

Memorandum



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



Subject: EO 12866 Meeting with NRDC and OIRA

Date: August 16, 2021

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

To: Docket No. NHTSA-2021-0001

On June 21, 2021, representatives from NHTSA and the Department of Transportation (DOT) attended an Executive Order 12866 meeting with representatives of the Natural Resources Defense Council (NRDC) 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 Daniel Cohen, Assistant General Counsel for Regulation, Office of General Counsel. NRDC was represented by Gabe Daly, Tom Zimpleman, and Alex Tom. OIRA was represented by Chandana Achanta. Also in attendance were Austin Brown representing the Council on Environmental Quality (CEQ) and Vera Pardee, outside counsel for the Sierra Club.

In the meeting, NRDC's representatives discussed their preferred path forward regarding NHTSA's interim final rule on CAFE civil penalties, 86 FR 3016 (Jan. 14, 2021). Specifically, NRDC described its legal challenges to the interim final rule and its concerns that automakers will act in reliance on the CAFE civil penalty rate in the interim final rule unless and until it is overridden. NRDC articulated its view that the CAFE civil penalties rulemaking does not need to be held for its timing to be coordinated with the CAFE standards rulemaking (and vice versa); they can be promulgated independently. Accordingly, NRDC requested that NHTSA promulgate a new rule re-establishing the increased CAFE civil penalty rate as soon as possible. Outside counsel for the Sierra Club supported that view, further noting that manufacturers are increasingly finding it more economical to pay penalties rather than comply with the standards as inflation erodes the financial impact of the CAFE civil penalty rate.