UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

NATURAL RESOURCES DEFENSE COUNCIL, INC.; SIERRA CLUB; and CENTER FOR BIOLOGICAL DIVERSITY,

Petitioners,

v.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION; JACK DANIELSON, in his capacity as Acting Deputy Administrator of the National Highway Traffic Safety Administration; the UNITED STATES DEPARTMENT OF TRANSPORTATION; and ELAINE CHAO, in her capacity as Secretary of the United States Department of Transportation

Respondents.

PETITION FOR REVIEW
of a final rule of the National Highway Traffic Safety Administration

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Dated: September 7, 2017
PETITION FOR REVIEW

Pursuant to 49 U.S.C. § 32909, 5 U.S.C. § 702 et seq., and Rule 15 of the Federal Rules of Appellate Procedure, the Natural Resources Defense Council, Sierra Club, and Center for Biological Diversity hereby petition this Court to review and set aside a final rule of the National Highway Traffic Safety Administration indefinitely delaying the effective date of an earlier final rule that increased the civil penalty rate for violations of Corporate Average Fuel Economy standards. The challenged rule was published in the Federal Register at 82 Fed. Reg. 32,139 (July 12, 2017).

A copy of the challenged final rule is attached as Exhibit A to this petition.

Dated: September 7, 2017

Respectfully submitted,

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EXHIBIT A
82 Fed. Reg. 32,139 (July 12, 2017)
Department of Veterans Affairs, S. Farrisee, Deputy Chief of Staff, the Department of Veterans Affairs. Gina Federal Register for publication designee, approved this document and Signing Authority of Federal Domestic Assistance program businesses, for which there is no Catalog guidelines of veteran-owned small businesses, for which there is no Catalog.

1995 (44 U.S.C. 3501–3521). The penalty for constituting a collection of information under the Paperwork Reduction Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any given year. This final rule has no such effect on state, local, and tribal governments, or on the private sector.

Paperwork Reduction Act


Catalog of Federal Domestic Assistance

This final rule affects the verification guidelines of veteran-owned small businesses, for which there is no Catalog of Federal Domestic Assistance program number.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Gina S. Farrisee, Deputy Chief of Staff, Department of Veterans Affairs, approved this document on July 5, 2017, for publication.

List of Subjects in 38 CFR Part 74

Administrative practice and procedures, Privacy, Reporting and recordkeeping requirements, Small business, Veteran, Veteran-owned small business, Verification.


Michael Shores,
Director, Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

PART 74—VETERANS SMALL BUSINESS REGULATIONS

Accordingly, the interim rule amending 38 CFR part 74 which was published at 82 FR 11154 on February 21, 2017, is adopted as final without change.

[FR Doc. 2017–14600 Filed 7–11–17; 8:45 am]

BILLING CODE 8320–01–P

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 statues 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. 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. 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).
DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 578

[Docket No. NHTSA–2017–0059]

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 reconsidered its final rule regarding the appropriate inflationary adjustment for CAFE civil penalties.

DATES: 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, M–30, 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: 202–493–2251.

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.


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 tenth of a mile per gallon that a 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:

\[
\text{Civil Penalties} = \text{manufacturer’s total production} \times \text{vehicle manufacturers who fall short of} \times \text{shortfall} \times \text{multiplied by the number of vehicles in the fleet that has the shortfall}.
\]

1 49 U.S.C. 32902.


3Credits 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. 32902; 49 CFR part 538.

4A 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 an imported passenger car fleet, and a light truck fleet. Each fleet belonging to each manufacturer has

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