



May 4, 2018

ATTORNEY GENERAL MADIGAN CHALLENGES PROPOSED ROLLBACK OF PENALTIES FOR VIOLATING NATIONAL FUEL ECONOMY STANDARDS

Chicago — Attorney General Lisa Madigan, as part of a coalition of 13 attorneys general, filed comments challenging the federal government's proposal to cut by over 60 percent the penalty assessed to automakers for violating national fuel economy standards for their fleets, from \$14 to \$5.50 per tenth of a mile per gallon.

In [comments](#) submitted to the National Highway Traffic Safety Administration (NHTSA), Madigan and the coalition not only argue that NHTSA has no authority to reduce the penalty, but that the rollback is "arbitrary and capricious," and will undermine national fuel economy standards, known as Corporate Average Fuel Economy (CAFE) standards, by slashing the penalties that incentivize automakers to comply with them.

"The NHTSA is proposing to make it cheaper for automakers to pay a fine rather than meet fuel economy standards that were created to protect our environment and the public's health," Madigan said. "If the NHTSA does not change course, our residents will have less fuel-efficient vehicle choices on the market, will pay more at the gas pump, and will suffer from increased pollution."

To deter auto manufacturers from violating CAFE standards, the federal Energy Policy and Conservation Act imposes a penalty for every tenth of a mile per gallon (mpg) by which the average fuel economy of a manufacturer's fleet of vehicles falls short of the applicable CAFE standard for the model year, multiplied by the number of vehicles in that manufacturer's fleet. In 2016, pursuant to amendments to the Federal Civil Penalties Inflation Improvements Act, the NHTSA increased the penalty for violating CAFE standards from \$5.50 per tenth of a mpg to \$14 per tenth of a mpg. This inflation-adjusted penalty went into effect in August 2016 and applies to automakers beginning in model year 2019. The previous \$5.50 per tenth of a mpg penalty had been in place, without adjustment for inflation, since 1997.

In their comments, Madigan and the other attorneys general highlight the important role that the CAFE standards play in reducing harmful pollution and helping consumers. These standards "will deliver enormous social benefits in terms of reducing carbon dioxide emissions, the main driver of climate change; protecting our national security by decreasing our dependence on foreign oil imports; reducing emissions of the criteria pollutants that cause air pollution and worsen public health; and providing consumers with savings at the gas pump."

On April 2, the NHTSA proposed a rule that would roll the penalty for violating CAFE standards back to the 1997 level of \$5.50 per tenth of a mpg, arguing that the amendments to the Federal Civil Penalties Inflation Improvements Act do not apply to these penalties. In their comments, Madigan and the other attorneys general charge that the NHTSA has no authority to reduce the penalty. The \$14 penalty is simply the result of a "catch-up" inflation adjustment Congress directed all federal agencies to make in 2015 to restore the real value of federal civil penalties. Madigan and the other attorneys general also argue that the agency's justifications for reversing the penalty adjustment ignore basic principles of legal analysis, flout the purposes of the applicable federal law, and "disregard the comprehensive, robust, and well-supported factual and technical record – which the Highway Administration itself helped create – regarding the achievability and social benefits" of the CAFE standards. Because federal law requires that agencies provide a "reasoned explanation" for changing or rescinding an existing rule, Madigan and the coalition contend that NHTSA's failure to do so in rolling back the penalties is arbitrary and capricious.

Joining Madigan in submitting the comments were the attorneys general of California, Delaware, the District of Columbia, Iowa, Maryland, Massachusetts, New Jersey, New York, Oregon, Vermont, Virginia, and Washington.



[© 2020 Illinois Attorney General](#)

[Home](#) • [Privacy Policy](#) • [Contact Us](#)