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08-3-5

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Clerk of the Board, Air Resources Board
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RE: Notice of Public Hearing to Consider Adoption of the 2008 Amendments to the California Zero Emission Vehicle Regulation

The Automotive Aftermarket Industry Association and the California Automotive Wholesalers Association respectively submit the following comments regarding amendments to the California Zero Emission Vehicle Regulation.

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.

Indeed, the California State Legislature appeared to understand the importance of a competitive repair market to the State's clean air goals when it passed SB 1146 which requires that manufacturers provide independent repair shops with the same information and tools that are available to the franchised new car dealer. In that bill the legislature stated that "…it is the important policy of this state to encourage competition so that consumers have choices available to them in the service, repair and parts used in the service and repair of motor vehicles."

The California Air Resources Board (CARB), to its credit, worked with the aftermarket to promulgate effective regulations that would implement this legislative initiative. This joint effort is helping to ensure that motorists will continue to obtain effective and affordable repairs for their emissions systems whether they patronize franchised new car dealers or one of our independent shops.

However, CARB staff continues to act contrary to the intentions of the legislature in ensuring competition by supporting extended warranties that act to reduce consumer choice and convenience, and threaten the economic viability of the independent aftermarket. A key example is the enactment in 1998 of regulations as part of the LEV II program that would extend the emissions warranty from the statutory 3 years/50,000 miles to 15 year/150,000 mile coverage. While CARB claimed that such action was needed to ensure that car companies build durable vehicle emissions systems, the staff had absolutely no evidence to support such action.

Now, the CARB staff is once again ignoring the legislative intent to ensure a competitive auto repair market by proposing to increase the number of vehicles that would need to be warranted for 15 years/150,000 miles. As with the original LEV II rulemaking, the aftermarket groups strongly oppose this proposal for the following reasons:

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

- CARB has no evidence that extending the warranty will provide any incentive to car companies to build more durable or defect free vehicle parts or that that car owners will be sufficiently aware of the extended warranty so that they can obtain replacement of the defective part without cost.

- Studies by both the aftermarket and CARB indicate that extended warranties have a negative economic impact 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 clearly lacks any statutory authority to implement a rulemaking that extends the emissions warranty beyond the statutorily mandated 3 years/50,000 miles on all parts and 7 years/70,000 miles on higher priced repairs. While CARB may claim as they have in the past that both the NMOG credit and SULEV are options that the vehicle manufacturers are not forced to use, we find that this argument is erroneous. Clearly, a vehicle manufacturer that wants to obtain credit through either program has no option but to increase the warranty. Moreover, the entire regulation is comprised of a menu of options that the vehicle producer may use to meet its NMOG and ZEV credits. The SULEV and NMOG credit options proposed by the staff would be just two more options that the Board is offering which the car companies choose to adopt into their vehicle fleet mix in order to meet the State's emissions requirements. If CARB can make the case that the NMOG and SULEV are only options and therefore are not covered under the warranty statute, than a similar case could be made for each of the menu of options now offered the car companies under the current program. I do not believe that such action would meet the intent of the legislators who enacted the warranty provisions.

CARB has no evidence that extending the warranty will provide any incentive to car companies to build defect free vehicle parts or that it ensures that car owners will obtain replacement of the defective part.

Although CARB has required manufacturers to extend warranties on certain parts in the past, there is no evidence that these programs have been effective in ensuring that the vehicle owner obtains the needed repair. In fact, CARB has had emissions warranties in place since the seventies and has no evidence that they are effective in improving vehicle durability or are a consumer benefit. In response to the aftermarket petition challenging CARB's assertions that warranties were needed to ensure more durable vehicles, the agency could only produce a declaration by Steven Albu that "based on my experience, I believe that the extension of the warranty period for PZEVs to 15 years or 150,000 miles, whichever occurs first, has made and will continue to make a significant contribution to the production of vehicles with reduced emissions over the warranty extension period." Interestingly enough, nowhere in Mr. Albu's declaration does he cite any studies or other evidence to support his opinion.

Further, a CARB sponsored study that was undertaken by the RAND Corporation to determine the economic threat to the aftermarket from extended warranties failed to uncover any evidence that the extended warranties provide incentives for more durable emissions systems. Specifically, the study states that "there appear to be no empirical studies that examine the effects of extended vehicle warranties on durability." The study also states: "Overall, it thus seems likely that durability of emission control systems will improve over time even absent extended emissions warranties."

Finally, CARB has no evidence that extending the warranty actually brings the vehicles in for repairs -- which should be one of the primary objectives of this action. Based on discussions we have had with staff, CARB appears to be content with extending the warranty and not caring whether or not the parts will be replaced. Given the length of time that CARB has had warranties in place for emission parts, it should be able to point to some evidence that this approach is effective in meeting its objective.

Studies by both the aftermarket and CARB indicate that extended warranties have negative economic impact on the small businesses that compose the independent aftermarket.

As stated above, as part of the CARB LEV II rulemaking in 1998, CARB required the staff to study the economic impact of the extended warranties on the independent aftermarket. The study performed by the RAND Corporation predicted that 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. A study undertaken by the market research firm, Penway Corporation for the Automotive Aftermarket Industry Association found that revenues could decline by $500 million in the years 2003 through 2008 on primary repair and maintenance work. Since this 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. None of these studies took into account the rulemaking that is now under consideration by CARB which would extend the number of vehicles that would be certified under the PZEV program and therefore come with the 15/150 warranty. This rulemaking can only increase the negative economic interest on our industry.

The shift in business to the new car dealer extends beyond the scope of the extended warranty itself. First, car owners may assume that the part causing the emissions failure and other parts are also covered by the extended warranty and, if they find out this is not true, simply decide to have parts repaired/replaced by the dealer because the vehicle is already there. Car owners also may be fearful of jeopardizing the emissions warranty, and therefore return to the new car dealer for all repairs even though other parts may not be covered. Both of these effects significantly benefit new car dealers over the independent vehicle repair shops where car owners would normally obtain their repairs. In fact, most studies indicate that car owners patronize independent shops 70 to 80 percent of the time once their warranty has expired. However, where an extended warranty exists, as discussed above, while they are at the dealership, not only do car owners obtain the emissions repairs, they also will obtain any other "drag along" repairs that they might need to have done or which might be recommended when the vehicle is inspected.

Today's motorist does not have time to move from one repair shop to another for different repairs and will attempt to minimize trips. The RAND study found in its household study that 60 percent of respondents, if they were aware that their warranty had been extended, would first go to the dealer if either the vehicle failed smog check or their check-engine light came on. Absent an extended warranty, the study found that 37 percent of car owners return to dealers for vehicles between three and 11 years old and 10 percent use dealers for vehicles between 12 and 16 years old. A large percentage of those that do have the warranted work at the dealer also would either have other work done at the dealer or would get an estimate.

Therefore, we urge that the extended warranty provision be removed from this rulemaking. At minimum, CARB must analyze the impact of this new rulemaking on the small independent repair shops in the State of California.

In conclusion, the aftermarket requests that CARB remove the extended warranty provisions from this rulemaking. In lieu of its removal in today's hearing, we request that CARB undertake a economic impact study and resolve to reexamine the need for an extended warranty provisions at a future rulemaking.

Thank you for your attention and we are available to respond to any questions regarding our testimony.

Sincerely,

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

Rodney Pierini, President & CEO
California Automotive Wholesalers Association,