

Congress of the United States
Washington, DC 20515

May 23, 2019

The Honorable Andrew Wheeler
Administrator
U.S. Environmental Protection Agency (EPA)
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Wheeler:

We write to request information and analysis prepared by Environmental Protection Agency (EPA) career staff related to the proposed Safer Affordable Fuel-Efficient (SAFE) Vehicles rule. This proposal would dramatically weaken future vehicle fuel economy and greenhouse gas standards, significantly harm the American economy and reduce America's global competitiveness. The Trump Administration has said it intends to finalize this proposal and remove state authority to enforce more protective greenhouse gas standards that have been adopted by 13 states, including our home states of Delaware and New Jersey, and the District of Columbia.

We are concerned that you have made numerous public statements, including statements to Congress, that directly conflict with the information and analyses prepared by EPA's career experts. We understand that you and Bill Wehrum, EPA's Assistant Administrator for the Office of Air and Radiation, are well aware of, and have received briefings about, this information and analyses.

Numerous stakeholders, including some automobile manufacturers, have pointed out the significant legal deficiencies associated with the Trump Administration's proposal. These include:

- The National Highway Traffic Safety Administration's (NHTSA) failure to set the "maximum feasible" fuel economy standards each year, as required by law;
- EPA's failure to comply with its obligation under the Clean Air Act to protect public health and welfare from climate pollution;
- The Administration's use of a safety and consumer choice model to justify the proposed rollback that EPA officials described as "unusable in its current form;"¹
- The Administration's artificial inflation of costs and minimization of benefits of greenhouse gas emission-reducing, fuel-efficient technologies;
- A failure to observe statutorily mandated procedures for reviewing and revising rules;
- The unprecedented proposed revocation of California's long-standing Clean Air Act preemption waivers; and
- The use of a legal justification for such preemption that ignores clear Congressional intent and judicial precedent.

It is not just external stakeholders who have identified these flaws. In fact, in comments submitted to the Department of Transportation and the White House Office of Management and Budget (OMB), EPA

¹ EPA-HQ-OAR-2018-0283-0453, E-mail 5 from William Charmley to Chandana Achanta (June 18, 2018).

career staff observed that “EPA analysis to date shows significant and fundamental flaws in CAFE model... These flaws make the CAFE model unusable in current form for policy analysis and for assessing the appropriate level of the CAFE or GHG standards.”² The EPA career staff also observed that the “proposed standards are detrimental to safety, rather than beneficial.”³

Despite the fact that you were briefed on these concerns before the rule was proposed,⁴ you have continued to make assertions about the proposal that you must know do not reflect the views of EPA’s expert staff. For example, you told Chairman Barrasso during your January 16, 2019, confirmation hearing:

Under our proposal, we have submitted that there will be 1,000 lives saved a year under our CAFE proposal. I neglected to mention that earlier, but I think that is very important for everyone to understand. It would decrease the cost of a new car by \$2,300. And that will get older cars off the road. And when you get an older car off the road, people are buying safer cars and it will save 1,000 lives a year. I think that is a very important fact to get out there in the public.⁵

Six months earlier, however, EPA career staff concluded that the proposed rule would *increase* fatalities.⁶

You have also repeatedly mischaracterized the emissions impact of the proposed rule; for example, you told Representative Matsui in a hearing about the EPA proposed budget on April 9, 2019:

I have been told by my staff that the CO2 reductions, the impact of the CO2 reductions are pretty similar to what the Obama administration proposal would have received under their—would have gotten under their proposal. Because the Obama proposal, [it] had a number of exemptions and off-ramps and the car automobile manufacturers aren’t complying with the Obama standards today.⁷

These and other statements like it are remarkable since analysis in the proposed rule clearly demonstrates that carbon pollution will increase by 8 *billion* tons during this century if the Trump Administration proposal is finalized.⁸

² *Id.*

³ *Id.*

⁴ See Senate Committee on Environment and Public Works, *Hearing on the Nomination of Andrew Wheeler to be Administrator of the Environmental Protection Agency* (Jan. 16, 2019), “Questions for the Record for Mr. Andrew Wheeler” (Response to Question 3) (www.epw.senate.gov/public/_cache/files/4/9/49a48117-2e79-437e-8385-7dad4f8de643/30EC89F8C2D1CAEA5DC9FD1E08A9AB82.responses-to-senator-carper-qfrs-redacted.pdf).

⁵ Senate Committee on Environment and Public Works, *Hearing on the Nomination of Andrew Wheeler to be Administrator of the Environmental Protection Agency* (Jan. 16, 2019) at 111 (www.epw.senate.gov/public/index.cfm/2019/1/hearing-on-the-nomination-of-andrew-wheeler-to-be-administrator-of-the-environmental-protection-agency).

⁶ *Supra* note 1.

⁷ House Committee on Energy and Commerce, *Hearing on ‘The Fiscal Year 2020 EPA Budget’* (Apr. 9, 2019) (energycommerce.house.gov/committee-activity/hearings/hearing-on-the-fiscal-year-2020-epa-budget).

⁸ National Highway Traffic Safety Administration, *The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Year 2021–2026 Passenger Cars and Light Trucks, Draft Environmental Impact Statement* (Jul. 2018); *Trump Administration Sees a 7-Degree Rise in Global Temperatures by 2100*, Washington Post (Sept. 28, 2018).

Finally, you have asserted that the proposed rollback “has nothing to do with the oil industry. We’re not doing this for the oil industry. I’m not doing this for the oil industry.”⁹ Yet it is hard to discern any other purpose for the proposal, since no entity in the automotive industry has requested such an extreme rollback of the current vehicle fuel economy and greenhouse gas standards. Moreover, the oil industry launched a covert social media and lobbying campaign to weaken the current standards and revoke California’s Clean Air Act waiver.¹⁰ The oil industry stands to reap the most benefit from the proposed rollback because Americans will be forced to spend hundreds of millions of dollars more for gasoline in less efficient cars.¹¹

We have learned that EPA career staff have continued to further analyze the Trump Administration’s proposal and continued to provide valuable insights to EPA’s political officials and officials at the Department of Transportation.¹² So that we can better understand the motivation for and flaws in the Trump Administration’s proposal, as well as the degree to which your public statements (including those made to Congress) may have deviated from the information that was provided to you and other EPA political appointees, please provide, no later than close of business on June 4, 2019, copies of the following materials:

1. The July 20, 2018, briefing slides prepared by EPA career staff for you that described EPA career staff’s significant concerns with the proposed rule, including their concern that the proposal “does not include EPA’s technical assessment or input,” that NHTSA failed to incorporate any of EPA’s technical analysis or feedback, and that it was clear to EPA that “NHTSA doesn’t want to engage EPA on technical aspects of NHTSA’s analysis.” That briefing also included the staff’s request that EPA’s logo be removed from the technical analysis document used to support the proposed rollback because no EPA input was included in it.
2. All of the briefing slides prepared by EPA career staff and presented to Bill Wehrum in February, March, or April of 2019 related to the proposed rule.¹³
3. All drafts of the longer white paper related to the proposed rule prepared by EPA career staff that further summarized EPA career staff’s analysis.¹⁴
4. A list of all meetings (including in-person meetings and telephonic and video conferences) that have occurred since January 20, 2017, between any EPA political appointee and any representative of Marathon Petroleum, American Fuel & Petrochemical Manufacturers (“AFPM”) (or any of its member companies), Koch Industries, American Legislative Exchange Council (“ALEC”) (or any of its members), or Americans for Prosperity, at which fuel economy or greenhouse gas tailpipe standards was discussed, including the date of the meeting and a list of all

⁹ Reuters, *U.S. EPA to revise proposed freeze of vehicle fuel economy rules* (Apr. 2, 2019) (www.reuters.com/article/us-autos-emissions-epa/u-s-epa-to-revise-proposed-freeze-of-vehicle-fuel-economy-rules-idUSKCN1RN321).

¹⁰ See, e.g., The New York Times, *The Oil Industry’s Covert Campaign to Rewrite American Car Emissions Rules* (Dec. 13, 2018) (www.nytimes.com/2018/12/13/climate/cape-emissions-rollback-oil-industry.html).

¹¹ Vox, *Trump is freezing Obama’s fuel economy standards. Here’s what that could do.* (Aug. 2, 2018) (www.vox.com/energy-and-environment/2018/5/3/17314000/trump-epa-cars-trucks-fuel-economy-cape-standards).

¹² See, e.g., Inside EPA, *EPA Staff Crafts New Analysis of Flaws, Possible Fixes For Vehicle GHG Plan* (Apr. 15, 2019).

¹³ We have been made aware of at least five such briefing presentations, each covering different sub-topics analyzed by EPA career staff.

¹⁴ See *supra* note 12.

meeting attendees and their affiliation(s). For each such meeting, please also provide copies of all documents and communications provided in advance of, at, or following the meeting, to any political appointee at EPA.

5. Please provide copies of all documents and communications (including letters, memos, emails, PowerPoint presentations, or other materials) received or sent by any political appointee at EPA from or to any representative of Marathon Petroleum, AFPM (or any of its member companies), Koch Industries, ALEC (or any of its members), or Americans for Prosperity related to fuel economy or greenhouse gas tailpipe standards.
6. EPA's latest version of its Optimization Model for reducing Emissions of Greenhouse gases from Automobiles (OMEGA) source code (a.k.a. "installation files").

Thank you very much for your attention to this important matter. If you have any questions or concerns, please have your staff contact Michal Freedhoff of the Environment and Public Works Committee staff at 202-224-8832 or Dustin Maghamfar with the Committee on Energy and Commerce at 202-225-2927.

Sincerely,



Tom Carper
Ranking Member
Senate Committee on Environment
and Public Works



Frank Pallone, Jr.
Chairman
House Committee on
Energy and Commerce

cc: The Honorable John Barrasso, Chairman
Senate Committee on Environment and Public Works

The Honorable Greg Walden, Ranking Member
House Committee on Energy and Commerce