



April 22, 2019

**SUBMITTED ELECTRONICALLY**

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460  
(202) 566-1667

**Re: FOIA Request for EPA Staff Analysis Regarding the Clean Car Standards and the “SAFE” Rulemaking to Roll Back Those Standards**

Dear National Freedom of Information Officer:

Environmental Defense Fund (“EDF”) respectfully requests copies of certain records of the U.S. Environmental Protection Agency (“EPA”) pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, including records related to the EPA and National Highway Traffic Safety Administration’s (“NHTSA”) joint rulemaking setting out greenhouse gas emission and corporate average fuel economy (“CAFE”) standards for light-duty vehicles (“Clean Car Standards”).

*Request for Records*

EDF seeks the analysis detailed in the attached Inside EPA article, “*EPA Staff Crafts New Analysis Of Flaws, Possible Fixes For Vehicle GHG Plan.*” The attached article describes this analysis as “a ‘draft technical report’ that represents a more in-depth and comprehensive critique of the assumptions behind the proposal, and potential fixes, than what is already public,” and describes that this analysis has been shared with the Department of Transportation as well as the Office of Management and Budget. EDF further seeks any related presentations or reports—including any presentations to or briefings for EPA or NHTSA staff members or leadership—that formed the basis of the analysis.

If any of the information sought in this request is deemed by EPA to be properly withheld under a FOIA exemption, 5 U.S.C. § 552(b), please provide EDF with an explanation, for each such record or portion thereof, sufficient to identify the record and the particular exemption(s) claimed.

## *Request for Expedited Processing*

EDF respectfully seeks expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E)(i) and 40 C.F.R. § 2.104(e)(1)(ii), which applies when there is “[a]n urgency to inform the public about an actual or alleged Federal government activity, if the information is requested by a person primarily engaged in disseminating information to the public.” In support of this request I certify that the following information is true and correct to the best of my knowledge and belief:

1. EDF engages in extensive, daily efforts to inform the public about matters involving public health and environmental policy. For example, EDF has multiple channels for distributing information to the public, including through direct communication with its more than two million members and supporters, active engagement on social media, and frequent appearances by staff in major media outlets.<sup>1</sup>
2. In a 2012 final rule, EPA and NHTSA set out greenhouse gas emission standards and fuel economy standards under their separate respective authorities for light-duty cars and trucks from Model Year 2017-2025.<sup>2</sup> These “Clean Car Standards” are projected to reduce carbon pollution by billions of tons over the lifetime of the vehicles sold while saving a car owner thousands of dollars in gas bills over the life of each vehicle.<sup>3</sup>
3. In March 2017, President Trump announced that his administration would “work tirelessly to eliminate” the Clean Car Standards.<sup>4</sup> In August 2018, EPA and NHTSA issued a notice of proposed rulemaking to roll back the Clean Car Standards.<sup>5</sup> The proposal, identified as the “SAFE” Rule, would require no additional reductions in greenhouse gas emissions or improvements in fuel efficiency after MY2020 through MY2026. According to an EDF analysis, this rollback would result in approximately 4.5

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<sup>1</sup> See, e.g., Chester France, *Administration Cooks the Books to Justify Rollback of the Clean Car Standards*, EDF Climate 411 Blog (Aug. 7, 2018), <http://blogs.edf.org/climate411/2018/08/07/administration-cooks-the-books-to-justify-rollback-of-the-clean-car-standards/>; Martha Roberts, *The attack on our clean cars is the biggest scandal at EPA*, The Hill (May 8, 2018), <https://thehill.com/opinion/energy-environment/386692-the-attack-on-our-clean-cars-is-the-biggest-scandal-at-epa>; Martha Roberts, *Four ways the Trump administration’s Clean Cars rollback would harm Americans*, EDF Climate 411 Blog (July 31, 2018), <http://blogs.edf.org/climate411/2018/07/31/four-ways-the-trump-administrations-clean-cars-rollback-would-harm-americans/>; Coral Davenport, *Top Trump Officials Clash Over Plan to Let Cars Pollute More*, N.Y. Times (July 27, 2018) (quoting Chester France, consultant for EDF), <https://www.nytimes.com/2018/07/27/climate/trump-auto-pollution-rollback.html>; Steven Martinez, *Environmental Group, State Attorneys Urge EPA to Keep Glider Kit GHG Rules*, TruckingInfo (Jan. 8, 2018) (quoting Jason Mathers, EDF Director of On-Road Vehicles), <https://www.truckinginfo.com/143735/environmental-group-urges-epa-to-maintain-glider-kit-standards>.

<sup>2</sup> EPA & NHTSA, *2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards*, 77 Fed. Reg. 62,624 (Oct. 15, 2012).

<sup>3</sup> EPA Regulatory Announcement: “EPA and NHTSA Set Standards to Reduce Greenhouse Gases and Improve Fuel Economy for Model Years 2017-2025 Cars and Light Trucks” at 3 (Aug. 2012), EPA-420-F-12-051, <https://nepis.epa.gov/Exe/ZyPDF.cgi/P100EZ7C.PDF?Dockey=P100EZ7C.PDF>.

<sup>4</sup> Paul A. Eisenstein, *Trump Rolls Back Obama-Era Fuel Economy Standards*, NBC NEWS (Mar. 16, 2017), <https://www.nbcnews.com/business/autos/trump-rolls-back-obama-era-fuel-economy-standards-n734256>.

<sup>5</sup> EPA & NHTSA, *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks*, 83 Fed. Reg. 42986 (Aug. 24, 2018).

billion tons of additional carbon pollution by 2050—a huge blow to efforts to protect human health and welfare against the devastating impacts of climate change.<sup>6</sup>

4. The Trump Administration has indicated that it is moving quickly to finalize the proposed rollback rule. Department of Transportation employees continued to work on the rollback rule during the December 2018 – January 2019 government shutdown, according to EPA Administrator Andrew Wheeler and the Department of Transportation’s published shutdown plan.<sup>7</sup> Most recently, Administrator Wheeler has asserted that a final rule will be released in “late spring or early summer.”<sup>8</sup> The agencies have stated that they will consider late comments “[t]o the extent practicable.”<sup>9</sup>
5. EDF and other organizations commented extensively on the numerous serious flaws in the technical analysis underlying the “SAFE” proposed rule.<sup>10</sup> Among other resources, our comments described and reflected concerns raised in technical critiques prepared by EPA staff of NHTSA’s technical analysis that were included in the rulemaking docket.<sup>11</sup> The accompanying article describes these materials as “prior EPA staff briefing materials drafted for April and June 2018 pre- proposal meetings at OMB.”<sup>12</sup> EPA’s update of these materials is deeply relevant for public stakeholders participating in this rulemaking. Given the imminent release of the final rule, these materials must be released to the public as soon as possible.

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<sup>6</sup> See EDF Comment on NHTSA & EPA’s Proposed Rule: The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks, 83 Fed. Reg. 42,986 (Oct. 26, 2018), [https://www.edf.org/sites/default/files/EDF1\\_Comment\\_Intro.PDF](https://www.edf.org/sites/default/files/EDF1_Comment_Intro.PDF).

<sup>7</sup> See Maxine Joselow, *Wheeler: Obama admin ‘tried to tip the scales’ on EVs*, E&E NEWS (Feb. 4, 2019), <https://www.eenews.net/eenewspm/2019/02/04/stories/1060119581>; U.S. Dep’t of Transportation, *Operations During a Lapse in Annual Appropriations Plans by Operating Administration* at 27 (Dec. 2018, revised Jan. 11, 2019), <https://www.transportation.gov/sites/dot.gov/files/docs/mission/budget/328471/dot-shut-down-plan-updated-01-14-2019.pdf> (indicating that DOT’s Volpe staff would be “at work,” not furloughed, during the shutdown).

<sup>8</sup> Valerie Volcovici, *California sues U.S. agencies over data on vehicle emissions freeze*, REUTERS (April 5, 2019), <https://www.reuters.com/article/us-autos-emissions-california/california-sues-us-agencies-over-data-on-vehicle-emissions-freeze-idUSKCN1RH2G4>.

<sup>9</sup> 83 Fed. Reg. at 43471.

<sup>10</sup> See, e.g., EDF Comment on NHTSA & EPA’s Proposed Rule: The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks, 83 Fed. Reg. 42,986 (Oct. 26, 2018), [https://www.edf.org/sites/default/files/EDF1\\_Comment\\_Intro.PDF](https://www.edf.org/sites/default/files/EDF1_Comment_Intro.PDF); Comment of the Center for Biological Diversity, Conservation Law Foundation, Earthjustice, EDF, Environmental Law and Policy Center, Natural Resources Defense Council, Public Citizen, Inc., Sierra Club, and Union of Concerned Scientists on NHTSA & EPA’s Proposed Rule: The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks, 83 Fed. Reg. 42,986 (Oct. 26, 2018), [https://www.edf.org/sites/default/files/NGO\\_Coalition\\_Legal\\_Comment\\_AppendixA\\_10\\_26\\_18.pdf](https://www.edf.org/sites/default/files/NGO_Coalition_Legal_Comment_AppendixA_10_26_18.pdf).

<sup>11</sup> See Comment of the Center for Biological Diversity, Conservation Law Foundation, Earthjustice, EDF, Environmental Law and Policy Center, Natural Resources Defense Council, Public Citizen, Inc., Sierra Club, and Union of Concerned Scientists on NHTSA & EPA’s Proposed Rule: The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks, 83 Fed. Reg. 42,986 (Oct. 26, 2018) (citing Docket Entry: E.O. 12866 Review Materials for The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks NPRM, Docket ID EPA-HQ-OAR2018-0283-0453).

<sup>12</sup> Doug Obey, *EPA Staff Crafts New Analysis Of Flaws, Possible Fixes For Vehicle GHG Plan*, INSIDE EPA (April 15, 2019).

## *Request for Fee Waiver*

As a non-partisan, non-profit organization that provides information that is in the public interest, EDF respectfully requests a waiver of fees associated with this request. We are not seeking information for any commercial purpose and the records received will contribute to a greater public understanding of an issue of considerable public interest: the rigor and validity of the analysis underlying the current administration's efforts to significantly weaken federal Clean Car Standards, one of our nation's most vital efforts to reduce climate pollution. *See* 5 U.S.C. § 552(a)(4)(A)(iii).

EDF is well positioned to disseminate the records to the public, as we routinely issue press releases, action alerts, blog posts, reports, analyses, and other public outreach materials.<sup>13</sup> We fully intend to disseminate newsworthy information received in response to this request. In addition to our own capacity to convey information to the public, the information that EDF has obtained through FOIA has been disseminated through news articles to a wide audience, enhancing public knowledge.<sup>14</sup> Accordingly, we respectfully request that the documents be furnished without charge. 5 U.S.C. § 552(a)(4)(A)(iii).

For ease of administration and to conserve resources, we will accept documents produced in a readily accessible electronic format. In the event EDF's request for expedited processing or a fee waiver is denied or if you have any questions about this request, please contact me immediately by telephone at (202) 572-3318, or by email at [blevitan@edf.org](mailto:blevitan@edf.org).

Respectfully submitted,

Benjamin Levitan  
Environmental Defense Fund  
1875 Connecticut Ave. NW, Suite 600  
Washington, DC 20009

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<sup>13</sup> *See, e.g.*, EDF Blog Post, *Clean Cars Are Safer and Cheaper to Drive* (Aug. 1, 2018), <http://blogs.edf.org/climate411/2018/08/01/clean-cars-are-safer-and-cheaper-to-drive/>; EDF, *Promoting government transparency* (last updated Apr. 18, 2018), <https://www.edf.org/climate/promoting-government-transparency>.

<sup>14</sup> *See, e.g.*, Ryan Beene, *White House Told EPA to Ready California Autos Challenge in 2017*, Bloomberg (June 1, 2018), <https://www.bloomberg.com/news/articles/2018-06-01/white-house-told-epa-to-ready-california-autos-challenge-in-2017> (reporting information disclosed through an EDF FOIA request); Ellen Knickmeyer, *Emails Show Cooperation Among EPA, Climate-Change Deniers*, Assoc. Press (May 26, 2018), <https://apnews.com/64cd37b0503440c0b92e6ca075f87dd4> (same); Michael Biesecker, *Emails: Pruitt Monitored Changes to EPA Webpages on Climate*, Assoc. Press (Feb. 2, 2018), <https://www.apnews.com/85e69300761040a2995f5b457f2ac9f4> (same); Coral Davenport & Eric Lipton, *Scott Pruitt Is Carrying Out His E.P.A. Agenda in Secret, Critics Say*, N.Y. Times (Aug. 11, 2017), <https://www.nytimes.com/2017/08/11/us/politics/scott-pruitt-epa.html> (same).