



Association of International Automobile Manufacturers, Inc.

Comments on Proposed Amendments to California Emission Warranty Information Reporting
and Recall Regulations and Test Procedures

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The Association of International Automobile Manufacturers, Inc. (AIAM) is a trade association representing 14 international motor vehicle manufacturers which account for half of all passenger cars and light duty trucks sold annually in California. AIAM member companies include American Honda Motor Co., American Suzuki Motor Corp., Aston Martin Lagonda of North America, Inc., Ferrari North America, Inc., Hyundai Motor America, Isuzu Motors America, Inc., Kia Motors America, Inc., Maserati North America, Inc., Mitsubishi Motors North America, Inc., Nissan North America, Inc. Peugeot Motors of America, Renault, SA, Subaru of America, and Toyota Motor North America, Inc. AIAM also represents original equipment suppliers and other automotive-related trade associations.

AIAM appreciates the opportunity to provide comments on ARB's proposal to amend the emissions warranty information reporting (EWIR) regulations. AIAM supports the goals that ARB established for this rulemaking to reduce reporting burdens, to ease ARB's burden of proof for corrective actions, and to facilitate prompt corrective actions when needed. We also appreciate the ARB staff's accessibility and willingness to discuss the proposal and the issues that have been raised by us and others in the process. In these discussions we have been able to reach some compromise on a few issues. But we continue to have some serious concerns with the proposal as it is currently drafted, because it is inconsistent with the longstanding statutory structure of the California vehicle emissions control program.

As a practical matter, we can accept the following aspects of the ARB proposal:

1. The proposed annual reporting.
2. The proposed new reporting threshold of the greater of 4 percent or 50 warranty claims.
3. The proposed new corrective action threshold of the greater of 10 percent or 100 warranty claims.
4. The exclusion of cases involving "infant mortality," voluntary recalls, and cases with no emissions impact in counting toward the thresholds.

However, we believe the EWIR proposal undercuts the fundamental statutory framework upon which the California vehicle emissions control program is based.

This statutory structure has three basic requirements:

1. A set of technology-forcing vehicle emissions standards;
2. Manufacturer certification of vehicle emissions compliance for the statutory “useful life” (or durability) period; and
3. Mandatory recall, if vehicles are shown to exceed emissions standards during their statutory useful life.

Vehicle Emissions Standards

The grounding principle of the California vehicle program has always been technology-forcing vehicle emissions standards. Manufacturers are required to show compliance with these standards through a certification process, and the emissions standards are enforced in various ways, including recalls.

Vehicle Certification

Manufacturers must certify (prior to production) that vehicles meet applicable emissions standards for a statutory “useful life” or durability period. Currently the applicable durability period for most light duty vehicles is 120,000 miles. In the certification process manufacturers test development prototype vehicles using various approved test procedures to demonstrate that their vehicles are designed to comply with applicable emissions standards for the prescribed durability period. There are two important distinctions here:

1. Durability vehicles are not production vehicles; they are development prototype vehicles. Because of the inherent variability associated with the mass production of components and the assembly line process, manufacturers explicitly design the development prototype vehicles to a lower emissions level than the applicable emissions standard in order to provide a compliance cushion for production vehicles in-use. This cushion is usually referred to as “headroom.”
2. The durability period is NOT the same as the “warranty” period. Warranties apply for a prescribed period of time during which the manufacturer will provide free-of-charge repair (almost always done at dealerships) of a failed component for every vehicle. Warranty periods are prescribed by statute and reflect the tradeoffs lawmakers weighed in balancing environmental protection versus protection of the interests of aftermarket businesses.

Emissions Recall

An important traditional enforcement tool in the California vehicle program is recall. Under applicable statutes, ARB can order a manufacturer to recall vehicles if ARB determines that such vehicles exceed applicable emissions standards during their statutory “useful life” period. Traditionally, ARB (and EPA) has conducted routine testing of in-use vehicles to determine if



recalls are needed. A few years ago EPA and ARB amended their regulations to require manufacturers to conduct in-use testing for surveillance and recall purposes. Currently manufacturers are testing each vehicle test group at low mileage and high mileage points.

Effects of EWIR Proposal

The EWIR proposal appears to undercut the fundamental statutory framework underlying the vehicle emissions control program in several key ways.

1. The EWIR proposal would remove the consideration of vehicle emissions as a basis of determining the need for corrective action, except where a manufacturer could show that emissions could increase “under no conceivable circumstances.” AIAM believes this aspect of the proposal is counter to the fundamental statutory intent of the program, because under the proposal ARB could order a corrective action based solely on the warranty claims threshold being exceeded even though emissions from vehicles do not exceed applicable emissions standards. In effect, the EWIR proposal will reduce the incentive for manufacturers to build headroom into vehicles. Designing vehicles to any degree below the applicable standards (i.e., to provide headroom) could actually penalize manufacturers. This is because the net effect of the EWIR proposal is dangerously close to attempting to hold manufacturers accountable for achieving in-use emissions levels equivalent to certification levels (which include headroom) rather than the applicable emissions standards.
2. The EWIR proposal would require, in some cases, extended warranties as a corrective action. While we agree that extended warranties may be an appropriate option for manufacturers in certain cases (as it is today), the statutory framework of the vehicle emissions control program does not authorize mandatory extended warranties. Therefore, we believe that extended warranties should be maintained as an option and not made mandatory.

“Due Process” Arguments

AIAM believes ARB’s proposed process creates serious constitutional due process concerns. We agree generally with the Alliance’s “due process” analysis with respect to the ARB’s use of a 4% warranty defect level as an irrebutable presumption of defect for purposes of ordering corrective action. We are especially concerned with respect to ARB’s proposal to ignore vehicle emissions levels in all situations, except where manufacturers can show that emissions will not increase “under any conceivable circumstances.”

We appreciate the considerable burden CARB has under current EWIR regulations to demonstrate that a defect will cause a test group to exceed applicable emissions standards, on average, for the vehicles’ useful life before it can order corrective action. However, we do not believe it is sound public policy to establish a new process which creates an insurmountable



burden of proof on manufacturers to show no emissions increases under “any conceivable circumstances.” We believe it essential to strike a balance which is fair to both manufacturers and ARB.

The ultimate question should be whether the vehicles with the defect present exceed emission standards. If the 4% threshold is reached, that should create only a rebuttable presumption of defect. The manufacturer should be able to challenge this presumption with evidence demonstrating lack of an emissions impact. The burden would be on the manufacturer, but at least this would provide a process consistent with due process.

AIAM Proposal

The following program would address AIAM’s major concerns and strike a fair balance for both manufacturers and ARB.

Rather than eliminating emissions levels entirely from consideration, AIAM recommends that manufacturers be allowed the option to conduct engineering analyses, including analysis of available emissions data from development and other test programs, and to conduct additional emissions testing during the time between the EWIR report (4% trigger) and the SEWIR report (10% trigger). If and when the 10% action level trigger is achieved, the manufacturer will have assembled the data/analyses, as may be relevant, for discussion with ARB. This approach will maintain the option for manufacturers and ARB to consider the emissions impact of cases as may be relevant without causing extended delays in implementation of needed corrections actions.

AIAM believes that most manufacturers are conscientious in tracking emissions warranty claims and often take voluntary actions well before the 10% action trigger is reached. We also believe that manufacturers will exercise their option to raise issues over emissions impacts only on infrequent occasions. However, we believe it is important and necessary for the manufacturers to have this option for those rare occasions when it may be needed.

Respectfully,



Michael J. Stanton
President & CEO

