

Memorandum



U.S. Department of Transportation
**National Highway Traffic Safety
Administration**



Subject: EO 12866 Meeting with Tesla and OIRA

Date: August 16, 2021

From: Michael Kuppersmith, Trial Attorney
Office of the Chief Counsel

To: Docket No. NHTSA-2021-0001

On April 30, 2021, representatives from NHTSA and the Department of Transportation (DOT) attended an Executive Order 12866 meeting with representatives of Tesla and the Office of Information and Regulatory Affairs (OIRA). The meeting occurred telephonically to discuss issues relating to the Corporate Average Fuel Economy (CAFE) civil penalties rulemaking, which was pending EO 12866 regulatory review at the time. NHTSA was represented by Michael Kuppersmith, Trial Attorney, Office of Chief Counsel; DOT was represented by Tim Mullins, Senior Attorney, Office of General Counsel. Tesla was represented by Joseph Mendelson, as well as Gary Guzy and Thomas Brugato of Covington and Burling. OIRA was represented by Chandana Achanta and Mary Fitzpatrick. Also in attendance were Austin Brown representing the Council on Environmental Quality (CEQ) and Rio Schondelmeyer representing the Office of Management and Budget (OMB).

In the meeting, Tesla's representatives discussed their preferred path forward regarding NHTSA's interim final rule on CAFE civil penalties, 86 FR 3016 (Jan. 14, 2021). Specifically, Tesla expressed its legal—both substantive and procedural—and policy concerns with the interim final rule. Tesla highlighted that a comprehensive cost-benefit analysis would have more thoroughly considered sellers in the CAFE credit market like Tesla. Tesla also emphasized the need for prompt action, so that regulated entities will have certainty going forward. Accordingly, Tesla urged NHTSA to acknowledge that the interim final rule was promulgated without authority and immediately revoke it.