



Mercedes-Benz

Mercedes-Benz USA, LLC
A Daimler Company

Mr. James Owens
Deputy Administrator
National Highway Traffic Safety Administration
1200 New Jersey Ave., SE
Washington, DC 20590

Re: Mercedes-Benz Information in Support of
Alliance for Automotive Innovation Petition for Rulemaking – 49 C.F.R. Part 578

Dear Mr. Owens:

Mercedes-Benz USA, LLC (“MBUSA”), on behalf of its parent company Mercedes-Benz AG (hereinafter “MBAG”), is pleased to submit data in support of the Alliance for Automotive Innovation petition for rulemaking to amend 49 C.F.R. Part 578 to clarify and establish that the first model year to which a civil penalty rate of \$14 will apply to manufacturers is Model Year 2022. Attached to this letter, MBAG is providing information which reflects its CAFE compliance methodology and the anticipated changes based on an application of the higher penalty amount in MY19 versus MY22.

MBAG remains committed to continued investment in drivetrain innovations and to offering increasing choices for hybrids and electric vehicles. However, the widespread adoption of alternative powertrains is difficult to bring to fruition in the US marketplace, as both industry and consumers struggle with uncertain regulatory pathways and the economic strain occasioned by the on-going Covid-19 pandemic.

MBAG participated in the development of the Alliance for Automotive Innovation petition for rulemaking, which we endorse. We encourage NHTSA to review the CAFE Civil Penalties record for a complete examination of industry concerns. We hope that NHTSA will continue to receive and review such technical input and revise regulations when circumstances warrant such changes.

MBAG’s product plans with regard to the US market were finalized before the ruling leading to the possible increase in the penalty amounts. MBAG could not, as of the date of the ruling, alter its market plans in order to change its CAFE compliance results or methodology. The unexpected change marks a significant change for MBAG, and MBAG respectfully requests that NHTSA consider the substantial impact on MBAG should NHTSA apply the penalty increase to years before MY22.




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October 28, 2020

Accordingly, MBAG requests that NHTSA take the impact of the penalty increase on MBAG and other manufacturers into account when considering the petition. MBAG has submitted this letter and the accompanying data under a request for confidential treatment, and requests that NHTSA inform MBUSA should there be any request to release this letter and/or the provided information.

Sincerely,



Gregory Gunther

Jonathan Morrison, Esq.
Chief Counsel
National Highway Traffic Safety Administration
1200 New Jersey Avenue, SE
West Building
Room W41-227
Washington DC 20590

Re: Request for Confidential Treatment of Information Submitted in
Support of Alliance for Automotive Innovation
Petition for Rulemaking – 49 C.F.R. Part 578

Dear Mr. Morrison:

Mercedes-Benz USA, LLC (“MBUSA”), on behalf of its parent company Mercedes-Benz AG (hereinafter “MBAG”), hereby requests confidential treatment for the letter and accompanying information provided in support of the Alliance for Automotive Innovation’s Petition for Rulemaking to apply any increase in CAFE civil penalties beginning in Model Year 2022. The information is submitted in order to provide the Agency with detailed information on the undue financial impact the civil penalty would have on Mercedes-Benz if applied to model years over which MBAG can no longer impact with new or different market or product decisions. The information is set forth in a format which reflects MBAG’s long range plans and compliance strategies; thus, even if individual facts may be available publicly, the compilation as a whole is not and deserves confidential treatment.

MBUSA seeks confidential treatment under the test announced in *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 588 US ___, 204 L. Ed. 2d 742 (June 24, 2019) (finding that confidential protection under FOIA Exemption 4 requires two conditions: (1) that the information is kept private or closely held by the person providing it; and (2) that the person receiving it provides some assurance that the information will be kept secret). The information for which Mercedes-Benz seeks confidential treatment is customarily and actually treated as private and the company does not release or otherwise provide this information or information like it to the public. Consistent with the agency’s practice of maintaining confidential treatment of this type of information, this constitutes assurance that NHTSA will continue to treat this information as confidential. The confidential business information contained in the presentation materials involves the company’s analysis of issues related to its quarterly assessment meeting with the agency including its analysis and observations on certain recall management issues. The information contained in the submission has not been publicly disclosed. MBAG and MBUSA have taken measures to ensure that the information is not disclosed or otherwise made available to any persons outside of the company. MBUSA is requesting that the letter and information be granted confidential treatment and that confidentiality be granted for an indefinite period of time.

October 28, 2020

Any questions related to this matter may be directed to Greg Gunther at 1(904)741-9607.

Sincerely,



Gregory Gunther

**CERTIFICATE IN SUPPORT OF
REQUEST FOR CONFIDENTIALITY**

I, Gregory Gunther, pursuant to the provisions of 49 CFR Part 512, state as follows:

(1) I am the Department Manager of Vehicle Compliance and Analysis for Mercedes-Benz USA, LLC (MBUSA), and I am authorized by MBUSA and its parent company, Mercedes-Benz Aktiengesellschaft (MBAG), to execute this certificate on its behalf;

(2) I certify that the information contained in **this document, in support of the Alliance for Automotive Innovation Petition for rulemaking**, is confidential and proprietary data and is being submitted with the claim that it is entitled to confidential treatment under 5 U.S.C. 552(b)(4) (as incorporated by reference in and modified by the statute under which the information is being submitted);

(3) I hereby request that the information contained in the **Mercedes-Benz Support Documentation for Petition for Rulemaking** be protected indefinitely.

(4) This certification is based on the information provided by the responsible personnel who have authority in the normal course of business to release the information for which a claim of confidentiality has been made to ascertain whether such information has ever been released outside MBUSA or MBAG;

(5) Based upon that information, to the best of my knowledge, information and belief, the information for which MBUSA has claimed confidential treatment has never been released or become available outside of MBUSA or MBAG, except as hereinafter specified:

(6) I make no representations beyond those contained in this certificate and, in particular, I make no representations as to whether this information may become available outside of MBUSA or MBAG because of unauthorized or inadvertent disclosure except as stated in Paragraph 5; and

October 28, 2020

(7) I certify under penalty of perjury that the foregoing is true and correct.

Executed on the **28th day of October 2020**.



Gregory Gunther

Request and Basis for Petition

MBAG concurs with the assessment provided by the Alliance for Automotive Innovation, in which it concludes that the 2nd Circuit decision requires further rulemaking and that the basis of the Improvements Act is future-oriented. As presented by our data, MBAG has developed and implemented product plans based upon the civil penalty of \$5.50 per 1/10th mile per gallon. The outcome of our product planning, credit accrual through contractual negotiation and technology development, and powertrain strategy is reflected through a holistic approach which factors in the penalty rate.

As the Agency is aware, credits are purchased through an OEM-dominant process where contracts and prices are negotiated based on the life-expectancy and usage of credits, technology penetration, and base price of the CAFE penalty. It is foreseeable that had automakers known an increase in penalty rate was imminent, either contractual party might have made alternative choices through the negotiation process. Instead, each party entered into a mutually agreeable contractual obligation based on the known facts of the time. [REDACTED]

We are no longer in a position to alter our contract and product planning for the model years which have already occurred. NHTSA recognized this premise when it decided in December 2016 that retroactive application of an adjusted CAFE civil penalty would not serve the purpose of the Improvements Act or the purpose of the CAFE statute. Also at that time, NHTSA declined to apply the higher civil penalty rate to the impending model years (2017, 2018) because those product plans were fixed at that time. The same is true for MYs 2019-2021, of which MY2019-2020 has effectively lapsed.

In light of product planning, including penalty adjustments, MBAG respectfully requests that NHTSA align with the Alliance for Automotive Innovation petition which requests that the fuel economy penalty rate remain at the \$5.50 per 1/10th mile per gallon rate through lapsed model years, 2019 – 2021, and instead begin application of the revised penalty rate beginning in MY2022.

In addition to the above argument, based on the penalty rate itself, automakers continue to experience cascading impacts related to the COVID-19 pandemic. Beginning in March 2020 and onward, MBAG has continued disruption to its supply chain, production and work force as a result of the pandemic, causing unforeseen financial loss for the 2020 calendar year. We believe that retroactively applying an increased penalty rate in such a tenuous financial climate is unconscionable and inconsistent with this Administration's efforts to promote regulatory relief in light of the economic consequences of COVID-19.

Conclusion

Please review the attached summary of MBAG's credit purchases and projections from MY2012-2020 in support of the above requests. We defer to the proposed regulatory text set forth by the Alliance for Automotive Innovation for NHTSA's consideration.

CONFIDENTIAL BUSINESS INFORMATION

CAFE - Import Passenger Cars										
Model Year	Fleet	CAFE Std.	CAFE	Volume	Credits/ Shortfall	Penalty Rate	Est. NHTSA Penalty \$	Offset with Credits	Actual NHTSA Penalty Paid \$	Comments

CAFE - Domestic Passenger Cars										
Model Year	Fleet	CAFE Std.	CAFE	Volume	Credits/ Shortfall	Penalty Rate	Est. NHTSA Penalty \$	Offset with Credits	Actual NHTSA Penalty Paid \$	Comments

CAFE - Light Duty Trucks										
Model Year	Fleet	CAFE Std.	CAFE	Volume	Credits/ Shortfall	Penalty Rate	Est. NHTSA Penalty \$	Offset with Credits	Actual NHTSA Penalty Paid \$	Comments

Totals (PC Import + PC Domestic + Light Duty Trucks)				
Model Year	Fleet	Penalty Rate	Est. NHTSA Penalty \$	Comments