ATTORNEYS GENERAL OF THE STATES OF CALIFORNIA, CONNECTICUT, MASSACHUSETTS, NEW MEXICO, AND OREGON, THE SECRETARY OF THE NEW MEXICO ENVIRONMENT DEPARTMENT, THE SECRETARY OF THE COMMONWEALTH OF PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, AND THE CORPORATION COUNSEL OF THE CITY OF NEW YORK

May 1, 2009

The Honorable Ronald Medford
Acting Deputy Administrator
National Highway Traffic Safety Administration
U.S. Department of Transportation
West Building
1200 New Jersey Avenue SE
Washington, DC 20590

RE: Comments Regarding Scoping for Environmental Impact Statement (EIS) for New Corporate Average Fuel Economy (CAFE) Standards for Model Years 2012 to 2016
[Docket No. NHTSA-2009-0059]

Dear Acting Deputy Administrator Medford:

The Attorneys General of the States of California, Connecticut, Massachusetts, New Mexico, and Oregon, the Secretary of the New Mexico Environment Department, the Secretary of the Commonwealth of Pennsylvania Department of Environmental Protection, and the Corporation Counsel of the City of New York are pleased to submit these comments in response to your agency's Notice of Intent to Prepare an Environmental Impact Statement for New Corporate Average Fuel Economy Standards, 74 Fed Reg. 14,857 (Apr. 1, 2009).

This environmental impact statement (EIS) is being completed pursuant to the President's direction that the National Highway Traffic Safety Administration (NHTSA) re-examine "the appropriate legal factors under the EISA, the comments filed in response to the [2008] Notice of Proposed Rulemaking, [and] the relevant technological and scientific considerations" in setting new corporate average fuel economy (CAFE) standards. 74 Fed. Reg. 4907, 4907 (Jan. 28, 2009). As the President said: "Increasing fuel efficiency in our cars and trucks is one of the most important steps that we can take to break our cycle of dependence on foreign oil. It will also help spark the innovation needed to ensure that our auto industry keeps pace with competitors around the world."

Thus, we are hopeful that this new EIS will be an improvement over the 2008 EIS on CAFE standards. We also assume that, pursuant to the President's direction, NHTSA will be reassessing the various comments that we submitted in 2008 regarding the proposed CAFE standards for model years 2011 to 2015 and the related EIS. We hereby incorporate those six letters by reference. For ease of reference, we have enclosed a copy of our comments on the 2008 draft EIS.

At this stage of EIS development, we wish to emphasize one point: NHTSA should not minimize the effects of these rules on global warming, but rather should explain how these rules are consistent with and essential to the Nation's efforts to address global warming.

The overarching goal of an EIS is to provide useful, understandable information to decision-makers and the public. *Earth Island Inst. v. U.S. Forest Serv.*, 442 F.3d 1147, 1160 (9th Cir. 2006). "[T]he agency must assess the 'impact of the action when added to other past, present, and reasonably foreseeable future actions *regardless of what agency (Federal or non-Federal) or person undertakes such other actions*.'" *Center for Biological Diversity v. NHTSA*, 538 F.3d 1172, 1217 (9th Cir. 2008) (quoting 40 C.F.R. § 1508.7, emphasis in original). As the Ninth Circuit explained, "Any given rule setting a CAFE standard might have an 'individually minor' effect on the environment but these rules are 'collectively significant actions taking place over a period of time.'" *Id.* (quoting 40 C.F.R. § 1508.7).

The 2008 EIS fails to meet this standard. It continually minimizes the effect of CAFE rules, estimating that one set of those rules by itself will have a negligible effect on global warming and the associated effects on public health and welfare. But, as the Administrator of the U.S. Environmental Protection Agency explained recently in proposing to find that greenhouse gas emissions endanger public health and welfare, this kind of mindset is inappropriate:

> Importantly, because no single greenhouse gas source category dominates on the global scale, many (if not all) individual greenhouse gas source categories could appear too small to matter, when, in fact, they could be very significant contributors in terms of both absolute emissions or in comparison to other similar source categories within the U.S. If the U.S. and the rest of the world are to combat the risks associated with global climate change, contributors must do their part even if their contributions to the global problem, measured in terms of percentage, are smaller than typically encountered when tackling solely regional or local environmental issues. Total U.S. greenhouse gas emissions make up about 18 percent of the world's greenhouse gas emissions, and individual sources within the U.S. will be subsets of that 18 percent. The Administrator is placing significant weight on the fact that [motor vehicle] source categories contribute to 24 percent of total U.S. greenhouse gas emissions for the proposed contribution finding.

Proposed Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 18,886, 18,907 (Apr. 24, 2009).

NHTSA's new EIS needs to put these rules in context, and show how they contribute to reducing greenhouse gas emissions and addressing global warming. NHTSA itself recently "recognize[d] [the] seriousness of the global warming problem facing the nation and the world today, and that CAFE is one of many actions needed around the world to address that problem." Average Fuel Economy Standards, Passenger Cars and Light Trucks, Model Year 2011, 74 Fed. Reg. 14,196, 14,396 (Mar. 30, 2009). There are many ways to put CAFE in context. NHTSA could compare the carbon dioxide emission reductions from new CAFE rules with the overall emission reduction goal that the President has endorsed (an 80% reduction by 2050). NHTSA could evaluate whether new CAFE rules could constitute a "stabilization wedge" necessary to avoid greater global warming. NHTSA could evaluate whether the automobile manufacturing industry is doing its proportionate share to address global warming. NHTSA could

evaluate whether new CAFE rules will help prevent us from reaching a "tipping point" beyond which cataclysmic damages occur due to non-linear changes in the climate. We urge NHTSA to do all of these, and not obscure the importance of its authority to issue CAFE rules.

Thank you for your consideration of these comments. We look forward to reviewing the draft EIS and the proposed rules for CAFE standards for model years 2012 to 2016. If we can be of any assistance in strengthening this EIS or the proposed rules, please do not hesitate to contact us through Marc N. Melnick, Deputy Attorney General, at 510/622-2133.

Sincerely,

Edmund G. Brown Jr.
Attorney General of California

Richard Blumenthal
Attorney General of Connecticut

Martha Coakley
Attorney General of Massachusetts

Gary K. King
Attorney General of New Mexico

John Kroger
Attorney General of Oregon

Ron Curry
Secretary of the New Mexico Environment Department

John Hanger
Secretary of the Commonwealth of Pennsylvania Department of Environmental Protection

Michael A. Cardozo
Corporation Counsel of the City of New York

Encl.

cc: Charles A. Hurley, Administrator-Designee, NHTSA
Lisa P. Jackson, Administrator, U.S. Environmental Protection Agency
Carol M. Browner, White House Coordinator of Energy and Climate Policy
Docket Management Facility