



April 22, 2019

SUBMITTED ELECTRONICALLY

National Freedom of Information Officer
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW (2822T)
Washington, DC 20460
(202) 566-1667

Re: FOIA Request for EPA Staff Analysis Regarding the Clean Car Standards and the “SAFE” Rulemaking to Roll Back Those Standards

Dear National Freedom of Information Officer:

Environmental Defense Fund (“EDF”) respectfully requests copies of certain records of the U.S. Environmental Protection Agency (“EPA”) pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, including records related to the EPA and National Highway Traffic Safety Administration’s (“NHTSA”) joint rulemaking setting out greenhouse gas emission and corporate average fuel economy (“CAFE”) standards for light-duty vehicles (“Clean Car Standards”).

Request for Records

EDF seeks the analysis detailed in the attached Inside EPA article, “*EPA Staff Crafts New Analysis Of Flaws, Possible Fixes For Vehicle GHG Plan.*” The attached article describes this analysis as “a ‘draft technical report’ that represents a more in-depth and comprehensive critique of the assumptions behind the proposal, and potential fixes, than what is already public,” and describes that this analysis has been shared with the Department of Transportation as well as the Office of Management and Budget. EDF further seeks any related presentations or reports—including any presentations to or briefings for EPA or NHTSA staff members or leadership—that formed the basis of the analysis.

If any of the information sought in this request is deemed by EPA 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 40 C.F.R. § 2.104(e)(1)(ii), which applies when there is “[a]n urgency to inform the public about an actual or alleged Federal government activity, if the information is requested by a person primarily engaged in disseminating information to the public.” 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
2. In a 2012 final rule, EPA and NHTSA set out greenhouse gas emission standards and fuel economy standards under their separate respective authorities for light-duty cars and trucks from Model Year 2017-2025.² These “Clean Car Standards” are projected to reduce carbon pollution by billions of tons over the lifetime of the vehicles sold while saving a car owner thousands of dollars in gas bills over the life of each vehicle.³
3. In March 2017, President Trump announced that his administration would “work tirelessly to eliminate” the Clean Car Standards.⁴ In August 2018, EPA and NHTSA issued a notice of proposed rulemaking to roll back the Clean Car Standards.⁵ The proposal, identified as the “SAFE” Rule, would require no additional reductions in greenhouse gas emissions or improvements in fuel efficiency after MY2020 through MY2026. According to an EDF analysis, this rollback would result in approximately 4.5

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 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. 62,624 (Oct. 15, 2012).

³ 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>.

⁴ 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>.

⁵ 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).

billion tons of additional carbon pollution by 2050—a huge blow to efforts to protect human health and welfare against the devastating impacts of climate change.⁶

4. The Trump Administration has indicated that it is moving quickly to finalize the proposed rollback rule. Department of Transportation employees continued to work on the rollback rule during the December 2018 – January 2019 government shutdown, according to EPA Administrator Andrew Wheeler and the Department of Transportation’s published shutdown plan.⁷ Most recently, Administrator Wheeler has asserted that a final rule will be released in “late spring or early summer.”⁸ The agencies have stated that they will consider late comments “[t]o the extent practicable.”⁹
5. EDF and other organizations commented extensively on the numerous serious flaws in the technical analysis underlying the “SAFE” proposed rule.¹⁰ Among other resources, our comments described and reflected concerns raised in technical critiques prepared by EPA staff of NHTSA’s technical analysis that were included in the rulemaking docket.¹¹ The accompanying article describes these materials as “prior EPA staff briefing materials drafted for April and June 2018 pre- proposal meetings at OMB.”¹² EPA’s update of these materials is deeply relevant for public stakeholders participating in this rulemaking. Given the imminent release of the final rule, these materials must be released to the public as soon as possible.

⁶ 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.

⁷ See Maxine Joselow, *Wheeler: Obama admin ‘tried to tip the scales’ on EVs*, E&E NEWS (Feb. 4, 2019), <https://www.eenews.net/eenewspm/2019/02/04/stories/1060119581>; U.S. Dep’t of Transportation, *Operations During a Lapse in Annual Appropriations Plans by Operating Administration* at 27 (Dec. 2018, revised Jan. 11, 2019), <https://www.transportation.gov/sites/dot.gov/files/docs/mission/budget/328471/dot-shut-down-plan-updated-01-14-2019.pdf> (indicating that DOT’s Volpe staff would be “at work,” not furloughed, during the shutdown).

⁸ Valerie Volcovici, *California sues U.S. agencies over data on vehicle emissions freeze*, REUTERS (April 5, 2019), <https://www.reuters.com/article/us-autos-emissions-california/california-sues-us-agencies-over-data-on-vehicle-emissions-freeze-idUSKCN1RH2G4>.

⁹ 83 Fed. Reg. at 43471.

¹⁰ See, e.g., 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; Comment of the Center for Biological Diversity, Conservation Law Foundation, Earthjustice, EDF, Environmental Law and Policy Center, Natural Resources Defense Council, Public Citizen, Inc., Sierra Club, and Union of Concerned Scientists 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/NGO_Coalition_Legal_Comment_AppendixA_10_26_18.pdf.

¹¹ See Comment of the Center for Biological Diversity, Conservation Law Foundation, Earthjustice, EDF, Environmental Law and Policy Center, Natural Resources Defense Council, Public Citizen, Inc., Sierra Club, and Union of Concerned Scientists 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) (citing Docket Entry: E.O. 12866 Review Materials for The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks NPRM, Docket ID EPA-HQ-OAR2018-0283-0453).

¹² Doug Obey, *EPA Staff Crafts New Analysis Of Flaws, Possible Fixes For Vehicle GHG Plan*, INSIDE EPA (April 15, 2019).

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. 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 rigor and validity of the analysis underlying the current administration's efforts to significantly weaken federal Clean Car Standards, one of our nation's most vital 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.¹³ 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.¹⁴ 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 (202) 572-3318, or by email at blevitan@edf.org.

Respectfully submitted,

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¹³ *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>.

¹⁴ *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).



EPA Staff Crafts New Analysis Of Flaws, Possible Fixes For Vehicle GHG Plan

April 15, 2019

EPA staff has prepared a new draft review that includes possible remedies for widely criticized assumptions in the Trump administration's proposed freeze of vehicle greenhouse gas and fuel economy standards, assumptions that critics say artificially boost the safety, cost and other benefits of the proposal while understating its environmental impacts.

It is not clear whether the analysis will significantly alter the pending joint rulemaking with the Transportation Department (DOT), amid numerous signs that the administration is poised to finalize a near-freeze of the Obama-era standards and that protracted litigation with states and environmentalists appears inevitable.

But it also could ultimately provide fresh fodder for future legal challenges of the rulemaking, with critics already arguing the plan faces significant legal risk. Even automakers are expressing unease and are largely avoiding public support for the rollback.

Sources familiar with the EPA staff work say it builds upon already public analyses -- from agency staff and many outside groups -- identifying shortcomings in the proposal, including claimed safety benefits that disappear after addressing modeling anomalies related to driving habits, "vehicle miles traveled," and other controversial assumptions from the proposal.

"There is a new paper," says one source, referencing the draft staff analysis that outlines alleged modeling weaknesses in the proposal on safety and the cost of the current standards.

This source says the analysis has gone to the Office of Management & Budget (OMB) as well as DOT, but there are not indications that it is prompting a major change in the plan.

A second source following the issue describes the analysis as a technical tear down of the DOT-spearheaded proposal, as well as ways to "improve and fix" the rule.

Another knowledgeable source refers to the analysis as a "draft technical report" that represents a more in-depth and comprehensive critique of the assumptions behind the proposal, and potential fixes, than what is already public.

Whether and how the analysis might alter -- or merely tweak -- the final vehicle GHG rule rollback is not clear, but the third source suggests it is more likely to create an "honest accounting" of the issues that could factor into likely court fights on the regulation.

EPA Administrator Andrew Wheeler [in an April 11 Reuters interview](#) suggested the administration is unlikely to moderate its rollback enough to avert a massive legal battle with California and its allies, though Wheeler said the final rule would not freeze the GHG rules at model year 2020 levels through MY26 as the proposal did.

"Our final regulation is not going to be the same as the proposal," he said, expressing hope that the final rule will be something everybody can "get behind and support."

The article quotes two U.S. officials as predicting a "small increase" in yearly fuel economy gains, while also indicating a final rule is months away, perhaps coming out in mid June. This is in line with prior remarks from Wheeler that the rule might not come out until early summer.

The practical effect of any change in stringency depends as much on the details as the top-line targets, including the extent that the rule retains or bolsters flexibility mechanisms, including credit for vehicle technologies automakers are already expected to install.

Withering Critiques

The expected small increase in the required vehicle fuel economy improvements appears unlikely to avert a major legal battle, as EPA is also continuing to say it will rescind California's waiver of federal preemption to implement tougher GHG rules than the federal limits.

The administration's proposal, dubbed the Safer Affordable Fuel Efficient (SAFE) Vehicles rule, has already been the subject of withering criticism by EPA staff and others of the plan's underlying analysis, including its claims of thousands of lives saved and assertions that the current rules are too costly.

Such critiques include prior EPA staff [briefing materials](#) drafted for April and June 2018 pre-proposal meetings at OMB. Among other conclusions, these briefings state the proposal would be “detrimental to safety rather than beneficial,” assuming that apparent flaws in DOT's modeling are not corrected. Those flaws include improperly assuming reduced driving will occur under the proposal compared to the current program.

Since then, an array of groups -- and even the industry itself -- have offered similar critiques of the safety, cost, and other assumptions in the proposal.

Such critiques include the Association of Global Automakers' [formal October comments](#) citing “anomalies” in DOT's assumptions of old vehicle scrappage. When removed, these assumptions result in the plan's safety benefits becoming “negligible.”

Other comments from the Environmental Defense Fund (EDF) claim that the proposal understates its environmental effects in terms of both GHGs and criteria pollutants. EDF says the proposal would result in cumulative premature deaths from fine particle pollution of between 14,500 and 32,000 through 2050, which translates to between \$89 billion and \$197 billion in damages that the group claims were “totally ignored” in the proposal.

Capitol Hill Democrats, meanwhile, have been [ramping up questioning](#) of Wheeler's recent public statements that the rule will result in GHG emissions comparable to those under the Obama-era rules.

Rep. Doris Matsui (D-CA) at an April 9 House hearing noted that such claims appear wholly inconsistent with [a September EPA presentation](#) to the Clean Air Act Advisory Committee stating that the proposed freeze would result in 3.8 billion tons of cumulative additional carbon emissions through 2050.

And House Energy & Commerce environment panel Chairman Paul Tonko (D-NY) pressed Wheeler on “internal” EPA analysis that would undercut the rule's safety claims. A Hill source says Tonko was referring to the 2018 pre-proposal briefing materials for OMB.

Sources indicate that the more recent EPA analysis updates and expands upon the agency's prior analysis.

Such analyses are typically made public after the conclusion of the rulemaking process, but the third knowledgeable source expresses some doubt on when and whether EPA political staff will “let it see the light of day.”

Credit Provisions

Multiple sources have been suggesting in recent weeks to *InsideEPA/climate* that the final rule could require between a 0.5 and 1 percent annual improvement in fuel economy. [An April 11 New York Times report](#) suggests the rule will require “about” a 1 percent improvement while also allowing credits for advanced refrigerant use in air conditioning, which would cut releases of high global warming potential chemicals.

The latter issue suggests a possible change from the proposal that did not count air conditioning leakage toward tailpipe emissions compliance, though one observer says it is not clear precisely how that might work given that DOT is limited in factoring such GHG credits into its fuel economy program.

Also unclear is the extent to which the final rule will include additional flexible credit provisions -- or allow more benefits -- from air conditioning or other “off-cycle” technologies than the plan envisioned. These details could affect the claimed benefits or real-world stringency of the program based on factors including whether the credits spur vehicle improvement or merely ratify technologies the industry is already adopting.

In addition, regulators have already projected some continued improvement in the vehicle fleet over time as the industry moves to compete in global markets with increasingly tough fuel economy and electric vehicle requirements.

One industry source also cites some indication that the final rule will rein in fees for noncompliance with the fuel economy program, after prior DOT attempts to delay an Obama-era fee increase were blocked by an appellate court.

The *Times* report also says automakers are bracing for the disruption of potentially having to meet the requirements of two different emissions standards -- one for California and the states that follow its rules, and another for the remainder of the country subject to EPA rules.

Such an outcome would be theoretically blocked by EPA's preemption provisions, though there are major questions about whether the agency successfully defend those in court.

Given no real sign of any deal that could avert a court battle, industry is increasingly raising this issue of bifurcated markets as part of ongoing meetings with the White House, according to the *Times*.

Trump officials during these meetings with individual auto companies have been **pressing the industry** to support its rollback.

The *Times* article also quotes Alliance of Automobile Manufacturers' Gloria Bergquist raising the prospect that states with stricter standards might have to create new rules against buying cars from other states. "Because this is all such new territory, no one's quite sure how this is going to work," she said. "We're trying to figure it out. But it's going to be a headache."

It also cites former EPA transportation air quality chief Margo Oge as saying automakers "will have to choose between Trump and California."

An industry source attributes at least part of the reticence by automakers on whether to back the rollback to not knowing key parts of the final rule.

"How are you going to support something when you don't know what it is?" the source said. -- *Doug Obey* (dobey@iwpnews.com)

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