

June 20, 2007

**Automotive Aftermarket
Industry Association**
7107 Wisconsin Avenue
Suite 1300
Bethesda, MD 20814

**Automotive Engine
Rebuilders Association**
330 Lexington Dr.
Buffalo Grove, IL 60089

**Automotive Parts
Remanufacturers
Association**
4215 Lafayette Center, Ste. 3
Chantilly, VA 20151

**Automotive Service Councils
of California**
758 University Ave.
Sacramento, CA 95825

**California Autobody
Association**
555 University Ave., Ste. 236
Sacramento, CA 95825

**California Automotive
Wholesalers Association**
11160 Sun Center Dr.
Rancho Cordova, CA 95670

**California Automotive
Business Coalition**
1 Capitol Mall Plaza, Ste 250
Sacramento, CA 95814

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

Federal Express

RE: Comments on Notice of Public Availability of Modified Test and Supporting Documents (15 Day Notice) on California's Emission Warranty Information Reporting and Recall Regulations and Emission Test Procedures

The automotive aftermarket organizations listed below respectively submit the following comments regarding the modified text and supporting documents in connection with the proposed amendments to California's Emission Warranty Information and Reporting and Recall Regulations and Emission Test Procedures.

The independent vehicle aftermarket is composed of thousands of repair shops located in every town in the State of California. These shops and the highly efficient distribution systems that serve them, play a key role in the California economy employing 228,173 people in manufacturing, distribution, retail and installation. In fact, aftermarket sales compose 2.6% of the states' gross state product, contributing over \$35 billion to the California economy.

The independent aftermarket also plays a critical role in ensuring the integrity of the motor vehicle emissions system, making sure that low emission vehicles continue to work properly throughout their useful life. Car owners benefit by having access to affordable repair costs that are available through 20,000 shops conveniently located in every part of the State of California. Absent this competitive network of repair outlets, Californians would be forced to pay higher repair prices and endure longer wait times in order to obtain those repairs. Neither would benefit the citizens of the State nor the Board's goal of ensuring clean air.

The aftermarket has previously submitted its concerns regarding these proposed amendments in comments dated December 1, 2006 and March 21, 2007. The proposed final modifications to these regulations have not addressed any of the concerns raised in those earlier comments. To reiterate our concerns are the following:

- To enforce vehicle emissions regulations, CARB does not have the authority to extend the warranty beyond the 3 year/50,000 mile warranty currently in the California statute.
- Even if CARB had the authority to extend the warranty, doing so is not a "corrective action" under California law.
- CARB has provided no evidence, (1) that allowing extension of the statutory warranty is necessary to reduce emissions; (2) that extending the warranty will provide any incentive to car companies to build more durable or defect free vehicle parts, or (3) that car owners will be

sufficiently aware of the extended warranty so that they will have the defect repaired.

- Studies by both the aftermarket and CARB indicate that extended warranties will have a greater negative economic impact than the recall alternative on the small businesses that compose the independent aftermarket.

CARB does not have the authority to extend the warranty beyond the 3 year/50,000 mile warranty currently in California statute.

CARB staff acknowledge in their original Statement of Reasons that they could not adopt the extended warranty requirements under Section 43205 of the California Health and Safety Code, which specifically provides that light and medium duty vehicles shall have a warranty period of 3 years/50,000 miles and 7 years/70,000 miles for components estimated by the manufacturer to cost individually more than \$300 to replace (currently \$460 adjusted for inflation). The requirements of Section 43205 are imposed *on manufacturers* by the legislature; this section does not grant CARB general authority to impose warranty requirements as it sees fit. The extended warranty under this rulemaking would expand this burden beyond the scope of the warranty requirements that the legislature believed were reasonable.

Staff instead seeks support for extending warranties in Section 43105. However, that section does not confer any authority on CARB. It imposes a sales prohibition on manufacturers who have previously failed to meet emissions standards and thereafter failed to comply with “corrective action” specified by CARB. Except for recall of vehicles or engines, the Section does not specify what corrective action CARB has authority to impose. Given the express language of Section 43205, there is no basis to assume that Section 43105 confers authority to impose an extended warranty as an enforcement tool. The more specific limitations on warranties imposed by Section 43205 prevail.

Further, arguments by the staff that Section 43205 does not expressly limit CARB’s authority under Section 43105 are unreasonable. The staff argument presumes that, when it imposes a requirement on a regulated entity, the legislature must expressly state that the requirement may not be, either directly or indirectly, made more stringent by an administrative agency. CARB’s interpretation demands from the legislature a level of exhaustive statutory explanation that is neither customary nor required. Under principles of statutory interpretation: (1) where a statute specifically addresses an issue, it is controlling over more general statutory sections and (2) an administrative agency may not increase statutory burdens without express authority or exceed the scope of its own statutory authority through indirect means. In short, if CARB were to impose this extended warranty, it would increase the warranty burden beyond that found reasonable by the legislature and without authority to do so.

Finally, even in those situations where the proposed regulations indicate that extended warranty may be imposed as an alternative to or a supplement to recall, the Executive Officer has sole discretion over which action to require. CARB therefore may unilaterally require a manufacturer to implement an extended warranty. Further, similar to the circumstances in *Central Valley Chrysler-Plymouth v. California Air Resources Board*, No. CV-F-02-5017 (2002), there are factors that suggest the Executive Officer would likely impose the extended warranty alternative in many or most cases.

In sum, there is nothing in the law that permits an extension of the warranty for a component with high failure rates. In effect, the initial warranty was put in place to cover parts failures and more stringent penalties, such as recall, were designed to address more widespread defect issues such as those that are the target of this rulemaking.

CARB does not have the authority to extend the warranty because extending the warranty is not a “corrective action” as required by California law.

As stated previously, CARB staff relies upon Section 43105 of the California Health and Safety Code as providing the statutory basis which gives CARB the authority to extend the statutory warranty. That section requires the manufacturer of a vehicle or engine, which does not meet emissions standards, “...to take corrective action, which may include recall of vehicles or engines, specified by the state board in accordance with regulations of the state board.” The staff alleges that extending the warranty is “corrective action” under this section. However, there is nothing in California law which would in any way indicate that extending a statutory warranty could be considered corrective action under Section 43105 and there is strong evidence to the contrary.

The Health and Safety Code does not define “corrective action” for purposes of Section 43105. However, in Section 42400.2 the legislature has defined the term in the context of persons who emit air contaminants from non-vehicular sources. In that section “corrective action” is defined to mean “...the termination of the emission violation or the grant of a variance from the applicable order, rule, regulation or permit...” Applying that definition to Section 43105 clearly demonstrates that extended warranties are not corrective actions as contemplated by the legislature. First, extending a warranty does not terminate the emissions violation --- as a recall would. If anything it extends the violation and allows it to continue in the vague hope that when future part failures occur, the vehicle owners will voluntarily and expeditiously get the part replaced. By using this approach, CARB is allowing the emissions violation to continue in direct contradiction to the requirements of Section 43105.

Extending warranties is not granting a variance either. A variance involves a decision by CARB that the manufacturer may continue to permit the vehicles in question to violate emissions standards. This is clearly not what an extended warranty does.

Therefore, because extending the statutory warranty is neither terminating the violation nor granting the manufacturer a variance for it, it is not a corrective action which the Board can take under Section 43105.

CARB has no evidence that the regulation allowing extension of the statutory warranty is necessary to reduce emissions, that it will provide any incentive to car companies to build defect free vehicle parts or that it ensures that car owners will replace the defective part.

CARB has failed to provide any evidence that would demonstrate that the extended warranties are an effective tool that will ensure either that the car companies will build more durable emissions related parts or that the defective parts for which the warranty is extended will actually get repaired. Despite having had years to assess the effectiveness of extended warranties, CARB continues to rely on the assumption that warranties are effective in reducing emissions without any evidence that would support this presumption.

Even CARB’s own emissions model does not show any benefit from extended warranties. Air Improvement Resource, Inc., an internationally recognized mobile sources emissions modeling and technology assessment firm, at the request of the aftermarket, examined CARB’s emissions models for PZEV and SULEV vehicles to determine what emissions benefit CARB credited to the extended warranties required for those vehicles. Its conclusion was that CARB estimated no in-use emissions benefit for the extended warranty. A copy of the Air Improvement Resource report is attached.

Moreover, CARB has made no effort to try to quantify the emissions reductions from using extended warranties instead of recalls or other more stringent enforcement measures.

Therefore, CARB has failed to show in any way that allowing extended warranties is necessary to reduce emissions.

Studies by both the aftermarket and CARB indicate that extended warranties will have a greater negative economic impact than the recall alternative on the small businesses that compose the independent aftermarket.

The staff report and the findings of the Board conclude, without support, that this rulemaking will have little or no economic impact on any industry, including the vehicle aftermarket. This conclusion was reached despite the findings of both the RAND Corporation and the Penway Corporation that there will be such an impact. The RAND Corporation predicted that aftermarket revenues due to the extended warranties on PZEV's would decline from 2.2 to 6.9 percent or \$375 million to \$1.3 billion. The Penway study found that revenues could decline by \$500 million in the years 2003 through 2008 on primary repair and maintenance work. Since the Penway study was performed back in 2000, we updated the study based on the same assumptions used in the RAND study. The updated numbers indicated that the extended warranty on PZEV's would cause a cumulative shift of \$8 billion in revenue from independent aftermarket to vehicle dealers between the years 2003 to 2020. Copies of the Rand and Penway studies and the update to the Penway study are attached hereto. Neither of these studies took into account the rulemaking that is now under consideration by CARB regarding emissions warranty information reporting, but the studies clearly demonstrate that extended warranties significantly hurt the small independent repair shops.

We again respectfully request that based on the absence of evidence that the extended warranties are effective, the lack of statutory authority and the large negative effect on the motor vehicle aftermarket, CARB eliminate any provision in the proposed regulation that allows it to impose an extended emissions warranty when the emissions reporting information indicates that the threshold for triggering corrective action has been exceeded.

Sincerely,

Aaron Lowe, Vice President, Government Affairs
Automotive Aftermarket Industry Association

John Goodman, President
Automotive Engine Rebuilders Association

William Gager, President
Automotive Parts Remanufacturers Association

Bob Constant, Chairman, Government Affairs Committee
Automotive Service Councils of California

David McClune, Executive Director
California Autobody Association

Marty Keller, Executive Director
California Automotive Business Coalition

Rodney Pierini, President & CEO
California Automotive Wholesalers Association

cc: Craig Moyer, Esq.