes the agency implements in 1996 (61 FR 69350), 2004 (69 FR 7121), 2008 (73 FR 75340), and 2013 (78 FR 66643). Over time, the DCIA formula caused statutory civil penalties to lose value relative to total inflation.

The 2015 Act requires agencies to: (1) Adjust the level of statutory civil penalties with an initial "catch-up" adjustment through an interim final rulemaking; and (2) beginning January 15, 2017, make subsequent annual adjustments for inflation. This rule implements the statutorily mandated initial catch-up adjustments. The purpose of the 2015 Act<sup>2</sup> is to provide a mechanism to address these issues by translating originally enacted statutory civil penalty amounts to today's dollars and rounding statutory civil penalties to the nearest dollar. Once Federal agencies issue the 2016 one-time catch-up rule, each statutory civil penalty amount will be adjusted every year to reflect the inflation that has thereafter accrued.

Pursuant to section 5(b)(2)(A) of the 2015 Act, this initial catch-up "cost-of-living adjustment" is, for each statutory civil penalty, the percentage by which the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October 2015 exceeds the CPI-U for the month of October of the year during which the amount of that civil penalty was established (i.e., originally enacted) or last adjusted by statute or regulation (other than pursuant to the Federal Civil Penalties Inflation Adjustment Act). However, section 5(b)(2)(C) of the 2015 Act provides that the maximum amount of any initial catch-up increase shall not exceed 150 percent of the level that was in effect on November 2, 2015. Table 2

to 40 CFR 19.4 presents the results of these calculations and adjustments, identifying: (1) The maximum or minimum<sup>3</sup> penalty level established when each statutory section was originally enacted or last adjusted by Congress;<sup>4</sup> and (2) the statutory maximum or minimum civil penalty level, adjusted for inflation under the 2015 Act, that applies to statutory civil penalties assessed on or after August 1, 2016 for violations that occurred after November 2, 2015, the date the 2015 Act was enacted.

The formula<sup>5</sup> for determining the cost-of-living or inflation adjustment to statutory civil penalties consists of the following five-step process:

**Step 1:** Identify the latest year that the penalty level or range was established (i.e., originally enacted) or last adjusted by statute or regulation (other than pursuant to the Federal Civil Penalties Inflation Adjustment Act).

**Step 2:** Calculate the cost-of-living adjustment, which is the percentage for that statutory civil penalty by which the CPI-U for the month of October 2015 exceeds the CPI-U for the month of October of the year identified in Step 1 (hereafter referred to the "cost-of-living multiplier.")<sup>6</sup>

<sup>2</sup>Under Section 3(2)(A) of the 2015 Act "civil monetary penalty" means "a specific monetary amount as provided by Federal law"; or "has a maximum amount provided for by Federal law." EPA-administered statutes generally refer to statutory maximum civil penalties, with the following exceptions: Section 311(b)(7)(D) of the Clean Water Act, 33 U.S.C. 1321(b)(7)(D), refers to a minimum penalty of "not less than \$100,000"; Section 104(b)(1) of the Marine Protection, Research, and Sanctuaries Act, 33 U.S.C. 1414(b)(1), refers to an exact penalty of \$600 "for each dry ton (or equivalent) of sewage sludge or industrial waste dumped or transported by person in calendar year 1992 . . ."; and Section 325(d)(1) of the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11945(d)(1), refers to an exact civil penalty of \$25,000 for each frivolous trade secret claim.

<sup>3</sup>Section 5(b)(2)(D) provides that the cost-of-living-adjustment "shall be applied to the amount of the civil monetary penalty as it was most recently established or adjusted under a provision of law other than under this Act." Because EPA has not adjusted any of the statutory civil penalty levels identified at 40 CFR 19.4 for inflation outside of the inflation adjustments made pursuant to the DCIA, the initial cost-of-living adjustment is calculated based on the statutory civil penalty amount as originally enacted or last adjusted by Congress.

<sup>4</sup>Office of Management and Budget Memorandum, *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015* (OMB Memorandum M-16-06) at p. 8 Appendix (February 24, 2016).

<sup>5</sup>See OMB Memorandum M-16-06 at p. 6 for a list of the applicable cost-of-living multipliers by year.

**Step 3:** Multiply the statutory civil penalty level derived from Step 1 by the cost-of-living multiplier calculated in Step 2 and round to the nearest dollar.

**Step 4:** To calculate the 150 percent increase limitation, identify the statutory civil penalty amount in effect on November 2, 2015<sup>7</sup> and multiply by 2.5.<sup>8</sup>

**Step 5:** Compare the statutory civil penalty amounts in Step 3 and Step 4, and take the lesser of the two amounts. The lesser amount is the statutory maximum (or minimum) civil penalty that can be assessed on or after August 1, 2016, for violations that occur after November 2, 2015. Under this rule, these amounts are listed in Table 2 of 40 CFR 19.4.

For example, with this rule, the new statutory maximum total penalty that may be assessed in an administrative penalty enforcement action under Clean Air Act (CAA) section 113(d)(1), 42 U.S.C. 7413(d)(1), and CAA section 205(c)(1), 42 U.S.C. 7524(c)(1), is increasing from \$320,000 to \$356,312.<sup>9</sup> Both of those statutory maximum penalty amounts were established or last adjusted by Congress in 1990, meaning that the applicable cost-of-living multiplier is 1.78156. Multiplying the originally enacted statutory penalty level of \$200,000 by the cost-of-living multiplier of 1.78156 yields a statutory civil penalty level of \$356,312 (see Column D). To determine the 150 percent statutory cap, multiply the inflation adjusted statutory civil maximum penalty level of \$320,000, in effect as of November 2, 2015, by 2.5, which equals \$800,000 (see Column F). The new statutory civil penalty level is the lesser of the Columns D and F, resulting in an upward adjustment for inflation of \$36,312 (see Column H) and the new statutory civil penalty level of \$356,312 (see Column G).

<sup>7</sup>78 FR 66643 (November 6, 2013).

<sup>8</sup>To calculate the 150 percent increase limitation, multiply the inflation adjusted statutory civil penalty amounts in effect on November 2, 2015 by 2.5 or 250 percent.

<sup>9</sup>Note that CAA section 113(d)(1) and section 205(c)(1) authorize the imposition of a higher statutory maximum civil penalty in an administrative enforcement action if the EPA Administrator and the Attorney General jointly decide that a higher statutory maximum civil penalty is appropriate in a particular matter.

<sup>10</sup> enforced pursuant to an administrative proceeding or a civil action in the Federal courts."

<sup>2</sup>The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Section 701 of Pub. L. 114-74) was signed into law on Nov. 2, 2015, and further amended the Federal Civil Penalties Inflation Adjustment Act of 1990.

Citation	Year enacted	Original statutory civil penalty level	Multiplier	Original statutory civil penalty level × multiplier	Statutory civil penalty level as of November 2, 2015	Statutory civil penalty level (as of November 2, 2015) × 2.5	New statutory civil penalty level: The lesser of (D) and (F)	Difference in penalty levels between (G) and (E)
	A	B	C	D	E	F	G	H
CLEAN AIR ACT (CAA), 42 U.S.C. 7413(d)(1), 7524(c)(1)	1990	\$200,000	1.78156	\$356,312	\$320,000	\$800,000	\$356,312	\$36,312

The 2015 Act allows agencies to limit the catch-up adjustment to less than the otherwise required amount only under narrowly defined circumstances. To do so, EPA must determine, and the Director of the Office of Management and Budget (OMB) must concur, that “increasing the civil monetary penalty by the otherwise required amount will have a negative economic impact; or the social costs of increasing the civil monetary penalty by the otherwise required amount outweigh the benefits.”<sup>10</sup> In its February 24, 2016 guidance to Federal agencies on the implementation of the 2015 Act, OMB made clear that it expects reductions from the statutorily prescribed catch-up adjustment levels “to be rare.”<sup>11</sup> This rare exception does not apply to the civil penalty provisions covered by this rule.

With this rule, the new statutory maximum (or minimum) penalty levels listed in Table 2 to 40 CFR 19.4 will apply to all statutory civil penalties assessed on or after August 1, 2016, for violations that occurred after November 2, 2015, when the 2015 Act was enacted. The statutory civil penalty levels, as codified at Table 1 to 40 CFR 19.4, will continue to apply to (1) violations that occurred on or before November 2, 2015, and (2) violations that occurred after November 2, 2015, where the penalty assessment was made prior to August 1, 2016.

## II. The 2015 Act Requires Federal Agencies To Issue These Adjustments by Interim Final Rule

Section 4 of the 2015 Act directs Federal agencies to publish the initial catch-up adjustment through an interim final rule no later than July 1, 2016, which must be effective no later than August 1, 2016. Because the 2015 Act prescribes the formula that Federal agencies must follow to calculate the mandated inflation adjustments, the law does not provide Federal agencies any discretion to vary the amount of the statutory civil penalty changes to reflect

any views or suggestions provided by commenters. Accordingly, pursuant to the 2015 Act and 5 U.S.C. 553(b)(3)(B), EPA finds that there is good cause to promulgate this rule without providing for public comment. It would be impracticable and unnecessary to delay publication of this rule pending opportunity for notice and comment because the 2015 Act does not allow agencies to alter the rule based on public comment.

## III. Statutory and Executive Order Reviews

### A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order 12866, OMB determined this interim final rule to be a “non-significant” regulatory action and, therefore, it did not undergo interagency review.<sup>12</sup>

### B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This rule merely increases the level of statutory civil penalties that could be imposed in the context of a Federal civil administrative enforcement action or civil judicial case for violations of EPA-administered statutes and their implementing regulations.

### C. Regulatory Flexibility Act (RFA)

This action is not subject to the RFA. The RFA applies only to rules subject to notice and comment rulemaking requirements under the Administrative Procedure Act (APA), 5 U.S.C. 553, or any other statute. This rule is not subject to notice and comment requirements because the 2015 Act does not allow agencies to alter the rule based on public comment.

### D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does

not significantly or uniquely affect small governments. This action is required by the 2015 Act, without the exercise of any policy discretion by EPA. This action also imposes no enforceable duty on any state, local or tribal governments or the private sector. Because the calculation of any increase is formula-driven pursuant to the 2015 Act, EPA has no policy discretion to vary the amount of the adjustment.

### E. Executive Order 13132: Federalism

This action does not have federalism implications. It will not have a substantial direct effect on the states, or on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

### F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175. This rule merely reconciles the real value of current statutory civil penalty levels to reflect and keep pace with the levels originally set by Congress when the statutes were enacted. The calculation of the increases is formula-driven and prescribed by statute, and EPA has no discretion to vary the amount of the adjustment to reflect any views or suggestions provided by commenters. Accordingly, this rule will not have a substantial direct effect on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes.

### G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern environmental health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory

<sup>10</sup> Section 4(c)(1) of the 2015 Act.

<sup>11</sup> See OMB Memorandum M–16–06 at p.4.

<sup>12</sup> See OMB Memorandum M–16–06 at pp. 3–4.

action” in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

**H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use**

This action is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

**I. National Technology Transfer and Advancement Act**

The rule does not involve technical standards.

**J. Executive Order 12898, Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations**

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

The primary purpose of this rule is to reconcile the real value of current statutory civil penalty levels to reflect and keep pace with the levels originally set by Congress when the statutes were enacted. Because calculation of the increases is formula-driven, EPA has no discretion in updating the rule to reflect the allowable statutory civil penalties derived from applying the formula. Since there is no discretion under the 2015 Act in determining the statutory civil penalty level, EPA cannot vary the amount of the statutory civil penalty

adjustment to address other issues, including environmental justice issues.

**K. Congressional Review Act (CRA)**

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. The CRA allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency finds that notice and comment rulemaking procedures are impracticable, unnecessary or contrary to the public interest (5 U.S.C. 808(2)). This rule is not subject to notice and comment requirements because the 2015 Act does not allow agencies to alter the rule based on public comment.

**List of Subjects in 40 CFR Part 19**

Environmental protection, Administrative practice and procedure, Penalties.

Dated: June 23, 2016.  
Gina McCarthy,  
Administrator

For the reasons set out in the preamble, title 40, chapter I, part 19 of the Code of Federal Regulations is amended as follows:

**PART 19—ADJUSTMENT OF CIVIL MONETARY PENALTIES FOR INFLATION**

- 1. The authority citation for part 19 is revised to read as follows:

**Authority:** Pub. L. 101–410, Oct. 5, 1990, 104 Stat. 890, as amended by Pub. L. 104–134, title III, sec. 31001(s)(1), Apr. 26, 1996, 110 Stat. 1321–373; Pub. L. 105–362, title XII, sec. 1301(a) Nov. 10, 1998, 112 Stat. 3293; Pub. L. 114–74, title VII, sec. 701(b), Nov. 2, 2015, 129 Stat. 590.

- 2. Revise § 19.2 to read as follows:

**§ 19.2 Effective date.**

The penalty levels in the last column of Table 1 to § 19.4 apply to all

violations which occurred after December 6, 2013 through November 2, 2015, and to violations occurring after November 2, 2015, where penalties are assessed before August 1, 2016. The statutory civil penalty levels set forth in the last column of Table 2 to § 19.4 apply to all violations which occur after November 2, 2015, where the penalties are assessed on or after August 1, 2016

- 3. Amend § 19.4 by:
  - a. Revising the section heading and the introductory text;
  - b. In Table 1, amending the last column heading by removing the text “Penalties effective after December 6, 2013”; and adding “Statutory civil penalties for violations that occurred after December 6, 2013 through November 2, 2015, or are assessed before August 1, 2016” in its place; and
  - c. Adding a new Table 2.

The revisions and addition read as follows:

**§ 19.4 Statutory civil penalties, as adjusted for inflation, and tables.**

Table 1 to § 19.4 sets out the statutory civil penalty provisions of statutes administered by EPA, with the original statutory civil penalty levels, as enacted, and the operative statutory civil penalty levels, as adjusted for inflation, for violations occurring on or before November 2, 2015, and for violations occurring after November 2, 2015, where penalties are assessed before August 1, 2016. Table 2 sets out the statutory civil penalty provisions of statutes administered by EPA, with the original statutory civil penalty levels, as enacted, with the last column displaying the operative statutory civil penalty levels where penalties are assessed on or after August 1, 2016, for violations that occurred after November 2, 2015.

\* \* \* \* \*

TABLE 2 OF SECTION 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code citation	Environmental statute	Statutory civil penalties, as enacted	Statutory civil penalties for violations that occurred after November 2, 2015 and assessed on or after August 1, 2016
7 U.S.C. 136f(a)(1)	FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA)	\$5,000	\$18,750
7 U.S.C. 130f(a)(2) <sup>1</sup>	FIFRA	1,000/500/1,000	2,750/1,772/2,750

<sup>1</sup> Note that 7 U.S.C. 130f(a)(2) contains three separate statutory maximum civil penalty provisions. The first mention of \$1,000 and the \$500 statutory maximum civil penalty amount were originally enacted in 1978 (Pub. L. 95–396), and the second mention of \$1,000 was enacted in 1972 (Pub. L. 92–516).

TABLE 2 OF SECTION 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code citation	Environmental statute	Statutory civil penalties, as enacted	Statutory civil penalties for violations that occurred after November 2, 2015 and assessed on or after August 1, 2016
15 U.S.C. 2615(a)(1)	TOXIC SUBSTANCES CONTROL ACT (TSCA)	25,000	37,500
15 U.S.C. 2647(a)	TSCA	5,000	10,781
15 U.S.C. 2647(g)	TSCA	5,000	8,908
31 U.S.C. 3802(a)(1)	PROGRAM FRAUD CIVIL REMEDIES ACT (PFCRA)	5,000	10,781
31 U.S.C. 3802(a)(2)	PFCRA	5,000	10,781
33 U.S.C. 1319(d)	CLEAN WATER ACT (CWA)	25,000	51,570
33 U.S.C. 1319(g)(2)(A)	CWA	10,000/25,000	20,628/51,570
33 U.S.C. 1319(g)(2)(B)	CWA	10,000/125,000	20,628/257,848
33 U.S.C. 1321(b)(6)(B)(i)	CWA	10,000/25,000	17,816/44,539
33 U.S.C. 1321(b)(6)(B)(ii)	CWA	10,000/125,000	17,816/222,695
33 U.S.C. 1321(b)(7)(A)	CWA	25,000/1,000	44,539/1,782
33 U.S.C. 1321(b)(7)(B)	CWA	25,000	44,539
33 U.S.C. 1321(b)(7)(C)	CWA	25,000	44,539
33 U.S.C. 1321(b)(7)(D)	CWA	100,000/3,000	178,156/5,345
33 U.S.C. 1414b(d)(1)	MARINE PROTECTION, RESEARCH, AND SANCTUARIES ACT (MPRSA)	600	1,187
33 U.S.C. 1415(a)	MPRSA	50,000/125,000	187,500/247,336
33 U.S.C. 1901 note (see 1409(a)(2)(A))	CERTAIN ALASKAN CRUISE SHIP OPERATIONS (CACSO)	10,000/25,000	13,669/34,172
33 U.S.C. 1901 note (see 1409(a)(2)(B))	CACSO	10,000/125,000	13,669/170,861
33 U.S.C. 1901 note (see 1409(b)(1))	CACSO	25,000	34,172
33 U.S.C. 1908(b)(1)	ACT TO PREVENT POLLUTION FROM SHIPS (APPS)	25,000	70,117
33 U.S.C. 1908(b)(2)	APPS	5,000	14,023
42 U.S.C. 300g-3(b)	SAFE DRINKING WATER ACT (SDWA)	25,000	53,907
42 U.S.C. 300g-3(g)(3)(A)	SDWA	25,000	53,907
42 U.S.C. 300g-3(g)(3)(B)	SDWA	5,000/25,000	10,781/37,561
42 U.S.C. 300g-3(g)(3)(C)	SDWA	25,000	37,561
42 U.S.C. 300h-2(b)(1)	SDWA	25,000	53,907
42 U.S.C. 300h-2(c)(1)	SDWA	10,000/125,000	21,563/269,535
42 U.S.C. 300h-2(c)(2)	SDWA	5,000/125,000	10,781/269,535
42 U.S.C. 300h-3(c)	SDWA	5,000/10,000	18,750/40,000
42 U.S.C. 300i(b)	SDWA	15,000	22,537
42 U.S.C. 300i-1(c)	SDWA	100,000/1,000,000	131,185/1,311,850
42 U.S.C. 300j(e)(2)	SDWA	2,500	9,375
42 U.S.C. 300j-4(c)	SDWA	25,000	53,907
42 U.S.C. 300j-6(b)(2)	SDWA	25,000	37,561
42 U.S.C. 300j-23(d)	SDWA	5,000/50,000	9,893/98,935
42 U.S.C. 4852d(b)(5)	RESIDENTIAL LEAD-BASED PAINT HAZARD REDUCTION ACT OF 1992	10,000	16,773
42 U.S.C. 4910(a)(2)	NOISE CONTROL ACT OF 1972	10,000	35,445
42 U.S.C. 6928(a)(3)	RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)	25,000	93,750
42 U.S.C. 6928(c)	RCRA	25,000	56,467
42 U.S.C. 6928(g)	RCRA	25,000	70,117
42 U.S.C. 6928(h)(2)	RCRA	25,000	56,467
42 U.S.C. 6934(a)	RCRA	5,000	14,023
42 U.S.C. 6973(b)	RCRA	5,000	14,023
42 U.S.C. 6991e(a)(3)	RCRA	25,000	56,467
42 U.S.C. 6991e(d)(1)	RCRA	10,000	22,587
42 U.S.C. 6991e(d)(2)	RCRA	10,000	22,587
42 U.S.C. 7413(b)	CLEAN AIR ACT (CAA)	25,000	93,750
42 U.S.C. 7413(d)(1)	CAA	25,000/200,000	44,539/356,312
42 U.S.C. 7413(d)(3)	CAA	5,000	8,908
42 U.S.C. 7524(a)	CAA	25,000/2,500	44,539/4,454
42 U.S.C. 7524(c)(1)	CAA	200,000	356,312
42 U.S.C. 7545(d)(1)	CAA	25,000	44,539
42 U.S.C. 9604(e)(5)(B)	COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA)	25,000	53,907
42 U.S.C. 9606(b)(1)	CERCLA	25,000	53,907
42 U.S.C. 9609(a)(1)	CERCLA	25,000	53,907
42 U.S.C. 9609(b)	CERCLA	25,000/75,000	53,907/161,721
42 U.S.C. 9609(c)	CERCLA	25,000/75,000	53,907/161,721
42 U.S.C. 11045(a)	EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA)	25,000	53,907

TABLE 2 OF SECTION 19.4—CIVIL MONETARY PENALTY INFLATION ADJUSTMENTS

U.S. Code citation	Environmental statute	Statutory civil penalties, as enacted	Statutory civil penalties for violations that occurred after November 2, 2015 and assessed on or after August 1, 2016
42 U.S.C. 11045(b)(1)(A)	EPCRA	25,000	53,907
42 U.S.C. 11045(b)(2)	EPCRA	25,000/75,000	53,907/161,721
42 U.S.C. 11045(b)(3)	EPCRA	25,000/75,000	53,907/161,721
42 U.S.C. 11045(c)(1)	EPCRA	25,000	53,907
42 U.S.C. 11045(c)(2)	EPCRA	10,000	21,563
42 U.S.C. 11045(d)(1)	EPCRA	25,000	53,907
42 U.S.C. 14304(a)(1)	MERCURY—CONTAINING AND RECHARGEABLE BATTERY MANAGEMENT ACT (BATTERY ACT).	10,000	15,025
42 U.S.C. 14304(g)	BATTERY ACT	10,000	15,025

[FR Doc. 2016-15411 Filed 6-30-16; 8:45 am]  
BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[Docket No. EPA-R02-OAR-2016-0059; FRL-9948-57-Region 2]

### Approval of Air Quality Implementation Plans; New Jersey, Carbon Monoxide Maintenance Plan

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the New Jersey Department of Environmental Protection. This revision establishes an updated ten-year carbon monoxide (CO) limited maintenance plan for the New Jersey portion of the New York-Northern New Jersey-Long Island (NYNNJLI) CO area which includes the following areas: Hudson, Essex, Bergen, and Union Counties, and the municipalities of Clifton, Passaic and Paterson in Passaic County. New Jersey qualifies for a limited maintenance plan, rather than a full maintenance plan, because monitoring concentrations of CO are less than 85% of the standard. In a limited maintenance plan, future-year projection inventories and transportation conformity budgets are not required. In addition, EPA is also approving the 2007 Attainment/Base Year CO emissions inventory and the shutdown of 5 CO maintenance monitors in New Jersey.

The New Jersey portion of the NYNNJLI CO area was redesignated to attainment of the CO National Ambient Air Quality Standard (NAAQS) on

August 23, 2002 and a maintenance plan was also approved at that time. By this action, EPA is approving a second limited maintenance plan for this area because it provides for continued attainment of the CO NAAQS for an additional ten years. The intended effect of this rulemaking is to approve a SIP revision that will insure continued maintenance of the CO NAAQS.

**DATES:** This final rule is effective on August 1, 2016.

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R02-OAR-2016-0059. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through <http://www.regulations.gov>.

**FOR FURTHER INFORMATION CONTACT:** Henry Feingersh, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007-1866, telephone number (212) 637-3382, or by email at [feingersh.henry@epa.gov](mailto:feingersh.henry@epa.gov).

**SUPPLEMENTARY INFORMATION:** The supplementary Information section is arranged as follows:

#### Table of Contents

- I. What Action is EPA Taking?
- II. What Comments did EPA Receive on its Proposal and What are EPA's Responses?
- III. What is the Adequacy Status of the CO Limited Maintenance Plan for the New Jersey Portion of the New York-Northern New Jersey-Long Island Area?
- IV. What is EPA's Final Action?
- V. Statutory and Executive Order Reviews

#### I. What action is EPA taking?

EPA is approving New Jersey's SIP revision updating their existing ten-year carbon monoxide (CO) maintenance plan for the New Jersey portion of the New York-Northern New Jersey-Long Island (NYNNJLI) CO area, which includes the following areas: Hudson, Essex, Bergen, and Union Counties, and the municipalities of Clifton, Passaic and Paterson in Passaic County, with another ten-year plan. The reader is referred to the March 25, 2016 (81 FR 16102) proposal for details on this rulemaking.

#### II. What comments did EPA receive on its proposal and what are EPA's responses?

EPA did not receive any comments on our proposed approval of the updated CO limited maintenance plan. EPA is approving the New Jersey SIP revision request.

#### III. What is the adequacy status of the CO limited maintenance plan for the New Jersey portion of the New York-Northern New Jersey-Long Island area?

Section 118(e) of the transportation conformity rule (40 CFR part 93) states that a conformity determination cannot be made using submitted motor vehicle emission budgets ("budgets") until EPA makes a positive determination that the submitted budgets are adequate. In accordance with our rule, the limited maintenance plan for the New Jersey portion of the New York-Northern New Jersey-Long Island (NYNNJLI) CO area was posted for adequacy review on July 27, 2015 on EPA's conformity Web site: <http://www.epa.gov/otaq/stateresources/transconf/adequacy.htm>.

As a general rule, however, limited maintenance plans, such as the maintenance plan for the NYNNJLI CO area, do not include budgets. Instead, for those areas that qualify under our



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

JUN 29 2015

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

**MEMORANDUM**

**SUBJECT:** Guidance on Evaluating a Violator's Ability to Pay a Civil Penalty in an Administrative Enforcement Action

**FROM:** Susan Shinkman, Director  
Office of Civil Enforcement (OCE)

Cynthia L. Mackey, Director  
Office of Site Remediation Enforcement (OSRE)

**TO:** Regional Counsel  
Regional Enforcement Division Directors  
Regional Enforcement Coordinators  
OECA Office and Division Directors

Since the early days of the U.S. Environmental Protection Agency's (the EPA or the Agency) enforcement program, it has been fundamental that the Agency's enforcement actions deter violators and the regulated community from failing to comply with environmental requirements. To achieve this deterrence, EPA's enforcement actions should, at a minimum, recover any economic benefit gained by the violator as a result of its noncompliance and a gravity-based penalty to account for the seriousness and duration of the violation.<sup>1</sup> While the Agency seeks to obtain civil penalties that provide for both specific and general deterrence, the EPA may reduce the civil penalty sought if the violator produces information demonstrating its inability to pay the proposed penalty.

**I. Purpose and Scope**

This guidance supplements existing guidance issued by the Office of Enforcement and Compliance Assurance (OECA) on how to assess a violator's claim that it lacks the ability to pay all or part of a civil penalty to be assessed as part of an enforcement action. Specifically, this guidance builds upon and does not supersede the 1986 guidance on *Determining a Violator's*

<sup>1</sup> See *Policy on Civil Penalties*, EPA General Enforcement Policy GM-21 (Feb. 16, 1984)(GM-21); *A Framework for Statute-Specific Approaches to Penalty Assessments*, EPA General Enforcement Policy GM-22 (Feb. 16, 1984) (GM-22).

*Ability to Pay a Civil Penalty*, Thomas L. Adams, Jr. (Dec. 16, 1986), or the *General Policy on Superfund Ability to Pay Determinations*, Barry Breen (Sept. 30, 1997)(1997 Superfund Policy).<sup>2</sup>

This 2015 guidance describes the steps case teams should follow in evaluating ability-to-pay (ATP) claims, and provides an overview of the Agency’s tools to assist practitioners in ATP evaluations. It also provides guidance on the type of documentation to consider when determining whether the EPA may accept extended payment plans for administrative penalties. Moreover, the guidance describes, where appropriate, how to structure extended payments.

This guidance applies to EPA administrative enforcement matters involving ATP claims raised by individuals, for-profit entities (including sole proprietorships, corporations, partnerships, limited liability companies (LLCs), and for-profit utilities), governmental entities, federally recognized Indian tribal entities, and not-for-profit entities. This guidance does not apply to federal agencies.<sup>3</sup>

The tools and approaches discussed here may also be useful for civil judicial cases referred by the EPA to the U.S. Department of Justice (DOJ). After a case has been referred, the EPA and the DOJ will work together to determine whether additional information should be collected. The DOJ may rely on EPA’s financial analyst,<sup>4</sup> either internal or retained by the Agency, or the DOJ may engage its own analyst.

## **II. Burden of Proof**

### **A. Where ATP is a Statutory Factor for the EPA to Consider in Determining the Appropriate Penalty**

Pursuant to 40 C.F.R. § 22.24, the EPA, as the complainant, “has the burden of going forward with and of proving that the violation occurred as set forth in the complaint and that the proposed penalty . . . is appropriate.” As to the appropriateness of a proposed penalty, the burden is on the EPA to prove that it has taken into account the applicable statutory penalty factors. Under many of the environmental statutes administered by the EPA, a violator’s ability to pay is one of the factors to be considered in determining the appropriateness of a civil penalty.<sup>5</sup>

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<sup>2</sup> This 2015 guidance is intended to apply to administrative civil penalties assessed under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) as well as all other EPA civil penalty authorities. In addition, the [1997 Superfund Policy](#), which is directly applicable to ability-to-pay determinations in the context of Superfund cost recovery enforcement actions, may also provide a helpful framework for case teams to evaluate ability-to-pay claims concerning civil penalties, in both Superfund and non-Superfund cases.

<sup>3</sup> Because the United States is covered by the Full Faith and Credit Clause of the United States Constitution, federal agencies are excluded from ATP considerations when calculating civil penalties.

<sup>4</sup> If the EPA case team needs more support to conduct financial analysis, please refer to the list of financial analysts and OCE contracting officer representatives on the “Ability to Pay” document library located on EPA Region 5, Office of Regional Counsel’s SharePoint site.

<sup>5</sup> See, e.g., Clean Water Act (CWA), § 309(g)(3), 33 U.S.C. § 1319(g)(3); CERCLA, § 109(a)(3), 42 U.S.C. § 9609(a)(3); Emergency Planning and Community Right-to-Know Act (EPCRA), § 325(b)(1)(C), 42 U.S.C. § 11045(b)(1)(C); Act to Prevent Pollution from Ships (APPS), § 9(b), 33 U.S.C. § 1908(b); and the Toxic Substances Control Act (TSCA), §§ 16(a)(2)(B), 207(c)(1)(C), 15 U.S.C. §§ 2615(a)(2)(B), 2647(c)(1)(C). Other statutes direct the EPA to “take into consideration” *inter alia* “the economic impact” or “effect” of the penalty on “the violator.” See, e.g., Clean Air Act (CAA), §§ 113(e)(1), 205(c)(2), 42 U.S.C. §§ 7413(e)(1), 7524(c)(2);

Since the Environmental Appeals Board's (EAB or Board) decision in *In re New Waterbury, Ltd.*, it has been a well-settled principle that the EPA needs only to prove that it has considered each of the statutory factors and that its proposed penalty is supported by EPA's analysis of those factors.<sup>6</sup> As concluded by the EAB in *New Waterbury*, "this does not mean that there is any specific burden of proof with respect to any individual factor; rather the burden of proof goes to the Region's consideration of all of the factors."<sup>7</sup>

To meet this burden,<sup>8</sup> the EPA must come forward with evidence to show that it considered the factors and that the penalty is appropriate. This does not require the EPA to establish that "the respondent can, in fact, pay a penalty, but whether a penalty is *appropriate*."<sup>9</sup> In *New Waterbury*, the EAB rejected the respondent's claim that, at a penalty hearing, the EPA must, as part of its prima facie case, "introduce *specific* evidence to show that a respondent has the ability to pay a penalty."<sup>10</sup> Rather, the EPA needs only to "produce some evidence regarding the respondent's *general* financial status from which it can be *inferred* that the respondent's ability to pay should not affect the penalty amount."<sup>11</sup>

Typically, it is sufficient to obtain general financial information directly from the respondent or from publicly available records. For example, administrative law judges (ALJs) have held that the EPA has satisfied its burden of production upon submitting information such as a Dun & Bradstreet report, respondent's credit risk score, and/or documentation of multiple attempts to contact the respondent.<sup>12</sup> Where the EPA has limited information about the respondent's

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CWA, §§ 309(d), 311(b)(8), 33 U.S.C. §§ 1319(d), 1321(b)(8); Certain Alaskan Cruise Ship Operations Act (CACSO), 33 U.S.C. § 1901 note (*see* § 1409(c)); Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), § 14(a)(4), 7 U.S.C. § 136l(a)(4); and the Safe Drinking Water Act (SDWA), § 1423(c)(4)(B)(v), 42 U.S.C. § 300h-2(c)(4)(B)(v). Although the statutes differ somewhat in the terms that are used, the EPA has read these terms to be analogous to "ability to pay." *See, e.g.*, 45 Fed. Reg. 59770, 59771 (Sept. 10, 1980) (The EPA has "combined the concepts involved in these factors into one 'ability to pay' factor."); *see In re Commercial Cartage Co.*, [7 E.A.D. 784](#), 807 (EAB 1998) (concluding that "the 'ability to continue in business' factor from section 205(c)(2) of the Clean Air Act is analogous to the 'ability to pay' factor found in other statutory penalty provisions").

<sup>6</sup> [5 E.A.D. 529](#), 538 (EAB 1994); *see also In re Spitzer Great Lakes, Ltd.*, [9 E.A.D. 302](#), 320 (EAB 2000); *In re JHNY, Inc.*, [12 E.A.D. 372](#), 398 (EAB 2005); and *In re United Global Trading, Inc.*, [No. FIFRA-04-2011-3020 EPA](#) at 20 (ALJ Feb. 28, 2014).

<sup>7</sup> *In re New Waterbury* at 539.

<sup>8</sup> *See id.* at 536, n.16 ("The term 'burden of proof' in this context encompasses two concepts: the burden of production, and the burden of persuasion. 4 Stein, *et al.*, *Administrative Law* 24-2 (1994). The first of these to come into play is the burden of production—that is, the 'duty of going forward with the introduction of evidence.' *Id.* at 24-9. This burden may shift during the course of litigation; if a complainant satisfies its burden of production, the burden then shifts to the respondent to produce, or go forward with the introduction of, rebuttal evidence. *Id.* The burden of persuasion comes into play only 'if the parties have sustained their burdens of producing evidence and only when all of the evidence has been introduced.' 2 *McCormick on Evidence* at 426 (Strong, ed. 1992). This burden refers to what a 'litigating proponent must establish in order to persuade the trier of facts of the validity of his claim.' *Administrative Law* at 24-5. Importantly, this burden does not shift between the parties during the course of litigation. *Id.* at 24-8.")

<sup>9</sup> *Id.* at 539.

<sup>10</sup> *Id.* at 541.

<sup>11</sup> *Id.*

<sup>12</sup> *See In re United Global Trading, Inc.* at 19-21 (whereby the ALJ held that the EPA satisfied the relatively low burden of proof when it provided a Dun & Bradstreet report, a locations sales report from American Business Directory, and an annual sales report from Demographics Now).

financial condition when the complaint is filed, “a respondent’s ability to pay may be *presumed* until it is put at issue by a respondent.”<sup>13</sup>

## **B. The Respondent Has the Burden of Proving Inability to Pay**

If the respondent puts its ability to pay the penalty at issue, the respondent has the burden of proof to show that (1) the EPA failed to consider all of the statutory factors<sup>14</sup> in determining the appropriateness of the penalty, or (2) “through the introduction of additional evidence that despite consideration of all the factors the recommended penalty calculation is not supported and thus is not ‘appropriate’.”<sup>15</sup>

For the respondent to prove its inability to pay the penalty, it must establish that paying the penalty would cause it to suffer an undue financial hardship and prevent it from paying its ordinary and necessary business expenses.<sup>16</sup> If the respondent fails to proffer specific evidence or does offer evidence but cannot demonstrate its inability to pay, it has failed to meet its burden.<sup>17</sup>

It is not sufficient for the respondent to offer only tax returns with no explanation or supporting documentation of how it cannot pay the penalty. In *In re Bil-Dry Corp.*, the EAB found that the respondent failed to meet its burden of proof.<sup>18</sup> The respondent submitted four years of federal tax returns and testimony from its president, but offered only “conclusory comments that a full penalty assessment would put Respondent out of business [and] failed to provide the type of detailed analysis required to establish Respondent’s inability to pay claim.”<sup>19</sup> The Board found persuasive testimony from EPA’s financial expert, stating that the respondent could have submitted evidence “such as examples of austere measures being taken at the business because of hard times, loan extensions obtained, or statements of back taxes owed.”<sup>20</sup>

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<sup>13</sup> *In re New Waterbury* at 541; *see also In re Spitzer Great Lakes* at 321.

<sup>14</sup> Under Section 3008 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. § 6928, the ability of a violator to pay a proposed penalty is *not* a factor that the Agency must consider in assessing a civil penalty. However, because ability to pay is considered to be a mitigating factor in EPA’s [RCRA Civil Penalty Policy](#) (June 2003), enforcement personnel should be generally aware of the financial status of the respondent in the event that its ability to pay the proposed penalty is raised as an issue in settlement or at a hearing. As with any mitigating factor or circumstance, the burden to demonstrate inability to pay rests on the respondent. Therefore, in enforcement cases initiated, *e.g.*, under Sections 3008(a) and (g) of RCRA, 42 U.S.C. § 6928(a) and (g), the respondent has the burden of persuasion on its alleged inability to pay. *See In re Bil-Dry Corp.*, [9 E.A.D. 575](#), 611-12 (EAB 2001). In such cases, however, a respondent’s inability to pay usually will be considered *only if* the issue is raised by the respondent. *Id.*

<sup>15</sup> *In re Waterbury* at 539.

<sup>16</sup> *In re Bil-Dry Corp.* at 614.

<sup>17</sup> *See In re JHNY, Inc.* at 383 (“Even financially challenged entities need to toe the line of compliance, and only those entities demonstrating a genuine inability to pay should be removed from the compliance-inducing influence that civil penalty assessment affords.”)

<sup>18</sup> *In re Bil-Dry Corp.* at 612-13.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* at 613.

### III. Evaluating an Ability to Pay Claim

Once the respondent has raised its ATP claim, the EPA will evaluate whether the respondent has funds that could be applied to a penalty payment while covering its ordinary and necessary business expenses. There are several steps to this process, including: (a) requesting federal tax returns and other pertinent financial information and documentation; (b) selecting the applicable financial computer model and interpreting the results; (c) handling, as appropriate, information claimed by the submitter to be confidential business information; (d) evaluating and resolving the ATP claim; and, in some instances, (e) litigating the claim.

#### A. Documents Needed for ATP Analysis

Obtaining the respondent's pertinent financial documents is the first step in evaluating its financial condition and ability to pay the proposed penalty. Additionally, EPA's financial computer models require certain numerical inputs from these documents. A for-profit respondent will need to proffer the three to five most recent consecutive years of its federal tax returns filed with the Internal Revenue Service (IRS),<sup>21</sup> together with all schedules and attachments. Individuals and municipalities that do not file federal tax returns or have other relevant financial documents to submit to the EPA will need to fill out the applicable EPA financial data request form.<sup>22</sup>

For-profit businesses generally file the following documents:

- Sole proprietorship or one-member LLCs/partnerships file IRS Form 1040 ("U.S. Individual Income Tax Return") and Schedule C;
- S-corporations file IRS Form 1120S ("U.S. Income Tax Return for an S Corporation") and Schedule K-1;
- C-corporations file IRS Form 1120 ("U.S. Corporation Income Tax Return");
- Multi-member LLCs file IRS Form 8832 ("Entity Classification Election") and can elect to be treated as either an S- or C-corporation; and
- Multi-member partnerships file IRS Form 1065 ("U.S. Return of Partnership Income") and Schedule K-1.

Governmental entities<sup>23</sup> do not file tax forms with the IRS, but generally have the following documents:

- Annual financial reports, bond prospectuses, and budgets, which typically are publicly available on the entity's website or from commercial providers.

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<sup>21</sup> The respondent should certify that all responses and information are complete and accurate. The EPA may consider requesting all audit assessments or adjustments along with accompanying notes from the IRS and the respondent's responses to the IRS subsequent to the initial filing for the case team's consideration.

<sup>22</sup> EPA's financial data request forms for individuals and municipalities are available at: <http://www2.epa.gov/enforcement/penalty-and-financial-models>.

<sup>23</sup> Governmental entities include special districts that are a form of local government created by a local community to meet a specific public need and may be supported by taxes and user fees. Examples include airports, cemeteries, community services, drainage/flood control/water conservation, fire protection, healthcare/hospitals, harbors/ports, irrigation, libraries, police protection, recreation and parks, resource conservation, sanitation/sewer, transit, utility, water, and waste management agencies.

Not-for-profit entities generally file the following documents:

- IRS Form 990 if gross receipts are more than \$200,000 or assets greater than \$500,000; and
- Annual financial reports.

The case team generally requests the tax returns and other relevant financial reports through correspondence or via initial pre-filing notices with the respondent. To the extent that the EPA requests financial documentation through informal conversations, it is important to memorialize such requests in writing to respondent so that the case team can introduce such written requests before the ALJ if the respondent fails to provide documents in support of its ATP claim.

### **B. Which EPA Financial Model to Use and When**

The EPA has developed a series of financial computer models<sup>24</sup> – ABEL, INDIPAY, and MUNIPAY – designed to estimate a violator’s ability to pay. ABEL estimates a company’s future cash flow based on past performance, and should be used for S- or C-corporations or multi-member LLC/partnerships. INDIPAY estimates the amount an individual can afford to pay based on excess cash flow and debt capacity, and should be used for individuals, sole proprietorships or one-member LLC/partnerships. MUNIPAY estimates a non-federal governmental entity’s level of affordable expenditures based on its available funds, debt capacity, and demographic characteristics (*e.g.*, average annual income). Annual financial reports, bond prospectuses, budgets, or the EPA financial data request form for governmental entities are to be used with the MUNIPAY<sup>25</sup> model. The EPA does not have a corresponding model for not-for-profit entities.

The financial computer models are generally only used for settlement purposes, and the case team is not required to use the models. However, it is advised that EPA staff run the applicable model because it provides a quick estimate of ability to pay. The models also provide a baseline of financial documents to request from the respondent and can deter frivolous ATP claims. The case team also may find the models helpful as a starting point in discussing ability to pay and, oftentimes, use of the models can result in a quick settlement, especially when the penalty is too small to warrant the expense of retaining financial experts.

For cases involving large penalties, complex corporate structures, federally recognized tribal entities, and not-for-profit entities, the case team is advised to contact a financial analyst for assistance.

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<sup>24</sup> These models are located at: <http://www2.epa.gov/enforcement/penalty-and-financial-models>.

<sup>25</sup> Governmental entities can be evaluated with the basic MUNIPAY principles of looking at the non-restricted fund balances and assessing the entity’s capacity to assume additional debt. If there are concerns about the interpretation of financial data, the case team generally should consult with a financial analyst. Also, if MUNIPAY produces inconclusive results or if a governmental entity submits documentation of a unique financial condition, the case team generally should consult with a financial analyst and request that the governmental entity to provide additional information, if needed.

## C. Conducting the ATP Analysis

### 1. Evaluating the Model Result

When the model concludes that the respondent can pay the penalty, the case team can be reasonably assured that, based on the available financial documentation, the penalty will not burden the respondent with an undue financial hardship. If the respondent continues to claim an undue financial hardship, it should provide further documentation of the circumstances upon which that assertion is based (e.g., job loss, fire at facility, loss of major client, substantial outstanding debt with burdensome debt service payments, default on debt payments or financial covenant agreements, bankruptcy,<sup>26</sup> no assets,<sup>27</sup> significant unpaid tax liens and liabilities,<sup>28</sup> and/or other significant change in financial status). The case team may consult a financial analyst or expert to review the documentation provided and evaluate the validity of the respondent's assertions.

Conversely, the model could provide a result indicating a low, or zero,<sup>29</sup> probability that the respondent can pay the penalty. In many cases, the case team should be able to rely on this result and adjust the penalty accordingly. However, there may be certain scenarios that suggest further analysis beyond the model results may be needed. For example:

- ***Models Generate Flags Warranting Further Inquiry:*** The models may generate a flag or message when certain inconsistencies are identified from the inputs (e.g., “the most recent year’s cash flow is significantly worse than its historic average, which could mean that ABEL’s future cash flow projections are overstated.”). A financial analyst can evaluate such model flags to determine whether additional information should be requested, and to more accurately assess the respondent’s ability to pay the penalty.
- ***Respondent’s Cash Flow Is Understated:*** The model does not capture potential sources of funds beyond the reported financial data. The respondent’s cash flow could be understated if it has been depleted through nonessential or excessive business expenses (e.g., officer compensation, travel and entertainment expenses, charitable contributions, cash dividends paid to shareholders, and expensive cars and homes). In these scenarios, the respondent may have money to pay the penalty, and it must decide how to make this money available by reducing other costs. The respondent may liquidate certain nonessential assets, call in loans made to officers, acquire additional loans (if it has

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<sup>26</sup> A bankruptcy filing will not involve an ATP analysis because any penalties assessed can only be collected pursuant to the Bankruptcy Code. Before bringing an enforcement action against a debtor in bankruptcy, the regional legal bankruptcy coordinator should be consulted. See [Guidance on EPA Participation in Bankruptcy Cases](#), Steven A. Herman (Sept. 30, 1997).

<sup>27</sup> If the respondent has no assets, it is not necessarily indicative of an inability to pay. For example, in the service industries where equipment is leased, the balance sheet may not reflect any assets.

<sup>28</sup> This can be verified through credit reports or Dunn & Bradstreet reports.

<sup>29</sup> Even where the economic model generates a zero ATP result, it is not inappropriate for the EPA to seek and accept a nominal penalty in settlement. For example the [Lead-Based Paint Consolidated ERPP](#) at p. 22, fn. 31 states that: “[e]ach financial analysis of a respondent’s ability to pay should assume an ability to pay at least a small penalty to acknowledge and reinforce the respondent’s obligations to comply with the regulatory requirements cited as violations in the civil administrative complaint.”

sufficient debt capacity), or borrow money from its parent company or subsidiaries. The case team may find it useful to obtain a financial analyst or investigator to help identify other sources of funds or conduct a trend analysis of historical expenses to identify excessive expenses made out of line with historical patterns, such as an accelerated rate of paying back long-term debt.

- **Related Corporate Entities:** In addition to reviewing the liable party's tax returns and related financial information, the case team should request information on the respondent's relationship with affiliated corporations, partnerships, and other business enterprises. Examples of such a relationship may include: related party transactions (including rent below market value), loan or security agreements, coinsurance, equity and debt participation, intermingling of property or funds, and/or officer and shareholder compensation. The case team may find that it is appropriate to look to the assets of the related business enterprise to pay a penalty when the liable party does not have the resources to pay the penalty on its own.<sup>30</sup> In the event that the case team's investigation reveals that the liable party has been intentionally undercapitalized, has engaged in profit sharing, or has acted at variance with its official corporate form, the case team should evaluate veil piercing and alter ego theories. Similarly, the case team should be alert to fact patterns that may give rise to a fraudulent conveyance claim under the Federal Debt Collection Procedures Act.<sup>31</sup>

Regardless of the model results, the case team may follow up with clarifying questions to the respondent after the initial data request. If the respondent does not provide sufficient financial information and support that it lacks the financial resources to pay the civil penalty, the case team should presume that the respondent is able to pay the proposed penalty in full.

- **Evaluating Real Estate Assets:** Real estate is a significant asset for many respondents, including companies and individuals, and has the potential to contribute to a penalty payment. In the case of companies, investigating real estate assets can help identify significant discrepancies between the real estate's reported book value on the balance sheet and the actual current market value. The case team may also determine the value of the mortgages or liens secured by the real estate. When the market value is much higher than the mortgage balance, there may be potential for opening an equity line or obtaining additional debt secured by the real estate to support a penalty payment.

In cases involving individuals and sole proprietors, the respondent may own real estate, including rental or other commercial property that generates income. The INDIPAY model considers whether the individual has the cash flow to pay for a loan that could be applied to the penalty payment. That is, the model calculates the maximum affordable annual debt carried by the respondent, including credit card and mortgage debt, as compared to the respondent's total income. For example, under the INDIPAY model, an

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<sup>30</sup> See, e.g., *In re New Waterbury* at 547-50.

<sup>31</sup> 28 U.S.C. §§ 3301-3308.

individual lacks ability to pay if it carries more than 36 percent<sup>32</sup> of its average income in debt. Assuming the respondent has the capacity to assume additional debt to finance the payment of a penalty, the respondent can work with a lender to determine whether such a loan is feasible, considering the respondent's total assets.

- **Other Entities:** If the respondent is organized as a governmental entity, a federally recognized Indian tribe or related tribal entity, or a not-for profit entity, a traditional ATP analysis may not be appropriate.
  - **Governmental Entities:** Some governmental entities, particularly small municipalities or utility districts, may have unique financial conditions. If there are concerns about the interpretation of financial data, the case team should consult with a financial analyst. For cases against governmental entities that will involve extensive and costly injunctive relief (*e.g.*, cases involving significant violations of the Clean Water Act or Safe Drinking Water Act), it is recommended that the case team consult with a financial analyst.<sup>33</sup>
  - **Federally Recognized Indian Tribal Entities and Related Entities:** Unique and complicated legal and financial issues arise in the context of federally recognized Indian tribes and related entities.<sup>34</sup> These include issues affected by federal law, such as treaties, tribal and state laws, judicial decisions, federal government assistance, Executive Orders, and Executive Branch policies and guidance.<sup>35</sup> Our experience has been that some tribes have neither the kinds of financial documentation necessary for EPA to evaluate an ATP claim nor adequate revenue sources, although they may own and operate both for-profit and not-for-profit businesses. The case team should, in all cases, seek the advice and expertise of a financial analyst and contact OECA and its Office of Regional Counsel (ORC) Indian law attorneys on all ATP issues involving tribes and related entities. These offices can coordinate with other EPA tribal experts in the Office of International and Tribal Affairs, the Office of General Counsel, and the regions, who can provide advice on the intricacies of federal Indian law and policy, such as tribal sovereign immunity, tribal corporate liability, and tribal consultation and coordination.<sup>36</sup>

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<sup>32</sup> The 36-percent default value in the INDIPAY model for the maximum debt payments as a percent of income is based upon the criteria that commercial lenders commonly employ.

<sup>33</sup> Nothing in this guidance is meant to serve as an Agency interpretation of Clean Water Act § 309(e), 33 U.S.C. § 1319(e). For further guidance on calculating penalties in municipal cases, practitioners may refer to the National Municipal Litigation Consideration section of the [Interim Clean Water Act Settlement Penalty Policy](#) at 17-20 (Mar. 1, 1995).

<sup>34</sup> The Bureau of Indian Affairs within the U.S. Department of the Interior maintains and updates a list of federally recognized Indian tribes. Related tribal entities can include, but are not limited to, corporations that are related to or part of a tribe, and independent or semi-independent boards operated by a tribe or other entity.

<sup>35</sup> State laws are normally inapplicable within areas of "Indian country," as defined in 18 U.S.C. § 1151, absent special circumstances. Consult Indian law experts on the specific facts to determine whether federal, tribal, or state law is applicable in a given situation.

<sup>36</sup> See [Guidance on the Enforcement Principles Outlined in the 1984 Indian Policy](#), Steven A. Herman (Jan. 17, 2001), and [Questions and Answers on the Tribal Enforcement Process](#), Walker B. Smith (Apr. 17, 2007), which address civil administrative and judicial actions involving tribes and implement the [EPA Policy for the](#)

- **Not-for-Profit Entities:** Not-for-profit or charitable entities can include a wide range of entities, including schools and universities, housing, medical care, and churches or other religious institutions. Not-for-profit entities may own real estate and operate facilities that could be involved in environmental violations. Income for non-profits may come from fees charged for services, grants, and donations. In the context of an ATP analysis, a not-for-profit entity will be asked to provide the last three years of IRS Form 990 filings, if such a filing was made, and also the last three years of financial statements, including statements of receipts and expenses, assets and liabilities, and any related fund accounting. The ATP evaluation will depend on the size, nature, and stability of the not-for-profit entity. For example, a college may have fairly steady revenue sources (tuition, donations) and also relatively consistent expenses, but an entity supported entirely by donations may be far less stable. The analyst generally may consider trends in the entity's performance, the size of the entity, whether fund balances are growing or declining, the reasonableness of expenditures and salaries for managers, and other line items that appear to be unusual or one-time in nature. The entity's ability to pay will depend, in part, on whether excess funds are being generated from the entity's activities, and whether there is an excess amount available in unrestricted funds, similar to the government evaluation.

Although the ATP models are useful financial analysis tools, the financial model used may not yield a conclusive result in some cases. Many factors must be weighed in determining whether to rely on the model result or to engage in further financial analysis. For example, a high-penalty case or a particularly complex corporate respondent may warrant expending the resources to retain a financial analyst. In contrast, the case team may rely on the model result and less extensive documentation in a case involving straightforward facts and/or a low penalty amount.

## **2. Gathering and Evaluating Financial Information Beyond Federal Tax Returns**

In general, the ATP evaluation will be an iterative process. In determining whether to ask for more information and conduct further analysis, the case team may assess the significance of the uncertainty and the importance of missing information to the ultimate inability to pay evaluation and overall case. In many situations, the case team will request additional financial documentation to fully evaluate the respondent's claim. The documentation that the team requests will depend on the issues or concerns that have been identified. At this stage, the case team may decide to seek advice from a financial analyst as to which documents would be most helpful to further evaluate the ATP claim.

Below is a chart delineating some of the most typically requested information, including a short description of each category's usefulness to the ATP analysis.

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*Administration of Environmental Programs on Indian Reservations*, William D. Ruckelshaus (Nov. 8, 1984); see also *EPA Policy on Consultation and Coordination with Indian Tribes*, Lisa P. Jackson (May 4, 2011).

<b>Financial Information</b>	<b>Basis for Requesting Financial Information</b>
<b><i>For Corporations and Multi-member LLCs/Partnerships</i></b>	
Financial Statements Prepared by Outside Accounting Firm	<ul style="list-style-type: none"> <li>• Financial statements contain additional information beyond tax returns, including a statement of cash flow and detailed notes and the auditor’s opinion regarding the status of the company.</li> <li>• Financial statements may be based on a compilation, review, or audit.</li> </ul>
Budgets and Year-to-Date Results	<ul style="list-style-type: none"> <li>• Budgets and year-to-date results provide up-to-date information on performance and cash flow.</li> </ul>
Asset Ledger	<ul style="list-style-type: none"> <li>• An asset ledger provides the dates assets were placed into service, costs, and depreciation to date.</li> </ul>
Loan and Mortgage Agreements	<ul style="list-style-type: none"> <li>• Loan and mortgage agreements provide information on financial ratio requirements, guarantors and collateral or other security.</li> </ul>
Federal Tax Returns of Related Financial Entities	<ul style="list-style-type: none"> <li>• Federal tax returns of related financial entities may determine whether a related entity’s assets can fund the penalty payment when respondent claims inability to pay.</li> </ul>
SEC Filing DEF 14A Proxy Statements	<ul style="list-style-type: none"> <li>• SEC Filing DEF 14A Proxy Statements may include a list of owners of more than 5% of the company, management salaries, members of the board of directors, and board compensation.</li> </ul>
<b><i>For Individuals, Sole Proprietorships, and One-member LLCs/Partnerships</i></b>	
Individual Data Request Form	<ul style="list-style-type: none"> <li>• Individual data request forms provide information on income, expenses, assets, liabilities, legal proceedings, and spousal holdings.</li> <li>• This data should be verified through documentation and independent research.</li> </ul>
Real Estate Property Tax Records	<ul style="list-style-type: none"> <li>• Real estate property tax records provide information on valuation, location, and nature of property.</li> </ul>
W-2 Wage and Tax Statements	<ul style="list-style-type: none"> <li>• W-2 statements can be used to verify income and related deductions.</li> </ul>
Bank, Mortgage and Credit Card Statements	<ul style="list-style-type: none"> <li>• Bank, mortgage, and credit card statements can be used to verify cash availability, level of expenditure and indebtedness.</li> </ul>

In addition to requesting financial data, the case team is encouraged to conduct online searches of publicly available information related to the respondent’s financial status. For example, credit reports include information on a company’s financial condition, credit level, and credibility. A Dun & Bradstreet report may indicate gross sales revenue and number of employees, as well as identify the credit history, the corporate officers, and corporate address. Secretary of State websites provide a history of the entity’s corporate filings and annual reports, and include

information about officers and basic financial data. A publicly traded company will publish annual and quarterly reports on its website as well as on the U.S. Securities and Exchange Commission's EDGAR system. In addition, investor presentations and transcripts of quarterly calls with analysts may be available for public companies.

### 3. Confidentiality of Financial Information<sup>37</sup>

The case team should be mindful of the sensitivity of a respondent's financial information as well as handling confidential business information (CBI). Publicly available information, including published annual reports, is not entitled to confidential treatment. However, if the respondent claims any information submitted as CBI, the case team should ask the respondent to identify CBI with specificity (rather than stamping each page as CBI).

The 40 C.F.R. Part 2, Subpart B, regulations set forth at 40 C.F.R. §§ 2.201 through 2.215 establish certain "basic rules" governing business confidentiality claims, the handling by the EPA of business information which is or may be entitled to confidential treatment, and determinations by the EPA of whether information is entitled to confidential treatment for reasons of business confidentiality.<sup>38</sup> The additional Subpart B regulations set forth at 40 C.F.R. §§ 2.301 through 2.311 provide "special rules" for treatment of certain categories of business information obtained under various statutory provisions.<sup>39</sup> The basic rules of §§ 2.201 through 2.215 govern, except to the extent that they are modified or supplanted by the special rules of §§ 2.301 through 2.311 or in the event of a conflict between the rules, in which case the special rule which is applicable to the particular information in question shall govern. For example, if a company voluntarily provides financial information claimed as "business confidential" to support the ATP claim or to show that it lacks financial resources to pay the penalty, the information submitted would be governed by the basic rules set forth in 40 C.F.R. §§ 2.201 through 2.215. In contrast, if a company submits financial information claimed as business confidential pursuant to an EPA request for information under a specific statute, then it may be likely that the special rules would apply to the submitted information.

The regulations in 40 C.F.R. Part 2, Subsection B also address specific requirements for overall handling of CBI. In accordance with 40 C.F.R. § 2.203, when requesting financial information, the EPA must give notice to a respondent that it may assert a business confidentiality claim, and that information covered by such a claim will be disclosed by the EPA only to the extent, and by means of the procedures, set forth in 40 C.F.R. Part 2, Subpart B. EPA's notice must contain a statement that, if the respondent submits financial information without a confidentiality claim,

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<sup>37</sup> The EPA is governed by the Right to Financial Privacy Act of 1978, 12 U.S.C. §§ 3401-3422 (RFPA). This statute protects the confidentiality of personal financial records by requiring that federal government agencies provide individuals with notice and an opportunity to object before a bank or other specified institution can disclose personal financial information to a federal government agency. The RFPA creates a statutory right of privacy on behalf of a customer of a financial institution in the records of the institution pertaining to him or her. *See* 12 U.S.C. §§ 3403, 3410. Generally, the RFPA prohibits financial institutions from providing any governmental authority access to, or copies of, information in the financial records of any customer unless the customer has authorized such disclosure, 12 U.S.C. § 3404, or unless certain legal requirements—such as, for example, compliance with an administrative subpoena, search warrant or judicial subpoena—have been met. *See* 12 U.S.C. § 3402.

<sup>38</sup> *See* 40 C.F.R. § 2.202(a).

<sup>39</sup> *See* 40 C.F.R. § 2.202(b).

the EPA is permitted by applicable law to release the information without further notice to the respondent. It is important to note<sup>40</sup> that, if the respondent claims information submitted to the EPA as CBI, then the EPA must treat the information as CBI, unless the EPA makes an adverse determination that such claim is not entitled to confidential treatment. Where the EPA determines that information is not CBI, such information may be released in response to a request pursuant to the Freedom of Information Act.

Additionally, in cases involving individuals or small closely held businesses, financial information that a respondent submits may include personal information, the disclosure of which could constitute an unwarranted invasion of personal privacy.<sup>41</sup> In these instances, the EPA will carefully examine this information in order to protect against the public release of such information.<sup>42</sup>

#### **4. Considerations Regarding the Administrative Penalty**

Based on the financial analysis, the case team will determine if the respondent can pay the full or reduced penalty amount, but it is generally left to the respondent to decide how it will raise the funds. The respondent's funding options may include: using available cash; selling assets; increasing debt by personal or commercial borrowing; increasing equity by selling stock; delaying distribution of profits; and/or delaying planned future investments. When the respondent demonstrates that there is no or limited ability to pay or to borrow money for payment, the case team will typically work with the respondent to determine how much it can pay, and consider whether an extended payment plan is appropriate.<sup>43</sup> The case team has an obligation to support its conclusion with full documentation.<sup>44</sup>

In certain circumstances, a respondent claiming an inability to pay all of a civil penalty may propose to complete a supplemental environmental project (SEP) as part of the settlement. As with all SEPs, the case team will only consider SEPs in ATP settlements that conform to EPA's SEP Policy,<sup>45</sup> and acceptance of the proposed SEP is at EPA's discretion. In particular, note that the SEP Policy makes clear that an acceptable SEP must have a nexus to the underlying violations and that the violator must pay a minimum penalty in addition to implementing the SEP.

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<sup>40</sup> If a CBI claim is received after the information itself is received, the EPA will make such efforts as are administratively practicable to associate the late claim with the previously submitted information in EPA files. However, the EPA cannot assure the effectiveness of such efforts, in light of the possibility of prior disclosure or widespread prior dissemination of information. *See* 40 C.F.R. § 2.203(c).

<sup>41</sup> *See* 5 U.S.C. § 552(b)(6).

<sup>42</sup> *See* 5 U.S.C. § 552(a).

<sup>43</sup> *See infra* section III, pp. 15-18 for guidance on when extended payment plans for administrative penalties are appropriate and how they should be structured.

<sup>44</sup> *See* GM-22 at 27 (“[T]o promote consistency, it is essential that each case file contain a complete description of how each penalty was developed.”); *see also Documenting Penalty Calculations and Justifications in EPA Enforcement Actions*, James M. Strock (Aug. 9, 1990)(Strock Memo).

<sup>45</sup> The [2015 Update to the 1998 EPA SEP Policy](#) and any subsequent updates to the SEP Policy supersede “non-monetary alternatives” which are referenced in GM-22 at 23-24.

## IV. Litigating an Ability-to-Pay Claim in Administrative Enforcement Actions

### A. Pre-Filing Negotiations

Once the case team initiates discussions on the penalty amount with the respondent, the case team should make clear to the respondent that if the respondent believes it has an inability to pay the proposed penalty, it should explain why and also submit supporting documentation such as financial statements, balance sheets, and other pertinent financial information. The case team's request<sup>46</sup> for documentation should be stated in an email, informal correspondence, or a show cause letter. This approach allows the respondent to work with the case team early in the process to resolve any ATP issues. It also helps the case team to create a record early on so that the respondent cannot claim later that it was unaware of options to address its alleged inability to pay the penalty. During negotiations at settlement meetings, the case team should ask whether the respondent will submit supporting financial records. The request and response should be documented.

### B. Prehearing Information Exchange

Pursuant to 40 C.F.R. § 22.19(a)(3), the respondent is obligated to “explain in its prehearing information exchange why the proposed penalty should be reduced or eliminated.” If a respondent fails to raise an ATP claim after being notified of its burden, the presiding officer could deem the respondent to have waived any ATP objection to the penalty.<sup>47</sup> If ability to pay is raised after commencement of administrative litigation, the case team should generally consult with a financial analyst and list an expert witness who can testify to the respondent's financial capability in EPA's initial prehearing exchange.

After the prehearing information exchange, both parties can move for additional discovery, and the Presiding Officer may order such discovery only if it “seeks information that is most reasonably obtained from the non-moving party, and which the non-moving party has refused to provide voluntarily . . . .”<sup>48</sup> It is imperative that the case team establish a record of its repeated requests<sup>49</sup> as well as the respondent's repeated failures to produce requested financial

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<sup>46</sup> Where the enforcement case team believes it is highly probable that the company has an ability to pay (*i.e.*, if the respondent is a large Fortune 500 company or where it should be readily discernable that ability to pay the penalty should not reasonably present an issue of concern, especially when considering the size of the penalty), then the case team need not initiate an ATP discussion and unnecessarily open a path that may also be used for purposes of delay or for other strategic advantage, such as causing the EPA case team to spend additional time and unwarranted resources exploring a non-existent fact when resources can be better directed towards the pursuit of settlement.

<sup>47</sup> See *In re New Waterbury* at 542 (“In this connection, where a respondent does not raise its ability to pay as an issue in its answer, or fails to produce any evidence to support an inability to pay claim after being apprised of that obligation during the pre-hearing process, the Region may properly argue and the presiding officer may conclude that any objection to the penalty based upon ability to pay has been waived under the Agency's procedural rules [footnote in opinion omitted] and thus this factor does not warrant a reduction of the proposed penalty.”) See also *In re JHNY* at 399, where respondent submitted financial information supporting its ATP claim only during settlement negotiations but failed to comply with the prehearing exchange requirements to provide documentary evidence demonstrating its inability to pay the proposed penalty. Here, the respondent “waived its ability to contest the Region's penalty proposal on this basis.”

<sup>48</sup> See 40 C.F.R. § 22.19(e)(ii).

<sup>49</sup> See *In re Chase*, RCRA (9006) [Appeal No. 13-04, slip.op.](#) at 27 (EAB Aug. 1, 2014).

documentation to the EPA, for expert witness review and analysis prior to hearing. The case team may seek to exclude, as prejudicial, the presentation and introduction of any required financial information that the respondent has failed to provide at least 15 days prior to the hearing, without good cause for such failure.<sup>50</sup>

It is equally important for the case team to establish any failure, by the respondent, to promptly supplement or correct financial information provided to the EPA in a prehearing information exchange, or in response to a request for information or a discovery order, upon learning that any of that information is incomplete, inaccurate, or outdated.<sup>51</sup> If the case team can establish any such failure, it may then move for an order to compel production of that information<sup>52</sup> and/or for an *in limine* order seeking to exclude the prior incomplete, inaccurate, or outdated information from presentation and introduction into evidence at the hearing. Even when financial documentation is provided, it should demonstrate how the penalty will cause the respondent to suffer an undue financial hardship.<sup>53</sup> Without proffering the necessary financial documentation as well as a showing of undue financial hardship, the respondent has not met its burden of proof and may be required to pay the penalty in full.

If the Presiding Officer issues an order to compel production and the respondent fails to comply with such order,<sup>54</sup> the case team should consider requesting that the Presiding Officer issue an order drawing an adverse inference to the respondent's ATP claim and/or precluding the respondent from presenting or introducing into evidence at hearing any documents or information pertaining to a claim of financial hardship or inability to pay.<sup>55</sup>

## V. Extended Payments of Civil Penalties

As a general rule, the EPA requires respondents to pay civil administrative penalties in full within 30 days of the effective date of the final administrative order<sup>56</sup> or settlement agreement.<sup>57</sup> Allowing a respondent more than 30 days to pay civil penalties has the potential to undermine the deterrence value of penalties and may confer a benefit to the respondent because of the time value of money resulting from a delayed or extended payment schedule. In addition, the use of extended payment schedules increases the resources needed by the federal government to track when payments are due and ensure that they are paid in a timely manner.<sup>58</sup> Finally, allowing

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<sup>50</sup> See 40 C.F.R. § 22.22(a)(1).

<sup>51</sup> See 40 C.F.R. § 22.19(f).

<sup>52</sup> See *In re Chase* at 28.

<sup>53</sup> See *In re Bil-Dry Corp.* at 610-12.

<sup>54</sup> See *In re Chase* at 29-30.

<sup>55</sup> See 40 C.F.R. § 22.19(g).

<sup>56</sup> Pursuant to 40 C.F.R. § 22.31(c), "The respondent shall pay the full amount of any civil penalty assessed in the final order within 30 days after the effective date of the final order unless otherwise ordered." A final order is effective upon filing with the Clerk. See 40 C.F.R. §§ 22.31(b), 22.5(a).

<sup>57</sup> The DOJ has a similar policy. In the context of civil judicial cases, the case team should consult its DOJ counterparts on how to respond to defendants' requests for extended payment plans.

<sup>58</sup> Payments over time have long been recognized under Agency policy as "a real burden on the Agency and should only be considered on rare occasions." See GM-22 at 23, and applicable statute-specific penalty policies (e.g., [Clean Air Act Mobile Source Civil Penalty Policy – Vehicle and Engine Certification Requirements](#), Granta Y. Nakayama (Jan. 16, 2009) at 28 ("[A]dministration of time-payments is a burden on the Agency, so that this option should be

extended payment schedules may increase the risk that the respondent will not pay the full penalty assessed (*e.g.*, the respondent may file for bankruptcy before the installment payments are fully paid). Accordingly, settlements should strive to require payment of the full penalty in a single payment within 30 days of the effective date of the enforcement settlement whenever practicable.

A limited exception to this practice may be acceptable if a respondent has demonstrated an inability to pay the entire penalty in a single payment within the 30-day period (*e.g.*, due to fluctuations in cash flow), and it is in the Agency's best interest to accept an extended payment plan.<sup>59</sup> But accepting penalty payments over time may not be in the Agency's best interest if it is only as a means to obtain a higher penalty. If a single, lesser penalty amount is appropriate based on the facts of the case, then no meaningful objective is served by taking on the additional and avoidable burdens associated with tracking payments over time. Here, the case team should balance the goal of obtaining a penalty sufficient to deter future violations against the possibility that the respondent will suffer new financial difficulties before it is able to pay off its penalty obligations. For purposes of this guidance, the term "extended payment" plan refers to one of two scenarios: (1) the respondent is required to pay the civil penalty in full as a single payment at a date that is beyond the 30-day effective date; or (2) the respondent is required to pay the penalty in installments.

#### **A. Financial Documentation for Evaluating Requests for Extended Payments in Administrative Enforcement Actions**

When evaluating a respondent's request for an extended payment plan in the context of an administrative enforcement action, the case team should require the respondent to submit documentation of its inability to pay the full civil penalty within 30 days. The level of documentation and degree of financial analysis needed will vary depending upon the length of the extended payment schedule sought and the amount of the civil penalty to be assessed. Consistent with longstanding EPA policy on the necessity of documenting the basis for the civil penalty, the case team should ensure that the case file contains documentation relied upon as support for agreeing to an extended payment schedule.<sup>60</sup>

The following scenarios are intended to guide the case team in administrative actions on the level of documentation that a respondent should be required to produce and the financial analysis the Agency should undertake before accepting an extended payment of a civil penalty.

- ***For payments up to 6 months from the effective date:*** If the case team deems the circumstances appropriate to facilitate a quick settlement without the excessive

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considered only if the Agency is convinced it is not possible for the violator to obtain the funds necessary to pay the full penalty through borrowing money or the sale of assets.”).

<sup>59</sup> A determination of whether a respondent has demonstrated an inability to pay the full amount of a penalty is required as a condition for considering installment payments. See GM-22 at 23 and applicable statute-specific penalty policies (*e.g.*, [Clean Air Act Stationary Source Penalty Policy](#) at 20, William G. Rosenberg and Edward E. Reich (Oct. 25, 1991); [Interim Clean Water Act Settlement Penalty Policy](#) at 21 (Mar. 1, 1995); [RCRA Civil Penalty Policy](#) at 39-40, John P. Suarez (June 23, 2003)).

<sup>60</sup> See GM-22 at 27 (“[T]o promote consistency, it is essential that each case file contain a complete description of how each penalty was developed.”); see also Strock Memo.

commitment of Agency resources for financial analysis (*e.g.*, small penalty assessed against a small business), the Agency will require the respondent to submit a signed, certified statement<sup>61</sup> of its current financial condition articulating a basis for its contention that it cannot pay the penalty within 30 days of the effective date without experiencing an undue financial hardship. The installment payment shall be sufficient in size and frequency to liquidate the debt in not more than six months, unless the EPA determines that a longer period is required.

- ***For payments of 6 to 12 months from the effective date:*** If the respondent's financial information has not already been submitted to the EPA, the case team should require the respondent to submit its most recent year's federal income tax return and/or financial statements. The respondent must submit a signed, certified statement of its current financial condition articulating a basis for its contention that it cannot pay the penalty within 30 days of the effective date without experiencing an undue financial hardship. The respondent should also submit any additional information that the EPA may require to be reviewed by the financial analyst. The installment payment shall be sufficient in size and frequency to liquidate the debt in not more than one year, unless the EPA determines that a longer period is required.
- ***For payments of more than 12 months from the effective date:***<sup>62</sup> If the respondent's financial information has not already been submitted to the EPA, the case team should require the respondent to submit at least three years of income tax returns and financial statements. The respondent must submit a signed, certified statement of its current financial condition articulating a basis for its contention that it cannot pay the penalty within 30 days of the effective date without experiencing an undue financial hardship. The respondent should also submit any additional information that the EPA may require to be reviewed by the financial analyst. The installment payment shall be sufficient in size and frequency to liquidate the debt in not more than three years, unless the EPA determines that a longer period is required.<sup>63</sup>

## **B. Interest Rates to Be Assessed for Payments Made After 30 Days of the Effective Date**

Interest should be assessed on all delayed single-payments or installment payments. For administrative enforcement cases, the EPA has discretion to charge an interest rate amount that is

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<sup>61</sup> The statement should be signed by a responsible corporate officer who must certify, under penalty of law, that the information contained in such statement, and the accompanying documents, are true, accurate, and complete based upon personal knowledge or personal inquiry of the person or persons directly responsible for gathering the information, and that he/she is aware that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

<sup>62</sup> The EPA prefers not to extend payment plans beyond three years. This preference for a general three-year limitation on length of installment payments is consistent with the EPA and the U.S. Treasury regulations governing the acceptance of installment payments. *Cf.* 40 C.F.R. § 13.18(a) and 31 C.F.R. § 901.8(b).

<sup>63</sup> *Cf.* 40 C.F.R. § 13.18(a).

necessary to protect the interest of the government.<sup>64</sup> It is recommended that the case team assess the IRS underpayment rate<sup>65</sup> or the prime rate set by the major banks, as these rates approximate the average interest rate at which the respondent is able to borrow money. Assessing the underpayment rate also reduces the likelihood that the respondent will opt to pay the penalty in installments rather than secure private financing of its penalty debt. Alternatively, if the case involves a small penalty and short payment plan (*i.e.*, presenting a greater likelihood that the penalty will be paid in full), the case team may assess a lower rate, such as the Treasury current value of funds rate.<sup>66</sup> In all cases, the team should consider the size of the penalty and length of the payment plan in determining the interest rate to be assessed, and should document the reasons for assessing the interest rate.

### C. Provisions for Early and Late Payments

Even where the settlement allows the respondent to pay the civil penalty on an extended payment schedule, the settlement should provide incentives for the respondent to pay earlier than provided under the settlement. For example, the settlement should make clear that the respondent will be required to pay the interest only on the balance due and for the length of time beyond 30 days it takes the respondent to pay the civil penalty in full.

Any settlement requiring the payment of a civil penalty, whether within 30 days or under an extended schedule, should specifically state the consequences if the respondent fails to make a timely penalty payment, including interest to be charged, stipulated penalties that may be assessed and administrative costs to be incurred. In determining the interest and administrative costs to be assessed, the case team is advised to check the language of the underlying penalty authority. For example, where a respondent fails to pay administrative penalties assessed under section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d), section 113(d)(5) requires the application of the IRS underpayment rate established pursuant to 26 U.S.C. § 6221(a)(2).<sup>67</sup>

In addition, the case team should generally include stipulated penalties for late or non-payments and/or an acceleration clause whereby the full amount of the penalty is immediately due and

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<sup>64</sup> 31 U.S.C. § 3717, and implementing EPA and U.S. Treasury regulations, also provide flexibility in assessing a higher interest rate when accepting installment payments in the collections context if the Agency determines that a higher interest is necessary to protect the interests of the United States. *Cf.* 40 C.F.R. § 13.11(a)(1) and 31 C.F.R. § 901.9(b)(2). In civil judicial cases, in contrast, interest is generally charged pursuant to 28 U.S.C. § 1961.

<sup>65</sup> 26 U.S.C. § 6621(a)(2) states that the underpayment rate established under this section shall be the sum of the federal short-term rate determined under subsection (b), plus 3 percentage points. The IRS determines this rate on a quarterly basis. Entering “underpayment rate” into the search engine on the [IRS website](#) should provide the latest press release with a link to the current Revenue Ruling specifying the underpayment rate.

<sup>66</sup> *Cf.* 40 C.F.R. § 13.11(a)(1) (which provides for assessing an annual rate of interest that is equal to the rate of the current value of funds to the United States Treasury (*i.e.*, the Treasury tax and loan account rate) on installment payments in the collection context); *cf.* 31 C.F.R. § 901.9(b)(3) (which provides for assessing the current value of funds to the Treasury when a debtor defaults on a repayment agreement and seeks to enter into a new agreement).

<sup>67</sup> Section 113(d)(5) of the Clean Air Act, 42 U.S.C. § 7413(d)(5), also provides that “[a]ny person who fails to pay [the civil penalty] on a timely basis . . . shall be required to pay . . . the United States enforcement expenses, including but not limited to attorney fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each such quarter during which such failure to pay persists. *Such nonpayment penalty shall be 10 percent of the aggregate amount of such person’s outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.*” [Emphasis added.]

owing upon a late or non-payment.<sup>68</sup> It may also be appropriate to include a surety bond (if applicable to certain industries),<sup>69</sup> letter of credit, or some other form of guarantee for payment of the penalty to protect the Agency's interest in collecting the full amount of the assessed penalty. Such provisions may be particularly appropriate where the case involves a large penalty, where the settlement agreement or consent decree contains lengthy payment schedules, and where the long-term financial viability of the respondent is uncertain.

## VI. Conclusion

This guidance is intended to assist case teams in evaluating a respondent's ability to pay a civil penalty. The guidance does not prescribe the amount by which the EPA may reduce a civil penalty if the respondent supports its ATP claim. Rather, this document provides a roadmap of the financial information the EPA should seek from a respondent to conduct an ATP analysis and how to use EPA's financial models. In addition, the guidance describes considerations for when additional financial information and/or the input from a financial analyst may be appropriate.

This memorandum is not a final agency action, and is intended solely as guidance for use by EPA personnel in the settlement of enforcement actions. It is not intended to, nor can it be relied upon, to create any rights enforceable by any party in litigation with the EPA or the United States. Furthermore, the EPA reserves the discretion to act at variance with this guidance in appropriate circumstances, taking into account all relevant case-specific facts and circumstances. The Agency also reserves the right to change this guidance at any time without public notice.

cc: Cynthia Giles, Assistant Administrator, OECA  
Lawrence Starfield, Principal Deputy Assistant Administrator, OECA  
Shari Wilson, Deputy Assistant Administrator, OECA  
Carol Ann Siciliano, Cross-Cutting Issues Law Office, OGC  
Kathie A. Stein, Judge, Environmental Appeals Board  
Susan Biro, Chief of the Administrative Law Judges  
Bruce S. Gelber, Deputy Assistant Attorney General, ENRD, DOJ  
W. Benjamin Fisherow, Chief, Environmental Enforcement Section, ENRD, DOJ

---

<sup>68</sup> An example of such an acceleration clause would be as follows: In the event of respondent's failure to make any payment of a civil penalty when due, the EPA may, without notice or demand, declare the entire unpaid balance due and any accrued interest and stipulated penalties then unpaid immediately due and payable.

<sup>69</sup> See, e.g., *In re American Lifan Industry, Inc.*, [CAA No. 14-02C](#) (EAB Feb. 24, 2014)(requiring a surety bond to ensure that there will be money available for certain future penalty assessments in accordance with 40 C.F.R. § 1054.690).



U.S. Department of Justice

Environment and Natural Resources Division

Environmental Enforcement Section  
P.O. Box 7611  
Washington, DC 20044-7611

Tel: (202) 514-4114  
leslie.allen@usdoj.gov

March 17, 2015

Phillip A. Brooks, Director  
Air Enforcement Division  
Office of Enforcement and Compliance Assurance  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Re: Request Pursuant to Section 205(c) of the Clean Air Act for a Waiver of the Penalty Limitation on EPA's Authority to Initiate Administrative Action Against Taotao USA, Inc., et al.

Dear Phill:

This is in response to your letter dated January 30, 2015, requesting a waiver to pursue administrative action against Taotao USA, Inc., and related entities, in connection with the manufacture and sale of highway motorcycles and recreational in violation of the certification requirements of the Act and implementing regulations. I concur with your request for a waiver pursuant to Section 205(c) of the Clean Air Act (CAA), 42 U.S.C. § 7524(c), of the limitation on EPA's authority to assess administrative penalties, in order to pursue administrative action in this matter.

If you have any questions, please call me or Leslie Allen.

Sincerely,

Karen S. Dworkin  
Assistant Section Chief  
Environmental Enforcement Section

**CONFIRMATION For  
Process Serving**

**ONE LEGAL LLC**



This is not an Invoice

<b>ONE LEGAL CONFIRMATION FOR ORDER NO.:</b> 1778662		<b>DATE:</b> 11/24/2015
<b>Customer:</b> US EPA	<b>Attorney:</b> Evan Belser	
<b>Customer No.:</b> 0092868	<b>Attorney e-mail:</b> belser.evan@epa.gov	
<b>Address:</b> 1200 Pennsylvania Ave NW	<b>Contact:</b> Michael Gilham	
3803R	<b>Contact e-mail:</b> gilham.michael@epa.gov	
Washington, DC 20460	<b>Contact Phone:</b> 202-564-6090	
	<b>Contact Fax:</b>	
	<b>Law Firm File No.:</b> none	

<b>CASE INFORMATION:</b>
<b>Case Number:</b> CAA-HQ-2015-8065
<b>County:</b>
<b>Court:</b> United States District Court, Of Columbia
<b>Case Short Title:</b> US Environmental Protection Agency vs. Taotao USA, Attn. Matao Cao Presic

<b>DOCUMENTS RECEIVED:</b>	<b>No. Docs:</b> 2	<b>No. Pgs:</b> 49
40 CFR Part 22, Rules of Practice, Complaint		
Party to Serve: Taotao Group, Co., Ltd.; Attn. Matao Cao		
Service Address: 1135 West Trinity Mills Road Carrollton, TX 75006		

**Confirmation Report. DO NOT PAY. An Invoice will be sent later.**

Notes:	Services:	Summary of Charges:
Service Status: Served	Additional Entities	53.95
<b>Services will be invoiced later.</b>	<b>DO NOT PAY NOW.</b>	<b>Total:</b> 53.95

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Customer Support | Phone: 1-800-938-8815  
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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Evan Belser, 1012375 US EPA 1200 Pennsylvania Ave NW 3803R Washington, DC 20460		TELEPHONE NO.: (202) 564-6090	FOR COURT USE ONLY	
ATTORNEY FOR (Name): Defendant		Ref. No. or File No. none		
Insert name of court, judicial district or branch court, if any: United States District Court, Of Columbia  State of DC				
PLAINTIFF: US Environmental Protection Agency				
DEFENDANT: Taotao USA, Attn. Matao Cao President;				
<b>PROOF OF SERVICE</b>	DATE:	TIME:	DEPT/DIV:	CASE NUMBER: CAA-HQ-2015-8065

1. At the time of service I was a citizen of the United States, over 18 years of age and not a party to this action, and I served copies of: 40 CFR Part 22, Rules of Practice, Complaint

2. Party Served: Taotao Group, Co., Ltd.; Attn. Matao Cao

3. Person Served: Mateo "Terry" Cao - Person authorized to accept service of process

4. Date & Time of Delivery: 11/16/2015 11:30 AM

5. Address, City and State: 1135 WestTrinity Mills Road  
Carrollton, TX 75006

6. Manner of Service: Personal Service - By personally delivering copies.

Fee for Service: \$ 53.95

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I declare under penalty of perjury that the foregoing is true and correct.

Caleb Malone  
One Legal - 194-Marin  
504 Redwood Blvd #223  
Novato, CA 94947  
415-491-0606

Signature: CX027 Caleb Malone

EPA-000541

Caleb Malone

**CONFIRMATION For  
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<b>ONE LEGAL CONFIRMATION FOR ORDER NO.:</b> 1778661		<b>DATE:</b> 11/24/2015
<b>Customer:</b> US EPA	<b>Attorney:</b> Evan Belser	
<b>Customer No.:</b> 0092868	<b>Attorney e-mail:</b> belser.evan@epa.gov	
<b>Address:</b> 1200 Pennsylvania Ave NW	<b>Contact:</b> Michael Gilham	
3803R	<b>Contact e-mail:</b> gilham.michael@epa.gov	
Washington, DC 20460	<b>Contact Phone:</b> 202-564-6090	
	<b>Contact Fax:</b>	
	<b>Law Firm File No.:</b> none	

<b>CASE INFORMATION:</b>
<b>Case Number:</b> CAA-HQ-2015-8065
<b>County:</b>
<b>Court:</b> United States District Court, Of Columbia
<b>Case Short Title:</b> US Environmental Protection Agency vs. Taotao USA, Attn. Matao Cao Presic

<b>DOCUMENTS RECEIVED:</b>	<b>No. Docs:</b> 2	<b>No. Pgs:</b> 49
40 CFR Part 22, Rules of Practice, Complaint		
<b>Party to Serve:</b> Taotao USA, Inc. Attn. Matao Cao	<b>Service Address:</b> 1135 West Trinity Mills Road Carrollton, TX 75006	

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<b>Notes:</b>	<b>Services:</b>	<b>Summary of Charges:</b>
Service Status: Served	Same Day	249.95
	Not Found-Standard	169.95
<b>Services will be invoiced later.</b>	<b>DO NOT PAY NOW.</b>	<b>Total:</b> 419.90

Attached is your Affidavit of Service. The original will be mailed. If you have any questions, please contact:  
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ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Evan Belser, 1012375 US EPA 1200 Pennsylvania Ave NW 3803R Washington, DC 20460		TELEPHONE NO.: (202) 564-6090	FOR COURT USE ONLY	
ATTORNEY FOR (Name): Defendant		Ref. No. or File No.	none	
Insert name of court, judicial district or branch court, if any: United States District Court, Of Columbia  State of DC				
PLAINTIFF: US Environmental Protection Agency				
DEFENDANT: Taotao USA, Attn. Matao Cao President;				
<b>PROOF OF SERVICE</b>	DATE:	TIME:	DEPT./DIV:	CASE NUMBER: CAA-HQ-2015-8065

1. At the time of service I was a citizen of the United States, over 18 years of age and not a party to this action, and I served copies of: 40 CFR Part 22, Rules of Practice, Complaint

2. Party Served: Taotao USA, Inc. Attn. Matao Cao

3. Person Served: Matao "Terry" Cao - Person authorized to accept service of process

4. Date & Time of Delivery: 11/16/2015 11:30 AM

5. Address, City and State: 1135 West Trinity Mills Road  
Carrollton, TX 75006

6. Manner of Service: Personal Service - By personally delivering copies.

Fee for Service: \$ 419.90

Not a registered California process server.

I declare under penalty of perjury that the foregoing is true and correct.

Caleb Malone  
One Legal - 194-Marin  
504 Redwood Blvd #223  
Novato, CA 94947  
415-491-0606

Signature: CX02 Caleb Malone

EPA-000543

Caleb Malone

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**ONE LEGAL LLC**



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<b>ONE LEGAL CONFIRMATION FOR ORDER NO.:</b> 1778663		<b>DATE:</b>
<b>Customer:</b> US EPA	<b>Attorney:</b> Evan Belser	
<b>Customer No.:</b> 0092868	<b>Attorney e-mail:</b> belser.evan@epa.gov	
<b>Address:</b> 1200 Pennsylvania Ave NW	<b>Contact:</b> Michael Gilham	
3803R	<b>Contact e-mail:</b> gilham.michael@epa.gov	
Washington, DC 20460	<b>Contact Phone:</b> 202-564-6090	
	<b>Contact Fax:</b>	
	<b>Law Firm File No.:</b> none	

<b>CASE INFORMATION:</b>
<b>Case Number:</b> CAA-HQ-2015-8065
<b>County:</b>
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<b>Case Short Title:</b> US Environmental Protection Agency vs. Taotao USA, Attn. Matao Cao Presic

<b>DOCUMENTS RECEIVED:</b>	<b>No. Docs:</b> 2	<b>No. Pgs:</b> 49
40 CFR Part 22, Rules of Practice, Complaint		
<b>Party to Serve:</b> Jinyun County Xiangyuan Industry CO., Ltd.: Attn. Matao Cao	<b>Service Address:</b> 1135 West Tinity Mills Road Carrollton, TX 75006	

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<b>Notes:</b>	<b>Services:</b>	<b>Summary of Charges:</b>
Service Status: Served	Additional Entities	53.95
<b>Services will be invoiced later.</b>	<b>DO NOT PAY NOW.</b>	<b>Total:</b> 53.95

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Customer Support | Phone: 1-800-938-8815  
Thank you for choosing One Legal for your process serving needs.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and Address): Evan Belser, 1012375 US EPA 1200 Pennsylvania Ave NW 3803R Washington, DC 20460		TELEPHONE NO.: (202) 564-6090	FOR COURT USE ONLY	
ATTORNEY FOR (Name): Defendant		Ref. No. or File No. none		
Insert name of court, judicial district or branch court, if any: United States District Court, Of Columbia  State of DC				
PLAINTIFF: US Environmental Protection Agency				
DEFENDANT: Taotao USA, Attn. Matao Cao President;				
<b>PROOF OF SERVICE</b>	DATE:	TIME:	DEPT/DIV:	CASE NUMBER: CAA-HQ-2015-8065

1. At the time of service I was a citizen of the United States, over 18 years of age and not a party to this action, and I served copies of: 40 CFR Part 22, Rules of Practice, Complaint

2. Party Served: Jinyun County Xiangyuan Industry CO., Ltd.; Attn. Matao Cao

3. Person Served: Mateo "Terry" Cao - Person authorized to accept service of process

4. Date & Time of Delivery: 11/16/2015 1:30 PM

5. Address, City and State: 1135 West Tinity Mills Road  
Carrollton, TX 75006

6. Manner of Service: Personal Service - By personally delivering copies.

Fee for Service: \$ 53.95

Not a registered California process server.

I declare under penalty of perjury that the foregoing is true and correct.

Caleb Malone  
One Legal - 194-Marin  
504 Redwood Blvd #223  
Novato, CA 94947  
415-491-0606

Signature: CX027 Caleb Malone

EPA-000545



U.S. Department of Justice

Environment and Natural Resources Division

Environmental Enforcement Section  
P.O. Box 7611  
Washington, DC 20044-7611

Tel: (202) 514-4084  
karen.dworkin@usdoj.gov

June 2, 2016

Phillip A. Brooks, Director  
Air Enforcement Division  
Office of Enforcement and Compliance Assurance  
Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Re: Second Supplemental Request Pursuant to Section 205(c) of the Clean Air Act for a Waiver of the Penalty Limitation on EPA's Authority to Initiate Administrative Action Against *Taotao USA, Inc., et al.*  
DJ # 90-5-2-11249/2

Dear Phill:

This is in response to your letter dated May 6, 2016, titled "Second Addendum to the EPA's January 30, 2015 Request, Pursuant to Section 205(c) of the Clean Air Act, for a Waiver of the Penalty Limitation on the EPA's Administrative Penalty Authority." This letter sought a waiver to pursue administrative penalty assessment action against Taotao USA, Inc., and related entities, for additional recreational vehicles (now totaling 1681) that have been found to violate the certification requirements of the Act and its implementing regulations. I concur with your request for a waiver pursuant to Section 205(c) of the Clean Air Act (CAA), 42 U.S.C. § 7524(c), of the limitation on EPA's authority to assess administrative penalties, in order to pursue an administrative penalty in this matter for these additional vehicles. In addition, you sought a waiver for certain potential additional violations that may occur in the future. I concur with your waiver request for future violations of Section 203(a) of the CAA, 42 U.S.C. § 7522(a), as long as such violations are *substantially similar* to those covered under the waivers already issued to date, and do not cause the total number of waived vehicles in the matter to exceed 125,000. (This includes both any vehicles that are included in your administrative complaint and vehicles that are not pled in the complaint but that EPA seeks to resolve in its administrative penalty assessment action.

By *substantially similar* to those covered under waivers concurred upon to date, I mean future violations:

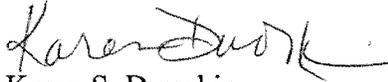
- that harm the regulatory scheme, but that do not cause excess emissions; and
- of provisions on certification, labeling, incorrect information in manuals, or warranty information violations.

I ask EPA to consult with us to discuss the path forward for any violations that are *not substantially similar*, including, but not limited to any future violations:

- that go beyond mere harm to the regulatory scheme;
- that cause excess emissions;
- that are other than violations of provisions on certification, labeling, incorrect information in manuals, or warranty information violations; or
- that are willful, knowing, or otherwise potentially criminal; or
- that increase the aggregate number of waived vehicles in the matter to over 125,000 total.

If you have any questions, please call me (514-4084) or Leslie Allen (514-4114).

Sincerely,



Karen S. Dworkin

Assistant Section Chief

Environmental Enforcement Section

**AFFIDAVIT OF SERVICE**

State of Washington DC

County of

U.S. Environmental Protection Agency Court

Case Number: CAA-HQ-2015-8065

In the Matter of:

**Taotao USA, Inc., Taotao Group Co., Ltd., and Jinyun County Xiangyuan Industry Co., Ltd.**

For: U.S. Environmental Protection Agency, Air Enforcement Division

Received by One Legal, LLC on the 24th day of June, 2016 at 11:08 am to be served on **Taotao USA, Inc. by serving its President, Matao Cao, 2201 Luna Road, Carrollton, TX 75006.** I, **Carlos Barrera**, being duly sworn, depose and say that on the 28 day of JUNE, 2016 at 1:15 p.m., executed service by delivering a true copy of the **Motion for Leave to Amend the Complaint and to Extend Prehearing Deadlines with Certificate of Service and Amended Complaint with Certificate of Service and Copies of EPA Statutes Pages 241 Through 266** in accordance with state statutes in the manner marked below:

( ) PUBLIC AGENCY: By serving \_\_\_\_\_ as \_\_\_\_\_ of the within-named agency.

( ) SUBSTITUTE SERVICE: By serving \_\_\_\_\_ as \_\_\_\_\_.

(x) CORPORATE SERVICE: By serving Lee Yin as Authorized Person

( ) OTHER SERVICE: As described in the Comments below by serving \_\_\_\_\_ as \_\_\_\_\_.

( ) NON SERVICE: For the reason detailed in the Comments below.

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

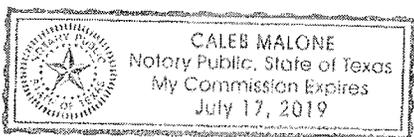
Subscribed and Sworn to before me on the 30 day of June, 2016 by the affiant who is personally known to me.

[Signature]  
NOTARY PUBLIC

[Signature]  
PROCESS SERVER # SCH5305 Exp:6/30/18  
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One Legal, LLC  
68 Mitchell Drive  
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San Rafael, CA 94903  
(800) 938-8815

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**AFFIDAVIT OF SERVICE**

State of Washington DC

County of

U.S. Environmental Protection Agency Court

Case Number: CAA-HQ-2015-8065

In the Matter of:

Taotao USA, Inc., Taotao Group Co., Ltd., and Jinyun County Xiangyuan Industry Co., Ltd.

For: U.S. Environmental Protection Agency, Air Enforcement Division

Received by One Legal, LLC on the 24th day of June, 2016 at 11:08 am to be served on **Taotao Group Co., Ltd. c/o Taotao USA, Inc. Attn. Mateo Cao, 2201 Luna Road, Carrollton, TX 75006. I, Carlos Barrera**, being duly sworn, depose and say that on the 24 day of JUNE, 2016 at 3:30 p.m., executed service by delivering a true copy of the **Motion for Leave to Amend the Complaint and to Extend Prehearing Deadlines with Certificate of Service and Amended Complaint with Certificate of Service and Copies of EPA Statutes Pages 241 Through 266** in accordance with state statutes in the manner marked below:

( ) PUBLIC AGENCY: By serving \_\_\_\_\_ as \_\_\_\_\_ of the within-named agency.

( ) SUBSTITUTE SERVICE: By serving \_\_\_\_\_ as \_\_\_\_\_

(x) CORPORATE SERVICE: By serving PARTY as Authorized to Receive

( ) OTHER SERVICE: As described in the Comments below by serving \_\_\_\_\_ as \_\_\_\_\_

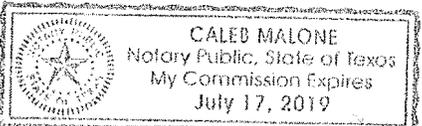
( ) NON SERVICE: For the reason detailed in the Comments below.

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 27 day of JUNE, 2016 by the affiant who is personally known to me

[Signature]  
NOTARY PUBLIC



[Signature]  
PROCESS SERVER # SCH5305 Exp:6/30/18  
Appointed in accordance with State Statutes

One Legal, LLC  
68 Mitchell Drive  
Ste. 250  
San Rafael, CA 94903  
(800) 938-8815

Our Job Serial Number: 2016004538  
Ref: 10376874

**AFFIDAVIT OF SERVICE**

State of Washington DC

County of

U.S. Environmental Protection Agency Court

Case Number: CAA-HQ-2015-8065

In the Matter of:

Taotao USA, Inc., Taotao Group Co., Ltd., and Jinyun County Xiangyuan Industry Co., Ltd.

For: U.S. Environmental Protection Agency, Air Enforcement Division

Received by One Legal, LLC on the 24th day of June, 2016 at 11:08 am to be served on Jinyun County Xiangyuan Industry Co., Ltd. c/o Taotao USA, Inc., 2201 Luna Road, Carrollton, TX 75006. I, **Carlos Barrera**, being duly sworn, depose and say that on the 24 day of JUNE, 2016 at 3:30 p.m., executed service by delivering a true copy of the **Motion for Leave to Amend the Complaint and to Extend Prehearing Deadlines with Certificate of Service and Amended Complaint with Certificate of Service and Copies of EPA Statutes Pages 241 Through 266** in accordance with state statutes in the manner marked below:

( ) PUBLIC AGENCY: By serving \_\_\_\_\_ as \_\_\_\_\_ of the within-named agency.

( ) SUBSTITUTE SERVICE: By serving \_\_\_\_\_ as \_\_\_\_\_

() CORPORATE SERVICE: By serving BOB as Assistant to Director

( ) OTHER SERVICE: As described in the Comments below by serving \_\_\_\_\_ as \_\_\_\_\_

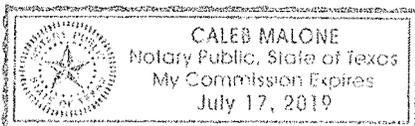
( ) NON SERVICE: For the reason detailed in the Comments below.

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 27 day of June 2016 by the affiant who is personally known to me.

NOTARY PUBLIC



ELB  
PROCESS SERVER # SCH5305 Exp: 6/30/18  
Appointed in accordance with State Statutes

One Legal, LLC  
68 Mitchell Drive  
Ste. 250  
San Rafael, CA 94903  
(800) 938-8815

Our Job Serial Number: 2016004539  
Ref: 10376874

**AFFIDAVIT OF SERVICE**

State of Washington DC

County of

U.S. Environmental Protection Agency Court

Case Number: CAA-HQ-2015-8065

In the Matter of:  
Taotao USA, Inc., Taotao Group Co., Ltd., and Jinyun County Xiangyuan Industry Co., Ltd.

For: U.S. Environmental Protection Agency, Air Enforcement Division

Received by One Legal, LLC on the 24th day of June, 2016 at 11:08 am to be served on William Chu, Law Offices of William Chu, 4455 LBJ Freeway, Dallas, TX 75244. I, Calvin Malone, being duly sworn, depose and say that on the 24 day of June, 2016 at 3:58 p.m., executed service by delivering a true copy of the **Motion for Leave to Amend the Complaint and to Extend Prehearing Deadlines with Certificate of Service and Amended Complaint with Certificate of Service and Copies of EPA Statutes Pages 241 Through 266** in accordance with state statutes in the manner marked below:

INDIVIDUAL SERVICE: Served the within-named person.

SUBSTITUTE SERVICE: By serving \_\_\_\_\_ as \_\_\_\_\_

POSTED SERVICE: After attempting service to the front door or front locked gate on the property described herein.

NON SERVICE: For the reason detailed in the Comments below.

Military Status:  Yes or  No If yes, what branch? \_\_\_\_\_

Marital Status:  Married or  Single Name of Spouse \_\_\_\_\_

COMMENTS: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

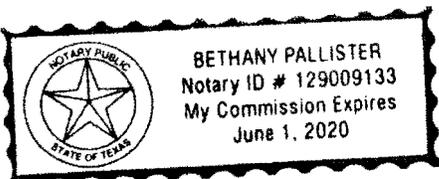
Subscribed and Sworn to before me on the 26 day of June, 2016 by the affiant who is personally known to me.

NOTARY PUBLIC

PROCESS SERVER # 541574 exp 10/31/17  
Appointed in accordance with State Statutes

One Legal, LLC  
68 Mitchell Drive  
Ste. 250  
San Rafael, CA 94903  
(800) 938-8815

Our Job Serial Number: 2016004536  
Ref: 10377654



**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Law Offices of William Chu  
 Attention: William Chu  
 4455 LBJ Freeway #909  
 Dallas, TX 75244

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee

B. Received by (Printed Name)  Agent  
 Addressee

C. Date of Delivery  
 7-18-16

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number  
(Transfer from service label)

7008 3230 0000 9394 7023

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Jinyun County Xiangyuan Industry Co., Ltd.  
 C/O Taotao USA, Inc.  
 Attention: Matao Cao, President  
 2201 Luna Road  
 Carrollton, TX 75006

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  
 Addressee

B. Received by (Printed Name)  Agent  
 Addressee

C. Date of Delivery  
 7/19/16

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type  
 Certified Mail  Express Mail  
 Registered  Return Receipt for Merchandise  
 Insured Mail  C.O.D.

4. Restricted Delivery? (Extra Fee)  Yes

2. Article Number  
(Transfer from s

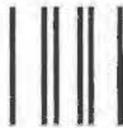
7008 3230 0000 9394 7030

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

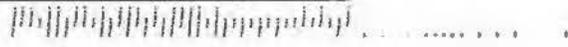
UNITED STATES POSTAL SERVICE



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

• Edward Kulschinsky, Attorney Adviser  
Air Enforcement Division  
Office of Civil Enforcement  
1200 Pennsylvania Ave., NW  
Room 1142C, Mailcode 2242A  
Washington, DC 20460

JUL 25 2016



UNITED STATES POSTAL SERVICE  
DALLAS TX  
JUL 25 2016  
PM 10:11



First-Class Mail  
Postage & Fees Paid  
USPS  
Permit No. G-10

• Edward Kulschinsky, Attorney Adviser  
Air Enforcement Division  
Office of Civil Enforcement  
1200 Pennsylvania Ave., NW  
Room 1142C, Mailcode 2242A  
Washington, DC 20460

JUL 25 2016



7006 3230 0000 9394 7016

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**OFFICIAL USE**

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

7006  
 Taotao USA, Inc.  
 Attention: Matao Cao, President  
 2201 Luna Road  
 Carrollton, TX 75006

RECEIVED

7006 3230 0000 9394 7020

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**OFFICIAL USE**

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

7006  
 Law Offices of William Chu  
 Attention: William Chu  
 4455 LBJ Freeway #909  
 Dallas, TX 75244

RECEIVED

7006 3230 0000 9394 7047

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**OFFICIAL USE**

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

7006  
 Taotao Group Co., Ltd.  
 C/O Taotao USA, Inc.  
 Attention: Matao Cao, President  
 2201 Luna Road  
 Carrollton, TX 75006

7006 3230 0000 9394 7030

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**OFFICIAL USE**

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

7006  
 Jinyun County Xiangyuan Industry Co., Ltd.  
 C/O Taotao USA, Inc.  
 Attention: Matao Cao, President  
 2201 Luna Road  
 Carrollton, TX 75006



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Updated Delivery Day: Monday, July 18, 2016

### Product & Tracking Information

Postal Product:

Features:

Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
July 18, 2016 , 1:52 pm	Delivered, Front Desk/Reception	CARROLLTON, TX 75006
Your item was delivered to the front desk or reception area at 1:52 pm on July 18, 2016 in CARROLLTON, TX 75006.		
July 18, 2016 , 8:49 am	Out for Delivery	CARROLLTON, TX 75006
July 18, 2016 , 8:38 am	Sorting Complete	CARROLLTON, TX 75006
July 18, 2016 , 4:54 am	Arrived at Unit	CARROLLTON, TX 75006
July 16, 2016 , 1:55 am	Departed USPS Facility	NORTH TEXAS PROCESSING AND DISTRIBUTION CENTER
July 15, 2016 , 2:10 pm	Arrived at USPS Facility	NORTH TEXAS PROCESSING AND DISTRIBUTION CENTER
July 14, 2016 , 7:28 pm	Departed USPS Facility	GAITHERSBURG, MD 20898
July 13, 2016 , 11:05 pm	Arrived at USPS Facility	GAITHERSBURG, MD 20898

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## Delivered

### Product & Tracking Information

Postal Product:

Features:

Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
July 18, 2016 , 4:55 pm	Delivered, To Mail Room	DALLAS, TX 75244
Your item has been delivered to the mail room at 4:55 pm on July 18, 2016 in DALLAS, TX 75244.		
July 16, 2016 , 8:59 pm	Departed USPS Facility	DALLAS, TX 75260
July 16, 2016 , 3:07 pm	Arrived at USPS Facility	DALLAS, TX 75260
July 14, 2016 , 7:28 pm	Departed USPS Facility	GAITHERSBURG, MD 20898
July 13, 2016 , 11:06 pm	Arrived at USPS Facility	GAITHERSBURG, MD 20898

### Available Actions

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Email Updates



### Track Another Package

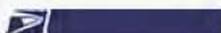
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## Delivered

Updated Delivery Day: Monday, July 18, 2016

### Product & Tracking Information

Postal Product:

Features:

Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
July 18, 2016 , 1:52 pm	Delivered, Front Desk/Reception	CARROLLTON, TX 75006
Your item was delivered to the front desk or reception area at 1:52 pm on July 18, 2016 in CARROLLTON, TX 75006.		
July 18, 2016 , 8:49 am	Out for Delivery	CARROLLTON, TX 75006
July 18, 2016 , 8:38 am	Sorting Complete	CARROLLTON, TX 75006
July 18, 2016 , 4:54 am	Arrived at Unit	CARROLLTON, TX 75006
July 16, 2016 , 1:55 am	Departed USPS Facility	NORTH TEXAS PROCESSING AND DISTRIBUTION CENTER
July 15, 2016 , 2:10 pm	Arrived at USPS Facility	NORTH TEXAS PROCESSING AND DISTRIBUTION CENTER
July 14, 2016 , 7:28 pm	Departed USPS Facility	GAITHERSBURG, MD 20898
July 13, 2016 , 11:05 pm	Arrived at USPS Facility	GAITHERSBURG, MD 20898

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### Track Another Package

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Tracking Number: 7008323000093947047



Updated Delivery Day: Monday, July 18, 2016

## Product & Tracking Information

Postal Product:

Features:

Certified Mail™

DATE & TIME	STATUS OF ITEM	LOCATION
July 18, 2016 , 1:52 pm	Delivered, Front Desk/Reception	CARROLLTON, TX 75006
Your item was delivered to the front desk or reception area at 1:52 pm on July 18, 2016 in CARROLLTON, TX 75006.		
July 18, 2016 , 8:49 am	Out for Delivery	CARROLLTON, TX 75006
July 18, 2016 , 8:38 am	Sorting Complete	CARROLLTON, TX 75006
July 18, 2016 , 4:54 am	Arrived at Unit	CARROLLTON, TX 75006
July 16, 2016 , 1:55 am	Departed USPS Facility	NORTH TEXAS PROCESSING AND DISTRIBUTION CENTER
July 15, 2016 , 2:10 pm	Arrived at USPS Facility	NORTH TEXAS PROCESSING AND DISTRIBUTION CENTER
July 14, 2016 , 7:28 pm	Departed USPS Facility	GAITHERSBURG, MD 20898
July 13, 2016 , 11:05 pm	Arrived at USPS Facility	GAITHERSBURG, MD 20898

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## Office of the Secretary of State

### Certificate of Fact

The undersigned, as Secretary of State of Texas, does hereby certify that the document, Certificate of Formation for TAOTAO USA, INC. (file number 800768734), a Domestic For-Profit Corporation, was filed in this office on February 02, 2007.

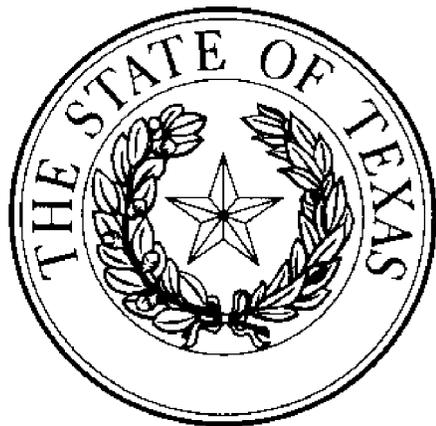
It is further certified that the entity status in Texas is in existence.

It is further certified that our records indicate WILLIAM CHU as the designated registered agent for the above named entity and the designated registered office for said entity is as follows:

4455 LBJ FREEWAY, SUITE 909

DALLAS, TX - 75244 USA

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in Austin, Texas on January 07, 2014.



A handwritten signature in cursive script that reads "Coby Shorter III".

Coby Shorter III  
Deputy Secretary of State



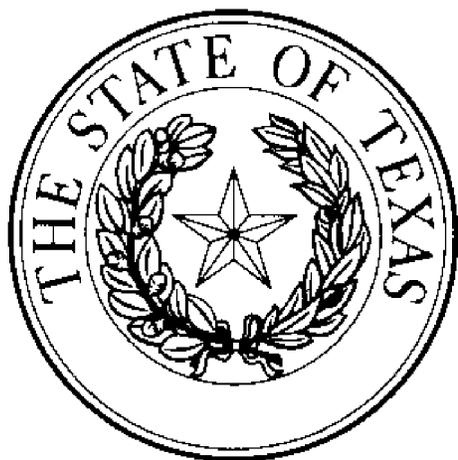
## Office of the Secretary of State

The undersigned, as Secretary of State of Texas, does hereby certify that the attached is a true and correct copy of each document on file in this office as described below:

TAOTAO USA, INC.  
Filing Number: 800768734

Certificate of Formation	February 02, 2007
Certificate of Assumed Business Name	March 17, 2007
Certificate of Correction	October 23, 2007
Public Information Report (PIR)	December 31, 2008
Certificate of Assumed Business Name	May 13, 2009
Abandonment of Assumed Business Name	June 01, 2009
Public Information Report (PIR)	December 31, 2009
Public Information Report (PIR)	December 31, 2010
Change of Registered Agent/Office	June 27, 2011
Public Information Report (PIR)	December 31, 2011
Public Information Report (PIR)	December 31, 2012
Certificate of Amendment	November 14, 2013
Public Information Report (PIR)	December 31, 2013

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in Austin, Texas on January 07, 2014.



A handwritten signature in cursive script that reads "Coby Shorter III".

Coby Shorter III  
Deputy Secretary of State

Come visit us on the internet at <http://www.sos.state.tx.us/>

Corporations Section  
P.O.Box 13697  
Austin, Texas 78711-3697



Coby Shorter III  
Deputy Secretary of State

## Office of the Secretary of State

**Form 201**  
**(Revised 1/06)**

Return in duplicate to:  
 Secretary of State  
 P.O. Box 13697  
 Austin, TX 78711-3697  
 512 463-5555  
 FAX: 512/463-5709  
**Filing Fee: \$300**



**Certificate of Formation  
 For-profit Corporation**

This space reserved for use.  
**FILED**  
 In the Office of the  
 Secretary of State of Texas

FEB 02 2007

**Corporations Section**

**Article 1 - Entity Name and Type**

The filing entity being formed is a for-profit corporation. The name of the entity is:

**TAOTAO USA, INC.**

The name must contain the word "corporation," "company," "incorporated," "limited" or an abbreviation of one of these terms.

**Article 2 - Registered Agent and Registered Office**  
 (Select and complete either A or B and complete C)

A. The initial registered agent is an organization (cannot be entity named above) by the name of:

OR

B. The initial registered agent is an individual resident of the state whose name is set forth below:

<b>Matao</b>		<b>Cao</b>	
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>

C. The business address of the registered agent and the registered office address is:

<b>659 East Royal Lane #3043</b>	<b>Irving,</b>	<b>TX</b>	<b>75039</b>
<i>Street Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>

**Article 3 - Directors**  
 (A minimum of 1 director is required.)

The number of directors constituting the initial board of directors and the names and addresses of the person or persons who are to serve as directors until the first annual meeting of shareholders or until their successors are elected and qualified are as follows:

Director 1				
<b>Matao</b>		<b>Cao</b>		
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
<b>659 East Royal Lane #3043</b>	<b>Irving</b>	<b>TX</b>	<b>75039</b>	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

<b>Director 2</b>				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
			TX	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

<b>Director 3</b>				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
			TX	
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>	<i>Country</i>

**Article 4 – Authorized Shares**  
 (Provide the number of shares in the space below, then select option A or option B, do not select both.)

The total number of shares the corporation is authorized to issue is: 5,000,000

- A. The par value of each of the authorized shares is: \_\_\_\_\_
- OR
- B. The shares shall have no par value.

If the shares are to be divided into classes, you must set forth the designation of each class, the number of shares of each class, the par value (or statement of no par value), and the preferences, limitations, and relative rights of each class in the space provided for supplemental information on this form.

**Article 5 – Purpose**

The purpose for which the corporation is formed is for the transaction of any and all lawful business for which a for-profit corporation may be organized under the Texas Business Organizations Code.

**Supplemental Provisions/Information**

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

**Organizer**

The name and address of the organizer:

**Matao Cao**

*Name*

**658 East Royal Lane #3043**

**Irving,**

**TX**

**75039**

*Street or Mailing Address*

*City*

*State*

*Zip Code*

**Effectiveness of Filing (Select either A, B, or C.)**

- A.  This document becomes effective when the document is filed by the secretary of state.
- B.  This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: \_\_\_\_\_
- C.  This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90<sup>th</sup> day after the date of signing is: \_\_\_\_\_

The following event or fact will cause the document to take effect in the manner described below:

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

**Execution**

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Date: January 30, 2007

  
\_\_\_\_\_  
Signature of organizer



**Office of the Secretary of State  
Corporations Section  
P.O. Box 13697  
Austin, Texas 78711-3697  
(Form 503)**

**Filed in the Office of the  
Secretary of State of Texas  
Filing #: 800768734 3/17/2007  
Document #: 163964890004  
Image Generated Electronically  
for Web Filing**

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**ASSUMED NAME CERTIFICATE  
FOR FILING WITH THE SECRETARY OF STATE**

1. The assumed name under which the business or professional service is or is to be conducted or rendered is:

TAOTAO USA, INC.

---

2. The name of the entity as stated in its certificate of formation, application for registration, application for certificate of authority, or comparable document is:

TAOTAO USA, INC.

---

3. The state, country, or other jurisdiction under the laws of which it was incorporated, organized or associated is TEXAS and the address of its registered or similar office in that jurisdiction is:  
659 East Royal Lane #3043, Irving, TX, USA 75039

4. The period, not to exceed 10 years, during which the assumed name will be used is (enter number of years or a date of expiration): 10 year(s)

5. The entity is a : Domestic For-Profit Corporation

6. If the entity is required to maintain a registered office in Texas, the address of the registered office is:

659 East Royal Lane #3043, Irving, TX, USA 75039

and the name of its registered agent at such address is:

Matao Cao

---

The address of the principal office (if not the same as the registered office) is:

2330 ALBERTA DRIVE #200, DALLAS, TX, USA 75229

---

7. If the entity is not required to or does not maintain a registered office in Texas, the office address in Texas is:

---

and if the entity is not incorporated, organized or associated under the laws of Texas, the address of its place of business in Texas is:

---

and the office address elsewhere is:

---

8. The county or counties where business or professional services are being or are to be conducted or rendered under such assumed name are:

CX030

EPA-000569

9. The undersigned, if acting in the capacity of an attorney-in-fact of the entity, certifies that the entity has duly authorized the attorney-in-fact in writing to execute this document. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

TAOTAO USA, INC.

**Name of the entity**

By: MATAO CAO

**Signature of officer, general partner, manager,  
representative or attorney-in-fact of the entity**

**NOTE**

**This form is designed to meet statutory requirements for filing with the secretary of state and is not designed to meet filing requirements on the county level. Filing requirements for assumed name documents to be filed with the county clerk differ. Assumed name documents filed with the county clerk are to be executed and acknowledged by the filing party, which requires that the document be notarized.**

**FILING OFFICE COPY**



The registered office address is inaccurate or erroneously stated. The corrected registered office address is:

Corrected Registered Office Address

Street Address (No P.O. Box)	City	TX State	Zip Code

The purpose of the entity is inaccurate or erroneously stated. The purpose is corrected to read as follows:

The period of duration of the entity is inaccurate or erroneously stated. The period of duration is corrected to read as follows:

#### Identification of Other Errors and Corrections

(Indicate the other errors and corrections that have been made by checking and completing the appropriate box or boxes.)

Other errors and corrections. The following inaccuracies and errors in the filing instrument are corrected as follows:

Add Each of the following provisions was omitted and should be added to the filing instrument. The identification or reference of each added provision and the full text of the provision is set forth below.

Alter The following identified provisions of the filing instrument contain inaccuracies or errors to be corrected. The full text of each corrected provision is set forth below:

Delete Each of the provisions identified below was included in error and should be deleted.

**Defective Execution** The filing instrument was defectively or erroneously signed, sealed, acknowledged or verified. Attached is a correctly signed, sealed, acknowledged or verified instrument.

[REDACTED]

The filing instrument identified in this certificate was an inaccurate record of the event or transaction evidenced in the instrument, contained an inaccurate or erroneous statement, or was defectively or erroneously signed, sealed, acknowledged or verified. This certificate of correction is submitted for the purpose of correcting the filing instrument.

[REDACTED]

After the secretary of state files the certificate of correction, the filing instrument is considered to have been corrected on the date the filing instrument was originally filed except as to persons adversely affected. As to persons adversely affected by the correction, the filing instrument is considered to have been corrected on the date the certificate of correction is filed by the secretary of state.

[REDACTED]

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Date: 10/16/2007

  
\_\_\_\_\_  
President

Signature and title of authorized person (see instructions)



Office of the Secretary of State  
Corporations Section  
P.O. Box 13697  
Austin, Texas 78711-3697  
(Form 503)

Filed in the Office of the  
Secretary of State of Texas  
Filing #: 800768734 5/13/2009  
Document #: 257834550002  
Image Generated Electronically  
for Web Filing

---

**ASSUMED NAME CERTIFICATE  
FOR FILING WITH THE SECRETARY OF STATE**

1. The assumed name under which the business or professional service is or is to be conducted or rendered is:

**Eagleatvparts**

---

2. The name of the entity as stated in its certificate of formation, application for registration, application for certificate of authority, or comparable document is:

**TAOTAO USA, INC.**

---

3. The state, country, or other jurisdiction under the laws of which it was incorporated, organized or associated is **TEXAS** and the address of its registered or similar office in that jurisdiction is:

**659 East Royal Lane #3043, Irving, TX, USA 75039**

---

4. The period, not to exceed 10 years, during which the assumed name will be used is (enter number of years or a date of expiration): **10 year(s)**

5. The entity is a : **Domestic For-Profit Corporation**

6. If the entity is required to maintain a registered office in Texas, the address of the registered office is:

**659 East Royal Lane #3043, Irving, TX, USA 75039**

---

and the name of its registered agent at such address is:

**William Chu**

---

The address of the principal office (if not the same as the registered office) is:

**11550 Newberry Street Ste 100, Dallas, TX, USA 75229**

---

7. If the entity is not required to or does not maintain a registered office in Texas, the office address in Texas is:

---

and if the entity is not incorporated, organized or associated under the laws of Texas, the address of its place of business in Texas is:

---

and the office address elsewhere is:

---

8. The county or counties where business or professional services are being or are to be conducted

CX030

EPA-000574

or rendered under such assumed name are:

**ALL COUNTIES LISTED BELOW:  
DALLAS,**

---

9. The undersigned, if acting in the capacity of an attorney-in-fact of the entity, certifies that the entity has duly authorized the attorney-in-fact in writing to execute this document. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

**TAOTAO USA, INC.**

**Name of the entity**

By: **YaoYao Lu**

Signature of officer, general partner, manager,  
representative or attorney-in-fact of the entity

**NOTE**

**This form is designed to meet statutory requirements for filing with the secretary of state and is not designed to meet filing requirements on the county level. Filing requirements for assumed name documents to be filed with the county clerk differ. Assumed name documents filed with the county clerk are to be executed and acknowledged by the filing party, which requires that the document be notarized.**

FILING OFFICE COPY

**Form 504**  
**(Revised 4/09)**

Return in duplicate to:  
Secretary of State  
P.O. Box 13697  
Austin, TX 78711-3697  
512 463-5555  
FAX: 512 463-5709  
**Filing Fee: \$10**



This space reserved for office use.

**FILED**  
In the Office of the  
Secretary of State of Texas

JUN 01 2009

**Corporations Section**

**Abandonment of Assumed  
Name Certificate**

**Assumed Name**

1. The assumed name to be abandoned is: Eagleatvparts
2. The assumed name certificate was filed with the secretary of state on: 05/13/2009  
*mm/dd/yyyy*

**Entity Information**

3. The legal name of the entity abandoning the assumed name is:

Taotao USA, Inc.

*State the name of the entity as currently shown in the records of the secretary of state or on its organizational documents, if not filed with the secretary of state.*

4. The file number, if any, issued to the entity by the secretary of state is: 800768734

5. The office address of the entity in its jurisdiction of formation is:

11550 Newberry St. Ste 100

Dallas, TX 75229

(Complete item 6 *only* when the entity is required by law to maintain a registered agent/registered office in Texas.  
An entity required to complete item 6 does not complete item 7. See instructions.)

- 6a. The entity is required to maintain a registered office and agent in Texas. The address of its registered office in Texas is:

659 East Royal Lane #3043, Irving, TX 75039

- 6b. The name of the registered agent at such address is:

William Chu

- 6c. The address of the principal office of the entity (if not the same as 6a) is:

11550 Newberry St. Ste 100, Dallas, TX 75229

(Complete item 7 *only* if the entity is not required by law to maintain a registered agent/registered office in Texas.  
Complete item 7c *only* if the entity is not organized under the laws of Texas. See instructions.)

- 7a. The entity is not required by law to maintain a registered agent/registered office in Texas. Its principal office address in Texas is:

**RECEIVED**  
Form 504

JUN 01 2009

**Secretary of State**

7b. The address of the entity's principal place of business in Texas (if not the same as 7a) is:

7c. The entity is not organized under the laws of Texas. Its office address outside the state is:

**County or Counties in which Assumed Name Filed**

8. The assumed name being abandoned was filed on the following dates in the following counties:

N/A

*Name of County*

*Date of Filing*

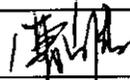
*Name of County*

*Date of Filing*

**Execution**

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and also certifies that the person is authorized to sign on behalf of the identified entity. If the undersigned is acting in the capacity of an attorney in fact for the entity, the undersigned certifies that the entity has duly authorized the undersigned in writing to execute this document.

Date: 5-26-2009



Signature of a person authorized by law to sign on behalf of the identified entity (see instructions)

05-102  
(1-08/28)

# TEXAS FRANCHISE TAX PUBLIC INFORMATION REPORT

(To be filed by Corporations and Limited Liability Companies (LLCS))

■ Tcode 13196

This report MUST be filed to satisfy franchise tax requirements

You have certain rights under Chapter 552 and 559, Government Code, to review, request, and correct information we have on file about you. Contact us at: (512) 463-4600, or (800) 252-1381, toll free nationwide.

■ Taxpayer number

■ Report year

32025808521

2008

Taxpayer name  
Taotao USA, Inc.  
Mailing address  
11550 Newberry Street, Suite 100  
City  
Dallas

State  
TX

ZIP Code  
75229

Plus 4

Secretary of State file number or  
Comptroller file number  
0800768734

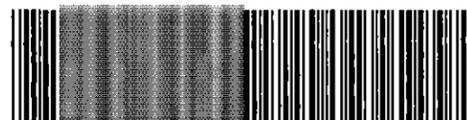
Check box if there are currently no changes or additions to the information displayed in Section A of this report. Then complete Sections B and C.

Entity's principal office

Principal place of business

**Please sign below!**

Officer, director and member information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or members change throughout the year.



3202580852108

### SECTION A. Name, title and mailing address of each officer, director or member.

Name	Title	Director	Term expiration	m	m	d	d	y	y
Matao Cao	President	<input checked="" type="checkbox"/> YES							
Mailing Address	City		State	ZIP Code					
1641 Mcgee Ln	Carrollton		TX	75010					
Name	Title	<input type="checkbox"/> YES							
Mailing Address	City		State	ZIP Code					
Name	Title	<input type="checkbox"/> YES							
Mailing Address	City		State	ZIP Code					

### SECTION B. Enter the information required for each corporation or LLC, if any, in which this reporting entity owns an interest of ten percent (10%) or more.

Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership
Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership

### SECTION C. Enter the information required for each corporation or LLC, if any, that owns an interest of ten percent (10%) or more in this reporting entity.

Name of owned (parent) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership
Name of owned (parent) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership

Registered agent and registered office currently on file. (See instructions if you need to make changes.)

Agent:

Office:

City

State

ZIP Code

Check box if you need forms to change the registered agent or registered office information

The above information is required by Section 171.203 of the Tax Code for each corporation or limited liability company that files a Texas Franchise Tax Report. Use additional sheets for Sections A, B, and C, if necessary. The information will be available for public inspection.

I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director or member and who is not currently employed by this, or a related, corporation or limited liability company.

sign here

Title

President

Date

4-28-2008

Area code and phone number

214-635-3980

Texas Comptroller of Public Accounts



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1015

00000379472

TX2009 05-102  
Ver. 1.1 (Rev. 1-08/28)

TEXAS FRANCHISE TAX PUBLIC INFORMATION REPORT

(To be filed by Corporations and Limited Liability Companies (LLCS))

Tcode 13196

This report MUST be filed to satisfy franchise tax requirements

You have certain rights under Chapter 552 and 559, Government Code, to review, request, and correct information we have on file about you. Contact us at: (512) 463-4600, or (800) 252-1381, toll free nationwide.

Taxpayer number

Report year

32025808521

2009

Taxpayer name  
Taotao USA, Inc.  
Mailing address  
11550 Newberry Street, Suite 100  
City  
Dallas

State  
TX

ZIP Code  
75229

Plus 4

Secretary of State file number of  
Comptroller file number  
0800768734

0608052108067

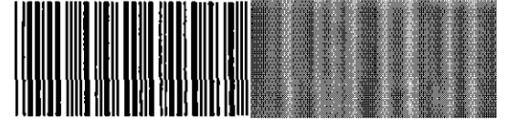
Check box if there are currently no changes or additions to the information displayed in Section A of this report. Then complete Sections B and C.

Entity's principal office

Principal place of business

Please sign below!

Officer, director and member information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or members change throughout the year.



3202580852109

SECTION A. Name, title and mailing address of each officer, director or member.

Table with columns: Name, Mailing Address, Title, Director (YES/NO), Term expiration (m, m, d, d, y, y), State, ZIP Code. Includes entry for Matao Cao, President, Carrollton, TX, 75010.

SECTION B. Enter the information required for each corporation or LLC, if any, in which this reporting entity owns an interest of ten percent (10%) or more.

Table with columns: Name of owned (subsidiary) corporation or limited liability company, State of formation, Texas SOS file number, if any, Percentage of Ownership.

SECTION C. Enter the information required for each corporation or LLC, if any, that owns an interest of ten percent (10%) or more in this reporting entity.

Table with columns: Name of owned (parent) corporation or limited liability company, State of formation, Texas SOS file number, if any, Percentage of Ownership.

Registered agent and registered office currently on file. (See instructions if you need to make changes.)

Agent: William Chu

Check box if you need forms to change the registered agent or registered office information

Office: 659 East Royal Lane #3043

City  
Irving

State  
TX

ZIP Code  
75039

The above information is required by Section 171.203 of the Tax Code for each corporation or limited liability company that files a Texas Franchise Tax Report. Use additional sheets for Sections A, B, and C, if necessary. The information will be available for public inspection.

I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director or member and who is not currently employed by this, or a related, corporation or limited liability company.

sign here

[Handwritten signature]

Title  
President

Date  
03-16-2009

Area code and phone number  
214-635-3980

Texas Comptroller Official Use Only

VE/DE

○

PIR IND

○



1015

TX2010  
Ver. 1.0 05-102  
(9-09/29)  
Tcode 13196

# TEXAS FRANCHISE TAX PUBLIC INFORMATION REPORT

To be filed by Corporations, Limited Liability Companies (LLCS) and Financial Institutions

This report MUST be signed and filed to satisfy franchise tax requirements

102703607677  
MA

Taxpayer number: 32025808521  
Report year: 2010

You have certain rights under Chapter 552 and 559, Government Code, to review, request, and correct information we have on file about you. Contact us at: (512) 463-4600, or (800) 252-1381, toll free nationwide.

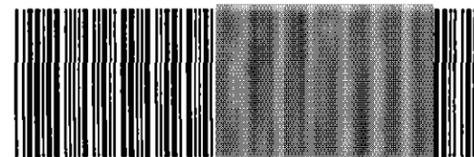
Taxpayer name: Taotao USA, Inc.  
Mailing address: 2425 Camp Ave Ste #100  
City: Carrollton

State: TX  
ZIP Code: 75006  
Plus 4

Secretary of State file number or Comptroller file number: 0800768734

Check box if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office  
Principal place of business



3202580852110

**Please sign below!** Officer, director and member information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or members change throughout the year.

### SECTION A. Name, title and mailing address of each officer, director or member.

Name	Title	Director	Term expiration	m	m	d	d	y	y
Matao Cao	President	<input checked="" type="checkbox"/> YES							
Mailing address: 1641 Mcgee Ln	City: Carrollton		State: TX					ZIP Code: 75010	
Name	Title	Director	Term expiration	m	m	d	d	y	y
Mailing address	City		State					ZIP Code	
Name	Title	Director	Term expiration	m	m	d	d	y	y
Mailing address	City		State					ZIP Code	

### SECTION B Enter the information required for each corporation or LLC, if any, in which this entity owns an interest of ten percent (10%) or more.

Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership
Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership

### SECTION C Enter the information required for each corporation or LLC, if any, that owns an interest of ten percent (10%) or more in this entity or limited liability company.

Name of owned (parent) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership
Name of owned (parent) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership

Registered agent and registered office currently on file. (See instructions if you need to make changes.)

Agent: William Chu  
Office: 659 East Royal Lane #3043  
City: Irving  
State: TX  
ZIP Code: 75039

Check box if you need forms to change the registered agent or registered office information

The above information is required by Section 171.203 of the Tax Code for each corporation or limited liability company that files a Texas Franchise Tax Report. Use additional sheets for Sections A, B, and C, if necessary. The information will be available for public inspection.

I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director or member and who is not currently employed by this, or a related, corporation or limited liability company.

sign here: [Signature] Title: president Date: 9.15.2010 Area code and phone number: 972-261-6577

Texas Comptroller Official Use Only



VE/DE | O | PIR IND | O



**Form 401**  
**(Revised 05/11)**  
Submit in duplicate to:  
Secretary of State  
P.O. Box 13697  
Austin, TX 78711-3697  
512 463-5555  
FAX: 512/463-5709  
**Filing Fee: See instructions**

This space reserved for office use.



**Statement of Change of  
Registered Office/Agent**

**FILED**  
**In the Office of the**  
**Secretary of State of Texas**  
**JUN 27 2011**  
**Corporations Section**

**Entity Information**

1. The name of the entity is:

TAOTAO USA, INC.

*State the name of the entity as currently shown in the records of the secretary of state.*

2. The file number issued to the filing entity by the secretary of state is: 800768734

3. The name of the registered agent as currently shown on the records of the secretary of state is:

William Chu

*Registered Agent Name*

The address of the registered office as currently shown on the records of the secretary of state is:

659 East Royal Ln. #3043

Irving

TX 75006

*Street Address*

*City*

*State Zip Code*

**Change to Registered Agent/Registered Office**

4. The certificate of formation or registration is modified to change the registered agent and/or office of the filing entity as follows:

**Registered Agent Change**

(Complete either A or B, but not both. Also complete C if the address has changed.)

A. The new registered agent is an organization (cannot be entity named above) by the name of:

**OR**

B. The new registered agent is an individual resident of the state whose name is:

*First Name*

*M.I.*

*Last Name*

*Suffix*

**Registered Office Change**

C. The business address of the registered agent and the registered office address is changed to:

4455 LBJ Freeway, Suite 909

Dallas

TX 75244

*Street Address (No P.O. Box)*

*City*

*State Zip Code*

The street address of the registered office as stated in this instrument is the same as the registered agent's business address.

## Statement of Approval

The change specified in this statement has been authorized by the entity in the manner required by the BOC or in the manner required by the law governing the filing entity, as applicable.

### Effectiveness of Filing (Select either A, B, or C.)

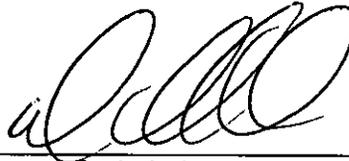
- A.  This document becomes effective when the document is filed by the secretary of state.
- B.  This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: \_\_\_\_\_
- C.  This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90<sup>th</sup> day after the date of signing is: \_\_\_\_\_

The following event or fact will cause the document to take effect in the manner described below:

## Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Date: 06/23/2011



\_\_\_\_\_  
Signature of authorized person

William Chu

\_\_\_\_\_  
Printed or typed name of authorized person (see instructions)



05-102  
(Rev. 1-08/28)  
Code 13196

# TEXAS FRANCHISE TAX PUBLIC INFORMATION REPORT

Franchise Number: 800768734

(To be filed by Corporations and Limited Liability Companies (LLCS))  
This report MUST be filed to satisfy franchise tax requirements

■ Taxpayer number      ■ Report year  
3 | 2 | 0 | 2 | 5 | 8 | 0 | 8 | 5 | 2 | 1 | 2 | 0 | 1 | 1

**You have certain rights** under Chapter 552 and 559, Government Code, to review, request, and correct information we have on file about you. Contact us at: (512) 463-4600, or (800) 252-1381, toll free nationwide.

Taxpayer name  
**TAOTAO USA, INC.**  
Mailing address  
**2425 CAMP AVE STE 100**  
City  
**CARROLLTON**

State  
**TX**

ZIP Code  
**75006**

Plus 4  
**1358**

Secretary of State file number or  
Comptroller file number  
**0800768734**

Blacken circle if there are currently no changes or additions to the information displayed in Section A of this report. Then complete Sections B and C.

Entity's principal office  
Principal place of business



3202580852111

*Please sign below!*

Officer, director and member information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or members change throughout the year.

**SECTION A** Name, title and mailing address of each officer, director or member.

Name <b>MATAO CAO</b>	Title <b>PRESIDENT</b>	Director <input checked="" type="radio"/> YES	Term expiration m   m   d   d   y   y
Mailing address <b>1641 MCGEE LN</b>	City <b>CARROLLTON</b>	State <b>TX</b>	ZIP code <b>75010</b>
Name	Title	Director <input type="radio"/> YES	Term expiration m   m   d   d   y   y
Mailing address	City	State <b>TX</b>	ZIP code <b>75010</b>
Name	Title	Director <input type="radio"/> YES	Term expiration m   m   d   d   y   y
Mailing address	City	State	ZIP code
Name	Title	Director <input type="radio"/> YES	Term expiration m   m   d   d   y   y
Mailing address	City	State	ZIP code

**SECTION B** Enter the information required for each corporation or LLC, if any, in which this reporting entity owns an interest of ten percent (10%) or more.

Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership
Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership

**SECTION C** Enter the information required for each corporation or LLC, if any, that owns an interest of ten percent (10%) or more in this reporting entity or limited liability company.

Name of owned (parent) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership
Registered agent and registered office currently on file. (See instructions if you need to make changes)		<input type="radio"/> Blacken circle if you need forms to change the registered agent or registered office information.	
Agent: <b>WILLIAM CHU</b>	City <b>DALLAS</b>	State <b>TX</b>	ZIP Code <b>75244</b>

The above information is required by Section 171.203 of the Tax Code for each corporation or limited liability company that files a Texas Franchise Tax Report. Use additional sheets for Sections A, B, and C, if necessary. The information will be available for public inspection.

I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director or member and who is not currently employed by this, or a related, corporation or limited liability company.

sign here      Title      Date      Area code and phone number  
**(972) 247 - 6009**



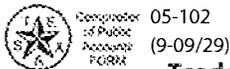
VE/DE        PIR IND   

EPA-000583

**TEXAS FRANCHISE TAX PUBLIC INFORMATION REPORT**

To be filed by Corporations and Limited Liability Companies (LLC) and Financial Institutions

This report MUST be signed and filed to satisfy franchise tax requirements



05-102  
(9-09/29)  
Tcode 13196

Taxpayer number       Report year      *You have certain rights under Chapter 552 and 559, Government Code, to review, request, and correct information we have on file about you. Contact us at: (512) 463-4600, or (800) 252-1381, toll free nationwide.*

3	2	0	2	5	8	0	8	5	2	1	2	0	1	2
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Taxpayer name <b>Taotao USA Inc</b>		Secretary of State file number or Comptroller file number <b>0800768734</b>	
Mailing address <b>2425 Camp Ave Ste 100</b>			
City <b>Carrollton</b>	State <b>TX</b>	ZIP Code <b>75006</b>	Plus 4

Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office
Principal place of business

*Please sign below!*

Officer, director and member information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or members change throughout the year.



**SECTION A** Name, title and mailing address of each officer, director or member.

Name	Title	Director	Term expiration												
<b>Matao Cao</b>	<b>President</b>	<input checked="" type="radio"/> YES	<table border="1"><tr><td>m</td><td>m</td><td>d</td><td>d</td><td>y</td><td>y</td></tr><tr><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>	m	m	d	d	y	y						
m	m	d	d	y	y										
Mailing address <b>1641 Mcgee Ln</b>	City <b>Carrollton</b>	State <b>TX</b>	ZIP code <b>75010</b>												
Name	Title	Director	Term expiration												
		<input type="radio"/> YES	<table border="1"><tr><td>m</td><td>m</td><td>d</td><td>d</td><td>y</td><td>y</td></tr><tr><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>	m	m	d	d	y	y						
m	m	d	d	y	y										
Mailing address	City	State	ZIP code												
Name	Title	Director	Term expiration												
		<input type="radio"/> YES	<table border="1"><tr><td>m</td><td>m</td><td>d</td><td>d</td><td>y</td><td>y</td></tr><tr><td></td><td></td><td></td><td></td><td></td><td></td></tr></table>	m	m	d	d	y	y						
m	m	d	d	y	y										
Mailing address	City	State	ZIP code												

**SECTION B** Enter the information required for each corporation or LLC, if any, in which this entity owns an interest of ten percent (10%) or more.

Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership

**SECTION C** Enter the information required for each corporation or LLC, if any, that owns an interest of ten percent (10%) or more in this entity or limited liability company.

Name of owned (parent) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership

Registered agent and registered office currently on file. (See instructions if you need to make changes)

Agent: **William Chu**       Blacken circle if you need forms to change the registered agent or registered office information.

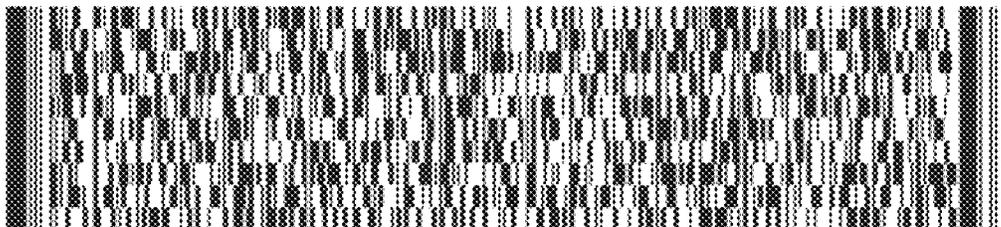
Office: **659 East Royal Lane Apt 3043**      City: **Irving**      State: **TX**      ZIP Code: **75039**

The above information is required by Section 171.203 of the Tax Code for each corporation or limited liability company that files a Texas Franchise Tax Report. Use additional sheets for Sections A, B, and C, if necessary. The information will be available for public inspection.

I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director or member and who is not currently employed by this, or a related, corporation or limited liability company.

sign here <b>Pu Li</b>	Title <b>CPA</b>	Date <b>06/22/2012</b>	Area code and phone number <b>( 972 ) 247 - 6009</b>
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**Texas Comptroller Official Use Only**



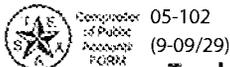
VE/DE	<input type="radio"/>	PIR IND	<input type="radio"/>
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**TEXAS FRANCHISE TAX PUBLIC INFORMATION REPORT**

To be filed by Corporations and Limited Liability Companies (LLC) and Financial Institutions

This report **MUST** be signed and filed to satisfy franchise tax requirements



05-102  
(9-09/29)  
Tcode 13196

Taxpayer number       Report year      *You have certain rights under Chapter 552 and 559, Government Code, to review, request, and correct information we have on file about you. Contact us at: (512) 463-4600, or (800) 252-1381, toll free nationwide.*

3	2	0	2	5	8	0	8	5	2	1	2	0	1	3
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Taxpayer name <b>Taotao USA Inc</b>		Secretary of State file number or Comptroller file number <b>0800768734</b>	
Mailing address <b>2425 Camp Ave Ste 100</b>			
City <b>Carrollton</b>	State <b>TX</b>	ZIP Code <b>75006</b>	Plus 4

Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office

Principal place of business

*Please sign below!*

Officer, director and member information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or members change throughout the year.



**SECTION A** Name, title and mailing address of each officer, director or member.

3202580852113

Name <b>Matao Cao</b>	Title <b>President</b>	Director <input checked="" type="checkbox"/> YES	Term expiration m m d d y y
Mailing address <b>1641 Mcgee Ln</b>	City <b>Carrollton</b>	State <b>TX</b>	ZIP code <b>75010</b>
Name	Title	Director <input type="checkbox"/> YES	Term expiration m m d d y y
Mailing address	City	State	ZIP code
Name	Title	Director <input type="checkbox"/> YES	Term expiration m m d d y y
Mailing address	City	State	ZIP code

**SECTION B** Enter the information required for each corporation or LLC, if any, in which this entity owns an interest of ten percent (10%) or more.

Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership
Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership

**SECTION C** Enter the information required for each corporation or LLC, if any, that owns an interest of ten percent (10%) or more in this entity or limited liability company.

Name of owned (parent) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership
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Registered agent and registered office currently on file. (See instructions if you need to make changes)  Blacken circle if you need forms to change the registered agent or registered office information.

Agent: **William Chu**

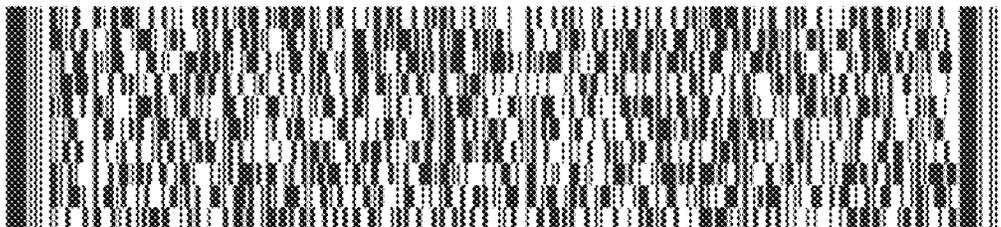
Office: **659 East Royal Lane Apt 3043**      City: **Irving**      State: **TX**      ZIP Code: **75039**

The above information is required by Section 171.203 of the Tax Code for each corporation or limited liability company that files a Texas Franchise Tax Report. Use additional sheets for Sections A, B, and C, if necessary. The information will be available for public inspection.

I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director or member and who is not currently employed by this, or a related, corporation or limited liability company.

**sign here**      **Matao Cao**      Title: **President**      Date: **09/04/2013**      Area code and phone number: **( 214 ) 635 - 3980**

**Texas Comptroller Official Use Only**



VE/DE       PIR IND



**Form 424**  
**(Revised 05/11)**  
 Submit in duplicate to  
 Secretary of State  
 P O Box 13697  
 Austin, TX 78711-3697  
 512 463-5555  
 FAX 512/463-5709  
**Filing Fee See instructions**



This space reserved for office use

### Certificate of Amendment

**FILED**  
 In the Office of the  
 Secretary of State of Texas  
 NOV 14 2013  
**Corporations Section**

### Entity Information

The name of the filing entity is

TAOTAO USA, INC

State the name of the entity as currently shown in the records of the secretary of state. If the amendment changes the name of the entity, state the old name and not the new name.

The filing entity is a (Select the appropriate entity type below)

- For profit Corporation
- Nonprofit Corporation
- Cooperative Association
- Limited Liability Company
- Professional Corporation
- Professional Limited Liability Company
- Professional Association
- Limited Partnership

The file number issued to the filing entity by the secretary of state is 0800768734

The date of formation of the entity is 02/02/2007

### Amendments

#### 1 Amended Name

(If the purpose of the certificate of amendment is to change the name of the entity, use the following statement)

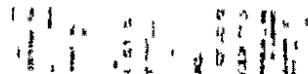
The amendment changes the certificate of formation to change the article or provision that names the filing entity. The article or provision is amended to read as follows:

The name of the filing entity is (state the new name of the entity below)

The name of the entity must contain an organizational designation or accepted abbreviation of such term, as applicable.

#### 2 Amended Registered Agent/Registered Office

The amendment changes the certificate of formation to change the article or provision stating the name of the registered agent and the registered office address of the filing entity. The article or provision is amended to read as follows:



**Registered Agent**

(Complete either A or B but not both. Also complete C.)

A The registered agent is an organization (cannot be entity named above) by the name of

OR

B The registered agent is an individual resident of the state whose name is

*First Name* *MI* *Last Name* *Suffix*

The person executing this instrument affirms that the person designated as the new registered agent has consented to serve as registered agent

C The business address of the registered agent and the registered office address is

*Street Address (No P.O. Box)* *City* *TX* *State* *Zip Code*

**3 Other Added, Altered, or Deleted Provisions**

Other changes or additions to the certificate of formation may be made in the space provided below. If the space provided is insufficient, incorporate the additional text by providing an attachment to this form. Please read the instructions to this form for further information on format.

Text Area 1 (The attached addendum, if any, is incorporated herein by reference.)

**Add** each of the following provisions to the certificate of formation. The identification or reference of the added provision and the full text are as follows:  
 Add new acting secretary name YAOYAO LU  
 Add new acting secretary address 2425 Camp Ave Suite 100 Carrollton, TX 75006

**Alter** each of the following provisions of the certificate of formation. The identification or reference of the altered provision and the full text of the provision as amended are as follows:

**Delete** each of the provisions identified below from the certificate of formation:

**Statement of Approval**

The amendments to the certificate of formation have been approved in the manner required by the Texas Business Organizations Code and by the governing documents of the entity.

**Effectiveness of Filing** (Select either A, B, or C.)

- A  This document becomes effective when the document is filed by the secretary of state
  - B  This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is \_\_\_\_\_
  - C  This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90<sup>th</sup> day after the date of signing is \_\_\_\_\_
- The following event or fact will cause the document to take effect in the manner described below:

**Execution**

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date 11/6/2013

By 

Signature of authorized person

Matao Cao  
Printed name (type name of authorized person) (see instructions)



## Office of the Secretary of State

January 07, 2014

A search of our records reveals the following information for the entity record selected.

Entity Name: TAOTAO USA, INC.  
Entity Type: Domestic For-Profit Corporation  
Jurisdiction: TEXAS, USA  
File Number: 800768734  
Formation File Date: February 02, 2007 Effective: February 02, 2007

The status of the entity is in existence.

The name and address of the registered agent and office in Texas is:

WILLIAM CHU  
4455 LBJ FREEWAY, SUITE 909  
DALLAS, TX 75244  
USA

The entity recorded the following assumed name(s) with this office:

TAOTAO USA, INC.	March 17, 2007	Active
Eagleatvparts	May 13, 2009	Abandoned

The management information from our computer records lists:

MATAO CAO PRESIDENT	1641 MCGEE LN CARROLLTON, TX 75010 USA
MATAO CAO DIRECTOR	1641 MCGEE LN CARROLLTON, TX 75010 USA
YAOYAO LU SECRETARY	2425 CAMP AVE., STE 100 CARROLLTON, TX 75006 USA



## Office of the Secretary of State

### Certificate of Fact

The undersigned, as Secretary of State of Texas, does hereby certify that the document, Certificate of Formation for TAOTAO USA, INC. (file number 800768734), a Domestic For-Profit Corporation, was filed in this office on February 02, 2007.

It is further certified that the entity status in Texas is in existence.

It is further certified that our records indicate WILLIAM CHU as the designated registered agent for the above named entity and the designated registered office for said entity is as follows:

4455 LBJ FREEWAY, SUITE 909

DALLAS, TX - 75244 USA

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in Austin, Texas on April 04, 2016.



A handwritten signature in black ink, appearing to read "Cascos" followed by a horizontal line.

Carlos H. Cascos  
Secretary of State



## Office of the Secretary of State

The undersigned, as Secretary of State of Texas, does hereby certify that the attached is a true and correct copy of each document on file in this office as described below:

TAOTAO USA, INC.  
Filing Number: 800768734

Certificate of Amendment  
Public Information Report (PIR)  
Public Information Report (PIR)

December 10, 2014  
December 31, 2014  
December 31, 2015

In testimony whereof, I have hereunto signed my name officially and caused to be impressed hereon the Seal of State at my office in Austin, Texas on April 04, 2016.



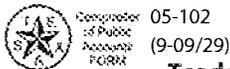
A handwritten signature in black ink, appearing to read "Cascos" followed by a horizontal line.

Carlos H. Cascos  
Secretary of State

**TEXAS FRANCHISE TAX PUBLIC INFORMATION REPORT**

To be filed by Corporations and Limited Liability Companies (LLC) and Financial Institutions

This report **MUST** be signed and filed to satisfy franchise tax requirements



05-102  
(9-09/29)  
Tcode 13196

Taxpayer number       Report year      *You have certain rights under Chapter 552 and 559, Government Code, to review, request, and correct information we have on file about you. Contact us at: (512) 463-4600, or (800) 252-1381, toll free nationwide.*

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Taxpayer name <b>Taotao USA Inc</b>		Secretary of State file number or Comptroller file number <b>0800768734</b>	
Mailing address <b>2425 Camp Ave Ste 100</b>			
City <b>Carrollton</b>	State <b>TX</b>	ZIP Code <b>75006</b>	Plus 4

Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office
Principal place of business

*Please sign below!*

Officer, director and member information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or members change throughout the year.



**SECTION A** Name, title and mailing address of each officer, director or member.

3202580852114

Name <b>Matao Cao</b>	Title <b>President</b>	Director <input checked="" type="radio"/> YES	Term expiration m m d d y y
Mailing address <b>1641 Mcgee Ln</b>	City <b>Carrollton</b>	State <b>TX</b>	ZIP code <b>75010</b>
Name	Title	Director <input type="radio"/> YES	Term expiration m m d d y y
Mailing address	City	State	ZIP code
Name	Title	Director <input type="radio"/> YES	Term expiration m m d d y y
Mailing address	City	State	ZIP code

**SECTION B** Enter the information required for each corporation or LLC, if any, in which this entity owns an interest of ten percent (10%) or more.

Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership
Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership

**SECTION C** Enter the information required for each corporation or LLC, if any, that owns an interest of ten percent (10%) or more in this entity or limited liability company.

Name of owned (parent) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership
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Registered agent and registered office currently on file. (See instructions if you need to make changes)  Blacken circle if you need forms to change the registered agent or registered office information.

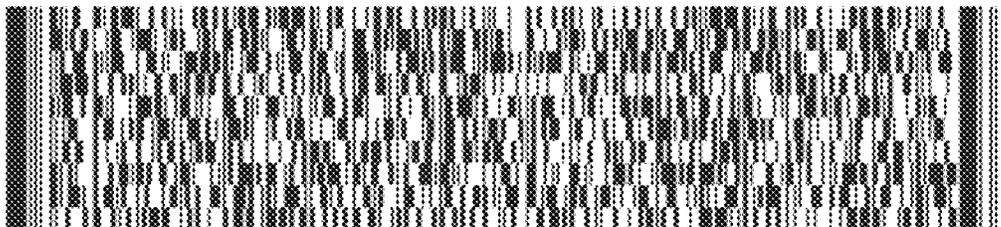
**Agent: William Chu**  
**Office: 659 East Royal Lane Apt 3043**      City **Irving**      State **TX**      ZIP Code **75039**

The above information is required by Section 171.203 of the Tax Code for each corporation or limited liability company that files a Texas Franchise Tax Report. Use additional sheets for Sections A, B, and C, if necessary. The information will be available for public inspection.

I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director or member and who is not currently employed by this, or a related, corporation or limited liability company.

sign here <b>Matao Cao</b>	Title <b>President</b>	Date <b>09/08/2014</b>	Area code and phone number <b>( 214 ) 635 - 3980</b>
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**Texas Comptroller Official Use Only**



VE/DE	<input type="radio"/>	PIR IND	<input type="radio"/>
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**Form 424**  
**(Revised 05/11)**  
Submit in duplicate to:  
Secretary of State  
P.O. Box 13697  
Austin, TX 78711-3697  
512 463-5555  
FAX: 512/463-5709  
Filing Fee: See instructions



This space reserved for office use.

**Certificate of Amendment**

**FILED**  
In the Office of the  
Secretary of State of Texas  
**DEC 10 2014**  
**Corporations Section**

**Entity Information**

The name of the filing entity is:

TAOTAO USA, INC.

State the name of the entity as currently shown in the records of the secretary of state. If the amendment changes the name of the entity, state the old name and not the new name.

The filing entity is a: (Select the appropriate entity type below.)

- For-profit Corporation
- Nonprofit Corporation
- Cooperative Association
- Limited Liability Company
- Professional Corporation
- Professional Limited Liability Company
- Professional Association
- Limited Partnership

The file number issued to the filing entity by the secretary of state is: 800768734

The date of formation of the entity is: 2/2/2007

**Amendments**

**1. Amended Name**

(If the purpose of the certificate of amendment is to change the name of the entity, use the following statement)

The amendment changes the certificate of formation to change the article or provision that names the filing entity. The article or provision is amended to read as follows:

The name of the filing entity is: (state the new name of the entity below)

The name of the entity must contain an organizational designation or accepted abbreviation of such term, as applicable.

**2. Amended Registered Agent/Registered Office**

The amendment changes the certificate of formation to change the article or provision stating the name of the registered agent and the registered office address of the filing entity. The article or provision is amended to read as follows:

**RECEIVED**

DEC 10 2014

Secretary of State

Registered Agent

(Complete either A or B, but not both. Also complete C.)

A. The registered agent is an organization (cannot be entity named above) by the name of:

OR

B. The registered agent is an individual resident of the state whose name is:

*First Name* *M.I.* *Last Name* *Suffix*

The person executing this instrument affirms that the person designated as the new registered agent has consented to serve as registered agent.

C. The business address of the registered agent and the registered office address is:

*Street Address (No P.O. Box)* *City* *TX* *State* *Zip Code*

**3. Other Added, Altered, or Deleted Provisions**

Other changes or additions to the certificate of formation may be made in the space provided below. If the space provided is insufficient, incorporate the additional text by providing an attachment to this form. Please read the instructions to this form for further information on format.

Text Area (The attached addendum, if any, is incorporated herein by reference.)

**Add** each of the following provisions to the certificate of formation. The identification or reference of the added provision and the full text are as follows:  
New Director Name: Xun Liu  
New Director Address: 2425 Camp Ave, Ste 100, Carrollton, TX 75006

**Alter** each of the following provisions of the certificate of formation. The identification or reference of the altered provision and the full text of the provision as amended are as follows:

**Delete** each of the provisions identified below from the certificate of formation.  
Director name: Matao Cao  
Director address: 1641 McGee Ln, Carrollton, TX 75010

**Statement of Approval**

The amendments to the certificate of formation have been approved in the manner required by the Texas Business Organizations Code and by the governing documents of the entity.

**Effectiveness of Filing** (Select either A, B, or C.)

- A.  This document becomes effective when the document is filed by the secretary of state.
- B.  This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: \_\_\_\_\_
- C.  This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90<sup>th</sup> day after the date of signing is: \_\_\_\_\_

The following event or fact will cause the document to take effect in the manner described below:

**Execution**

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

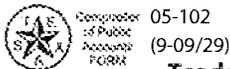
Date: 12/08/14

By: \_\_\_\_\_  
  
 \_\_\_\_\_  
 Xun Liu  
 \_\_\_\_\_ (see instructions)

**TEXAS FRANCHISE TAX PUBLIC INFORMATION REPORT**

To be filed by Corporations and Limited Liability Companies (LLC) and Financial Institutions

This report MUST be signed and filed to satisfy franchise tax requirements



05-102  
(9-09/29)  
Tcode 13196

Taxpayer number       Report year      *You have certain rights under Chapter 552 and 559, Government Code, to review, request, and correct information we have on file about you. Contact us at: (512) 463-4600, or (800) 252-1381, toll free nationwide.*

3	2	0	2	5	8	0	8	5	2	1	2	0	1	5
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Taxpayer name <b>Taotao USA Inc</b>				Secretary of State file number or Comptroller file number <b>0800768734</b>	
Mailing address <b>2425 Camp Ave Ste 100</b>					
City <b>Carrollton</b>		State <b>TX</b>	ZIP Code <b>75006</b>	Plus 4	

Blacken circle if there are currently no changes from previous year; if no information is displayed, complete the applicable information in Sections A, B and C.

Principal office
Principal place of business

*Please sign below!* Officer, director and member information is reported as of the date a Public Information Report is completed. The information is updated annually as part of the franchise tax report. There is no requirement or procedure for supplementing the information as officers, directors, or members change throughout the year.



**SECTION A** Name, title and mailing address of each officer, director or member.

Name <b>Matao Cao</b>		Title <b>President</b>		Director <input checked="" type="checkbox"/> YES		Term expiration m m d d y y	
Mailing address <b>1641 Mcgee Ln</b>		City <b>Carrollton</b>		State <b>TX</b>		ZIP code <b>75010</b>	
Name		Title		Director <input type="checkbox"/> YES		Term expiration m m d d y y	
Mailing address		City		State		ZIP code	
Name		Title		Director <input type="checkbox"/> YES		Term expiration m m d d y y	
Mailing address		City		State		ZIP code	

**SECTION B** Enter the information required for each corporation or LLC, if any, in which this entity owns an interest of ten percent (10%) or more.

Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership
Name of owned (subsidiary) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership

**SECTION C** Enter the information required for each corporation or LLC, if any, that owns an interest of ten percent (10%) or more in this entity or limited liability company.

Name of owned (parent) corporation or limited liability company	State of formation	Texas SOS file number, if any	Percentage of Ownership
---	--------------------	-------------------------------	-------------------------

Registered agent and registered office currently on file. (See instructions if you need to make changes)  Blacken circle if you need forms to change the registered agent or registered office information.

Agent: **William Chu**

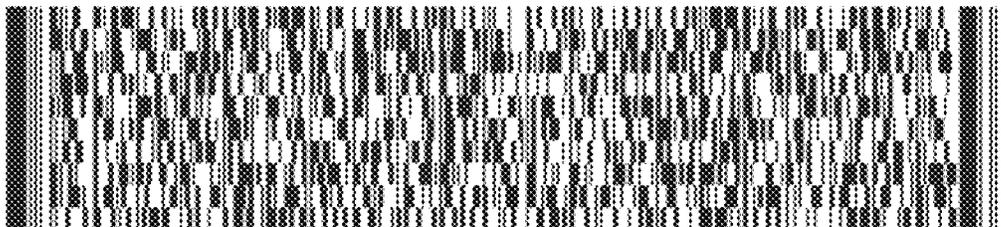
Office: **659 East Royal Lane Apt 3043**      City: **Irving**      State: **TX**      ZIP Code: **75039**

The above information is required by Section 171.203 of the Tax Code for each corporation or limited liability company that files a Texas Franchise Tax Report. Use additional sheets for Sections A, B, and C, if necessary. The information will be available for public inspection.

I declare that the information in this document and any attachments is true and correct to the best of my knowledge and belief, as of the date below, and that a copy of this report has been mailed to each person named in this report who is an officer, director or member and who is not currently employed by this, or a related, corporation or limited liability company.

sign here	<b>Qiong LI</b>	Title <b>Manager</b>	Date <b>04/29/2015</b>	Area code and phone number <b>( 214 ) 635 - 3980</b>
-----------	-----------------	-------------------------	---------------------------	---

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VE/DE	<input type="checkbox"/>	PIR IND	<input type="checkbox"/>
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## Office of the Secretary of State

April 04, 2016

A search of our records reveals the following information for the entity record selected.

Entity Name: TAOTAO USA, INC.  
Entity Type: Domestic For-Profit Corporation  
Jurisdiction: TEXAS, USA  
File Number: 800768734  
Formation File Date: February 02, 2007 Effective: February 02, 2007

The status of the entity is in existence.

The name and address of the registered agent and office in Texas is:

WILLIAM CHU  
4455 LBJ FREEWAY, SUITE 909  
DALLAS, TX 75244  
USA

The entity recorded the following assumed name(s) with this office:

TAOTAO USA, INC.	March 17, 2007	Active
Eagleatvparts	May 13, 2009	Abandoned

The management information from our computer records lists:

MATAO CAO PRESIDENT	1641 MCGEE LN CARROLLTON, TX 75010 USA
MATAO CAO DIRECTOR	1641 MCGEE LN CARROLLTON, TX 75010 USA



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Latest Updated on [11-16-2015](#)
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涛涛简介 | TAOTAO Introduction

中国涛涛集团始创于上世纪1985年，位于富丽的浙江省南部，坐落在金丽温高速公路间，紧邻中国五金之都——永康，其交通便利、快捷、四通八达。

集团自创立至今，一直以刻苦创业，勤奋拼搏，勇于开拓之精神，使之形成了独特的企业文化，是一家集研发、制造、销售于一体的跨行业大型集团公司，集团实力雄厚，拥有20多万平方米现代化厂区，员工2000多人，其中中高级职称人员200余名。集团旗下有浙江涛涛实业有限公司等六家实业公司，产业涉及实业、房产、酒店、金融投资等，主要产品有沙滩车、摩托车、电动车、电动自行车、木门、钢门、跑步机、健身椅、园林工具等。公司已通过ISO9001-2000国际质量管理体系认证、车辆世界制造厂代码工厂认证、摩托车一级目录生产许可、电动车生产许可。成为浙江省、丽水市“重点骨干”企业、浙江省诚信示范企业、浙江省文明单位；丽水市百强民营企业；被农业银行、建设银行等多家金融机构评为“黄金客户”、“最佳信用客户”、“AAA”级信用企业。公司在销售、税金各方面在当地都已名列前茅，并成为当地的主要经济产业支柱企业。

如今涛涛集团公司决定在国际市场稳中求发展的同时，重点开拓国内市场。涛涛人将凭借着在国际市场上的成功经验和先进的管理理念，依托完整的产业体系和先进的检测检验设备、完善的售后服务体系和长期生产电动车、摩托车的经验，在全国市场范围内极力打造中国涛涛品牌。

集团公司长期坚持“按国际标准生产，向世界名牌挑战”的理念，不断提高企业内部管理，自主创新品牌，加强售后服务的投入与建设，更好的服务于社会、服务于经销商和广大用户，为振兴民族工业继续做更大的贡献。



涛涛历史：

1985年 涛涛集团有限公司的前身永康市涛涛铸造有限公司成立。

2000年 永康市古丽涛涛大酒店成立。

2004年6月8日 正式成立涛涛集团有限公司，注册资本为8000万元。

2009年6月8日 成立涛涛集团。

去年(2009) 车业出口总额突破2000万美金。

Taotao Group is on Facebook.

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Taotao Group

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Community organisation · Lishui, Zhejiang

5.0 ★★★★★

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ABOUT



NO.6,XIMIN RD.,JINYUN Lishui,

+86 579 8705 2339

http://www.taotaogroup.com/

PHOTOS



Taotao Group added 9 new photos — travelling to 东白

山.

27 June at 20:29

New Poster for Tao Motor

taotaomotor.com

taotao.us

taotaomotor.en.alibaba.com



Like Comment



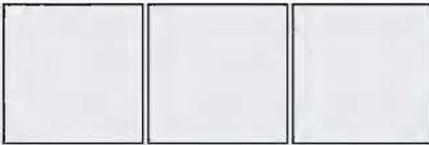
Taotao Group added 4 new photos.

10 May

CCTV came to TAOTAO.

Celebrate the opening ceremony for spirit of the craftsman.





VIDEOS



VISITOR POSTS



Shadowx Cheng  
27 May at 17:47

Nice model from Taotao garden tool

Like Comment Share



Josh Riddle  
25 May at 19:20

I've Been Enjoying My New TaoTao ATM50-A1 Scooter Already Put 600Km ... See more

4 Likes  
Like Comment Share



Shadowx Cheng  
31 March at 00:29

We are proud of Taotao families.

Like Comment Share

REVIEWS



5.0 of 5 stars  
1 review



Shadowx Cheng  
5  
24 March 2016



Tell people what you think



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MJ Tools

Places **L** Lishui, Zhejiang **O** Organisation **C** Community & Government **O** Organisation **C** Community organisation **T** Taotao Group



Like Comment

Sulan Bu, Skilled Corportion and 2 others like this.

Comments



Taotao Group added 5 new photos — at **C** China Import and Export Fair (Canton Fair) Guangzhou-China  
30 April Guangzhou, China

Taotao Canton fair 3rd session canton fair booth on A 5.2 D15-16,welcome !



Like Comment



Taotao Group added 10 new photos — at **C** China Import and Export Fair (Canton Fair) Guangzhou-China  
15 April Guangzhou, China

119th Canton fair .  
Taotao Tool Booth:

English (UK) Español Português (Brasil) Français (France) Deutsch

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C area 14.2D25,26.  
Taotao Motorcycle booth located at B area.  
13.1F25,26,27,... See more



Like Comment

Sulan Bu and Skilled Corportion like this.

Comments



Taotao Group updated their profile picture.

7 April



Like Comment

Sulan Bu likes this.

Comments



Taotao Group added 3 new photos.

6 April

TAOTAO Professional Sales Team.  
Which one you want to be friend ?





Like Comment

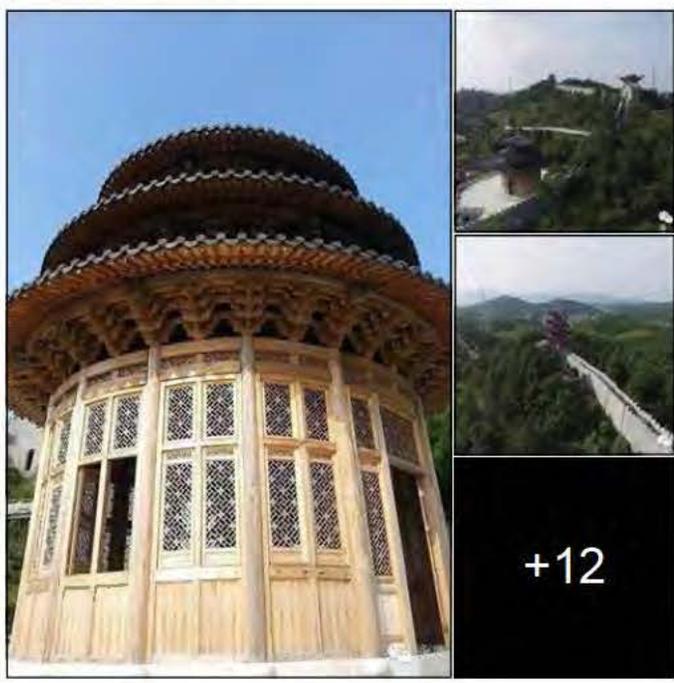
Sulan Bu and Shadowx Cheng like this.

1 share

Comments

Taotao Group added 15 new photos — in Yongkang, Zhejiang. 31 March

Taotao CEO Mr.Cao costs 5millions to built the "mini Great Wall" and Copy "Temple of Heaven" since 2009yr. It is finished on 2014yr and had been donated to "Society for the elderly" of Dongshantou coutry. 'Cause Dongshantou is Mr.Cao's hometown. He always think of how to improve the poor place where he borned. We are pround of TAOTAO families.



+12

Like Comment

1 share

Comments

**Taotao Group**  
24 March

VIDEO TAKE ON 2000YR



15 Views

Like Comment Share

**Taotao Group** added 3 new photos — at Pazhou International Exhibition Center, Guangzhou China  
23 March

119th Canton Fair April 5th-19th. Booth no.:

Motorcycle:

A area 13.1F25-27&G22-24.... See more



Like Comment

**Taotao Group** added 2 new photos — thinking about my future.  
21 March

Time to show the grass trimmer details to Asia and South America. Such as

Thailand ,Vietnam,Brazil ,etc.. #grasstrimmer #brushcutter 411model more fulfill the farmer use.Good quality on high temperature.Special construction of carburetor to more stable to work.



Like Comment

 Taotao Group added 2 new photos.  
15 March

Welcome CCTV come to TAOTAO.



Like Comment

 Taotao Group updated their cover photo.  
10 March





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Taotao Group Co., Ltd.

## Company Profile

## Contacts

## Company Overview

Company Introduction

## Company Capability

Trade Capacity

Production Capacity

R&amp;D Capacity

Trademarks &amp; Patents

## Business Performance

Buyer Interactions

## Additional Information

Trade Shows

## Taotao Group Co., Ltd.

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Business Type:	Manufacturer, Trading Company
Location:	Zhejiang, China (Mainland)
Main Products:	ATV, GO KART, SCOOTER, CHAINSAW, GRASS TRIMMER
Total Employees:	Above 1000 People
Total Annual Revenue:	Above US\$100 Million
Year Established:	2004
Top 3 Markets:	North America 35.40% Western Europe 15.50% South America 11.40%
Certifications:	ISO9001, ISO9001
Product Certifications:	EEC, CE

## About Taotao Group Co., Ltd.

Taotao Group Co., Ltd. was founded in 1985, located in Jinyun County, Zhejiang Province. We are near to Jinhua-Lishui-Wenzhou Expressway and are adjacent to China Hardware City - Yongkang. Taotao Group has been a comprehensive large group enterprise integrating the R&D, production and sale, covering an area of 20,000 square meters. We have 2,000 employees and over 200 staff members with intermediate & senior technical titles. Our group has six subsidiaries, including Jinyun County Xiang Yuan Industrial Co., Ltd., Jinyun County Taotao Leisure Articles Co., Ltd., Jinyun Tianhui Import & Export Co., Ltd., Jinyun County Taotao Garden Tools Co., Ltd. and Zhejiang Voyage Motorcycle Co., Ltd. They are engaged in industry, real estate, hotel and financial investment. Our main products are ATVs, motorcycles, electric vehicles, electric bicycles, wooden doors, steel doors, running machines, fitness equipment and garden tools. All of our products have gained good reputations from domestic and overseas markets for years.

## R&amp;D Capability

Taotao Group has a great R&D department which covers more than 400 square meters, and has more than 200 staff members with senior & intermediate technical titles. We are ready to provide you with OEM and ODM services. With our joint efforts, Taotao products have been CE, EEC, UL, EPA, CARB and ISO9001:2000 certified. Taotao develops 5-10 new products every year to meet different requirements from different markets.

## Large Output

Taotao Group is a first-grade production enterprise in China's motorcycle, electric vehicle and engine fields, and is the first corporation of China and the third corporation of world in aspect of attaining CPSC certificate from America. Our group has 4 casting shops, 4 welding shops, 2 mould shops, 1 injection shop, 1 hub-making shop and 1 heat-coping shop, and 16 production assembly lines for different products, as well as 4 plastic-spraying lines and 4 paint-coating lines. Our group has invested over 10 million Yuan in establishing a testing center for motorcycles, electric vehicles and related spare parts, more than 0.1 billion Yuan in production equipment and over 20 million Yuan in testing equipment or instruments. Our first-class production facilities, advanced testing equipment and skilled workers allow Taotao to produce 300,000 motorcycles, 300,000 engines, 300,000 ATVs, 300,000 electric vehicles, 100,000 running machines, 500,000 sets of fitness equipment, 300,000 steel & wooden doors and 2 million saw chains every year.

## Export Markets

Taotao Group has 9 wholly owned companies in the United States, Canada, Russia and Dubai. Annual sales volume is more than 80 million dollars. Taotao products have been exported to the USA, Canada, Europe, South America, the Middle East and Southeast Asia.

## Taotao Promises

- 1) 20-day delivery for ATVs, motorcycles and electric vehicles
- 2) 15-day delivery for related spare parts of ATVs, motorcycles and electric vehicles
- 3) 8-hour counter-offer for each enquiry
- 4) 1-year or 6,000km warranty for ATVs and motorcycles

## Contact Taotao Now

Please visit our divisions at the following websites:

[www.taotaomotor.com](http://www.taotaomotor.com)  
[www.taotaotool.com](http://www.taotaotool.com)  
[www.kscooter.com](http://www.kscooter.com)

[Less](#)

### Production Capacity

[View M](#)

#### Factory Information

Product Name	Units Produced (Previous Year)	Highest Ever Annual Output	Unit Type
ATV	123400	150000	Unit/Units
GO KART	54200	80000	Unit/Units
ELECTRIC SCOOTER	134500	180000	Unit/Units
CHAIN SAW	167800	200000	Piece/Pieces
GRASS TRIMMER	163400	210000	Piece/Pieces

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### Trade Capacity

[View M](#)

#### Trade & Market

Main Markets	Total Revenue(%)
North America	35.40%
Western Europe	15.50%
South America	11.40%
Northern Europe	9.30%
Mid East	8.30%
Southeast Asia	6.20%
Eastern Europe	6.00%
Domestic Market	3.10%
Southern Europe	1.20%

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Trade Manager

Export Percentage: 91% - 100%  
 Export Mode: Have Own Export License  
 No. of Employees in Trade Department: Above 50 People

#### Email to this supplier

To: Daniel Tan

\*Message: Enter your inquiry details such as product name, color, size, MOQ, FOB, etc.

Your message must be between 20-8000 characters

CX035

EPA-000608

I agree to share my **Business Card** to the supplier.

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# TAOTAO

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## LATEST NEWS

ZHEJIANG TAOTAO GARDEN TOOLS CO.

## CONTACT US

Add: No 6, XINMIN ROAD,XINBI  
STREET,JINYUN COUNTY,LISHUI  
CITY,ZHEJIANG,CHINA

Tel: 86-579-87052339

Fax: 86-579-87052881

Email: sales04@taotaogroup.com

## About us

ZHEJIANG TAOTAO GARDEN TOOLS CO.,LTD, branch company of TAOTAO GROUP CO.,LTD, is specialized in manufacturing various kinds of high-quality gasoline powered forest & agricultural machine, garden machine such as Gasoline Chain Saw,Brush Cutter & Grass Trimmer,Earth Auger,Hedge Trimmer,Multi function tools,Water Pump...etc.

Founded in 1985, now TAOTAO Garden have more than 1,000 professional workers ,covers an area of 100,000 Sq. Meters and is equipped with modern machinery and production lines with the back up of our well experienced Research & Development Department.

Welcome for your enquiry, and share the bright future!

Sitemap

Add: No 6, XINMIN ROAD,XINBI STREET,JINYUN COUNTY,LISHUI CITY,ZHEJIANG,CHINA Tel: 86-579-87052339 Fax: 86-579-87052881

10YR Gold Supplier

Trade Assurance

# TAOTAO GROUP CO., LTD

## JINYUN COUNTY TAOTAO LEISURE ARTICLE CO., LTD

Canton Fair Booth No.: 5.2D16&17, May 1st~5th May 2016. Welcome to visit our Booth

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8 Years Experience  
since 1985



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why  
choose  
us



**28** years  
experience



More than  
**800**  
workers

Once get the  
enquiry, we will  
handle within  
**1hour**



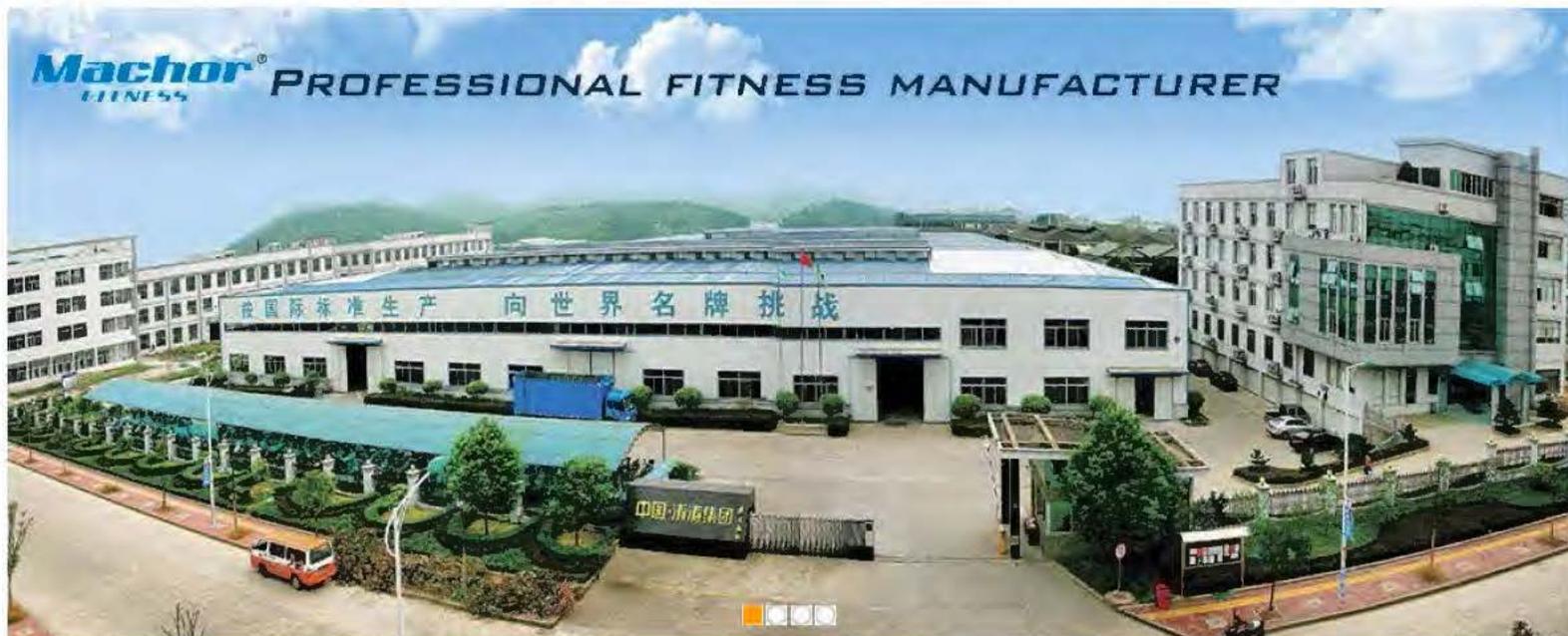
Good experience  
on **OEM** item



Our  
Production lead  
time:**21days**



Please choose your language

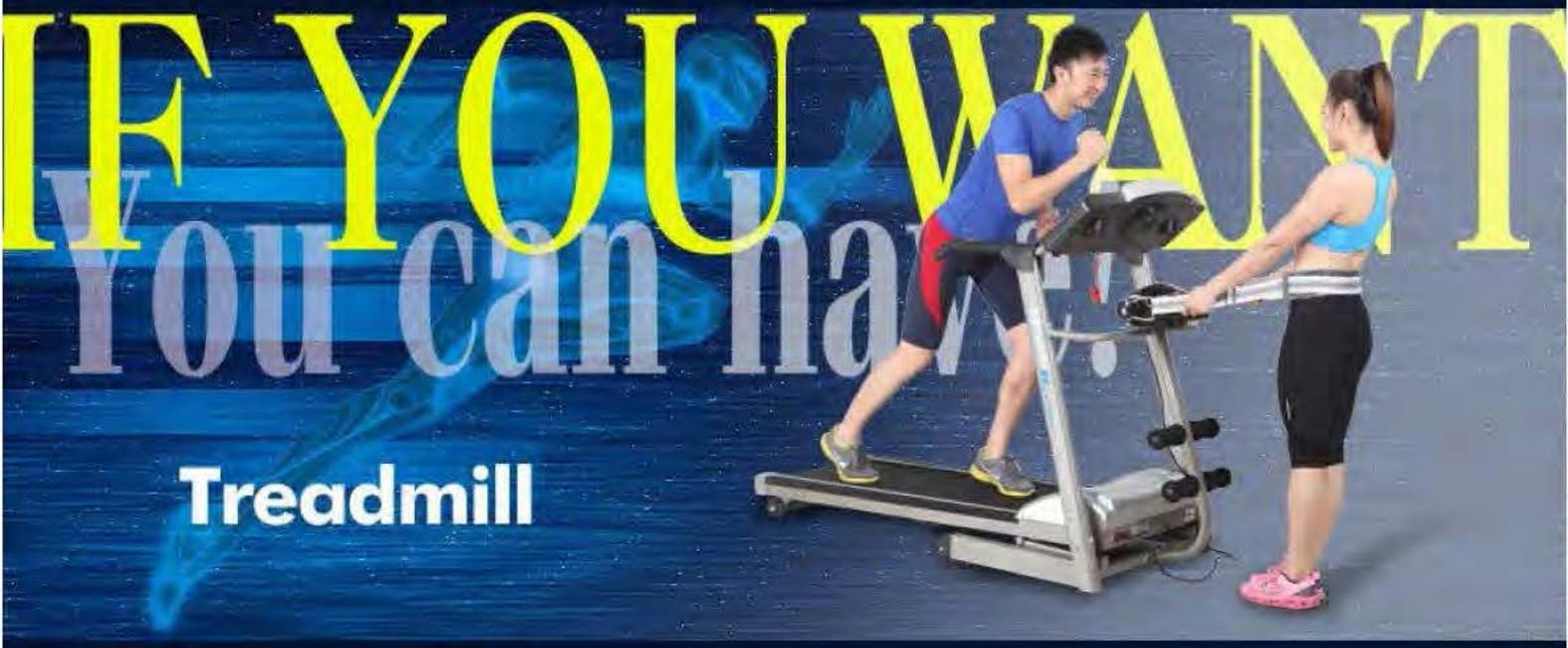


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Philip Wang    Yolanda Li    Peter Chen    Jack Chen    Nancy Sun

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ISO9001    **MT-3002D**



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ISO9001    **MT-801**

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**You can have!**

**X-bike**




**Machor<sup>®</sup>**  
FITNESS

FITNESS EQUIPMENT

ISO9001    **MF-9101**



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ISO9001    **MF-9102**



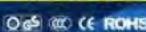
**Machor<sup>®</sup>**  
FITNESS

FITNESS EQUIPMENT

ISO9001    **MF-9105**



Stepper or for leg

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 <p><b>Machor</b> FITNESS</p> <p>FITNESS EQUIPMENT</p> <p>ISO9001  <b>MF-3201</b></p>	 <p><b>Machor</b> FITNESS</p> <p>FITNESS EQUIPMENT</p> <p>ISO9001  <b>MF-3103</b></p>	 <p><b>Machor</b> FITNESS</p> <p>FITNESS EQUIPMENT</p> <p>ISO9001  <b>MF-4109</b></p>	 <p><b>Machor</b> FITNESS</p> <p>FITNESS EQUIPMENT</p> <p>ISO9001  <b>MF-4105</b></p>

Company Introduce...



Verification Type:  Onsite Check

Business Type: Manufacturer, Trading Company

Location: Zhejiang, China (Mainland)

Year Established: 2004

Total Annual Revenue: US\$10 Million - US\$50 Million

Main Products: Fitness Equipment,ATV,Motorbike

Main Products: North America, Eastern Europe, Domesti...

 Mr. Philip Wang

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EPA-000616



Main Markets:

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### Main Categories >

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Fashion New balance power/home gym fitness AB Trainer exercise as...



2016 fashion new black power twist ab fitness equipment as seen o...



home use popular fitness Asymmetrical bars/Pull-UP Station better...



popular fitness similar Door Gym--Chin-UP Bar

#### New products

TREADMILL | AB FITNESS



Home use dance machine twist waist slimming stepper



Home-use fitness equipment dance machine twist waist slimming mac...

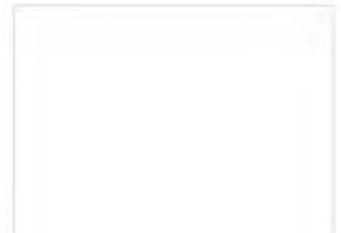
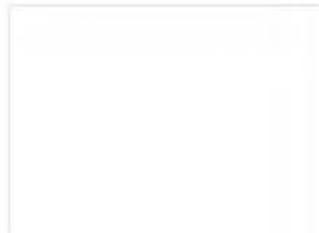
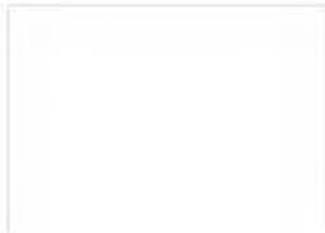
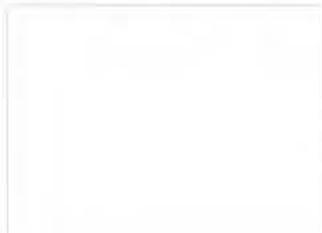


Crazy machine/fitness equipment crazy fit massage



dumbbell aerobics dumbbell for home and gym lose weight fitness eq...

#### X BIKE(MAGNETIC BIKE)



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Fashion cheap exercise magnetic X-bike fitness equipment as seen



MAGENTIC ELECTRIC BIKE



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worker Treadmill



Home treadmill /walker machine/



Fitness home gym Household

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Plastic Injection Workshop





## Production Line



## Test Center



## Warehouse



## Container Loading



## Sale's Case



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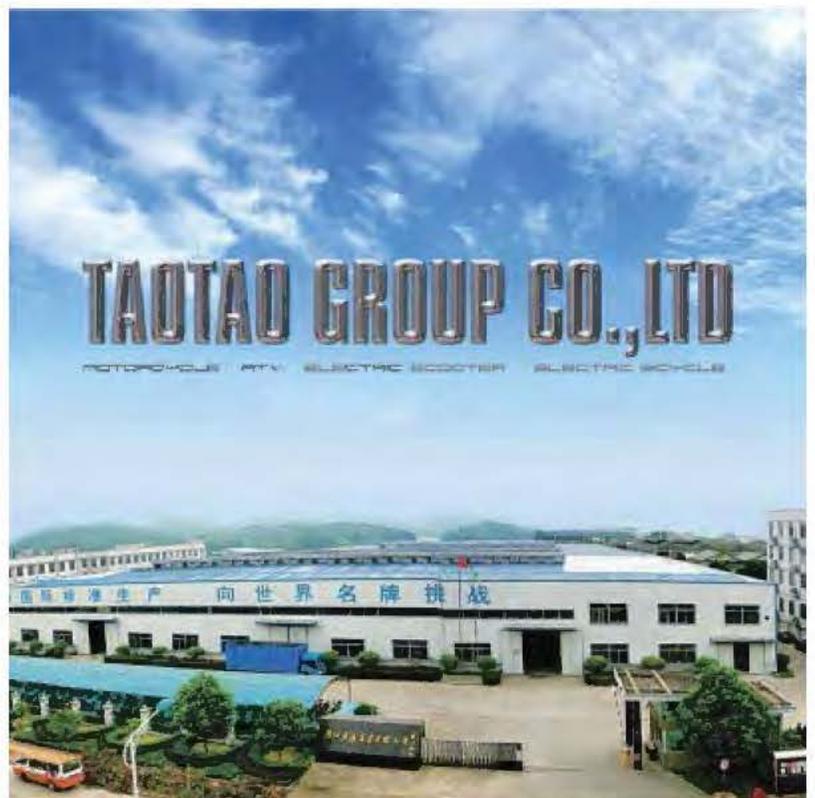
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#### About Taotao Group Co., Ltd.

Taotao Group Co., Ltd. was founded in 1985, located in Jinyun County, Zhejiang Province. We are near to Jinhua-Lishui-Wenzhou Expressway and are adjacent to China Hardware City – Yongkang. Taotao Group has been a comprehensive large group enterprise integrating the R&D, production and sale, covering an area of 20,000 square meters. We have 2,000 employees and over 200 staff members with intermediate & senior technical titles. Our group has six subsidiaries, including Jinyun County Xiang Yuan Industrial Co., Ltd., Jinyun County Taotao Leisure Articles Co., Ltd., Jinyun Tianhui Import & Export Co., Ltd., Jinyun County Taotao Garden Tools Co., Ltd. and Zhejiang Voyage Motorcycle Co., Ltd. They are engaged in industry, real estate, hotel and financial investment. Our main products are ATVs, motorcycles, electric vehicles, electric bicycles, wooden doors, steel doors, running machines, fitness equipment and garden tools. All of our products have gained good reputations from domestic and overseas markets for years.



#### R&D Capability

Taotao Group has a great R&D department which covers more than 400 square meters, and has more than 200 staff members with senior & intermediate technical titles. We are ready to provide you with OEM and ODM services. With

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our joint efforts, Taotao products have been CE, EEC, UL, EPA, CARB and ISO9001:2000 certified. Taotao develops 5-10 new products every year to meet different requirements from different markets.

### Large Output

Taotao Group is a first-grade production enterprise in China's motorcycle, electric vehicle and engine fields, and is the first corporation of China and the third corporation of world in aspect of attaining CPSC certificate from America. Our group has 4 casting shops, 4 welding shops, 2 mould shops, 1 injection shop, 1 hub-making shop and 1 heat-coping shop, and 16 production assembly lines for different products, as well as 4 plastic-spraying lines and 4 paint-coating lines. Our group has invested over 10 million Yuan in establishing a testing center for motorcycles, electric vehicles and related spare parts, more than 0.1 billion Yuan in production equipment and over 20 million Yuan in testing equipment or instruments. Our first-class production facilities, advanced testing equipment and skilled workers allow Taotao to produce 300,000 motorcycles, 300,000 engines, 300,000 ATVs, 300,000 electric vehicles, 100,000 running machines, 500,000 sets of fitness equipment, 300,000 steel & wooden doors and 2 million saw chains every year.

### Export Markets

Taotao Group has 9 wholly owned companies in the United States, Canada, Russia and Dubai. Annual sales volume is more than 80 million dollars. Taotao products have been exported to the USA, Canada, Europe, South America, the Middle East and Southeast Asia.

### Taotao Promises

- 1) 20-day delivery for ATVs, motorcycles and electric vehicles
- 2) 15-day delivery for related spare parts of ATVs, motorcycles and electric vehicles
- 3) 8-hour counter-offer for each enquiry
- 4) 1-year or 6,000km warranty for ATVs and motorcycles

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Please visit our divisions at the following websites:

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[www.taotaotool.com](http://www.taotaotool.com)

[www.kscooter.com](http://www.kscooter.com)

## About us

Taotao Group Co.,Ltd.was founded in 1985,loated in

## Products Categories

ATV

## Support

Product catalog

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No.6 Xinmin Road,Wuyun town,jinyun  
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Jinyun County,Zhejiang Province,is near to the Jinhua-Lishui-Wenzhou Expressway and is adjacent to China Hardware City- Yongkang.Taotao Group has been a comprehensive large group enterprise integrates R&D,production and sale,covering an area of 20000 square meters.We have 2000 employees and over 200 staff members with intermediate & senior technical titles. Our group has six subsidiary corporations,including Jinyun County Xiang Yuan Industrial Co.,Ltd. which are engaged in industry,real estate,hotels and financial investment. Our main products are ATVs,motorcycles,electric vehicles and garden tools. All of our products have gained good value and wide permission from national and overseas markets for years.

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BALANCE SCOOTER

---

BUGGY

---

DIRTBIKE

---

SCOOTER

---

SNOWMOBILE

Q & A

---

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county,Zhejiang province.

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## PRODUCT CATEGORIES

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## **We are proud to announce that we are now the exclusive Tao Tao Dealer for Calgary and area!!!**

All our ATV's come from Canada TT (TAOTAO) this is the only Chinese factory that sells here direct.

TAOTAO is a manufacturer with 6 warehouses in North America. This makes for better product consistency and far better parts support!

We moved the business out of the city 5 years ago and have not looked back. We run a true family owned business from our acreage just east of Calgary, no hard sales just a relaxed friendly environment. The best service by far. Easy to find located between Glenmore trail and Hwy 1 on Range road 275. Cruise control all the way no traffic jams!!!



**SB65**  
Smart Balance Scooter

Specifications			
Net Weight	10 KGS	Motor Power	350W*2
Max Load	100 KGS	Battery Type	Li-Ion Battery
Max Speed	10 KM/H	Battery Capacity	36V 4.4Ah
Max Mileage	15 KM	Charge Time	1-2 HOURS
Packing Size	60*30*30MM	Tire Size	170MM
Dimension	584*186*178MM		
Max Climbing Angle	20 DEGREE		
Min Turning Radius	0 DEGREE		

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**Aluminum Alloy Wheel**

Thickening and hard material can max load 100kg. New aircraft aluminum manufacturing engineering level

**2 TWO**

**Quality Natural Rubber Tires**

Strong grip is suitable for various complex road!

**3 THREE**

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The power button and charging port reasonable location, convenient hidden. Not easily affected by dust and water

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Car pedal panel can up and down with open and close-switch function. It can detect whether the driver standing on it or not.

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**Cool Front Lights**

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## TAO TAO Factory

### TAOTAO GROUP CO., LTD.

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With our joint effort, Taotao products have been CE, EEC, UL, EPA, CARB and ISO9001:2000 Quality Management System certified.

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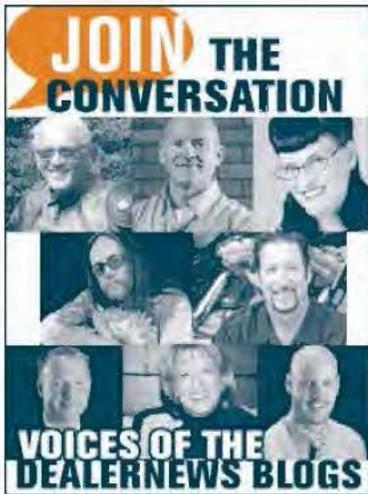
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## Taotao shops for American brands to boost street cred

Publish Date: Jan 27, 2014

XINHUA, China - Taolao Group, China's biggest ATV producer, is on a shopping spree for existing American brands to bolster its foothold in the West.

Chairman Terry Cao told *Want China Times* the company wants to expand its product variety and upgrade technology management by buying American firms in the same industry, but would give no specifics.

The U.S. accounts for 70 percent of Taolao's export volume, and Taolao accounts for 70 percent of China's total ATV exports to the U.S. Last year, the company sold 120,000 ATVs and motorcycles in the U.S., where it has a 30 percent market share. In 2013, the value of the company's exports reached \$85 million.

"Our products are still limited to low-emission vehicles under 250cc with prices from \$300 to \$700, half the price of Honda products," Cao said, though he acknowledged there is little brand loyalty for Taolao.

Taotao has established nine wholly-owned subsidiaries in the U.S., Canada and Russia. "More than 100 staff abroad are directly in charge of sale and after-sales service in local markets," he said.

The company hopes to boost sales volumes and brand awareness by buying established foreign enterprises. According to Cao's plan, the acquired companies would continue local production in developed markets like the U.S. in the initial stage after the acquisition.

"Gradually, we will win the trust of mid-range and high-end customers," he said.

While ATVs and motorcycles account for half of Taolao's annual revenue, the company also makes electric bicycles, wooden doors, steel doors, running machines, fitness equipment and garden tools.

Posted by Holly Wagner



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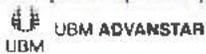


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