EXHIBIT A

82 Federal Register 32139
Department of Veterans Affairs, S. Farrisee, Deputy Chief of Staff, electronically as an official document of authorized the undersigned to sign and submit the document to the Office of the designated, approved this document and Signing Authority.

Department of Transportation

National Highway Traffic Safety Administration


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”) 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 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

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).
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.

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 would not be applied for current violations, so the penalty rate set forth in the rule would not be applied for current violations, so the increased penalty rate set forth in the rule would not be applied for current violations, so 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 would not be applied for current violations, so there is no immediate, concrete impact from the delay.


Jack Danielson, Acting Deputy Administrator.

[FR Doc. 2017–14526 Filed 7–7–17; 11:15 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION
National Highway Traffic Safety Administration

Civil Penalties

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

ACTION: Reconsideration of final rule; request for comments.

SUMMARY: NHTSA seeks comment on whether and how to amend the civil penalty rate for violations of Corporate Average Fuel Economy (CAFE) standards. NHTSA initially raised the civil penalty rate for CAFE standard violations for inflation in 2016, but upon further consideration, NHTSA believes that obtaining additional public input on how to proceed with CAFE civil penalties in the future will be helpful. Therefore, NHTSA is issuing this document to seek public comment as it sua sponte reconsiders its final rule regarding the appropriate inflationary adjustment for CAFE civil penalties.

DATES: Comments: Comments must be received by October 10, 2017. See the SUPPLEMENTARY INFORMATION section below for more information on submitting comments.

ADDRESSES: You may submit comments to the docket number identified in the heading of this document by any of the following methods:

- Federal eRulemaking Portal: Go to http://www.regulations.gov. Follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- Hand Delivery or Courier: U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. Eastern time, Monday through Friday, except Federal holidays.
- Fax: (202) 493–2551.

Regardless of how you submit your comments, you must include the docket number identified in the heading of this document. Note that all comments received, including any personal information provided, will be posted without change to http://www.regulations.gov. Please see the “Privacy Act” heading below. You may call the Docket Management Facility at 202–366–9324.

Docket: For access to the docket to read background documents or comments received, go to http://www.regulations.gov or the street address listed above. NHTSA will continue to file relevant information in the Docket as it becomes available.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to http://www.regulations.gov, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at https://www.transportation.gov/privacy. Anyone is able to search the electronic form of all comments received into any of DOT’s docket by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.).


SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

NHTSA sets 1 and enforces 2 CAFE standards for the United States, and in doing so, assesses civil penalties against vehicle manufacturers who fall short of their compliance obligations and are unable to make up the shortfall with credits. 3 The amount of the civil penalty was originally set by statute in 1975, and for most of the duration of the CAFE program, has been $5.50 per each tenth of a mile per gallon that a vehicle manufacturer’s fleet average CAFE level falls short of its compliance obligation, multiplied by the number of vehicles in the fleet that has the shortfall. The basic equation for calculating a manufacturer’s civil penalty amount is as follows:

\[ \text{Civil Penalty} = \text{Surplus} \times \text{Penalty Rate} \]

1 49 U.S.C. 32902.


3 Credits may be either earned (for over-compliance by a given manufacturer’s fleet, in a given model year) or purchased (in which case, another manufacturer earned the credits by over-complying and chose to sell that surplus). 49 U.S.C. 32903; 49 CFR part 538.

4 A manufacturer may have up to three fleets of vehicles, for CAFE compliance purposes, in any given model year—a domestic passenger car fleet, an imported passenger car fleet, and a light truck fleet. Each fleet belonging to each manufacturer has its own compliance obligation, with the potential for either over-compliance or under-compliance. There is no overarching CAFE requirement for a manufacturer’s total production.

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