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**Select Committee on
Energy Independence and Global Warming
U.S. House of Representatives**

August 7, 2008

The Honorable Nicole Nason
Administrator
National Highway Traffic Safety Administration (NHTSA)
1200 New Jersey Avenue, SE
West Building
Washington, DC 20590

Dear Ms. Nason:

The Select Committee received the July 24, 2008 letter from NHTSA General Counsel D.J. Gribbin refusing to comply with the Select Committee's June 17, 2008 request for information regarding its Notice of Proposed Rulemaking (NPRM) to promulgate fuel economy standards for cars and light trucks in compliance with the Energy Independence and Security Act of 2007. NHTSA refused the Select Committee's request for documents and other information focused largely on portions of the NPRM preamble as well as a proposed Appendix to the regulations that reassert NHTSA's view that State regulations to reduce greenhouse gas emissions from motor vehicles such as those promulgated by the State of California using Clean Air Act authority are preempted by the Energy Policy and Conservation Act (EPCA), even though two Federal courts have ruled otherwise. Specifically, the July 24, 2008 letter states that NHTSA will not provide:

- Dates on which offices and individuals at the Environmental Protection Agency (EPA) received drafts of NHTSA's NPRM;
- Copies of each draft of the NPRM that was sent to the EPA, the date on which the draft was shared, and the names of the individuals and offices at EPA with whom it was shared;
- Whether EPA provided NHTSA with comments related to the EPCA preemption issue described above, and if so, copies of the comments and any supporting documentation provided by EPA;
- Whether the EPCA preemption issue was drafted entirely by NHTSA or whether other Executive Branch Agencies or White House offices were involved in at least part of its preparation;

- A list of the names, affiliations, dates of any meetings, conversation or correspondence and the nature of any such interaction related to any such involvement in the preparation of the EPCA preemption issue by other Executive Branch agencies or White House offices; and
- Copies of all documents from the Department of Energy and EPA that were provided to NHTSA on all drafts of the NPRM.

NHTSA's July 24, 2008 letter stated that the documents listed above implicate Executive Branch decisions and are part of a "deliberative, pre-decisional" process. That statement is inapposite and evinces a fundamental misunderstanding of Congressional oversight. The Select Committee made this request pursuant to the Rules of the House and the authorities conferred under H. Res. 202, and yet NHTSA answered this request with the kind of defense used under the Freedom of Information Act. I am not aware of any court that has recognized "pre-decisional" as an adequate basis to withhold documents from a valid Congressional request. If the basis for withholding these documents is a claim of executive privilege, then please inform the Select Committee when that determination was made, by whom, and the process you went through to substantiate this claim. If there is no claim of executive privilege, the Select Committee expects to access the requested materials promptly.

You may also wish to direct your General Counsel's attention to the Select Committee's document dispute earlier this year with the EPA in which that agency asserted similar meritless claims of confidentiality. After a bipartisan and unanimous vote of the Select Committee Members to subpoena the materials related to this dispute, the Select Committee did in fact obtain them.

I look forward to your prompt response.

Sincerely,



Edward J. Markey
Chairman

cc: Rep. F. James Sensenbrenner, Jr., Ranking Member