



September 20, 2019

SUBMITTED VIA EMAIL

NHTSA
Executive Secretariat
1200 New Jersey Avenue, SE
West Building, 41-304
Washington, D.C. 20590

Re: FOIA Request for Responses to Comments on Proposed Rule, *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program*, NHTSA-2018-0067; EPA-HQ-OAR-2018-0283; FRL-9981-74-OAR (Sept. 19, 2019)

Environmental Defense Fund (“EDF”) respectfully requests records of the U.S. Department of Transportation (“DOT”) pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 *et seq.*, and applicable DOT regulations. These records concern the joint rulemaking of the U.S. Environmental Protection Agency (“EPA”) and National Highway Traffic Safety Administration (“NHTSA”), proposed as *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks*, 83 Fed. Reg. 42,986 (Aug. 24, 2018) (“Proposed Rule”), and finalized in part as *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program*, NHTSA-2018-0067; EPA-HQ-OAR-2018-0283; FRL-9981-74-OAR (Sept. 19, 2019) (“Final Rule”). EPA and NHTSA announced the Final Rule at a joint press conference at 8:00 a.m. EDT on September 19, 2019,¹ and EPA posted the Final Rule to its website at 12:10 p.m. EDT on the same day.

Records Requested

Time constraint: EDF requests only records created, generated, modified, or transmitted on or before September 19, 2019. For each such record, EDF seeks only the most recent (last modified) version of the record. EDF does not request any records created after September 19, 2019, or

¹ C-SPAN, *News Conference on California Fuel Economy Standards* (Sept. 19, 2019), <https://www.c-span.org/video/?464472-1/epa-administrator-wheeler-secretary-chao-hold-news-conference-california-fuel-standards>. See also EPA, *Trump Administration Announces One National Program Rule on Federal Preemption of State Fuel Economy Standards* (Sept. 19, 2019), <https://www.epa.gov/newsreleases/trump-administration-announces-one-national-program-rule-federal-preemption-state-fuel>.

later-modified (*i.e.*, modified after September 19, 2019) versions of any records responsive to this request.

Subject matter: Subject to the above time constraint, EDF respectfully requests:

1. Any and all records that respond to one or more comments that a member of the public submitted on the Proposed Rule. EDF requests records including, but not limited to, a “Response to Comments” document often prepared in connection with agency rules.²
2. Any and all “environmental documents” prepared in connection with the Final Rule, as that term is defined in 40 C.F.R. § 1508.10.
3. Any and all emails to which records responsive to paragraphs 1 and/or 2 are preserved as attachments.

Format and metadata: EDF respectfully requests that all records responsive to this request be produced in the form in which they have been preserved. Any responsive electronic records, in particular, should be produced in the file format in which they have been preserved (*e.g.*, “.doc” computer files should be produced in “.doc” format). EDF requests that metadata be preserved and produced along with all responsive electronic records.

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

² See, *e.g.*, *Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles - Phase 2, Response to Comments Document for Joint Rulemaking, EPA-420-R-16-901, August 2016*, <https://www.regulations.gov/document?D=EPA-HQ-OAR-2014-0827-2344> (Document ID: EPA-HQ-OAR-2014-0827-2344).

more than two million members and supporters, active engagement on social media, and frequent appearances by staff in major media outlets.³

2. NHTSA and EPA issued Clean Car Standards for MY2017-2025 light-duty vehicles in a joint rulemaking in 2012.⁴ EPA adopted the greenhouse gas emission standards into regulation, and NHTSA adopted fuel economy standards for MY2017-2021 and established “augural” fuel economy standards for MY2022-2025, which the agency would review and formally adopt in a subsequent rulemaking.⁵ 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 MY2012-2025.⁶
3. California concurrently adopted aligned emission standards covering the same model year vehicles as part of an agreement between NHTSA, EPA, and the California Air Resources Board (CARB) to create One National Program for the country.⁷
4. In March 2017, President Trump announced that his administration would “work tirelessly to eliminate” the Clean Car Standards.⁸ On August 2, 2018, NHTSA and EPA

³ See, e.g., Fred Krupp, Trump Administration Reportedly Moving to Block States’ Clean Cars Leadership (Sept. 17, 2019), <https://www.edf.org/media/trump-administration-reportedly-moving-block-states-clean-cars-leadership>; EDF, *Update: Trump’s Clean Cars Rollback Would Cost American Families Up to \$500 Each Year* (Sept. 5, 2019), <https://www.edf.org/media/update-trumps-clean-cars-rollback-would-cost-american-families-500-each-year>; EDF, *Colorado Becomes First State in the Central U.S. to Adopt Zero Emission Vehicle Standards* (Aug. 15, 2019), <https://www.edf.org/media/colorado-becomes-first-state-central-us-adopt-zero-emission-vehicle-standards>; 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>.

⁴ 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).

⁵ By statute, NHTSA is limited to setting CAFE standards no more than five years in advance. 49 U.S.C. § 32902(b)(3)(B).

⁶ 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>.

⁷ California Air Resources Board, “Fact Sheet: Advanced Clean Cars,” (February 8, 2019), <https://ww2.arb.ca.gov/resources/fact-sheets/advanced-clean-cars>.

⁸ 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>.

issued a notice of proposed rulemaking to roll back the Clean Car Standards.⁹ The Proposed Rule would require no additional reductions in greenhouse gas emissions or improvements in fuel efficiency after MY2020 through MY2026. The Proposed Rule would also preempt states from maintaining their Clean Car Standards by reinterpreting the Energy Policy and Conservation Act (EPCA) to preempt state vehicle standards for greenhouse gases and zero-emission vehicles (ZEVs), and by revoking California's 2013 Clean Air Act (CAA) waiver for the GHG and ZEV standards that comprise its Advanced Clean Cars (ACC) program.¹⁰ According to an EDF analysis, this rollback would result in approximately 4.5 billion tons of additional carbon pollution by 2050, which would be detrimental to U.S. efforts to protect human health and welfare against the devastating impacts of climate change.¹¹ The proposal would also increase oil consumption by more than 300 billion gallons and cost U.S. consumers billions of dollars in fuel savings.¹² EPA officials also concluded that the Proposed Rule would lead to additional deaths.¹³

5. On September 19, 2019, with the Final Rule, NHTSA and EPA finalized the provisions of the Proposed Rule that purport to preempt state authority to maintain Clean Car programs and withdraw California's waiver.¹⁴ In addition to the environmental consequences, the Final Rule constitutes an unprecedented attack on state authority, and will disrupt regulatory programs in 15 states and jurisdictions.
6. The records sought in this FOIA request are vital for informing the public's understanding of the information that the agency decisionmakers had before them at the time they made their decision on the Final Rule.
7. The public must be able to assess accurately the administrative record upon which the Final Rule is based. *See* 5 U.S.C. § 706. Denying expedited processing could serve to conceal important and relevant material.

⁹ The Proposed Rule 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).

¹⁰ 83 Fed. Reg. 42,986, 43232-43253.

¹¹ *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.

¹² Chris Harto et. al., *The Un-SAFE Rule: How a Fuel Economy Rollback Costs Americans Billions in Fuel Savings and Does Not Improve Safety*, Consumer Reports (August 2019). <https://advocacy.consumerreports.org/wp-content/uploads/2019/08/The-Un-SAFE-Rule-How-a-Fuel-Economy-Rollback-Costs-Americans-Billions-in-Fuel-Savings-and-Does-Not-Improve-Safety-2.pdf>

¹³ <https://apnews.com/1a7551fca3294ec49029b93e994cd7f9>

¹⁴ *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program*, <https://www.epa.gov/regulations-emissions-vehicles-and-engines/final-rule-one-national-program-federal-preemption-state>.

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 California agreement with four automakers and the Trump Administration decision to significantly weaken federal Clean Car Standards, one of our nation's most important 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.¹⁵ 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.¹⁶ 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 (303) 447-7205, or by email at ahenderson@edf.org. A pdf version of this request with sourcing is available upon request.

Respectfully submitted,

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¹⁵ *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>.

¹⁶ *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).

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