



DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 578

[Docket No. NHTSA-2016-0136]

RIN 2127-AL82

Civil Penalties

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule; delay of effective date.

SUMMARY: NHTSA is delaying the effective date of the final rule entitled “Civil Penalties,” published in the **Federal Register** on December 28, 2016, because NHTSA is reconsidering the appropriate level for CAFE civil penalties.

DATES: As of July 7, 2017, the effective date of the final rule published in the **Federal Register** on December 28, 2016, at 81 FR 95489, is delayed indefinitely pending reconsideration.

FOR FURTHER INFORMATION CONTACT: Rebecca Schade, Office of Chief Counsel, at (202) 366-2992.

SUPPLEMENTARY INFORMATION: On July 5, 2016, NHTSA published an interim final rule updating the maximum civil penalty amounts for violations of statutes and regulations administered by NHTSA, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act). The penalty for exceeding an applicable Corporate Average Fuel Economy (CAFE) standard was among the penalties adjusted for

inflation in the interim final rule. In accordance with the Inflation Adjustment Act and guidance on calculating the inflationary adjustment mandated by the Act issued by the Office of Management and Budget, NHTSA increased the civil penalty for failing to meet an applicable CAFE standard from \$5.50 per tenth of a mile per gallon (mpg) to \$14 per tenth of an mpg.

The Auto Alliance and Global Automakers jointly petitioned NHTSA for reconsideration of the interim final rule regarding the inflationary adjustment of CAFE non-compliance penalties (hereafter, the Alliance and Global petition will be referred to as the “Industry Petition”)¹ on August 1, 2016. The Industry Petition argued that NHTSA used the wrong base year to calculate the inflationary adjustment to the CAFE civil penalty and raised concerns about applying the adjusted civil penalty retroactively. The Industry Petition also argued that in the event that NHTSA chose not to adopt the base year suggested in the petition, NHTSA should seek comment on whether NHTSA should adopt a lower penalty level than the one in the interim final rule based on “negative economic impacts,” as permitted by the Inflation Adjustment Act.

On December 28, 2016, NHTSA published a final rule in response to the Industry Petition.² To address concerns raised in the Industry Petition about applying the adjusted penalty retroactively, NHTSA delayed application of the \$14 per tenth of an mpg penalty until the 2019 model year, which begins in October 2018 for most manufacturers. The final rule did not address the other points raised in the Industry Petition.

The December 28, 2016 final rule is not yet effective and would currently become effective on July 10, 2017.³

¹ Jaguar Land Rover North America, LLC also filed a petition for reconsideration in response to the July 5, 2016 interim final rule raising the same concerns as those raised in the Industry Petition. Both petitions can be found in Docket No. NHTSA-2016-0075, accessible via www.regulations.gov.

² 81 FR 95489.

³ 82 FR 8694 (Jan. 30, 2017); 82 FR 15302 (Mar. 28, 2017); 82 FR 29009 (June 27, 2017).

NHTSA is now reconsidering the final rule because the final rule did not give adequate consideration to all of the relevant issues, including the potential economic consequences of increasing CAFE penalties by potentially \$1 billion per year, as estimated in the Industry Petition. Thus, in a separate document published in this **Federal Register**, NHTSA is seeking comment on whether \$14 per tenth of an mpg is the appropriate penalty level for civil penalties for violations of CAFE standards given the requirements of the Inflation Adjustment Act and the Energy Policy and Conservation Act (EPCA) of 1975, which authorizes civil penalties for violations of CAFE standards.⁴ Because NHTSA is reconsidering the final rule, NHTSA is delaying the effective date pending reconsideration.

There is good cause to implement this delay without notice and comment under 5 U.S.C. 553(b)(B) and 553(d)(3) because those procedures are impracticable, unnecessary, and contrary to the public interest in these circumstances, where the effective date of the rule is imminent. Moreover, the agency is, through a separate document, already seeking out public comments on the underlying issues, which may be extensive, and additional time will be required to thoughtfully consider and address those comments before deciding on the appropriate course of regulatory action. A delay in the effective date is therefore consistent with NHTSA's statutory authority to administer the CAFE standards program and its inherent authority to do so efficiently and in the public interest. In addition, no party will be harmed by the delay in the effective date of the rule. On the contrary, the rule does not increase CAFE penalties before Model Year 2019, and therefore, the delay will not affect the civil penalty amounts assessed against any manufacturer for violating a CAFE standard prior to the 2019 model year at the earliest, *i.e.*, until sometime in 2020. Therefore, the increased penalty rate set forth in the rule

⁴ NHTSA incorporates the discussions in the document seeking comment on the appropriate CAFE civil penalties level by reference.

would not be applied for current violations, so there is no immediate, concrete impact from the delay.

Authority: Pub. L. 101-410, Pub. L. 104-134, Pub. L. 109-59, Pub. L. 114-74, Pub L. 114-94, 49 U.S.C. 32902 and 32912; delegation of authority at 49 CFR 1.81, 1.95.

Jack Danielson,

Acting Deputy Administrator.

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