



Sustainability, Environment & Safety Engineering
Ford Motor Company

One American Road
World Headquarters
Dearborn, MI 48126-2798

March 07, 2012

**Ford Motor Company Comments on
Notice of Public Availability of Modified Text
2012 Amendments to the
Clean fuels Outlet Regulation**

Ford Motor Company (Ford) welcomes the opportunity to comment on California's Proposed 2012 Amendments to the Clean Fuel Outlet (CFO) Regulation. Ford supports the development of infrastructure to support alternative fuel vehicle introduction. However, we request the following changes to the CFO amendments:

- 1) Provide more flexibility for the alternative fuel reporting by responding to requests from the Executive Officer, and
- 2) Eliminate the provision to penalize manufacturers for falling short of their projected volumes

Alternative Fuel Information

Proposed California exhaust emissions standards and test procedures require annual reporting of projected California sales and fuel economy data for all alternative fuel vehicles, even though the proposal limits the CFO regulations to hydrogen. It takes time and resources to gather the data for flexible-fuel vehicles, compressed natural gas, and other alternative fueled vehicles. In addition, manufacturers already submit projected sales data for all of our vehicles as part of the certification for application. Fuel economy data for all vehicles is also accessible on EPA's website. Therefore, if the ARB wanted to do a study on alternative fuel vehicles, that are not subject of the CFO, information is already available without requiring a separate report.

Because the proposal limits the CFO to hydrogen fuel, Ford believes it is appropriate to provide more flexibility in the reporting requirements for other alternative fuel vehicles. We believe that these reports should only be required upon request. Please see suggested regulatory change below.

Alternative Fuel Information.

Upon request of the Executive Officer, manufacturers shall submit projected California sales and fuel economy data for passenger cars, light-duty trucks, and medium-duty vehicles not certified exclusively on gasoline or diesel, except for vehicles that use hydrogen fuel. It is the intent of the Executive Officer to request this information, ~~the manufacturer shall submit projected California sales and fuel economy data~~ nineteen months prior to January 1 of the model year for which the vehicles are certified. For vehicles that use hydrogen fuel, the manufacturer shall submit, upon request of the Executive Officer, projected California sales and leases, fuel economy data, vehicle fuel pressure rating, name of air basin(s) where vehicles will be delivered for sale or lease, and number of vehicles projected to be delivered to each air basin. It is the intent of the Executive Officer to request this information, ~~thirty-three months prior to January 1 of the model year for which the vehicles are certified.~~

Clean Fuel Outlet Penalty Provision

In the original rulemaking proposal released for the 45-day comment period, § 2315 provided that a manufacturer would be "deemed" to have "knowingly falsified documentation within the meaning of Health and Safety Code Section 42402.4" if it failed to deliver for sale or lease at least 80% of its projected number of designated clean fuel vehicles. Since then, ARB has modified the proposal to clarify that ARB would need to make "the requisite showing of the manufacturer's knowledge of the falsity of the information and the intent to deceive" in order to bring the proposed rule more in line with Section 42402.4. While this is a step in the right direction, Ford continues to recommend (as we did in our original comments) that this provision be deleted in its entirety.

First, to the extent that a manufacturer's clean fuel vehicle projections submitted to the Executive Officer are within the scope of Health and Safety Code 42402.4, no regulation is

necessary to shore up that point. And to the extent that such projections are *not* within the scope of Health and Safety Code 42402.4, no regulation can make them so. At best, § 2315 is superfluous, and at worst it seeks improperly to equate inaccurate projections (or changed circumstances) with the falsification of concrete facts.

Second, in spite of the insertion of the "requisite showing" language, the regulation continues to state that a manufacturer "will be deemed" to have violated Section 42402.4 if the manufacturer's projections are not met. This appears to create an inappropriate presumption in favor of imposing liability against the manufacturer. This is not consistent with the statutory design, and as noted above, an ARB regulation may not modify or augment a statute.

Finally, to restate a point that we made in our prior comments, the threat of civil penalties for inaccurate projections is likely to have the unintended consequence of encouraging manufacturers to reduce their projected volumes in order to avoid any possibility of incurring a penalty. This, in turn, would have the effect of retarding the development of the infrastructure necessary to support the desired vehicles. As a policy matter, ARB is likely to accomplish its desired goals more quickly *without* § 2315 than with § 2315. For these reasons, we once again urge ARB to eliminate § 2315.