

generally, one of the stated purposes of the 2015 Act is to “maintain the deterrent effect of civil monetary penalties and promote compliance with the law.”<sup>82</sup> Further, as part of the statutory scheme established by EPCA and the 2015 Act, Congress requires NHTSA to account for such issues as lead time, consumer demand, and negative economic impacts of its actions (especially in light of COVID-19 and the Executive order to combat the economic emergency caused by it). Assuming *arguendo* that NHTSA is obligated to raise the civil penalty rate to \$14, the aforementioned factors, as well as legal doctrines of retroactivity and fairness, all point to the necessity of delaying effectiveness until at least model year 2022. Consideration of environmental impacts is inconsistent with these obligations and Congressional intent, and no further analysis pursuant to NEPA is required.

Still, NHTSA “may prepare an environmental assessment on any action in order to assist agency planning and decision making.”<sup>83</sup> When a Federal agency prepares an environmental assessment, the CEQ NEPA implementing regulations require it to (1) “[b]riefly provide sufficient evidence and analysis for determining whether to prepare an environmental impact statement or a finding of no significant impact” and (2) “[b]riefly discuss the purpose and need for the proposed action, alternatives . . . , and the environmental impacts of the proposed action and alternatives, and include a listing of [a]gencies and persons consulted.”<sup>84</sup> Generally, based on the environmental assessment, the agency must make a determination to prepare an environmental impact statement or “prepare a finding of no significant impact if the [a]gency determines, based on the environmental assessment, not to prepare an environmental impact statement because the proposed action will not have significant effects.”<sup>85</sup> Although NHTSA concludes that a NEPA analysis is not required, this section may serve as the Agency’s Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) for this interim final rule.

### I. Purpose and Need

This interim final rule sets forth the purpose of and need for this action. In response to the Alliance Petition, NHTSA considered whether it is appropriate, pursuant to the Inflation

Adjustment Act and EPCA (as amended by EISA), to increase the CAFE civil penalty rate beginning in model year 2022. The Alliance Petition cited cost, retroactivity, and lead time as reasons why a delay in effectiveness until model year 2022 is required. NHTSA considered the findings of this EA prior to deciding that the adjusted rate will go into effect beginning in model year 2022.

### II. Alternatives

NHTSA considered a range of alternatives for this action, including the No Action Alternative of adjusting the CAFE civil penalty rate from \$5.50 to \$14 beginning in model year 2019 (as originally established by the December 2016 final rule), and the alternatives of applying the adjustment beginning in model years 2020, 2021, 2022, and 2023. This EA describes the potential environmental impacts associated with the various model years in comparison with each other.

Upon consideration of the information presented in this EA, NHTSA is deciding to apply the adjustment beginning in model year 2022 in this interim final rule. NHTSA is seeking comment on whether to instead apply the increase beginning in model year 2023, and commenters should consider NEPA in their discussions of such an approach.

### III. Environmental Impacts of the Action and Alternatives

NHTSA considered a range of alternatives for when to apply the inflation adjustment in the CAFE civil penalty rate from \$5.50 to \$14. For the reasons explained in the preamble, NHTSA anticipates no differences in environmental impacts associated with the alternatives of applying the adjustment beginning in model years 2019, 2020, 2021, or 2022. Vehicles for model years 2019 and 2020 have largely if not entirely been produced already, and many manufacturers are already selling model year 2021 vehicles. Since some manufacturers launch subsequent model year vehicles as early as the spring, it is reasonable to assume that model year 2022 vehicles will be launched in the coming months. It is impossible for manufacturers to change the design and manufacture of vehicles that are already on the market, and the logistical realities of the industry make it infeasible for manufacturers to change course in the middle of a model year that is already underway or just prior to the start of a model year. Imposing a higher penalty on manufacturers for vehicles that, at this point, cannot be manufactured with improved fuel

economy and for which adjustment in production volumes costs manufacturers significantly more compared to the higher civil penalty rate would have no environmental benefit—only incurring costs to those manufacturers (which are likely to be passed on to consumers). In fact, imposing those costs on manufacturers now may make it even harder financially for those manufacturers to make further gains in fuel economy in the future, with less capital to invest in fuel-saving technology, design, marketing of the benefits, and production.

While this interim final rule adjusts the CAFE civil penalty rate beginning no earlier than model year 2022, NHTSA is seeking comment on whether to apply the adjustment beginning in model year 2023. Based on the information included in NHTSA’s Final EA in its July 2019 rule, NHTSA tentatively expects that applying the adjustment beginning in model year 2023 would have a minimal environmental impact. NHTSA seeks comments on the environmental impacts of applying the adjustment beginning in model year 2023.

### IV. Agencies and Persons Consulted

NHTSA and DOT have consulted with OMB and the U.S. Department of Justice and provided other Federal agencies with the opportunity to review and provide feedback on this rulemaking.

### V. Conclusion

NHTSA has reviewed the information presented in this EA and concludes that the alternatives to adjust the CAFE civil penalty rate beginning in model years 2019, 2020, 2021, or 2022 all would have the same environmental impacts on the quality of the human environment (or the differences among alternatives would be *de minimis*). Given the practical realities of the design and production process, the environmental impact of adjusting the CAFE civil penalty rate in model year 2022 is expected to be negligible as compared to the No Action Alternative. NHTSA has not made a final decision on whether to apply the adjustment beginning in model year 2023 and seeks comments on the environmental impacts of that alternative.

### VI. Finding of No Significant Impact

I have reviewed this EA. Based on the EA, I conclude that implementation of any of the action alternatives through model year 2022 (including the interim final rule) will not have a significant effect on the human environment and that a “finding of no significant impact”

<sup>82</sup> 28 U.S.C. 2461 note, sec. 2(b)(2).

<sup>83</sup> 40 CFR 1501.5(b).

<sup>84</sup> 40 CFR 1501.5(c).

<sup>85</sup> 40 CFR 1501.6(a).

is appropriate. This statement constitutes the Agency's "finding of no significant impact," and an environmental impact statement will not be prepared.<sup>86</sup> NHTSA will review comments regarding applying the adjustment beginning in model year 2023 as appropriate.

#### 6. Executive Order 12778 (Civil Justice Reform)

This rule does not have a preemptive or retroactive effect—specifically, it modifies a regulation to avoid having a retroactive effect. Judicial review of a rule based on this interim final rule may be obtained pursuant to 5 U.S.C. 702.

#### 7. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, NHTSA states that there are no requirements for information collection associated with this rulemaking action.

#### 8. Privacy Act

Please note that anyone is able to search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://dms.dot.gov>.

#### 9. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this action as a "major rule," as defined by 5 U.S.C. 804(2). For the reasons explained above, NHTSA finds that notice and public comment are impracticable, unnecessary, and contrary to the public interest. NHTSA will submit a rule report to each House of the Congress and to the Comptroller General of the United States.

#### List of Subjects in 49 CFR Part 578

Imports, Motor vehicle safety, Motor vehicles, Penalties, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 578 is amended as set forth below.

#### PART 578—CIVIL AND CRIMINAL PENALTIES

■ 1. The authority citation for 49 CFR part 578 continues to read as follows:

**Authority:** Pub. L. 101–410, 104 Stat. 890; Pub. L. 104–134, 110 Stat. 1321; Pub. L. 109–

59, 119 Stat. 1144; Pub. L. 114–74, 129 Stat. 584; Pub. L. 114–94, 129 Stat. 1312; 49 U.S.C. 30165, 30170, 30505, 32308, 32309, 32507, 32709, 32710, 32902, 32912, and 33115; delegation of authority at 49 CFR 1.81, 1.95.

■ 2. Amend § 578.6 by revising paragraph (h) to read as follows:

#### § 578.6 Civil penalties for violations of specified provisions of Title 49 of the United States Code.

\* \* \* \* \*

(h) *Automobile fuel economy.* (1) A person that violates 49 U.S.C. 32911(a) is liable to the United States Government for a civil penalty of not more than \$43,280 for each violation. A separate violation occurs for each day the violation continues.

(2) Except as provided in 49 U.S.C. 32912(c), beginning with model year 2022, a manufacturer that violates a standard prescribed for a model year under 49 U.S.C. 32902 is liable to the United States Government for a civil penalty of \$14, plus any adjustments for inflation that occurred or may occur (for model years before model year 2022), multiplied by each .1 of a mile a gallon by which the applicable average fuel economy standard under that section exceeds the average fuel economy—

(i) Calculated under 49 U.S.C. 32904(a)(1)(A) or (B) for automobiles to which the standard applies manufactured by the manufacturer during the model year;

(ii) Multiplied by the number of those automobiles; and

(iii) Reduced by the credits available to the manufacturer under 49 U.S.C. 32903 for the model year.

*Note 1 to paragraph (h)(2):* If the August 31, 2020 decision of the United States Court of Appeals for the Second Circuit in Case No. 19–2395 is vacated, 49 CFR 578.6(h)(2), revised October 1, 2019, would apply to all model years, instead of paragraph (h)(2) of this section. In such instance, NHTSA would amend this section in accordance with such vacatur.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95, and 501.5.

**James Clayton Owens,**  
Deputy Administrator.

[FR Doc. 2021–00278 Filed 1–12–21; 11:15 am]

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#### SURFACE TRANSPORTATION BOARD

##### 49 CFR Part 1022

[Docket No. EP 716 (Sub-No. 6)]

#### Civil Monetary Penalties—2021 Adjustment

**AGENCY:** Surface Transportation Board.

**ACTION:** Final rule.

**SUMMARY:** The Surface Transportation Board (Board) is issuing a final rule to implement the annual inflationary adjustment to its civil monetary penalties, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

**DATES:** This final rule is effective January 14, 2021.

#### FOR FURTHER INFORMATION CONTACT:

Sarah Fancher at (202) 245–0355. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), enacted as part of the Bipartisan Budget Act of 2015, Public Law 114–74, sec. 701, 129 Stat. 584, 599–601, requires agencies to adjust their civil penalties for inflation annually, beginning on July 1, 2016, and no later than January 15 of every year thereafter. In accordance with the 2015 Act, annual inflation adjustments are to be based on the percent change between the Consumer Price Index for all Urban Consumers (CPI–U) for October of the previous year and the October CPI–U of the year before that. Penalty level adjustments should be rounded to the nearest dollar.

##### II. Discussion

The statutory definition of civil monetary penalty covers various civil penalty provisions under the Rail (Part A); Motor Carriers, Water Carriers, Brokers, and Freight Forwarders (Part B); and Pipeline Carriers (Part C) provisions of the Interstate Commerce Act, as amended. The Board's civil (and criminal) penalty authority related to rail transportation appears at 49 U.S.C. 11901–11908. The Board's penalty authority related to motor carriers, water carriers, brokers, and freight forwarders appears at 49 U.S.C. 14901–14916. The Board's penalty authority related to pipeline carriers appears at 49 U.S.C. 16101–16106.<sup>1</sup> The Board has regulations at 49 CFR part 1022 that codify the method set forth in the 2015 Act for annually adjusting for inflation the civil monetary penalties within the Board's jurisdiction.

As set forth in this final rule, the Board is amending 49 CFR part 1022 to

<sup>1</sup> The Board also has various criminal penalty authority, enforceable in a federal criminal court. Congress has not, however, authorized federal agencies to adjust statutorily prescribed criminal penalty provisions for inflation, and this rule does not address those provisions.

<sup>86</sup> 40 CFR 1501.6(a).