

DAIMLERCHRYSLER

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DaimlerChrysler Corporation

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By Electronic Submittal

Clerk of the Board
Air Resources Board
1001 I Street
Sacramento, CA 95814

To whom it may concern:

DaimlerChrysler Corporation (DCC) appreciates the opportunity to comment on ARB's Proposed Amendments to the Emission Warranty Information Reporting and Recall Regulations and Test Procedures. In addition to supporting comments submitted by the Alliance of Automobile Manufacturers (AAM), DCC would like to take this opportunity to comment specifically on 3 issues: (1) whether a 4% warranty rate is conclusive and, in many cases, irrefutable evidence of a "systemic" defect; (2) the cost of compliance; and (3) ARB's discussion of the 2005 settlement agreement between DCC and ARB.

The Definition of "Systemic Failure" under the Proposed Regulation

The proposed regulation assumes that a 4% warranty rate is conclusive and irrefutable evidence of a "systemic failure" that must be addressed through remedial action in addition to the already statutorily-required warranty. See Section 2166.1(n). In addition, in many cases this conclusion is irrefutable because a manufacturer is not allowed to contest the requirement to extend warranties under the proposed regulation.

Staff has offered no explanation or justification for this definition. DCC presumes that the 4% figure was borrowed from the present regulation. Under the current regulation, however, 4% is the (unscreened) warranty rate at which an engine family, test group, or subgroup is potentially subject to recall. The current regulation allows the Executive Officer to determine that a recall is not necessary based on several factors, including emissions impact. 13 CCR 2148(a). The current regulation also allows the Executive Officer to determine that a recall is not necessary if the defect is likely to be corrected under the warranty program or is "limited to an emissions-related component on a less-than-substantial percentage of vehicles and does not represent a pervasive defect in design, application, or execution of such emissions-related components during the useful life of the vehicle or engines" 13 CCR 2148(b).

In one fell swoop, and without explanation, the proposed regulation dispenses with any consideration of the facts. An arbitrary level may be defensible as a trigger for further investigation when the outcome of each case is determined on its own merits. But with the removal of all consideration of the merits of corrective action, especially the emissions impact, an **arbitrary** threshold that dictates remedial action is not.

Cost to comply

Staff declares "For motor vehicle manufacturers to comply with the proposed regulatory action, the costs are expected to be negligible." But staff is responsible for developing a regulation that provides an environmental benefit commensurate with the cost. The proposed regulation could cost several millions of dollars annually without providing any environmental benefit.

For instance, staff estimates the number of extended warranties would probably triple annually under the proposal, to around 147 industry-wide. If one assumes extended warranties proportionate to market share, a manufacturer with a 10% share in California would be exposed to about 15 extended warranties. With the trigger for a California high cost warranty part currently defined as \$500.00, a median cost of \$250.00 (parts and labor) would be a reasonable estimate for a typical corrective action. If an average size engine family or test group in California and Section 177 states represents about 35,000 units and an extended warranty is mandated at a 4% failure rate, a single action could cost \$350,000, or over \$5 million to the manufacturer annually, assuming extended warranties proportionate to market share. It is unreasonable to impose these costs upon manufacturers (at least some of which will be passed on to consumers) if, as will be the case in many instances, vehicles continue to meet, on average, the health and environment-based emissions standards that ARB has established.

The ARB-DCC Settlement

In the Initial Statement of Reasons ("ISOR"), staff states that its proposal is in large part necessary to address certain deficiencies in a settlement regarding catalysts that DCC and ARB reached in 2005.

While the history of the settlement negotiations is confidential, DCC was surprised and disappointed to read in the ISOR that "DaimlerChrysler would not agree to recall all of the affected light-duty trucks." The ISOR further states that "faced with the burden of testing 30 individual engine families to show an emissions exceedence, on average, for each engine family, the ARB instead entered into a settlement agreement with DCC that corrected some, but not all, of the light-duty trucks in question."

In fact, ARB and DCC recognized that not all of the light-duty trucks with the catalyst design at issue were failing. Rather, ARB and DCC recognized that failure rates depended on individual vehicle characteristics as well as individual customer driving patterns. ARB and DCC reached a mutual agreement on the appropriate actions to be taken on various engine families by considering a number of factors, including warranty rates; results of emission tests conducted by DCC, ARB and EPA; in-use test results conducted by DCC, ARB and EPA; results of Inspection and Maintenance testing; and results of EPA catalyst "thump" tests, in which EPA personnel thumped catalysts to determine if they were rattling. These factors in combination, much of it based on evidence that staff or EPA had gathered, showed that these vehicles continued to pass the emission standards on average and therefore justified staff's decision not to pursue the unnecessary and costly burden of additional testing.

Staff also alleges that "of the 151,000 trucks with EWIR rates greater than 4%, only about 41,000 (27%) were recalled under the agreement." In fact, as CARB's own press release regarding the settlement demonstrates (see Attachment A), DCC is taking action on over 91,000 vehicles in California. DCC extended the catalyst warranty on over 50,000 vehicles and separately, DCC recalled an additional 41,120 vehicles to reflash their on-board diagnostic systems. Each of these vehicles will also have its catalyst inspected and replaced, if necessary, and will receive an additional one-year warranty. In addition, 22,691 reminder letters were sent to California owners reminding them of their 7/70 catalyst warranty should they hear a "rattle." Of the vehicles not recalled with warranty rates over 4%, 7,682 had already had the catalyst replaced with a new design under warranty.

The ISOR also erroneously estimates the emissions impact of the vehicles that were not recalled. First of all, as noted above, the ISOR understates the number of vehicles that were addressed under the settlement. Second, staff assumed that 72% of the vehicles on which no action was taken had defective catalysts simply because one of the engine families had a warranty rate of 72%. In fact, the sales-weighted average warranty rate for these vehicles was 16%. Third, staff counted as "excess emissions" all emissions from the vehicles at issue – thereby presuming any emission level greater than zero to be "excess" emissions. As a result of these errors, staff overstated the potential emissions impact by at least an order of magnitude.

In the Settlement Agreement, ARB expressly agreed that DCC negotiated in good faith. The ISOR misleadingly suggests otherwise and is unfair to both DCC and to the public, which is entitled to accurate information about ARB's activities.

Conclusion

DCC respectfully requests that the Board consider these comments, and those of the AAM, in this rulemaking. DCC further requests that the Board direct the staff to work with all stakeholders to develop a regulation that addresses the deficiencies noted in these comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Reginald R. Modlin".

Reginald R. Modlin
Director
Environmental Affairs



Release 05-28

**FOR IMMEDIATE
RELEASE
December 21, 2005**

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Chrysler Agrees to Recall OBD Systems and Extend Catalytic Converter Warranties on More Than 90,000 Trucks and Vans

Sacramento: The California Air Resources Board (ARB) announced today it has reached a settlement with DaimlerChrysler Corporation (DCC) to extend warranty coverage for catalytic converters on more than 90,000 light- and medium-duty trucks and vans built between 1996 and 1999. The auto manufacturer also agreed to recall on-board diagnostic (OBD) systems in about 40,000 of these vehicles and to pay \$1 million dollars to the ARB.

"Catalytic converters are critical components in the emission control systems of gasoline powered vehicles, and their failure can cause significant increases in air pollution," said Catherine Witherspoon, ARB Executive Officer. "We are pleased that DaimlerChrysler agreed to correct the problems at no cost to its customers."

DaimlerChrysler Corporation models affected by this action include Dodge Ram Pickups, Ram Vans, Dakotas, Jeep Wrangler and Cherokee vehicles equipped with certain 2.5L, 3.9L, 4.0L, 5.2L, and 5.9L engines and equipped with catalytic converters that use a ceramic substrate. A faulty mat material designed to surround and support the substrate can fail to hold it in place during normal driving. Drivers of vehicles with defective catalysts may hear a rattling noise coming from beneath the vehicle, the strongest indicator of a damaged catalyst. Other symptoms that may occur include a loss of power, hard engine starting, and illumination of the dashboard check engine light.

Warranties on the affected vehicles will be extended to 10 years/120,000 miles or one year from the date of the owner notification letter, whichever provides longer coverage. The original catalytic converter warranty is seven years/70,000 miles. DaimlerChrysler Corporation will also cover the catalytic converters on these vehicles for two years from the date of the owner notification letter should the owner fail Smog Check as a direct result of a defective original equipment catalytic converter. Owners who suspect they may have a defective catalytic converter can take their vehicles to a dealer for an inspection at no charge. As part of its agreement, DCC will reimburse any owners who paid to have a defective catalytic converter replaced at their own expense.

In addition to the catalyst problem, the on-board-diagnostic systems (OBD) of some of the affected DCC vehicles built between 1996 and 1998 do not properly detect catalytic converter failure. On board diagnostic systems, which are required in all light- and medium-duty vehicles built for sale in California since 1996, alert drivers of possible malfunctioning emission control equipment by illuminating the check engine light. As part of the settlement, DCC is recalling those vehicles with defective OBD systems and will recalibrate their computers with new software. Under the recall, owners can return their vehicles to a local DCC dealership for a simple software download at no expense to the owner.

DaimlerChrysler Corporation is currently in the process of notifying affected vehicle owners of the recall and extended warranty.

More information about this action and other ARB motor vehicle programs can be found at: www.arb.ca.gov or call 1-800-end-smog, 1-800-363-7664.

The Air Resources Board is a department of the California Environmental Protection Agency. ARB's mission is to promote and protect public health, welfare, and ecological resources through effective reduction of air pollutants while recognizing and considering effects on the economy. The ARB oversees all air pollution control efforts in California to attain and maintain health based air quality standards.

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