

## **Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015 for the Corporate Average Fuel Economy (CAFE) Program**

On November 2, 2015, the President signed into law the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015 (“the 2015 Act”) (Sec. 701 of Public Law 114-74) amending the Federal Civil Penalties Inflation Adjustment Act of 1990 (“the Inflation Adjustment Act”) in order to adjust for inflation the civil monetary penalties for all government agencies. The 2015 Act requires agencies to: (1) issue an interim final rule by July 1, 2016, to adjust civil monetary penalties with an initial “catch-up” inflation adjustment factor based upon the Consumer Price Index; and (2) make subsequent annual adjustments for inflation each year thereafter.

NHTSA issued its interim final rule on June 22, 2016, which was published in the Federal register (see 81 FR 43524 (July 5, 2016)), amending the maximum civil penalty amounts for violations of statutes and regulations it administers. The effective date of the final rule is August 4, 2016, and petitions for reconsideration of this final rule must be received no later than August 19, 2016. For information concerning the rule, consumers should contact Mr. Thomas Healy, Office of Chief Counsel, NHTSA, telephone (202)366–2992, facsimile (202) 366–3820, 1200 New Jersey Ave SE., Washington, DC 20590.

### Overview of the Changes to Penalties Under the CAFE Program:

- The Energy Policy and Conservation Act (EPCA) of 1975, Public Law 94–163, § 508, 89 Stat. 912 (1975), established a civil penalty of \$5 for each 0.1 of a mile per gallon by which the applicable average fuel economy standard exceeds the average fuel economy for automobiles to which the standard applies. The civil penalty is then multiplied by the annual production of those automobiles and reduced by the credits available to the manufacturer (see 49 U.S.C. 32912(b)).
- The previous civil CAFE penalty adjusted to inflation was \$5.50. The penalty is now further adjusted to \$14 for each 0.1 of a mile per gallon.
- For CAFE compliance violations other than those for failing to complying with standards (i.e., manufacturers failing to provide accurate CAFE reports or not submitting reports by the required deadlines), EPCA allows a civil penalty of \$10,000 for each violation (see 49 U.S.C. 32911(a)).
- The adjusted civil penalty amount was previously \$14,000 and is now further increased to \$40,000 for each violation of 49 U.S.C. 32911(a).

### Implementation of New Adjusted CAFE Civil Penalty Levels

- NHTSA will apply the new adjusted CAFE Civil Penalty levels to any penalties assessed on and after August 4, 2016.
- NHTSA is applying the new penalties levels starting in the 2015 compliance model year in order to comply with the requirements of 2015 Act and to ensure that the new civil penalties are fairly and uniformly applied as NHTSA does not anticipate being able to assess model year 2015

penalties against all manufacturers to which penalties would apply prior to the effective date of the penalty increase.

- The new adjusted penalty level will apply for any reporting violations (i.e., late reporting) on or after August 4, 2016, starting with manufacturer's 2016 Mid-Model Year Reports which are due by July 31, 2016 (see 49 CFR 537.7).
- Pursuant to the 2015 Act, NHTSA must apply the new penalty levels for all penalties assessed on or after August 4, 2016, even in the event a violation takes place prior to the effective date of the new penalty levels. This includes any increases in a manufacturer's civil penalties established prior to August 4, 2016, resulting from any recalculations of the manufacturer's CAFE compliance that might occur on or after the effective date of the new penalty levels.
- Previously, the Inflation Adjustment Act required government agencies to adjust civil monetary penalty levels every four years. The 2015 Act updates these requirements with annual adjustments for inflation based on OMB guidance. NHTSA's Office of Vehicle Safety Compliance (OVSC) will make information available on the NHTSA website on the inflation levels each year.