



October 17, 2018

**SUBMITTED VIA EMAIL TO OST.FOIA@DOT.GOV**

Ms. Kathy Ray  
National Freedom of Information Officer  
U.S. Department of Transportation  
1200 New Jersey Ave., SE  
W94-122  
Washington, DC 20590

**Re: FOIA Request for Records Relating to Correspondence of Secretary Elaine Chao and Calendars of Secretary Chao, Deputy Secretary Rosen, and Deputy Administrator King**

Dear Ms. Ray:

Environmental Defense Fund (“EDF”) respectfully requests copies of certain records of the U.S. Department of Transportation (“DOT”) pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and applicable Department of Transportation regulations, 49 C.F.R. §§ 7.1-7.46, including records related to the Environmental Protection Agency (“EPA”) and National Highway Traffic Safety Administration (“NHTSA”) joint greenhouse gas emission and corporate average fuel economy (“CAFE”) standards for light-duty vehicles (“Clean Car Standards”).

(1) Schedules. EDF requests the schedules of DOT Secretary Elaine Chao, DOT Deputy Secretary Jeffrey A. Rosen, and NHTSA Deputy Administrator and acting Administrator Heidi King since January 1, 2017.

EDF requests copies of all DOT records produced, modified, or transmitted since January 1, 2017 that are related to the schedules of Secretary Chao, Deputy Secretary Rosen, or Deputy Administrator King, including: calendars, schedules, itineraries, logs of daily activities and travel, and records of in-person, telephonic, or videoconference meetings, including lists of meeting attendees.

(2) Correspondence. EDF requests copies of all correspondence of Secretary Elaine Chao relating to the Clean Car Standards, with any external party. EDF previously requested copies of all external correspondence of Deputy Secretary Rosen and Deputy Administrator King relating

to the Clean Car Standards, in a FOIA request submitted to DOT on August 6, 2018, which has been assigned tracking number 2018-374.

This request for correspondence encompasses:

- all correspondence of Secretary Chao,
- relating to the Clean Car Standards,
- where any recipient or sender is anyone other than a DOT employee.

In accordance with 5 U.S.C. § 552(f)(2) (describing “record[s]”), EDF intends for “correspondence” to be broadly construed and include, without limitation, electronic and hard-copy communications, text messages, voice mails, records of phone calls, records of meetings, meeting invitations, calendars, written notes, and correspondence transmitted through any electronic platform.

For the purposes of this request, EDF respectfully seeks records produced, modified, or transmitted since January 1, 2017 that exist as of the date that DOT begins searching for records responsive to this request.

If any of the information sought in this request is deemed by DOT 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 49 C.F.R. § 7.31(c)(1)(ii), which applies to “[a] request made by a person primarily engaged in disseminating information, with a time urgency to inform the public of actual or alleged Federal Government Activity.” 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>

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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*

2. The National Highway Traffic Safety Administration and U.S. Environmental Protection Agency issued Clean Car Standards for MY2022-2025 light-duty vehicles in a joint rulemaking in 2012.<sup>2</sup> EPA adopted the greenhouse gas emission standards into regulation, and NHTSA established “augural” fuel economy standards, which the agency would review and formally adopt in a subsequent rulemaking.<sup>3</sup> The Clean Car Standards were issued with the support of the State of California and thirteen auto companies representing over 90 percent of U.S. vehicle sales, and the standards are projected to reduce carbon pollution by six billion tons over the lifetime of vehicles sold during MY2012-2025.<sup>4</sup>
3. On August 2, 2018, NHTSA and EPA issued a notice of proposed rulemaking to roll back the Clean Car Standards.<sup>5</sup> The proposal would require no additional reductions in greenhouse gas emissions or improvements in fuel efficiency after MY2020 through MY2026. Based on an initial EDF analysis, this rollback could result in more than 2 billion tons of additional carbon pollution by 2040, which would be detrimental to U.S. efforts to protect human health and welfare against the threat of climate change.<sup>6</sup>
4. The agencies initially provided just 60 days for public comments on the proposal, which is an inadequate comment period for such a technically complex rulemaking that will significantly weaken a major existing pollution control program with clear and considerable consequences for public health. The proposal is over 500 pages long, and is accompanied by a 1,600-page Preliminary Regulatory Impact Analysis, a 1,300-page Draft Environmental Impact Statement, and additional modeling and input files. EDF<sup>7</sup> requested an extension of the comment deadline, as did numerous other stakeholders

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*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. 62624 (Oct. 15, 2012).

<sup>3</sup> By statute, NHTSA is limited to setting CAFE standards no more than five years in advance. 49 U.S.C. § 32902(b)(3)(B).

<sup>4</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>5</sup> The proposal was initially released on August 2, and published in the Federal Register on August 24. 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).

<sup>6</sup> EDF Analysis: Impacts of Weakening the Existing EPA Phase 2 GHG Standards at 11 (Apr. 2018), <http://blogs.edf.org/climate411/files/2018/04/MTE-Relaxation-Impacts-Final.pdf>.

<sup>7</sup> Letter from Center for Biological Diversity et al., to Deputy Administrator King, NHTSA, *Re: Request for Extension of Comment Period* (Aug. 30, 2018), <https://www.regulations.gov/document?D=NHTSA-2018-0067-3278>.

including 18 states,<sup>8</sup> 32 U.S. Senators,<sup>9</sup> a trade group representing major automakers,<sup>10</sup> the City of Los Angeles,<sup>11</sup> the National Coalition for Advanced Transportation,<sup>12</sup> and the American Lung Association<sup>13</sup>—to allow for 120 days for public comment. Despite the broad range of entities seeking additional time to review and comment on the proposal, the agencies denied the extension requests, adding just three days to the comment period (to accommodate their hearing schedule).<sup>14</sup>

5. The records sought in this FOIA request are vital for informing the public’s understanding of the process by which DOT developed the rollback proposal, in the face of a concerted effort to limit the public’s understanding of and ability to participate meaningfully in the proposed policy change.<sup>15</sup> It is of particular importance that the public understand which stakeholders have influenced the process. Reporting on the Trump administration’s attack on the Clean Car Standards has shown that NHTSA is the agency driving the promulgation of this flawed proposal, and Deputy Secretary Jeffrey Rosen and Deputy Administrator Heidi King have been described as “two of the proposal’s chief authors.”<sup>16</sup> Therefore, their schedules and records are essential, along with the correspondence and schedule of Secretary Chao, in order to understand who informed their deliberations during the run up to and course of this proceeding. With an

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<sup>8</sup> Letter from the States of California, Connecticut, Delaware, Iowa, Illinois, Maine, Maryland, Massachusetts, Minnesota, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Vermont, Washington, and the District of Columbia, *Re: Request for Extension of Comment Period and Additional Public Hearings* (Aug. 27, 2018), <https://www.regulations.gov/document?D=NHTSA-2018-0067-2567>.

<sup>9</sup> Press Release: 32 Senators Urge EPA to Extend Comment Period for Proposed Rollback of Fuel Economy Standards (Sept. 10, 2018), <https://www.feinstein.senate.gov/public/index.cfm/press-releases?ID=AE3ABA60-FDD9-4505-8409-008A26FFBA18>.

<sup>10</sup> Letter from Chris Nevers, Auto Alliance, *Re: Request for Extension of Comment Periods in [the SAFE] Proposed Rule for Model Years 2021-2026 (Dockets EPA-HQ-OAR-2018-0283, NHTSA-2018-0067/NHTSA-2017-0069) and [DEIS] (Docket NHTSA-2018-0067-1425)* (Sept. 6, 2018), <https://www.regulations.gov/document?D=NHTSA-2017-0069-0397>.

<sup>11</sup> Letter from Mike Feuer, City Attorney, City of Los Angeles, *Re: Request for Extension of Comment Period and Additional Public Hearings* (Sept. 7, 2018), <https://www.regulations.gov/document?D=NHTSA-2018-0067-4159>.

<sup>12</sup> Letter from Latham & Watkins, on behalf of National Coalition for Advanced Transportation, *Re: Request for Extension of Public Comment Period for the Proposed Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule and DEIS* (Aug. 29, 2018), <https://www.regulations.gov/document?D=NHTSA-2018-0067-2872>.

<sup>13</sup> Letter from Harold Wimmer, President & CEO, American Lung Association, *Re: Comment period extension request for proposed rulemaking– Docket No. NHTSA-2018-0067; EPA-HQ-OAR-2018-0283* (Sept. 9, 2018), <https://www.regulations.gov/document?D=NHTSA-2018-0067-3615>.

<sup>14</sup> EPA & NHTSA, *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks; Extension of Comment Period*, 83 Fed. Reg. 48578 (Sept. 21, 2018), <https://www.federalregister.gov/documents/2018/09/26/2018-20962/the-safer-affordable-fuel-efficient-vehicles-rule-for-model-years-2021-2026-passenger-cars-and-light>.

<sup>15</sup> In addition to the limited time for public comment, the agencies altered the locations of the public hearings on the proposal, denying many residents the opportunity to offer testimony. After originally committing to hold hearings in Los Angeles and Washington, DC, the agencies canceled those events. See EPA & NHTSA, *Announcement of Public Hearings: The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks*, 83 Fed. Reg. 42,817 (Aug. 24, 2018).

<sup>16</sup> Coral Davenport, *Top Trump Officials Clash Over Plan to Let Cars Pollute More*, N.Y. Times (July 27, 2018), <https://www.nytimes.com/2018/07/27/climate/trump-auto-pollution-rollback.html>; see also Maxine Joselow, *2 officials drive the push against Obama's car rules*, E&E News (July 31, 2018), <https://www.eenews.net/greenwire/stories/1060091731/>.

impending deadline of October 26, 2018 to submit public comments, Americans need these records as quickly as possible in order to inform their comments.

6. It is urgent that the public understand the extent and nature of the correspondence that DOT has had with external industry groups and other stakeholders, before the Agency takes further action. The public must be able to assess which stakeholders have communicated with Agency decision-makers, and compare such access to that afforded to the general public. Denying expedited processing could serve to conceal important external input and/or inequitable stakeholder access until key actions have been taken or decisions have been finalized.

### *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, pursuant to 49 C.F.R. § 7.43(c). 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 activities and correspondence of senior Department of Transportation officials related to the decision to significantly weaken federal Clean Car Standards, one of our nation's most important efforts to reduce climate pollution and improve fuel economy. 5 U.S.C. § 552(a)(4)(A)(iii). The correspondence sought here is highly relevant to this issue. For example, media reports indicate that Deputy Secretary Rosen and Deputy Administrator King “have been leading the talks for months” in negotiations over the proposal and that “both are leaving their mark on the administration’s proposal.”<sup>17</sup>

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>18</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>19</sup> Accordingly, we respectfully request that the documents be furnished without charge. 5 U.S.C. § 552(a)(4)(A)(iii).

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<sup>17</sup> Maxine Joselow, *2 officials drive the push against Obama’s car rules*, E&E News (July 31, 2018), <https://www.eenews.net/greenwire/stories/1060091731>.

<sup>18</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>19</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*

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) 572-3525, or by email at [emurphy@edf.org](mailto:emurphy@edf.org).

Respectfully submitted,

Erin Murphy  
Environmental Defense Fund  
1875 Connecticut Ave. NW, Suite 600  
Washington, DC 20009

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*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).