

## Comment from Michael Anonymous

As the court ruled, "The Civil Penalties Rule, 81 Fed. Reg. 95,489, 95,489-92 (Dec. 28, 2016), raising the CAFE base penalty rate to \$14, is now in force" It has been in force since January 27, 2017 as well as the day this new rule was promulgated. This new rule is a continuation of an illegal effort to ignore that the rule issued in 2016 has been in effect all along and NHTSA now instead should be making annual inflation adjustments to civil penalties as the statute calls for.

Citing the effects of the COVID-19 as justification for delaying the model year for which the increased penalty rate is to take effect is thus immaterial. On the other hand, despite the severe effects of the pandemic on the poor, little-affected wealthy consumers have continued to buy high margin trucks and SUVs that Auto Alliance members and others continue to heavily market that have lower fuel economy targets and are predominately used as passenger vehicles. The result is healthy profits for automakers who have failed to make the necessary investments to comply with the law. This rule would thus reward law-breaking manufactures while ignoring the benefits to the public of enforcing CAFE standards as well as severely punishing manufactures that have made the necessary investments by devaluing credits they have recently earned.

Applying the adjustment to the CAFE civil penalty rate beginning in model year 2019 will result in a serious benefit to society by upholding the rule of law in a time of flagrant lawlessness and alternative truths. Automakers would then finally have the regulatory certainty that goes along with knowing that NHTSA will follow the will of Congress.

For these reasons and others, the rule of 2016 should be confirmed and a new rule should be made to raise the penalty rate for the 2022 model year in accordance with the Inflation Act and the APA.