January 25, 2021

By regulations.gov
National Highway Traffic Safety Administration (NHTSA)
Docket Management Facility
West Building, Room W12-140
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

Re: Civil Penalties; 49 CFR Part 578; Doc. No. NHTSA-2021-0001.

Ladies and Gentlemen:

The National Automobile Dealers Association (NADA) represents more than 16,000 franchised automobile and truck dealers who sell new and used motor vehicles and engage in service, repair, and parts sales. Together they employ over 1,000,000 people nationwide, yet the majority are businesses as defined by the Small Business Administration.

Earlier this month, NHTSA issued an interim final rule (IFR) responding to a rulemaking petition filed by the Alliance for Automotive Innovation (Auto Innovators) on the timing of a potential increase in the corporate average fuel economy (CAFE) noncompliance penalty rate from $5.50 to $14.00.[1] The IFR states that any potential increase in the CAFE noncompliance penalty rate should not occur prior to Model Year (MY) 2022. For the reasons outlined below, NADA supports NHTSA's decision as expressed in the IFR.

"Maximum achievable" CAFE standards are set for future MYs by modeling what will be both technologically feasible and economically practical in those future years. Vehicle manufacturers (OEMs) then strive to meet those maximum achievable fleet-average CAFE standards through a combination of strategic product planning, compliance flexibilities, and the application of credits. CAFE non-compliance penalties exist to both backstop and incentivize OEM compliance efforts. When imposed, CAFE penalties effectively minimize the economic advantage an OEM might otherwise benefit from should it fail to comply with an applicable CAFE standard.

By clarifying that any increase in the CAFE penalty rate will not occur until at least MY 2022, the IFR acts consistent with a 2016 Obama administration rule[2] that similarly concluded that CAFE penalty rate increases should not apply if they cannot incentivize changes in vehicle design or otherwise deter non-compliance. The fundamental purpose of the CAFE program is to promote

---

[1] 86 Fed. Reg. 3016, *et seq.* (January 14, 2021).
[2] 81 Fed. Reg. 95489, *et seq.* (December 28, 2016).

maximum achievable fuel economy improvements. Both the IFR and the 2016 rule conclude that raising CAFE penalty rates for MYs for which product changes are infeasible due to insufficient lead time would be inconsistent with Congress' intent that the CAFE program be responsive to consumer demand. Why? Because when incurred, CAFE penalties inevitably lead to higher vehicle prices. But unlike compliance costs which also lead to higher vehicle prices but which result in fuel economy improvements, the higher prices associated with CAFE penalties applied retroactively can only serve to deter new vehicle purchases.

The IFR appropriately prevents an untenable scenario involving certain OEMs that would have been forced to incur high noncompliance penalties based on their MY 2021 sales. As noted above, those penalties would have been passed on in the form of higher new vehicle prices. Arguably, some OEMs might have attempted to mix shift their product offerings by curtailing new vehicle sales. Either way, sales of cleaner, greener, and safer new vehicles would have lessened, undermining fleet turnover and the environmental and safety benefits associated therewith. By acting in a manner that avoids such unnecessary restrictions on new vehicle sales, NHTSA is acting consistent with the importance of leveraging consumer demand to enhance, not undermine, fleet turnover.

In addition to the above, NADA supports the comments submitted by Auto Innovators. On behalf of NADA, I thank NHTSA for the opportunity to comment on this matter.

Respectfully submitted,

Douglas I. Greenhaus

Douglas I. Greenhaus
Chief Regulatory Counsel, Environment, Health, and Safety