



October 11, 2006

Nicole Nason
Administrator
National Highway Traffic Safety Administration (NHTSA)
400 Seventh Street, S.W.
Washington, D.C. 20590

**Re: Petition for Enforcement Proceeding to Remove FFV Credits Falsely Claimed
by Ford for Vehicles that in Fact Do Not Operate as FFV Vehicles**

Dear Ms. Nason:

By this letter, Public Citizen is petitioning NHTSA to reject claims by Ford Motor Company for credits towards its compliance obligations under the agency's Corporate Average Fuel Economy (CAFE) program for vehicles that are not, as the statute requires, "capable of operating" on a mixture of alternative fuel and gasoline. *See* 49 U.S.C. 32901(a)(8)(A). The vehicles in question are the Ford Taurus and Mercury Sable Flex-Fuel Vehicles (FFV) for model years 2003 through 2005. Ford is continuing to market the 2006 Taurus FFV for model year 2006,¹ and will likely claim spurious credits for these model year vehicles as well.

NHTSA should reclaim these credits and require Ford to pay the penalty for failure to comply with the fuel economy law. NHTSA should also make a determination on whether the failure of these vehicles to operate properly on E85, in particular such problems as sudden stalling of the engine, is a safety defect under 49 U.S.C. § 301, which would subject Ford to penalties for failure to notify their customers and NHTSA of this defect.

Between model years 2003 and 2005, Ford received CAFE credits for FFVs under the Alternative Motor Fuels Act of 1988 for approximately 228,000 Flex Fuel Tauruses and Sables, avoiding as much as \$135 million in fuel economy non-compliance fines. (*See* chart below). For example, in 2003, Ford was credited with 43 miles per gallon (MPG) for more than 90,000 model year 2003 Taurus and Sable FFVs, even though the vehicles' actual MPG is 26 MPG, significantly less than the federal minimum CAFE standard of 27.5 MPG for passenger cars.² This poor fuel economy performance should

¹ *See* <https://www.fleet.ford.com/showroom/2006fleetshowroom/2006-taurusFFV.asp>, attached as Appendix 1.

² Don MacKenzie, et al., Fuel Economy Fraud: Closing the Loopholes That Increase U.S. Oil Dependence, Aug., 2005, at 22, *available at*, http://www.ucsusa.org/assets/documents/clean_vehicles/Executive_Summary_Final.pdf.

not be confused with Ford’s overall fuel economy average, of which the Taurus and Sable FFVs are only a part. Below is a chart depicting Ford’s fuel economy performance for these model years and the contribution of the Taurus and Sable FFVs to the overall CAFE average.

**Ford CAFE Credits for Taurus FFVs and Fines Avoided
Model Years 2003 Through 2005³**

Model Year	Tauruses / Sables Sold	Taurus / Sable FFVs† Sold	Fuel Economy without FFV Credits, total Domestic Car Fleet	Fuel Economy with FFV Credits, total Domestic Car Fleet‡	Increase in Domestic Car Fleet Credited Fuel Economy (Max = 1.2)	Domestic Car Fleet Sales	Fines Avoided
2003	397,994	92,820	26.6	27.5	0.9	1,116,779	\$55,281,551
2004	245,362	45,017	25.8	26.4	0.6	778,421	\$26,017,893
2005*	237,960	90,195	27.3	28.3	1.0	992,105	\$54,565,775
Total	881,316	228,032				2,897,325	\$135,865,219

† Taurus/Sable is the only FFV passenger car sold by Ford in model years 2003 through 2005. Ford only began selling Crown Victoria, Grand Marquis, and Town Car FFVs in model year 2006.

* Based on mid-year projections, not final data.

‡ These totals include the contribution of the Taurus and Sable FFVs towards the average CAFE performance of Ford, fleet-wide, for the model year specified. The average MPG for Taurus and Sable FFVs for those model years would be considerably higher (i.e. 42.9 MPG in 2003).

Ford should be stripped of CAFE credits it received from producing these vehicles because these model year Taurus and Sable FFVs cannot, in reality, use alternative fuels, and, for those three years, the Taurus FFV did not meet the clear legal requirements of 42 U.S.C. § 32901. Over that same period, Ford consistently failed to remedy the operational problems in the Taurus FFV to render the vehicles “capable of operating” on ethanol-based fuels.

As the agency is aware, Public Citizen believes that the dual fuel loophole is counter to good energy policy. The average fuel economy of the vehicle fleet has stagnated since the mid 1980s while the gap between average vehicle economy and available, feasible, and economical technology to vastly increase fuel economy grows increasingly wide.

³ Analysis courtesy of Don MacKenzie, Union of Concerned Scientists

Under the CAFE program, manufacturers are allotted credits for FFVs under a fictional assumption that the vehicles use gasoline 50 percent of the time and E-85 (85 percent ethanol fuel) 50 percent of the time. However, the vast majority of these vehicles never use a drop of ethanol because of the scarcity of E-85. The loophole thus in reality lowers the average fuel economy of the overall vehicle fleet.

Generally, FFVs actually use E85 less than one percent of the time, due to factors such as lack of supply and a lack of consumer information.⁴ Of the 176,000 gas stations in the country, only 907 sold E85 as of October 10, 2006.⁵ The automobile industry is aware of this discrepancy but still readily sells tens of thousands of FFVs in markets where few or no E85 fueling stations are available to the public. For example, the Energy Information Administration (EIA) estimates that 40,200 FFV cars and light trucks will be sold in New England in 2006,⁶ despite the fact that there are zero E85 fueling stations open to the public in the area.⁷ The EIA also estimates that 110,700 FFVs will be sold in the Middle Atlantic (22 E85 stations), 80,500 FFVs will be sold in the West South Central Region (24 E85 stations), and 123,100 FFVs will be sold in the Pacific (10 E85 stations).⁸ Clearly, the vast majority of these vehicles will run exclusively on regular gasoline.

Ford is one of the culprits participating in this farce. Ford advertises FFVs as its contribution to reducing dependence on foreign oil in nine states⁹ that have zero fuel stations selling E85 and in an additional 12 states¹⁰ that contain 5 or fewer fuel stations that sell E85.¹¹ More specifically, Ford has a contract with the state of Louisiana for Taurus FFVs¹² despite the fact that there is not a single E85 station in the state. Obviously, Ford is aware that of the fact it is marketing and selling FFVs that will never run on E85 fuel. Indeed, Ford admitted in a June 28, 2006 letter to Congress that “Right

⁴ [MacKenzie](#), *supra* at 23.

⁵ See U.S. Department of Energy summary of available E85 fueling stations, available at http://www.eere.energy.gov/afdc/infrastructure/station_counts.html, attached as Appendix 2.

⁶ See Energy Information Administration Annual Energy Outlook 2006 with Projections to 2020, available at <http://www.eia.doe.gov/oiia/aeo/index.html>.

⁷ See U.S. Department of Energy summary of available E85 fueling stations, available at http://www.eere.energy.gov/afdc/infrastructure/station_counts.html, attached as Appendix 2.

⁸ See chart comparing EIA Annual Energy Outlook 2006 with U.S. Department of Energy summary of available E85 fueling stations, attached as Table A1.

⁹ Alaska, Arkansas, Connecticut, Delaware, Hawaii, Louisiana, Mississippi, New Hampshire, New Jersey and Rhode Island (See U.S. Department of Energy summary of available E85 fueling stations, available at http://www.eere.energy.gov/afdc/infrastructure/station_counts.html).

¹⁰ Arizona, Florida, Idaho, Kentucky, Maryland, Montana, New Mexico, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, West Virginia and Wyoming. (See U.S. Department of Energy summary of available E85 fueling stations, available at http://www.eere.energy.gov/afdc/infrastructure/station_counts.html).

¹¹ See <https://www.fleet.ford.com/> (FFV models not available only in CA, NY, MA, ME and VT).

¹² See October 5, 2005 memorandum and attached contract from Denise Lee to All State Agencies and Political Subdivisions, memorandum available at <http://www.state.la.us/osp/AgencyCenter/Memos/Memos-2006/OSP06-03.pdf>, contract available at <http://www.state.la.us/OSP/Contracts/vehicles/docs/ALTFUEL.pdf>.

now, there are 170,000 gas stations in the United States, but only about 700 E85 pumps.”¹³

The problem with E85 fuel not being readily available is compounded by the fact that the majority of consumers don’t know they can use it. Verasun, the second-largest domestic producer of Ethanol conducted a study that found, “nearly 70 percent of flexible fuel vehicle owners are unaware they are driving one.”¹⁴ The discrepancy between FFV sales and E85 usage is especially marked with regard to the Taurus FFV, which undoubtedly has an even lower actual use rate of alternative fuel because it is not “capable of operating” properly on E85.

Ford advertises and promotes its FFVs as capable of operating either on E85 or unleaded gasoline.¹⁵ Indeed, the Taurus FFV owner’s manual states that the Taurus FFV will “produce satisfactory cold weather starting and driving results using winter grade E85.”¹⁶ Ford’s Web site also claims that all of its FFV vehicles “automatically adjust to any ethanol/gasoline mixture for hassle-free and environmentally sound driving.”¹⁷ However, the actual performance of the Taurus FFV does not support those claims. While the Taurus FFV operates smoothly on gasoline, consumers report significant problems in starting the vehicle using E85 fuel, even during normal driving conditions.¹⁸ Perhaps because Ford knows very few of its FFV Taurus and Sable vehicles will ever use E85, it has taken the risk of ignoring the fact they do not operate properly, hoping they would not be caught.

A number of private and fleet Taurus FFV owners report serious and continuing problems operating a Taurus FFV with E85 fuel. Dave Buss, a Nebraska resident and corn farmer, purchased a model year 2005 Taurus FFV in reliance on Ford’s false claims about the automobile’s capabilities. Mr. Buss purchased a Taurus FFV with the intention of using E85 fuel, but soon realized the car was not capable of operating on E85 fuel. He reports that he had difficulty getting the car to start on many occasions he attempted to drive it. It usually took multiple attempts to start the Taurus FFV when he tried to operate it on E-85. More specifically, when the car was parked for 4 hours or more, 70% of the time it will take multiple cranking attempts to stay running on E-85. When the Taurus FFV finally did start, it sometimes ran rough. For example, on the morning of September 28, 2005, it took Mr. Buss 3 cranking attempts to start the Taurus FFV. After he drove the car out of the garage and accelerated to 25 miles per hour, the car hesitated, misfired, and began to stall. At the time the car’s fuel tank contained an E-85 blend.

¹³ June 28, 2006 letter from DaimlerChrysler, Ford, and General Motors to Members of Congress, available at http://media.ford.com/pdf/Flex_Fuel_Letter.pdf.

¹⁴ www.greencarcongress.com/2005/11/ford_expands_fl.html.

¹⁵ See https://www.fleet.ford.com/showroom/environmental_vehicles/default.asp, attached as Appendix 3.

¹⁶ User manual for model year 2005 Ford Taurus FFV, at 162 attached as Appendix 4 (available online at https://www.fleet.ford.com/maintenance/owners_manuals/default.asp?FFV=Y).

¹⁷ https://www.fleet.ford.com/showroom/environmental_vehicles/default.asp.

¹⁸ See 10/28/2005 letter from Keneshaw Motor Company to Ford, attached as Appendix 5.

Mr. Buss took the car in for repairs soon after he purchased it and the mechanic also noted that Mr. Buss's Taurus required 6 to 8 attempts to start.¹⁹ These claims are substantiated by a videotape Mr. Buss created and have been the subject of a case before the Better Business Bureau in Nebraska.²⁰ A letter from his dealership to Ford further verifies his videotaped efforts and the mechanical difficulties faced by Mr. Buss when using E85 fuel.²¹

Many other consumers report experiencing the same problem. The Nebraska Department of Administrative Services – Transportation Services Bureau (DAS-TSB) has also had problems operating a Taurus FFV using E85 fuel.²² As of March 27, 2006, the Nebraska Ethanol Board was receiving several calls each week from frustrated owners of a Taurus FFV.²³

At a minimum, before claiming CAFE credits, Ford should have been required to repair all of the Taurus FFV's flaws to render these vehicles capable of operating properly on E85 fuel. Instead, one of Ford's first responses to consumer complaints was that the operational problem was the result of using "bad" E85 fuel.²⁴ Ford also issued a service bulletin to dealerships directing them to inform consumers that they should switch to gasoline to improve the performance of the Taurus FFV.²⁵ They were correct. The Taurus FFV operated properly when consumers switched to regular gasoline, but its failure to operate properly on E85 means that it is not an FFV.

Ford's misleading response to this operating defect in its Taurus FFVs gave consumers the impression that E85 is an unreliable fuel source, defeating any public value provided by this CAFE credit program. In a March 14, 2006 letter to Mr. Buss, Nebraska governor Dave Heineman noted Ford's response to consumer complaints was troubling because it "unjustifiably associates the use of E85 fuel with [the] problems."²⁶ The Nebraska Ethanol Board also wrote Ford to complain about Ford's deceptive choice to blame ethanol, saying that "Ford dealerships telling consumers not to use E85 is a problem."²⁷

Ford's inadequate response was compounded by the fact that the company failed to fix this defect over a period of 3 years despite vocal and repeated claims from consumers. While the company implemented two service programs in the last two years designed to fix the problem, there is no evidence that those programs worked. At this time, Ford is not offering the Taurus FFV in its model year 2007 line of FFV vehicles.²⁸

¹⁹ See 9/29/2005 service invoice, attached as Appendix 6.

²⁰ See BBB case number FRD0595848.

²¹ See 10/28/2005 letter from Keneshaw Motor Company to Ford, attached as Appendix 5.

²² See 3/27/2006 letter from the Nebraska Ethanol Board to Ford, attached as Appendix 7.

²³ See 3/27/2006 American Lung Association email, attached as Appendix 8.

²⁴ *Id.*

²⁵ See Ford service bulletin TSB 06-5-5, attached as Appendix 9.

²⁶ 3/14/2006 letter from Heineman to Buss, attached as Appendix 10

²⁷ 3/27/2006 letter from the Nebraska Ethanol Board to Ford, attached as Appendix 7

²⁸ See https://www.fleet.ford.com/showroom/environmental_vehicles/default.asp attached as Appendix 3

Yet Ford still received substantial CAFE credits for the Taurus and Sable FFVs. As a result, Ford was able to apply CAFE credits to its fleet average for model years 2003 through 2005, allowing it to produce a fleet with lower fuel economy. This shoddy performance should be particularly embarrassing to Ford in light of the fact that the fuel economy standards for cars has not been increased since the 27.5 MPG standard in 1985, over 20 years ago.

Ironically, Ford has recently and publicly celebrated the company's commitment to producing vehicles that run primarily on alternative fuel. In 2006, Bill Ford, President of Ford, announced, "[a] Flexible Fuel initiative based upon ethanol ... Ford has historically been a leader in FFV's going all the way back to the original Model T ... we're going to do all that we can to support it."²⁹ Susan M. Cischke, Vice President of Environmental and Safety Engineering for Ford Motor Company claimed that "Ford has been building flexible fuel vehicles (FFVs) for over a decade, and we are an industry leader in this technology."³⁰ Ford, Ms. Cischke explained, plans on "continuing our leadership in ethanol powered flexible fuel vehicles." According to Vice President Cischke, "Ford Motor Company will have placed a total of nearly 2 million FFVs on America's roads" by the end of 2006.³¹ Recently, Bill Ford boasted that Ford "has more than 1.5 million ethanol capable and hybrid vehicles on the road today."³²

Even though E85 fuel will not be used in the vast majority of those FFVs, Ford deceptively claims that E85 "reduces the United States' dependence on imported oil."³³ But the truth is that without the necessary E85 infrastructure, as Ford admits, "we will still be missing the opportunity to displace gasoline supplies in the U.S."³⁴ In fact, manipulation of the CAFE loophole has the opposite effect of decreasing dependence on oil because manufacturers including Ford can produce fleets with a much lower overall fuel efficiency. As a result, dual fuel credits actually *increased* petroleum consumption by hundreds of millions of gallons over the past decade and *increased* greenhouse gas emissions by millions of metric tons.³⁵ Credits awarded this year alone will result in added gasoline consumption of about 2.5 billion gallons over the lifetime of model year 2004 vehicles – that translates to 11 days worth of U.S. oil imports from all OPEC countries.

Ford received three years of CAFE credits that it did not earn for model years 2003-2005 Taurus and Sable FFVs by selling noncomplying vehicles yet claiming the credits. Moreover, Ford has been unable to fix the operational defect of the Taurus FFVs over the 3 model years. Therefore, Ford should forfeit the CAFE credits it received for

²⁹ http://media.ford.com/newsroom/release_display.cfm?release=21631

³⁰ March 7, 2006 statement submitted to the Senate Energy and Natural Resources Committee, available at http://energy.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing_ID=1534&Witness_ID=4343)

³¹ *Id*

³² Advertisement in Newsweek magazine, attached as Appendix 11

³³ https://www.fleet.ford.com/showroom/environmental_vehicles/default.asp, attached as Appendix 3

³⁴ June 28, 2006 letter from DaimlerChrysler, Ford, and General Motors to Members of Congress, *supra*

³⁵ See *Report to Congress: Effects of the Alternative Motor Fuels Act CAFE Incentives Policy*, Department of Transportation, Environmental Protection Agency, and Department of Energy, March 2002, at 42 (Table V-4).

producing the Taurus and Sable FFVs for model years 2003 through 2005, as well as any potential credits claimed for model year 2006.

Please respond in writing to this petition for an enforcement proceeding under both the fuel economy and safety laws and keep us informed of any agency proceedings on our request to have Ford forfeit the CAFE credits it received for producing the Taurus and Sable FFVs for model years 2003 through 2006.

Sincerely,

Joan Claybrook
President, Public Citizen