



September 20, 2021

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National Highway Traffic Safety Administration (NHTSA)
Docket Management Facility (M-30)
West Building, Room W12-140
1200 New Jersey Avenue, SE
Washington, DC 20590

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.

Last month, NHTSA issued a supplemental notice of proposed rulemaking (SNPRM) that follows up on a January 2021 interim final rule (IFR) addressing the timing of an increase in the corporate average fuel economy (CAFE) noncompliance penalty rate from \$5.50 to \$14.00.¹ Given the impossibility of making fuel economy improvements for MY 2019, 2020, and 2021 vehicles, the IFR concluded that any such penalty increase should not occur prior to Model Year (MY) 2022. NHTSA indicates that it is issuing the SNPRM in part based on Executive Order (E.O.) 13990, which asks agencies to review actions they took between January 2017 and January 2021 that may be inconsistent with, or present obstacles to, several Biden Administration public policy goals, such as improved environmental performance. For the reasons below, NADA continues to support the conclusions NHTSA made in its January 2021 IFR.

NHTSA is required to set “maximum achievable” CAFE standards by modeling what will be technologically feasible and economically practical in the future. 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 backstop and incentivize OEM compliance efforts and, if imposed, to minimize any economic advantage of noncompliance.

The IFR’s clarification that any increase in the CAFE penalty rate should not occur until at least MY 2022 was consistent with a 2016 Obama Administration rule that similarly concluded that CAFE penalty rate increases should not apply if they cannot incentivize changes in vehicle

¹86. Fed. Reg. 46811, *et seq.* (August 20, 2021). 86 Fed. Reg. 3016, *et seq.* (January 14, 2021). The \$14.00

design or to otherwise deter non-compliance.² Given that the fundamental purpose of the CAFE program is to promote maximum achievable fuel economy improvements³, both the IFR and the 2016 rule recognized 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. Simply put, to the extent CAFE penalties are imposed retroactively, they can only (and must) result in higher vehicle prices prospectively.

By way of example, assume Make X failed to meet its CAFE compliance obligations by 0.1 mpg in each of MYs 2019, 2020, and 2021, and that it delivered to market 1 million new vehicles subject to CAFE for each of those years. At the unadjusted rate \$5.50/0.1 mpg, Make X would owe \$16,500,000 in CAFE penalties. But, if NHTSA were to reverse the position it took in its IFR and retroactively impose an adjusted rate of \$14.00/0.1 mpg, Make X would owe \$42,000,000, or an extra \$25,500,000 in CAFE penalties. That extra \$25,500,000 must be added to the cost of MY 2022 and later Model X vehicles, over and above what they otherwise will incur for CAFE compliance costs (or penalties). And since Make X cannot avoid the retroactive application of higher CAFE penalties by improving the fuel economy performance of vehicles already built and delivered, no CAFE benefits will result. Worse yet, by forcing Make X to raise by \$25,500,000 the prices of its MY 2022 and later vehicles, NHTSA will cause a reduction in the demand for those vehicles, along with a commensurate reduction in associated CAFE program benefits. Such a result would *directly conflict with the plain language and clear purpose of Executive Order (E.O.) 13990* such as those policy goals targeting improved environmental performance.

In short, the IFR appropriately prevented an untenable scenario involving the retroactive application of increased CAFE noncompliance penalties resulting in higher new vehicle prices for MY 2022 and later vehicles. NHTSA should act consistent with E.O. 13990 and finalize its IFR to ensure that sales of cleaner, greener, and safer new vehicles will not be reduced by the retroactive application, *but future imposition*, of higher CAFE penalties.

On behalf of NADA, I thank NHTSA for the opportunity to comment on this matter.

Respectfully submitted,



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² 81 Fed. Reg. 95489, *et seq.* (December 28, 2016).

³ And the associated benefits such as a reduced dependency on foreign oil and a reduction in GHG emissions.