

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

ENVIRONMENTAL DEFENSE FUND,
1875 Connecticut Ave., NW, Suite 600
Washington, DC 20009,

Plaintiff,

v.

UNITED STATES DEPARTMENT
OF TRANSPORTATION,
1200 New Jersey Ave., SE
Washington, DC 20590,

Defendant.

No. 1:18-cv-3004

**COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

For over a decade, the Department of Transportation (“DOT”) and the Environmental Protection Agency (“EPA”) have issued joint rulemakings establishing greenhouse gas pollution and fuel economy standards for different classes of vehicles pursuant to their distinct and independent statutory responsibilities. These standards reduce pollution and save consumers money, and they have been broadly supported by a wide range of stakeholders, including industry. DOT is now taking a prominent role in attacking these win-win safeguards—advancing efforts to dramatically weaken standards for light-duty cars and trucks and to roll back a major part of the standards for medium- and heavy-duty trucks. To bring greater transparency to the motivations behind these deeply harmful efforts, Plaintiff Environmental Defense Fund (“EDF”) submitted three Freedom of Information Act (“FOIA”) requests to DOT, seeking the calendars and third-party communications of key agency officials. DOT failed to respond to these requests by the statutory deadline, violating EDF’s rights under FOIA and depriving the

public of these records during the pendency of a key comment period. DOT is violating FOIA and denying access to records of clear and immediate public interest.

INTRODUCTION

1. EDF files this action to enforce the statutory obligations of DOT under FOIA, 5 U.S.C. § 552.

2. In August 2018, EPA and DOT proposed to dramatically weaken the current greenhouse gas pollution and fuel economy standards for light-duty vehicles (“Clean Car Standards”), with a public comment period that ended on October 26, 2018. *See* 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); 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. 48,578 (Sept. 26, 2018). The administration has announced its intention to release a final rule in March 2019. *See* Office of Info. & Regulatory Affairs, RIN 2060-AU09: The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201810&RIN=2060-AU09> (last accessed Dec. 18, 2018).

3. In August 2017, EPA and DOT granted a trailer manufacturer trade group’s petition for rulemaking to consider revising provisions of the current greenhouse gas pollution and fuel efficiency standards for medium- and heavy-duty engines and vehicles (“Clean Truck Standards”). *See* Letter from Jack Danielson, Acting Deputy Adm’r, Nat’l Highway Traffic Safety Admin., to Jeffrey M. Sims, President, Truck Trailer Mfrs. Ass’n (Aug. 17, 2017). The specific provisions under review are those related to heavy-duty trailers (“Trailer Standards”). Recent court statements by the agencies indicate that EPA and DOT are preparing to move forward with a

“proposed rule to revisit” the Trailer Standards. *See* Respondents’ Status Report 3, *Truck Trailer Mfrs. Ass’n v. EPA* (“*TTMA*”), No. 16-1430 (D.C. Cir. Oct. 22, 2018).

4. These efforts, if finalized as planned, would harm human health and welfare by exacerbating climate change. An EDF analysis estimates that the agencies’ proposed rollback of the Clean Car Standards would result in approximately 4.5 billion tons of additional cumulative carbon pollution between 2017 and 2050. *See* Comments of EDF on Nat’l Highway Traffic Safety Admin.’s and EPA’s Proposed Rule 3–4 (Oct. 26, 2018), Docket ID: NHTSA-2018-0067-12108, https://www.edf.org/sites/default/files/EDF1_Comment_Intro.PDF. Rolling back the Trailer Standards would jeopardize the standards’ projected reduction of an estimated 11 million tons of greenhouse gas pollution in 2030 alone. *See* Memorandum from Angela Cullen & Jessica Brakora, EPA Office of Transp. & Air Quality, to Dockets NHTSA-2014-0132 & EPA-HQ-OAR-2014-0827, at 2 (Aug. 2, 2016), Docket ID: EPA-HQ-OAR-2014-0827-2210.

5. On August 6, 2018, EDF submitted a FOIA request (“First Request”) to DOT seeking records related to correspondence of two DOT officials, Deputy Secretary Jeffrey A. Rosen and Heidi King, the Deputy Administrator of DOT’s National Highway Traffic Safety Administration (“NHTSA”), regarding EPA and DOT’s joint rulemaking to substantially weaken the Clean Car Standards. *See* Ex. A (First Request – Letter from Erin Murphy, EDF, to Kathy Ray, DOT (Aug. 6, 2018)). The request sought the officials’ correspondence with persons outside the agency, hereinafter referred to as “external” correspondence.

6. On October 17, 2018, EDF submitted a second FOIA request (“Second Request”) to DOT seeking records related to external correspondence of an additional DOT official, Secretary Elaine Chao, regarding the Clean Car Standards. In the Second Request, EDF also sought records related to the schedules of Secretary Chao, Deputy Secretary Rosen, and Deputy

Administrator King. *See* Ex. B (Second Request – Letter from Erin Murphy, EDF, to Kathy Ray, DOT (Oct. 17, 2018)).

7. Also on October 17, 2018, EDF submitted a third FOIA request (“Third Request”) (collectively “FOIA Requests”) to DOT seeking records related to correspondence of certain DOT employees regarding the Trailer Standards. *See* Ex. C (Third Request – Letter from Erin Murphy, EDF, to Kathy Ray, DOT (Oct. 17, 2018)).

8. On August 7, 2018 and October 19, 2018, EDF received form letters from DOT acknowledging receipt of each FOIA request. But EDF has received no determination regarding its FOIA Requests—or any other communication explaining the status of these requests—from DOT, in violation of the statutory deadlines and other requirements of FOIA.

9. The public, including EDF and its members, has a strong interest in records related to current and anticipated rulemakings related to the Clean Car Standards and Trailer Standards. The programs achieve substantial reductions in climate pollution, yet the current administration is seeking to roll back both.

10. Knowledge of the extent and nature of communications with external stakeholders is critical for EDF, its members, and the public to make an informed judgment about DOT’s proposal to roll back the Clean Car Standards and expected decision to revise the Trailer Standards. EDF submitted its FOIA Requests to bring transparency to these records.

11. EDF requested the information in order to disseminate it to EDF’s members, supporters, and the general public. EDF also plans to leverage its expertise to analyze the records and help the public understand their significance.

12. DOT is unlawfully withholding and unreasonably delaying the release of records requested by EDF and to which EDF is lawfully entitled under FOIA, despite the records' clear salience to current agency decisions with grave implications for public health and welfare.

13. EDF seeks declaratory and injunctive relief declaring that DOT has violated FOIA and an order compelling the agency to promptly release all requested records.

JURISDICTION AND VENUE

14. This Court has jurisdiction over this action pursuant to FOIA, which vests jurisdiction in the U.S. District Court for the District of Columbia. 5 U.S.C. § 552(a)(4)(B). This Court also has jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under FOIA, a federal statute.

15. Injunctive relief is appropriate under FOIA. 5 U.S.C. § 552(a)(4)(B). Declaratory relief is appropriate under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*

16. Venue is proper in this judicial district pursuant to 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. § 1391(b).

PARTIES

17. Plaintiff EDF is a 501(c)(3) non-profit environmental organization dedicated to finding practical solutions to critical environmental problems through the use of law, policy, science, and economics. EDF has offices throughout the United States, including in the District of Columbia, and internationally.

18. EDF has more than two million members and supporters and frequently engages with them and with the general public through press releases, action alerts, blog posts, reports, analyses, and other outreach materials. EDF is frequently called upon to share its expertise on important environmental issues in the popular media and in other public forums.

19. EDF has long advocated for measures to protect communities from the deleterious effects of climate change, including the Clean Car Standards, which will reduce greenhouse gas emissions and improve the fuel economy of light-duty cars and trucks. EDF has likewise been involved in advocating for protective and comprehensive Clean Truck Standards, including standards for heavy-duty freight trailers, which contribute significantly to the greenhouse gas emissions of heavy-duty vehicles.

20. EDF is injured by DOT's failure to timely produce public records that were properly requested and to which EDF is entitled under FOIA. *See Zivotofsky v. Sec'y of State*, 444 F.3d 614, 617–18 (D.C. Cir. 2006) (“The requester is injured-in-fact for standing purposes because he does not get what the statute entitles him to receive.”).

21. Defendant DOT is a federal agency of the United States and is subject to FOIA pursuant to 5 U.S.C. § 552(f)(1). DOT has possession and control of the requested records and is responsible for fulfilling EDF's FOIA requests.

22. NHTSA is an agency within the DOT that sets and enforces fuel economy standards, among other responsibilities.

LEGAL BACKGROUND

23. FOIA requires a federal agency to make public records “promptly available”—subject to enumerated exemptions—to any person who makes a request that reasonably describes the records sought and complies with the agency's rules for making such a request. 5 U.S.C. § 552(a)(3)(A). FOIA requires the agency to issue a determination on the FOIA request within 20 working days from the date of receipt. *Id.* § 552(a)(6)(A)(i); *see also* 49 C.F.R. § 7.31(a)(2).

24. The agency's determination on a FOIA request shall contain (1) the agency's determination of whether to comply with the request and provide responsive records, (2) the

reasons for the agency's determination, and (3) notice of the right of the requester to appeal an adverse determination to the head of the agency. 5 U.S.C. § 552(a)(6)(A)(i). Mere notice of the agency's receipt of the request does not suffice for a "determination"; instead, "the agency must at least inform the requester of the scope of the documents that the agency will produce, as well as the scope of the documents that the agency plans to withhold under any FOIA exemptions." *Citizens for Responsibility & Ethics in Wash. v. Fed. Election Comm'n*, 711 F.3d 180, 186 (D.C. Cir. 2013).

25. FOIA allows the agency to extend the 20-working-day deadline by up to ten working days for "unusual circumstances" by providing written notice to the requester that describes the "unusual circumstances" and the date on which the determination will be issued. 5 U.S.C. § 552(a)(6)(B)(i); *see also* 49 C.F.R. § 7.34(a).

26. If the agency fails to comply with the applicable time limits of FOIA, a requester is deemed to have exhausted its administrative remedies and may file suit against the agency. 5 U.S.C. § 552(a)(6)(C)(i); *see also* 49 C.F.R. § 7.32(e).

27. Under FOIA, an agency shall waive or reduce fees and costs incurred in responding to a FOIA request "if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii); *see also* 49 C.F.R. § 7.43(c).

28. This Court interprets FOIA's fee waiver provision to require that an agency's determination on a request for a fee waiver be made within the 20-working-day period. *Pub. Citizen, Inc. v. Dep't of Educ.*, 292 F. Supp. 2d 1, 4 (D.D.C. 2003) ("[I]f the agency fails to respond

to a waiver request within 20 days, the requester is deemed to have constructively exhausted administrative remedies and may seek judicial review.”).

29. The agency bears the burden to prove the legality of its actions under FOIA. 5 U.S.C. § 552(a)(4)(B).

30. FOIA grants jurisdiction to the court “to enjoin the agency from withholding agency records and to order the production of any agency records improperly withheld from the complainant.” *Id.*

31. Under FOIA, this Court may assess attorney fees and costs against the United States if EDF prevails in this action. *Id.* § 552(a)(4)(E).

FACTUAL BACKGROUND

A. Clean Car Standards

32. In 2012, NHTSA and EPA issued the Clean Car Standards: a joint final rule setting out fuel economy standards and greenhouse gas emission standards for light-duty vehicles for model years (“MY”) 2017–2025 under their respective, independent statutory authorities, the Energy Policy and Conservation Act and the Clean Air Act. *See* 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); *see also Massachusetts v. EPA*, 549 U.S. 497, 532 (2007) (“EPA has been charged with protecting the public’s ‘health’ and ‘welfare,’ a statutory obligation wholly independent of DOT’s mandate to promote energy efficiency.”).

33. In March 2017, NHTSA and EPA announced their intention to revisit the Clean Car Standards. *See* Notice of Intention To Reconsider the Final Determination of the Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022–2025 Light Duty Vehicles, 82 Fed. Reg. 14,671 (Mar. 22, 2017).

34. In August 2018, NHTSA and EPA released a notice of proposed rulemaking that

recommends dramatically weakening the Clean Car Standards. *See* 83 Fed. Reg. 42,986. The proposal would require no additional reductions in greenhouse gas emissions or improvements in fuel efficiency for vehicles after MY 2020, instead freezing the standards at MY 2020 levels. *Id.* at 42,988. An EDF analysis estimates that this rollback would result in approximately 4.5 billion tons of additional cumulative carbon pollution between 2017 and 2050, a major setback to U.S. efforts to protect human health and welfare against the threat of climate change. *See* Comments of EDF on NHTSA’s and EPA’s Proposed Rule 3–4 (Oct. 26, 2018), Docket ID: NHTSA-2018-0067-12108, https://www.edf.org/sites/default/files/EDF1_Comment_Intro.PDF. The public comment period for this proposal closed on October 26, 2018.

35. News outlets have reported that DOT Deputy Secretary Jeffrey Rosen and NHTSA Deputy Administrator Heidi King are “two of the proposal’s chief authors.” *See* 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/>.

B. EDF’s FOIA Requests Regarding Clean Car Standards

1. EDF’s First Request

36. On August 6, 2018, EDF electronically filed the First Request with DOT seeking “all correspondence of Deputy Secretary Jeffrey A. Rosen or Deputy Administrator Heidi King relating to the Clean Car Standards, with any external party.” Ex. A at 1. The First Request sought a fee waiver because the records requested would “contribute to a greater public understanding of an issue of considerable public interest.” *Id.* at 2; *see also* 49 C.F.R. § 7.43(c).

37. EDF sought these records to inform the public's understanding of which stakeholders and what motivations are spurring the proposed rule to weaken the Clean Car Standards. The communications of top DOT officials are particularly crucial in light of reports that they are playing a leadership role in the rulemaking.

38. On August 7, 2018, DOT's Office of the Secretary emailed a letter to EDF confirming receipt of the First Request. *See* Ex. D (Letter from Darlene A. Wallace, DOT, to Erin Murphy, EDF (Aug. 7, 2018)). The letter provided no estimate of when DOT would issue a determination on the FOIA request, stating merely that EDF's request would be "addressed in the order it was received" and that the agency "regret[s] any inconvenience caused by the delay." *Id.*

39. On August 17, 2018, EDF Attorney Erin Murphy called the DOT FOIA Request Service Center, as recommended by DOT's letter confirming receipt of the request, to inquire about the status of EDF's First Request and left a voicemail. DOT did not return her call.

40. On August 29, 2018, Ms. Murphy called the DOT FOIA Request Service Center and left a voicemail. DOT did not return her call.

41. On October 5, 2018, Ms. Murphy called the DOT FOIA Request Service Center and left a voicemail. DOT did not return her call.

42. On December 4, 2018, Ms. Murphy called the DOT FOIA Request Service Center and spoke with a staff person, who said they would pass on her contact information to the person handling the request.

43. Later in the day on December 4, 2018, Kathy Ray, a DOT FOIA coordinator, called Ms. Murphy and left a voicemail, identifying herself as a FOIA officer.

44. On December 5, 2018, Ms. Murphy called Ms. Ray and left a voicemail. Ms. Ray did not return her call.

45. DOT did not provide a determination on EDF's First Request within FOIA's 20-working-day deadline, which lapsed on September 4, 2018. *See* 5 U.S.C. § 552(a)(6)(A)(i); *see also* 49 C.F.R. § 7.31(a)(2).

46. To date, DOT has still not issued a determination on the First Request or responded to EDF's request for a fee waiver.

2. EDF's Second Request

47. On October 17, 2018, EDF electronically filed the Second Request with DOT, seeking "all correspondence of Secretary Elaine Chao relating to the Clean Car Standards, with any external party," as well as all records "related to the schedules of Secretary Chao, Deputy Secretary Rosen, or Deputy Administrator King." Ex. B at 1. The Second Request sought a fee waiver because the records requested would "contribute to a greater public understanding of an issue of considerable public interest." *Id.* at 5; *see also* 49 C.F.R. § 7.43(c).

48. The Second Request also sought expedited processing because the requested records "are vital for informing the public's understanding" of and ability to provide meaningful comment on NHTSA's proposal to roll back the Clean Car Standards and because the records would facilitate public understanding of "which stakeholders have influenced the process." *See* Ex. B at 4-5; *see also* 49 C.F.R. § 7.31(c).

49. On October 19, 2018, DOT's Office of the Secretary emailed a letter to EDF confirming receipt of the Second Request. *See* Ex. E (Letter from Darlene A. Wallace, DOT, to Erin Murphy, EDF (Oct. 19, 2018)). The letter provided no estimate of when DOT would issue a determination on the Second Request, stating merely that EDF's request would be "addressed in the order it was received" and that the agency "regret[s] any inconvenience caused by the delay." *Id.*

50. On December 4, 2018, Ms. Murphy called the DOT FOIA Request Service Center, as recommended by DOT's letter confirming receipt of the request, and spoke with a staff person, who said they would pass on her contact information to the person handling the request.

51. Later in the day on December 4, 2018, Kathy Ray, a DOT FOIA coordinator, called Ms. Murphy and left a voicemail, identifying herself as a FOIA officer.

52. On December 5, 2018, Ms. Murphy called Ms. Ray and left a voicemail. Ms. Ray did not return her call.

53. DOT did not respond to EDF's request for expedited processing for the Second Request within the 10-calendar-day deadline, which lapsed on October 27, 2018. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I); *see also* 49 C.F.R. § 7.31(c)(4).

54. DOT did not provide a determination on EDF's Second Request within FOIA's 20-working-day deadline, which lapsed on November 15, 2018. *See* 5 U.S.C. § 552(a)(6)(A)(i); *see also* 49 C.F.R. § 7.31(a)(2).

55. To date, DOT has still not issued a determination on the Second Request or responded to EDF's related requests for a fee waiver and expedited processing.

56. The mandatory statutory deadlines are long past for the agency to issue a determination on the First and Second Requests. The public comment period on NHTSA and EPA's proposed rollback of the Clean Car Standards closed on October 26, 2018, and the agencies have announced their intention to issue a final rule in March 2019. DOT's failure to respond to the First and Second Requests within the required timeframe precluded EDF and its members from utilizing the requested records to inform their comments on the agencies' proposal, precluded EDF from disseminating relevant information to the public, and continues to stymie public

understanding of and engagement on the agency's deliberations and communications with regard to the standards.

C. Trailer Standards

57. In October 2016, NHTSA and EPA conducted a joint rulemaking establishing the Clean Truck Standards, including the Trailer Standards. Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicles—Phase 2, 81 Fed. Reg. 73,478, 73,481 (Oct. 25, 2016). These standards provide “significant [greenhouse gas] reductions,” *id.*, that will “benefit the public health and public welfare of current and future generations,” *id.* at 73,487. Under the Trailer Standards, EPA's greenhouse gas standards applicable to heavy-duty trailers were scheduled to go into effect on January 1, 2018, *id.* at 73,642–43, and NHTSA's fuel economy standards for heavy-duty trailers are scheduled to become mandatory in 2021, *id.* at 73,504.

58. On December 22, 2016, the Truck Trailer Manufacturers Association (“TTMA”) filed a petition for judicial review of the Trailer Standards in the U.S. Court of Appeals for the District of Columbia Circuit. *See* Petition for Review, *TTMA*, No. 16-1430 (Dec. 22, 2016).¹ The D.C. Circuit placed the case in abeyance on May 8, 2017. *See* Order, *TTMA*, No. 16-1430 (May 8, 2017).

59. On August 17, 2017, NHTSA granted TTMA's administrative petition for rulemaking to consider revisions to the Trailer Standards. *See* Letter from Jack Danielson, Acting Deputy Adm'r, NHTSA, to Jeffrey M. Sims, President, TTMA (Aug. 17, 2017). On October 27, 2017, the D.C. Circuit granted TTMA's motion to stay the Trailer Standards. *See* Order, *TTMA*,

¹ This document and other *TTMA* filings and related documents cited herein are available on EDF's website, at <https://www.edf.org/climate/heavy-duty-standards-case-resources>.

No. 16-1430 (Oct. 27, 2017). The Trailer Standards are the only provisions within the Clean Truck Standards that are implicated in the TTMA litigation.

60. On August 6, 2018, TTMA filed a motion to compel NHTSA and EPA to submit a status report detailing the agencies' progress toward reconsidering the Trailer Standards and a timeline for completion of the reconsideration. *See Motion to Compel Agencies to Submit Detailed Status Report and Timeline for Completion of Administrative Review, TTMA*, No. 16-1430 (Aug. 6, 2018). In response, EPA and NHTSA notified the court of the agencies' agreement to meet with TTMA regarding its concerns. Respondents' Opposition to Motion to Compel at 6, *TTMA*, No. 16-1430 (Aug. 16, 2018). Then, on September 24, 2018, without explaining how or whether its concerns had been resolved, TTMA withdrew its motion to compel the agencies to provide a status report and timeline. *See Notice of Withdrawal of Motion, TTMA*, No. 16-1430 (Sept. 24, 2018).

61. On October 22, 2018, EPA and NHTSA filed a status report stating that NHTSA is "continu[ing] to assess next steps after granting [TTMA's] request for rulemaking" and that "discussions are ongoing to schedule a meeting" with TTMA. Respondents' Status Report at 3, *TTMA*, No. 16-1430 (Oct. 22, 2018).

D. EDF's Third Request Regarding Trailer Standards

62. EDF electronically submitted its Third Request on October 17, 2018, seeking "all correspondence" related to trailers and "all records . . . related to the schedules" of certain DOT staff who are believed to be working on efforts to revise the Trailer Standards. Ex. C at 1-2. EDF sought a fee waiver and expedited processing of the Third Request because it is urgent that its members and the public "understand the extent and nature of the correspondence that DOT has had with [truck] trailer industry groups and other stakeholders, before the Agency takes further

action.” *Id.* at 4; *see also* 49 C.F.R. §§ 7.31(c), 7.43(c). If DOT delays, repeals, or otherwise weakens the Trailer Standards, such an action would allow additional harmful greenhouse gas emissions from heavy-duty vehicles. *See* Ex. C at 4.

63. On October 19, 2018, DOT’s Office of the Secretary emailed a letter to EDF confirming receipt of the Third Request. *See* Ex. F (Letter from Darlene A. Wallace, DOT, to Erin Murphy, EDF (Oct. 19, 2018)). The letter provided no estimate of when DOT would issue a determination on the Third Request, stating merely that EDF’s request would be “addressed in the order it was received” and that the agency “regret[s] any inconvenience caused by the delay.” *Id.*

64. On December 4, 2018, Ms. Murphy called the DOT FOIA Request Service Center, as recommended by DOT’s letter confirming receipt of the request, and spoke with a staff person, who said they would pass on her contact information to the person handling the request.

65. Later in the day on December 4, 2018, Kathy Ray, a DOT FOIA coordinator, called Ms. Murphy and left a voicemail, identifying herself as a FOIA officer.

66. On December 5, 2018, Ms. Murphy called Ms. Ray and left a voicemail. Ms. Ray did not return her call.

67. DOT did not respond to EDF’s request for expedited processing related to its Third Request within the 10-calendar-day deadline, which lapsed on October 27, 2018. *See* 5 U.S.C. § 552(a)(6)(E)(ii)(I); 49 C.F.R. § 7.31(c)(4).

68. DOT did not provide a determination on EDF’s Third Request within FOIA’s 20-working-day deadline, which lapsed on November 15, 2018. 5 U.S.C. § 552(a)(6)(A)(i); *see also* 49 C.F.R. § 7.31(a)(2).

69. To date, DOT has still not issued a determination on the Third Request or responded to EDF’s related requests for a fee waiver and expedited processing.

70. DOT's rulemaking to consider revisions to the Trailer Standards is ongoing, and the agency's failure to respond to the Third Request within the required timeframe has prevented EDF, its members, and the general public from being fully informed and able to meaningfully engage on this issue.

**CLAIM FOR RELIEF
VIOLATION OF THE FREEDOM OF INFORMATION ACT**

71. EDF incorporates by reference all preceding paragraphs.

72. Under FOIA, EDF has a statutory right to have DOT process the FOIA Requests in a timely manner and to obtain all non-exempt records responsive to the FOIA Requests.

73. DOT failed to comply with the statutory deadline for issuing a determination on EDF's FOIA Requests. *See* 5 U.S.C. § 552(a)(6)(A)(i).

74. DOT failed to make a determination on the FOIA Requests from which EDF could exercise its statutory right of appeal. *See id.*

75. DOT failed to provide a date on which DOT would complete action on EDF's FOIA Requests. *See id.* § 552(a)(7)(B)(ii).

76. DOT failed to make timely determinations on EDF's requests for a fee waiver.

77. Unless enjoined by this Court, DOT will continue to violate EDF's legal rights to timely receive a complete set of responsive documents sought through its FOIA Requests.

78. It is in the public interest for the Court to issue an injunction requiring DOT's immediate compliance with FOIA.

REQUEST FOR RELIEF

EDF requests the following relief from the Court:

- A. Declare DOT's failure to provide EDF with a determination on its FOIA Requests and fee waiver requests within FOIA's deadlines unlawful.

- B. Declare DOT's failure to provide a completion date for the FOIA Requests unlawful.
- C. Declare DOT's failure to make the requested records promptly available to EDF unlawful.
- D. Order DOT to provide EDF with all responsive records immediately, at no charge to EDF, and in unredacted form unless an exemption is applicable and properly asserted.
- E. Order DOT to provide a *Vaughn* index of any responsive records or portions of records withheld under the claim of a FOIA exemption.
- F. Award EDF its costs and reasonable attorney fees pursuant to 5 U.S.C. § 552(a)(4)(E), 28 U.S.C. § 2412, and any other applicable law.
- G. Grant any further relief as the Court deems just and proper.

Respectfully submitted on December 19, 2018.

/s/ John E. Putnam

JOHN E. PUTNAM*
NATHANIEL H. HUNT*
SAMANTHA R. CARAVELLO*
Kaplan Kirsch & Rockwell LLP
1675 Broadway, Suite 2300
Denver, CO 80202
Telephone: (303) 825-7000
E-mail: jputnam@kaplankirsch.com
nhunt@kaplankirsch.com
scaravello@kaplankirsch.com

**Applying for pro hac vice*

/s/ Tyler L. Burgess

TYLER L. BURGESS (No. 1025617)
Kaplan Kirsch & Rockwell LLP
1634 I Street, NW, Suite 300
Washington, D.C. 20006
Telephone: (202) 955-5600
E-mail: tburgess@kaplankirsch.com

/s/ Benjamin Levitan

BENJAMIN LEVITAN (No. NY0253)

ERIN MURPHY*

Environmental Defense Fund

1875 Connecticut Ave. NW, Suite 600

Washington, D.C. 20009

Telephone: (202) 387-3500

E-mail: blevitan@edf.org

emurphy@edf.org

**D.D.C. admission pending*

Counsel for Environmental Defense Fund

EXHIBIT A



August 6, 2018

SUBMITTED VIA EMAIL TO OST.FOIA@DOT.GOV

Ms. Kathy Ray
1200 New Jersey Ave., SE
W94-122
Washington, DC 20590

Re: FOIA Request for Records Relating to Correspondence of Department of Transportation Officials Jeffrey Rosen and Heidi 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, 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”).

Specifically, EDF requests copies of all correspondence of Deputy Secretary Jeffrey A. Rosen or Deputy Administrator Heidi King relating to the Clean Car Standards, with any external party.

This request encompasses:

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

External parties may include, but are not limited to, employees and representatives of businesses, trade groups and associations, other agencies or organizations, and state governments. This request expressly includes any attachments to responsive correspondence.

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 February 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 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 Department of Transportation's decision to significantly weaken federal Clean Car Standards, one of our nation's most important efforts to improve fuel economy and reduce climate pollution. 5 U.S.C. § 552(a)(4)(A)(iii). The correspondence sought here is highly relevant to this issue, because 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."¹

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.² 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.³ Accordingly, we respectfully request that the documents be furnished without charge. 5 U.S.C. § 552(a)(4)(A)(iii).

¹ 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/>.

² 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>.

³ 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).

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 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.

Respectfully submitted,

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

EXHIBIT B



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.¹

¹ 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 2012.² 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.³ 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 MY2012-2025.⁴
3. On August 2, 2018, NHTSA and EPA issued a notice of proposed rulemaking to roll back the Clean Car Standards.⁵ 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.⁶
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. EDF⁷ requested an extension of the comment deadline, as did numerous other stakeholders

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>.

² 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).

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

⁴ 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>.

⁵ 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).

⁶ 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>.

⁷ 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,⁸ 32 U.S. Senators,⁹ a trade group representing major automakers,¹⁰ the City of Los Angeles,¹¹ the National Coalition for Advanced Transportation,¹² and the American Lung Association¹³—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).¹⁴

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.¹⁵ 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.”¹⁶ 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

⁸ 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>.

⁹ 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>.

¹⁰ 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>.

¹¹ 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>.

¹² 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>.

¹³ 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>.

¹⁴ 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>.

¹⁵ 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).

¹⁶ 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."¹⁷

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

¹⁷ 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>.

¹⁸ 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>.

¹⁹ 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.

Respectfully submitted,

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

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).

EXHIBIT C



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.¹

¹ 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.”² The GHG standards adopted by EPA applicable to trailers contained in the Phase 2 standards were to go into effect on January 1, 2018.³ NHTSA’s fuel economy standards for trailers—which were adopted as part of the Phase 2 rulemaking—became mandatory in 2021.⁴
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.⁵ After the agencies sought and the court granted an abeyance of the case,⁶ NHTSA published a letter granting TTMA’s petition for rulemaking of the trailer standards on August 17, 2017.⁷ 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.⁸
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.⁹ The Agencies’ response

[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/>.

² 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).

³ 81 Fed. Reg. at 73,642-43.

⁴ 81 Fed. Reg. at 73,504.

⁵ 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>.

⁶ 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.

⁷ 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

⁸ 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.

⁹ 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.

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

5. On September 24, 2018, TTMA abruptly withdrew its motion to compel the Agencies to provide a status report and detailed timeline, without explanation.¹¹
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.¹² Accordingly, we respectfully request that the records be furnished without charge.

¹⁰ 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.

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

¹² 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.

Respectfully submitted,

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

EXHIBIT D



U.S. Department
of Transportation

General Counsel

1200 New Jersey Ave., S.E.
Washington, DC 20590

Office of the Secretary
of Transportation

8/7/2018

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

File No. 2018-374

Dear Mr. Murphy:

The purpose of this letter is to acknowledge receipt of your recent request for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You requested a copy of all correspondence of Deputy Secretary Jeffrey A. Rosen or Deputy Administrative Heidi King relating to the Clean Car Standards with external party. **(See Request)**

Please be advised that all FOIA requests will be handled on a first-in/first-out basis. Your request will be addressed in the order it was received. We regret any inconvenience caused by the delay.

Processing fees may apply for FOIA requests as set forth in the Department of Transportation's (DOT) FOIA regulation (49 CFR Part 7.41).

If you have questions concerning your request, please call our FOIA Request Service Center at (202) 366-4542.

Sincerely,

Darlene A. Wallace

Darlene A. Wallace
Office of the Secretary
FOIA Program Assistant

EXHIBIT E



**U.S. Department
of Transportation**

General Counsel

1200 New Jersey Ave., S.E.
Washington, DC 20590

Office of the Secretary
of Transportation

10/19/2018

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

File No. 2019-32

Dear Mr. Murphy:

The purpose of this letter is to acknowledge receipt of your recent request for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You requested a copy of all schedules of Secretary Elaine Chao, Deputy Secretary Rosen, and Deputy Administrator King since January 1, 2017; and correspondence and external correspondence of Secretary Chao, Rosen and King relating to the Clean Car Standards submitted to DOT on 08/06/2018. (See Request)

Please be advised that all FOIA requests will be handled on a first-in/first-out basis. Your request will be addressed in the order it was received. We regret any inconvenience caused by the delay.

Processing fees may apply for FOIA requests as set forth in the Department of Transportation's (DOT) FOIA regulation (49 CFR Part 7.41).

If you have questions concerning your request, please call our FOIA Request Service Center at (202) 366-4542.

Sincerely,

Darlene A. Wallace

Darlene A. Wallace
Office of the Secretary
FOIA Program Assistant

EXHIBIT F



U.S. Department
of Transportation

General Counsel

1200 New Jersey Ave., S.E.
Washington, DC 20590

Office of the Secretary
of Transportation

10/19/2018

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

File No. 2019-31

Dear Mr. Murphy:

The purpose of this letter is to acknowledge receipt of your recent request for records under the Freedom of Information Act (FOIA), 5 U.S.C. 552. You requested a copy of correspondence to and from the following, relating to Heavy-Duty Trailer Standards: Danielson, Giuseppe, Hagen, King, Kolodziej, Morris, Owens, Posten, Smith, Tamm; including any of the following terms: trailer(s), tractor-trailer, tractor trailer, truck-trailer, and/or truck trailer. (**See Request**)

Please be advised that all FOIA requests will be handled on a first-in/first-out basis. Your request will be addressed in the order it was received. We regret any inconvenience caused by the delay.

Processing fees may apply for FOIA requests as set forth in the Department of Transportation's (DOT) FOIA regulation (49 CFR Part 7.41).

If you have questions concerning your request, please call our FOIA Request Service Center at (202) 366-4542.

Sincerely,

Darlene A. Wallace

Darlene A. Wallace
Office of the Secretary
FOIA Program Assistant

| | | | |
|--|--|---|--|
| <input type="radio"/> G. Habeas Corpus/ 2255 <input type="checkbox"/> 530 Habeas Corpus – General <input type="checkbox"/> 510 Motion/Vacate Sentence <input type="checkbox"/> 463 Habeas Corpus – Alien Detainee | <input type="radio"/> H. Employment Discrimination <input type="checkbox"/> 442 Civil Rights – Employment (criteria: race, gender/sex, national origin, discrimination, disability, age, religion, retaliation) *(If pro se, select this deck)* | <input checked="" type="radio"/> I. FOIA/Privacy Act <input checked="" type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 890 Other Statutory Actions (if Privacy Act) *(If pro se, select this deck)* | <input type="radio"/> J. Student Loan <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (excluding veterans) |
| <input type="radio"/> K. Labor/ERISA (non-employment) <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 740 Labor Railway Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act | <input type="radio"/> L. Other Civil Rights (non-employment) <input type="checkbox"/> 441 Voting (if not Voting Rights Act) <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 445 Americans w/Disabilities – Employment <input type="checkbox"/> 446 Americans w/Disabilities – Other <input type="checkbox"/> 448 Education | <input type="radio"/> M. Contract <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 153 Recovery of Overpayment of Veteran’s Benefits <input type="checkbox"/> 160 Stockholder’s Suits <input type="checkbox"/> 190 Other Contracts <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise | <input type="radio"/> N. Three-Judge Court <input type="checkbox"/> 441 Civil Rights – Voting (if Voting Rights Act) |

V. ORIGIN
 1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify)
 6 Multi-district Litigation
 7 Appeal to District Judge from Mag. Judge
 8 Multi-district Litigation – Direct File

VI. CAUSE OF ACTION (CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE A BRIEF STATEMENT OF CAUSE.)
 The U.S. Department of Transportation failed to provide EDF with documents requested under FOIA, 5 U.S.C. 552.

| | | | |
|-------------------------------------|--|---|--|
| VII. REQUESTED IN COMPLAINT | CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 <input type="checkbox"/> | DEMAND \$ | JURY DEMAND: YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> |
| VIII. RELATED CASE(S) IF ANY | (See instruction) | YES <input type="checkbox"/> NO <input checked="" type="checkbox"/> | If yes, please complete related case form |

| | |
|------------------|----------------------------------|
| DATE: 12/19/2018 | SIGNATURE OF ATTORNEY OF RECORD: |
|------------------|----------------------------------|

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
 Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and services of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the cover sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: Use 11001 to indicate plaintiff if resident of Washington, DC, 88888 if plaintiff is resident of United States but not Washington, DC, and 99999 if plaintiff is outside the United States.
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. CASE ASSIGNMENT AND NATURE OF SUIT: The assignment of a judge to your case will depend on the category you select that best represents the primary cause of action found in your complaint. You may select only one category. You must also select one corresponding nature of suit found under the category of the case.
- VI. CAUSE OF ACTION: Cite the U.S. Civil Statute under which you are filing and write a brief statement of the primary cause.
- VIII. RELATED CASE(S), IF ANY: If you indicated that there is a related case, you must complete a related case form, which may be obtained from the Clerk’s Office.

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

| | | |
|------------------|---|------------------|
| _____ |) | |
| <i>Plaintiff</i> |) | |
| |) | |
| v. |) | Civil Action No. |
| |) | |
| _____ |) | |
| <i>Defendant</i> |) | |

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

| | | |
|------------------|---|------------------|
| _____ |) | |
| <i>Plaintiff</i> |) | |
| |) | |
| v. |) | Civil Action No. |
| |) | |
| _____ |) | |
| <i>Defendant</i> |) | |

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

Plaintiff

v.

Defendant

)
)
)
)
)
)
)
)

Civil Action No.

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)*

A lawsuit has been filed against you.

Within 30 days after service of this summons on you (not counting the day you received it) you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

If you fail to respond, judgment by default may be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

ANGELA D. CAESAR, CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
_____ on *(date)* _____ ; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
_____ on *(date)* _____ ; or

I returned the summons unexecuted because _____ ; or

Other *(specify):* _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: