

Memorandum



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



Subject: Stakeholder Meeting with Tesla

Date: September 13, 2021

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

To: Docket No. NHTSA-2021-0001

On August 30, 2021, representatives from NHTSA attended a stakeholder meeting with representatives of Tesla. The meeting occurred via video to discuss issues relating to the Corporate Average Fuel Economy (CAFE) civil penalties rulemaking, after a supplemental notice of proposed rulemaking was published in the Federal Register. NHTSA was represented by Steve Cliff, Ann Carlson, Jack Danielson, Dee Fujita, Kerry Kolodziej, Michael Kuppersmith, David Greene, and Jimmi Nassar. Tesla was represented by Joseph Mendelson and Rohan Patel.

In the meeting, Tesla's representatives discussed their concerns regarding NHTSA's supplemental notice of proposed rulemaking (SNPRM) on CAFE civil penalties, 86 FR 46811 (Aug. 20, 2021). Specifically, Tesla reiterated its opinion that another round of comments is unnecessary and that it would prefer NHTSA withdraw the interim final rule immediately. Tesla also mentioned its concerns with the substance of the SNPRM, noting that it appeared to leave open regulatory options that Tesla believes are unlawful under the Second Circuit's opinions in the litigation related to this issue. Additionally, Tesla noted that the rulemaking posture will allow for another round of litigation, potentially in a different venue.

Tesla does not believe that NHTSA will learn anything new from another round of comments, having already had multiple rounds of comments and multiple rounds of briefing in the Second Circuit on this issue. Tesla expressed that NHTSA has limited capacity, time, and resources and could dispense with this rulemaking quickly, in line with the Administration's priorities.

Tesla also noted that extending the rulemaking process produces continuing uncertainty in investments and transactions across the industry, and any delays will continue to have deleterious effects on the credit market until the issue is resolved.

NHTSA's representatives expressed, as it did in the SNPRM, that having a comment period is appropriate in this instance and that the Agency is not predetermining what the comments will say or what the outcome of the rulemaking will be.