Congress of the United States
Washington, DC 20515

October 17, 2005

The Honorable Norman Y. Mineta
Secretary
U.S. Department of Transportation
400 7th Street, SW
Washington, DC 20590

Dear Mr. Secretary:

We are writing to object strongly to the National Highway Traffic Safety Administration's recent pronouncement on the legitimacy of state laws regulating carbon dioxide pollution from motor vehicles. California has exercised its state authority, recognized by the Clean Air Act, and has adopted a landmark law to reduce air pollution that causes global warming. While we do not believe that NHTSA's claim carries any legal weight, NHTSA should not attempt to undermine state actions to reduce the threat of climate change.

On August 23, 2005, NHTSA issued a proposed rule to change the fuel economy standards for light trucks.[1] In the preamble to that proposal, NHTSA included language opining that a state regulation to reduce carbon dioxide emissions from motor vehicles relates to fuel economy and is therefore preempted by federal law. This language is legally and factually incorrect, as well as irrelevant to the substance of NHTSA's proposal.

NHTSA has no jurisdiction over or expertise in the Clean Air Act, which governs regulation of air pollution from motor vehicles. California's authority to set its own motor vehicle emissions standards is explicitly preserved from federal preemption by section 209(b) of the Clean Air Act. Moreover, it has long been recognized that tailpipe standards can affect fuel economy, but Congress has maintained California's authority to adopt such standards. Ongoing litigation on this issue makes NHTSA's attempted intervention especially inappropriate.

NHTSA included this language in a section entitled "Executive Order 13132 Federalism." Yet Executive Order 13132 aims to *protect* state authorities by requiring an agency to consult with States and localities before issuing a rule that will substantially affect them. While this section of the rule was supposed to demonstrate NHTSA's compliance with the Executive Order, NHTSA omitted any discussion of whether it had consulted with states and localities in developing its proposed rule. Instead, NHTSA included an unrelated discussion of how federal law allegedly preempts state regulation of carbon dioxide.

Climate change poses an urgent and serious threat to California's people and economy. Just one effect of climate change — the projected reductions of Sierra snowpack by 25% to 40% in the next few decades, and up to 90% by the end of the century — could have devastating

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[1] Department of Transportation, NHTSA, *Average Fuel Economy Standards for Light Trucks Model Years 2008-2011; Notice of Proposed Rulemaking*, 70 Fed. Reg. 51414 (Aug. 30, 2005).

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effects on California's water supplies and the cities, farms, and fisheries that depend on them.[2] Because the Administration has not sought to ameliorate the threat, the State has acted prudently and appropriately in limiting greenhouse gas emissions from motor vehicles.[3] It is particularly troubling that the federal government would seek to preempt state action in an arena where the federal government has not exercised its own authority.

We request that you direct NHTSA to disavow the language on preemption of state law included in its proposed CAFE rule and not to reiterate such claims in the final CAFE rule or elsewhere. As a longtime advocate for California we are confident that you will give this request the attention it is due, and we hope that as you consider the interests of every state in your current role, you will agree with the merits of our request.

Sincerely,

[2] *See* Katherine Hayhoe et al., *Emissions Pathways, Climate Change, and Impacts on California*, Proceedings of the National Academy of Sciences, vol. 101, no. 34 (Aug. 24, 2004).

[3] *See* U.S. EPA, *Control of Emissions from New Highway Vehicles and Engines*, 68 Fed. Reg. 52,922 (Sept. 8, 2003) (notice of denial of petition for rulemaking).

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