

Memorandum



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



Subject: EO 12866 Meeting with National Automobile Dealers Association (NADA) and EOP **Date:** December 28, 2021

From: Hunter B. Oliver, Senior Trial Attorney
Office of the Chief Counsel

To: Docket No. NHTSA-2021-0030

On December 16, 2021, representatives from NHTSA and the Department of Transportation (DOT) attended an Executive Order 12866 telephonic meeting with representatives of the National Automobile Dealers Association (NADA) and the Executive Office of the President (EOP). NHTSA was represented by Hunter Oliver, Senior Trial Attorney, Office of Chief Counsel; DOT was represented by Tim Mullins, Senior Attorney, Office of General Counsel. The Office of Management and Budget was represented by Kim Wilson. NADA was represented by Douglas Greenhaus, Andrew Koblenz, and Greg Cote. The meeting was requested by NADA as part of the Executive Order 12866 process.

In the meeting, NADA overviewed the organization's opposition to the Corporate Average Fuel Economy (CAFE) Preemption rulemaking to repeal NHTSA's portion of The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program, 84 Fed. Reg. 51,310 (Sept. 27, 2019) ("SAFE I Rule"). NADA's opposition to the rulemaking is more specifically described in NADA's written public comment submitted to the rulemaking docket following the publication of the CAFE Preemption Notice of Proposed Rulemaking.¹ NADA's representatives described the organization's long-term support for the One National Program and for unified national fuel economy standards. They also described the SAFE I Rule as valuable in providing clarity on the application of preemption under the Energy Policy and Conservation Act (EPCA). They expressed the view that the SAFE I Rule was promulgated pursuant to all procedural and statutory requirements, such as those under the Administrative Procedure Act, and that none of the material background or facts had changed since the SAFE I Rule's promulgation. Nevertheless, they noted that preemption under EPCA was still a legal issue in which EPCA's preemption provisions operated in a self-executing manner irrespective of the presence of the SAFE I Rule or the regulations that rulemaking codified. Finally, NADA's representatives expressed their view on the substantive scope of preemption under the SAFE I Rule and EPCA, describing it as limited in nature and not applying to certain other state programs that did not pertain to new motor vehicles. As such, NADA preferred for NHTSA not to finalize the rulemaking and instead leave the SAFE I Rule and its accompanying regulations in place.

¹ The comment in question is publicly available through the public docket for the rulemaking. See NHTSA-2021-0030-0435, National Automobile Dealers Association, *Re: Corporate Average Fuel Economy (CAFE) Preemption* (Jun. 10, 2021).