



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: Freedom of Information Act Request for Correspondence Relating to Heavy-Duty Trailer Standards**

Dear Ms. Ray:

Environmental Defense Fund (“EDF”) respectfully requests copies of certain records of the U.S. Department of Transportation (“DOT” or “Agency”) pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and applicable DOT regulations, 49 C.F.R. §§ 7.1-7.46. This request describes the records sought, our request for expedited processing, and our request for a fee waiver for production of these records.

*Request for Records*

(1) Correspondence. EDF requests copies of all correspondence that: (i) include among its sender(s) or recipient(s) any of the following DOT employees:

- Jack Danielson
- Jeffrey Giuseppe
- Ryan Hagen
- Heidi King
- Kerry Kolodziej
- Jonathan Morris
- James Owens
- Ryan Posten
- Loren Smith
- James Tamm;

and (ii) include any of the following terms:

- trailer(s)
- tractor-trailer
- tractor trailer
- truck-trailer, and/or
- truck trailer.

Additionally, EDF requests copies of all correspondence between the individuals listed above and any staff or representatives of the Truck Trailer Manufacturers Association (“TTMA”), or any staff or representatives of Arnold & Porter Kaye Scholer, LLP.

(2) Schedules. EDF requests the schedules of the DOT employees listed above since January 1, 2017. Specifically, EDF requests copies of all records produced, modified, or transmitted since January 1, 2017 that are related to the schedules of the DOT employees listed above, including: calendars, schedules, itineraries, logs of daily activities and travel, and records of in-person, telephonic, or videoconference meetings, including lists of meeting attendees.

EDF requests records as that term is described at 5 U.S.C. § 552(f)(2). For the purposes of this request, correspondence includes, but is not limited to, hard-copy and electronic correspondence such as emails, voice mails, records of phone calls, text messages, and correspondence transmitted through any other electronic platform.

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->

2. In the 2016 Phase 2 Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines for Model Years 2021-2027 (“the Phase 2 standards”), DOT and the U.S. Environmental Protection Agency (“EPA”) stated that the Greenhouse Gas (“GHG”) standards for trailers would provide “significant GHG reductions” and that GHG emission reductions today will “benefit the public health and public welfare of current and future generations.”<sup>2</sup> The GHG standards adopted by EPA applicable to trailers contained in the Phase 2 standards were to go into effect on January 1, 2018.<sup>3</sup> NHTSA’s fuel economy standards for trailers—which were adopted as part of the Phase 2 rulemaking—became mandatory in 2021.<sup>4</sup>
  
3. On December 22, 2016, the Truck-Trailer Manufacturers Association (“TTMA”) filed a petition for judicial review of the heavy-duty trailer provisions of the Phase 2 Standards.<sup>5</sup> After the agencies sought and the court granted an abeyance of the case,<sup>6</sup> NHTSA published a letter granting TTMA’s petition for rulemaking of the trailer standards on August 17, 2017.<sup>7</sup> Subsequently, a court order on October 27, 2017 granted another motion for abeyance and granted TTMA’s motion for a stay of the trailer standards.<sup>8</sup>
  
4. On August 6, 2018, TTMA filed a motion to compel the Agencies to submit a detailed status report and a timeline for completion of administrative review, and TTMA indicated that it would consider moving to lift the abeyance so that the case could move forward if the Agencies would *not* commit to making a decision within 90 days, either by issuing a proposed rule or announcing that they are not going to do so.<sup>9</sup> The Agencies’ response

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[is-the-biggest-scandal-at-epa](#); 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>; Peter Zalzal & Alice Henderson, *New Standards for Cleaner Freight Trucks – By the Numbers*, EDF Climate 411 Blog (Aug. 17, 2016), <http://blogs.edf.org/climate411/2016/08/17/new-standards-for-cleaner-freight-trucks-by-the-numbers/>.

<sup>2</sup> EPA & NHTSA, *Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2*, 81 Fed. Reg. 73,478, 73,487 (Oct. 25, 2016).

<sup>3</sup> 81 Fed. Reg. at 73,642-43.

<sup>4</sup> 81 Fed. Reg. at 73,504.

<sup>5</sup> Petition for Review, *Truck Trailers Manufacturers Association v. EPA*, No. 16-1430 (D.C. Cir. filed Dec. 22, 2016), available at <https://www.edf.org/sites/default/files/ttma-petition-for-review.pdf>.

<sup>6</sup> See May 8, 2017 Order Granting Motion to Hold Cases in Abeyance, *Truck Trailers Manufacturers Association v. EPA*, No. 16-1430 (D.C. Cir. filed Dec. 22, 2016), [http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2017/20170508\\_docket-16-1430\\_order.pdf](http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2017/20170508_docket-16-1430_order.pdf).

<sup>7</sup> Letter from Jack Danielson, Acting Deputy Administrator, NHTSA, to Jeffrey M. Sims, President of Truck Trailers Manufacturers Association (Aug. 17, 2017), [https://cdn.ymaws.com/www.ttmanet.org/resource/resmgr/docs/Response\\_Letter\\_to\\_Jeffrey\\_M.pdf](https://cdn.ymaws.com/www.ttmanet.org/resource/resmgr/docs/Response_Letter_to_Jeffrey_M.pdf)

<sup>8</sup> October 27, 2017 Order Granting Motion Granting Stay and Motion to Continue Abeyance, *Truck Trailers Manufacturers Association v. EPA*, No. 16-1430 (D.C. Cir. filed Dec. 22, 2016), [http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2017/20171027\\_docket-16-1430\\_order.pdf](http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2017/20171027_docket-16-1430_order.pdf).

<sup>9</sup> August 6, 2018 Motion to Compel Agencies to Submit Detailed Status Report and Timeline for Completion of Administrative Review, *Truck Trailers Manufacturers Association v. EPA*, No. 16-1430 (D.C. Cir. filed Dec. 22, 2016), [http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2018/20180806\\_docket-16-1430\\_motion.pdf](http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2018/20180806_docket-16-1430_motion.pdf).

stated that the Agencies have agreed to meet with TTMA and are currently working to schedule those meetings.<sup>10</sup>

5. On September 24, 2018, TTMA abruptly withdrew its motion to compel the Agencies to provide a status report and detailed timeline, without explanation.<sup>11</sup>
6. If DOT or EPA delay, repeal, or otherwise weaken the emissions standards for trailers, such an action would allow additional GHG emissions from heavy-duty vehicles, which would contribute to climate change-related public health hazards, including extreme weather events, rising temperatures, and air quality degradation.
7. It is urgent that the public understand the extent and nature of the correspondence that DOT has had with trailer industry groups and other stakeholders, before the Agency takes further action. The public must be able to assess who and what has been informing NHTSA's deliberations on this important pollution safeguard. Denying expedited processing could serve to conceal strategic considerations and preferential stakeholder access until after key actions have been taken or decisions have been finalized.

#### *Request for Fee Waiver*

EDF is a non-partisan, non-profit organization that provides information that is in the public interest. Accordingly, EDF respectfully requests a waiver of fees associated with this request pursuant to 49 C.F.R. § 7.43(c), which applies when “disclosure of the information is in the public interest.” 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: what considerations and stakeholders are informing a rulemaking that threatens to weaken important pollution limits for freight transportation, a major source of climate and conventional pollution. 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, reports, analyses, and other public outreach materials. These outreach channels are proven effective: FOIA productions to EDF have repeatedly been covered by major media outlets.<sup>12</sup> Accordingly, we respectfully request that the records be furnished without charge.

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<sup>10</sup> August 16, 2018 Respondents' Opposition to Motion to Compel, *Truck Trailers Manufacturers Association v. EPA*, No. 16-1430 (D.C. Cir. filed Dec. 22, 2016), [http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2018/20180816\\_docket-16-1430\\_opposition.pdf](http://blogs2.law.columbia.edu/climate-change-litigation/wp-content/uploads/sites/16/case-documents/2018/20180816_docket-16-1430_opposition.pdf).

<sup>11</sup> September 24, 2018 Notice of Withdrawal of Motion, *Truck Trailers Manufacturers Association v. EPA*, No. 16-1430 (D.C. Cir. filed Dec. 22, 2016).

<sup>12</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 and 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).

For ease of administration and to conserve resources, we will accept records 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 by telephone at (202) 572-3525, or by email at [emurphy@edf.org](mailto:emurphy@edf.org).

Respectfully submitted,

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