

# Memorandum



U.S. Department of Transportation  
National Highway Traffic Safety  
Administration



**Subject:** EO 12866 Meeting with EDF and OIRA

**Date:** May 12, 2021

**From:** Hunter B. Oliver, Senior Trial Attorney  
Office of the Chief Counsel

**To:** Docket No. NHTSA-2021-0030

On April 1, 2021, representatives from NHTSA and the Department of Transportation (DOT) attended an Executive Order 12866 meeting with representatives of the Environmental Defense Fund (EDF) and the Office of Information and Regulatory Affairs (OIRA). The meeting occurred telephonically to discuss issues relating to the Proposed Rulemaking CAFE Preemption, which was pending EO 12866 regulatory review at the time. NHTSA was represented by Hunter Oliver, Senior Trial Attorney, Office of Chief Counsel; DOT was represented by Tim Mullins, Senior Attorney, Office of General Counsel. EDF was represented by Peter Zalzal and Chet France, as well as Matthew Littleton of Donahue, Goldberg, Weaver, & Littleton. OIRA was represented by Mary Fitzpatrick and Matthew Oreska.

In the meeting, EDF's representatives discussed EDF's preferred approach to the Federal government's reconsideration of The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program, 84 FR 51310 (Sept. 27, 2019) (SAFE I Rule). In particular, EDF strongly encouraged NHTSA to reconsider the SAFE I Rule and the preemption conclusions contained therein. EDF expressed the view that the SAFE I Rule was unlawful and, especially, contended that NHTSA lacked the delegated authority to speak with the force of law on the question of EPCA preemption. EDF believed that 49 U.S.C. § 32919 was self-executing and neither mandated nor authorized NHTSA to expressly codify regulations on EPCA preemption. EDF emphasized California's longstanding practice of regulating motor vehicle emissions and underscored the success of states in such regulations and their federalism interests in continuing to regulate in this area. Accordingly, EDF urged NHTSA to move forward quickly with a reconsideration of the SAFE I Rule.