

Jonathan Morrison  
09-6-4



## California New Car Dealers Association

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June 23, 2009

Mary D. Nichols  
Chairman  
Air Resources Board  
1001 I Street  
Sacramento, California 95814

**Re: Cool Automotive Paints Regulation Draft**

Dear Chairman Nichols:

The California Motor Car Dealers Association (CMCDA) is a statewide trade association which represents the interests of over 1,200 franchised new car and truck dealer members. CMCDA members are primarily engaged in the retail sale of new and used motor vehicles but also engage in automotive service, mechanical and collision repair, and parts sales. We are writing on behalf of our dealer members to provide comments relative to the draft regulatory proposal concerning automotive window glazing reflectivity.

We have worked with ARB staff on this proposal over the past year and have found them to be flexible and professional each step of the way. When we raised a substantive issue, ARB staff would work to accommodate our concern in a manner that would not diminish the effect of the regulation. While we have concern about the availability of compliant window glazing products in such a short timeframe, and concur with the comments of the Alliance of Automobile Manufacturers on this matter, we believe that the structural framework of the proposal is acceptable. We do have a serious concern with the records retention requirement of the proposal, as described below.

Record Retention:

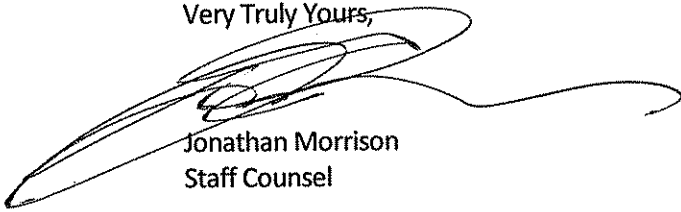
The proposed regulation would require collision repair facilities to retain documents related to replacement glazing for a period of five years, and to allow ARB staff access to these documents upon request during this period. This would remove a crucial constitutional protection under the 4<sup>th</sup> amendment. A long history of federal and California case law provides that agencies may not access business records unless pursuant to a properly fashioned warrant or subpoena, or unless the business is "pervasively regulated" and the legislature specifically authorizes such access without a warrant or subpoena. *United States v. Biswell, 406 US 311 (1972)*. ARB lacks authority under the Administrative Procedures Act to expand this access or to impose record retention requirements by regulation.

Since our members have significant responsibility under state and federal privacy laws to prevent unauthorized access to confidential customer information, and because automotive repair laws already require that repair records be kept for three years (see Business and Professions Code Section 9884.11), which ARB may access through traditional means, we simply ask that proposed 17 CCR 95603(f)(3) be deleted.

Chairman Mary Nichols  
June 23, 2009  
Page 2 of 2

Thank you for the opportunity to comment on this issue—we look forward to continuing to work with you and your staff to address our concerns. Should you or your staff have any questions or comments, please do not hesitate to contact me at (916) 441-2599.

Very Truly Yours,

A handwritten signature in black ink, appearing to read 'Jonathan Morrison', with a long, sweeping horizontal flourish extending to the right.

Jonathan Morrison  
Staff Counsel