

NEW YORK STATE DEPARTMENT OF ENVIRONMENTAL CONSERVATION

Office of the General Counsel, Deputy Commissioner & General Counsel

625 Broadway, 14th Floor, Albany, New York 12233-1010

P: (518) 402-8543 | F: (518) 402-9018

www.dec.ny.gov

AUG 18 2020

Attention: Robert T. Holycross
Vice President, SE&SE
Ford Motor Company
One American Road
Dearborn, MI 48126-2798

Low Emission Vehicle Program Enforcement Discretion for Motor Vehicle Manufacturers Subject to 6 New York Codes Rules and Regulations Part 218

Dear Mr. Holycross:

This is to advise you that in consideration of the Settlement Agreement between the California Air Resources Board ("CARB") and Ford Motor Company ("Settlement Agreement"), the New York State Department of Environmental Conservation is exercising its enforcement discretion to allow Ford Motor Company to comply with the Settlement Agreement commitments. As of the effective date of the Settlement Agreement, the New York State Department of Environmental Conservation will exercise its discretion through Model Year 2026 to not enforce against Ford Motor Company the fleetwide, light-duty motor vehicle greenhouse gas ("GHG") emissions standards ("Vehicular GHG Emission Standards") New York has adopted in 6 New York Codes Rules and Regulations Part 218 ("Enforcement Discretion"), provided that Ford Motor Company meets the condition set forth in this Enforcement Discretion. The New York State Department of Environmental Conservation undertakes this Enforcement Discretion in reliance on the Ford Motor Company's commitments in the Settlement Agreement.

Background

CARB and Ford Motor Company voluntarily entered into the Settlement Agreement based on a mutual interest in mitigating their respective risks and resolving potential legal disputes concerning the authority of CARB and the states that have adopted California's motor vehicle emissions standards pursuant to Section 177 of the Clean Air Act, 42 U.S.C. § 7507 ("Section 177 States") to adopt and enforce Vehicular GHG Emissions Standards for vehicles manufactured by Ford Motor Company for Model Years 2021-2026 in light of the SAFE Rule Part One and Part Two, as set forth in the Settlement Agreement.

Ongoing and potentially lengthy litigation over the SAFE Rule Part One and Part Two leads to regulatory uncertainty and subjects Ford Motor Company to considerable enforcement risk. Ford Motor Company entered into the Settlement Agreement, recognizing that it offers Ford Motor Company compliance flexibility and greater certainty to plan for its nationwide fleet.

The SAFE Rule Part One and Part Two, and the related litigation, also entail risks that CARB and the Section 177 States may not be able to enforce the Vehicular GHG Emissions Standards and thereby achieve their GHG reduction goals. The Settlement Agreement provides CARB and the Section 177 States, including New York, among other things, greater certainty regarding continuing automotive GHG emission reductions during Model Years 2021-2026.



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CARB and the Section 177 States, including New York, have taken the position that they may enforce the Vehicular GHG Emissions Standards, including for periods for which EPA purported to revoke California's Clean Air Act waiver of federal preemption for its vehicular GHG emissions standards (and with them, New York's Vehicular GHG Emissions Standards), if the revoked portions of the waiver are reinstated and if the actions in the SAFE Rule Part One are vacated. The New York State Department of Environmental Conservation may exercise enforcement discretion with respect to such authority.

The New York State Department of Environmental Conservation has determined that the Ford Motor Company's Settlement Agreement commitments will result in GHG emissions reductions and will deliver environmental benefits that may not be realized in the absence of the Settlement Agreement.

Conditions of Enforcement Discretion

Ford Motor Company must meet all the conditions of this Enforcement Discretion, as set forth below in order to be eligible for this Enforcement Discretion.

Ford Motor Company must comply with all terms and conditions of the Settlement Agreement, including any modifications made in accordance with provisions of the Settlement Agreement.

Acknowledgements

In exercising this Enforcement Discretion, the New York State Department of Environmental Conservation acknowledges that Ford Motor Company's compliance with the Settlement Agreement will be enforced exclusively in accordance with the terms of the Settlement Agreement. As such, the New York State Department of Environmental Conservation acknowledges the enforcement, mitigation, dispute resolution, and Force Majeure mechanisms as implemented in accordance with the Settlement Agreement.

The New York State Department of Environmental Conservation further acknowledges the modification and termination terms as implemented in accordance with the Settlement Agreement.

The New York State Department of Environmental Conservation acknowledges that Ford Motor Company is relying on the New York State Department of Environmental Conservation's exercise of its enforcement discretion, as described herein, as an important and material basis for the Ford Motor Company's decision to enter into the Settlement Agreement.

Reservation of Rights

Nothing in this Enforcement Discretion relieves Ford Motor Company's obligation to comply with all applicable portions of the New York State Department of Environmental Conservation's 6 New York Codes Rules and Regulations Part 218 other than the Vehicular GHG Emission Standards, including its Low Emission Vehicle Program requirements not addressed specifically by this Enforcement Discretion.

This document is not a regulation and does not constitute final agency action.

No Party other than Ford Motor Company may rely on this Enforcement Discretion to create rights, duties, obligations or defenses, implied or otherwise, enforceable in any judicial or administrative proceeding with the New York State Department of Environmental Conservation. In addition, this Enforcement Discretion does not exempt any person from complying with the other requirements in 6 New York Codes Rules and Regulations Part 218 or any other applicable local, state or federal law.

If you have any questions concerning the conditions of this directive, please contact Colleen McCarthy at (518) 402-9203.

Sincerely,



Thomas S. Berkman
Deputy Commissioner
and General Counsel

c: Attention: Bradley M. Gayton, General Counsel
Ford Motor Company
One American Road
Dearborn, MI 48126-2798

Colleen McCarthy
Office of General Counsel
New York State Department of Environmental Conservation
625 Broadway
Albany, New York 12233-1500