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August 2, 2012

Federal Trade Commission  
Office of the Secretary  
Room H – 113 (Annex B)  
600 Pennsylvania Avenue, NW  
Washington, DC 20580

BY ELECTRONIC MAIL

Re: Used Auto Parts Guides Review  
16 CFR Part 20  
Project No. P127702

Dear Sir:

This firm represents the Automotive Parts Remanufacturers Association (APRA). APRA is the trade association for those companies which collect used motor vehicle parts and restore them to functionality through the process described as “rebuilding” or “remanufacturing” thus extending the life of the product. Currently, the Association represents over nine hundred companies which remanufacture motor vehicle parts and their suppliers. The parts remanufactured by members of APRA are for automobiles, trucks, buses, and off-highway vehicles such as construction and industrial equipment and farm machinery. The membership of APRA is international, but the large majority of the members are U.S. companies.

Rebuilt/remanufactured vehicle parts constitute a significant portion of the parts resold for use on motor vehicles after they have left the dealer’s showroom. For many types of parts, they represent by far the largest percentage of sales in the motor vehicle aftermarket.

For all makes and models of vehicles, rebuilt/remanufactured parts sell for about 20-40% below the cost of new parts. They thus provide a lower priced alternative to new parts for people of modest means, the elderly, students, small businesses – and government agencies. For older model vehicles and other equipment, a rebuilt/remanufactured part may be the only replacement alternative (other than an un-restored used part) because the original manufacturer of the vehicle will have exhausted its supply of new parts. If vehicle parts were no longer remanufactured, almost 25% of the U.S. road fleet and an even greater percentage of the off-road vehicles would have to be retired well before they are functionally obsolete.

APRA is vitally interested in the Guides for the Rebuilt, Reconditioned and Other Used Automobile Parts Industry, their application to the used motor vehicle parts industry and whether they should be retained, modified or amended by the FTC. The Association believes that the Guides are an important tool to ensure that previously used motor vehicle parts are properly identified and that parts labeled as "rebuilt" or "remanufactured" have received reconditioning appropriate to the use of those terms. Therefore, except for a few modifications suggested later in this letter, the Association believes that the Guides should be retained in their current form.

There is a distinct difference among parts that are rebuilt/remanufactured and those that are merely repaired or reconditioned. APRA promotes the Guides among its members and the rest of the motor vehicle industry as defining the minimum standards for rebuilding/remanufacturing parts and for labeling rebuilt and remanufactured products. Without these accepted standards, the Association believes that the instances when parts are improperly labeled as "rebuilt" or "remanufactured" or not labeled at all and sold as new would substantially increase. As a result, the purchasers of used vehicle parts will become confused; may be negligently or intentionally misled, will purchase parts which will differ in quality substantially from what they believe they are buying and will suffer monetary loss.

The following comments are intended to address the issues raised in the request for public comments as they relate to rebuilt/remanufactured parts. The Guides also relate to the marketing and sale of used parts which are either sold "as is" or have not been repaired or reconditioned sufficiently to qualify as rebuilt or remanufactured. Our comments will not specifically address these other types of parts except as may be necessary to demonstrate why certain portions of the Guides are necessary to distinguish these parts from those which are rebuilt/remanufactured or need to be changed for that reason or other reasons. Nevertheless, APRA believes that the Guides should continue to encompass all these other types of used parts.

#### SPECIFIC QUESTIONS RAISED IN REQUEST

*1 Are the Guides still needed? Why or why not?*

Absolutely, the Guides are still needed. The family automobile (or automobiles) is the largest asset of most American families outside of their homes. The care and maintenance of these vehicles is a major and ongoing expense and involves an industry, the motor vehicle aftermarket, which is larger than the motor vehicle manufacturing industry and involves service facilities, retail outlets, parts manufacturers, parts rebuilders/remanufacturers, jobbers and warehousemen.

Consumers and the technicians who service their vehicles must often choose from a wide variety of parts available for repairing the vehicles. Decisions must be made. Should a consumer

buy a new part or a used part when repairing a vehicle? Should a mechanic install a repaired part or a part that is remanufactured and thus is like new? If a new part is bought, should the consumer buy the vehicle manufacturer's brand or a part manufactured by an independent supplier? If the consumer buys a used part, what is the difference between used, reconditioned, repaired, rebuilt and remanufactured?

While the consumer must make these decisions, the Guides help the consumer to do so. They ensure that he or she is getting the type and quality of part that is being represented to him and that a part labeled as "rebuilt" or "remanufactured" has been submitted to at least the minimum processing necessary to use those terms. Because of the variety of parts and because even a knowledgeable consumer might have difficulty distinguishing whether a part is new, has been rebuilt/remanufactured or is used and unrepaired, the Guides are necessary. Most rebuilt/remanufactured parts are indistinguishable from new. Even used parts once cleaned may look new unless some wear or deterioration is obvious. Therefore, identification of the condition of the part may not be able to be made by visual inspection, even by a trained service technician, and therefore proper labeling is essential to assure that neither the technician nor the vehicle owner is misled.

The Guides also provide a concrete statement of what must be done to a part before it can be labeled "rebuilt" or "remanufactured." There is presently no industry association or group which provides comprehensive definitions for these terms or the procedures involved in rebuilding/remanufacturing operations. The Automotive Engine Rebuilders Association has adopted Standards of Service for both gasoline and diesel engines. These Standards are specific to engines and no similar standards exist for small parts. In addition these Standards incorporate the FTC Guides. Also, the Society of Automotive Engineers (SAE) has adopted several technical procedure recommendations for certain rebuilt or remanufactured parts, but these address particular procedures for specific parts and do not deal with the basics applicable to all such parts. Therefore, there is no general rule or guide which embraces minimum rebuilding/remanufacturing requirements for all motor vehicle parts except the Guides. Moreover, there are no requirements known to us which encompass any requirements for used, repaired or reconditioned parts other than the Guides.

Therefore, if the Guides were to be repealed (or changed to delete the definitions for rebuilding and remanufacturing), there will be no minimum quality standards connected with these terms.

The Guides are also necessary because of the increasing importation of foreign new and rebuilt parts. While most parts of American origin have their quality clearly shown and are in compliance with the Guides, used parts imported (or rebuilt and then imported) from foreign sources often do not. We do not know whether such failures are related to lack of knowledge of the labeling

requirements, negligence or intentional efforts to mislead consumers, but suspect that all three may be the case. Regardless, the lack of compliance in connection with imported parts creates problems for consumers in this growing part of the industry.

Therefore, the FTC should clarify the Guides and take other steps to ensure that they are complied with by the importers of foreign used parts.

Among the steps it should take are:

- i. Amend Section 20.0 to make it clear that the Guides apply to any industry product imported into the United States.
  - ii. Initiate efforts to insure greater awareness of the Guides among importers of industry products.
  - iii. Establish inspection and enforcement protocols with the Customs Service to ensure that Customs is aware of the Guides and can point out violations to importers and/or take other enforcement actions, if necessary, especially with respect to rebuilt/remanufactured parts which may appear to be new.
  - iv. Monitor compliance by importers of industry products.
2. *What benefits do the Guides provide to consumers? What evidence do you have or know of that shows these benefits?*

The primary benefit to consumers is that the condition of used and repaired parts cannot be misrepresented and they cannot be sold as new parts. The Guides ensure that parts that are not new are properly labeled. Moreover, they also let consumers know what work (if any) has been performed on a used part prior to its resale to them. This will prevent consumers from confusing a part that has merely been cleaned and repaired with one that has undergone the more thorough remanufacturing/rebuilding process. Without the labeling required by the Guides, in many cases, if a thoroughly cleaned, used part is placed next to a rebuilt part and a new one, most people could not tell one from the other.

Proper identification also allows consumers to purchase a rebuilt or remanufactured part at a lower price while still being assured of a quality product. This is important to the elderly, minorities, young people and others of modest means who cannot afford the high cost of new parts but wish to keep their vehicles in good condition, as well as “cost conscious” consumers from every part of American society. Without disclosure requirements, these consumers could be misled into

purchasing parts of questionable quality or forced to break their budgets by buying new parts to ensure quality.

Consumers also benefit because a number of states now have laws which require a service technician to advise a customer when the technician installs a used or a rebuilt part, rather than a new one, when making a repair. Identification of those parts by the technician would be more difficult and the laws less effective without the labeling required by the Guides.

3. *What change, if any, should the Commission make to the Guides to increase their benefits to consumers?*

Section 20-1 of the Guides should be amended to make it clear that a part which is removed from a vehicle and marketed without any work being done on it can only be labeled "used" or "secondhand." The Guides are unclear on this point. While they distinguish between "new" and "used" parts and between "rebuilt/remanufactured" and other used parts, they do not require any distinction between a part that is otherwise repaired or reconditioned and one that is sold for reuse without any work being performed on it.

The Guides would also better serve consumers if they required that the original trademarks be left on a rebuilt or remanufactured part. The original trademark would provide both the consumer and the service technician greater assurance that the part was made to work with the vehicle; would fit into it and would interact appropriately with the remaining parts of the vehicle. Concerns that the trademark would lead a consumer to believe he or she is purchasing a new product or one rebuilt or remanufactured by the original manufacturer are not supportable because of the Supreme Court finding in the Champion Spark Plug case (331 U.S. 125, 67 S. Ct 1136) and the requirements of the present Guides to fully disclose the fact that the part was rebuilt or remanufactured and who performed such work. Therefore, the Association would strongly recommend that the Guides be amended to prohibit the removal of the original trademarks when a part is rebuilt or remanufactured.

As stated above, the Guides should also be amended to make it clear that they apply to parts imported into the United States.

a. *How would the changes affect the costs and benefits of the Guides for consumers?*

These changes would not impose any additional costs on consumers and would benefit consumers in the ways mentioned above.

b. *How would the changes affect the costs and benefits of the Guides for the businesses, particularly email businesses?*

The changes would have no direct benefits or impose any additional costs for any businesses, including small businesses, except for the initial costs imposed upon importers to print labels that properly reflect the condition of their products.

*c. What evidence do you have or know of that supports these changes?*

We have no specific evidence that would support these changes. However, consumers would be benefited because confusion regarding the quality of the parts they are purchasing would be reduced for unrepaired and repaired parts as well as for imported and repaired or reconditioned parts.

*4. What costs have the Guides imposed on consumers?*

To our knowledge the Guides have not imposed any costs on consumers.

*5. What changes, if any, would reduce the Costs the Guides impose on consumers?*

To our knowledge, the Guides do not impose any costs on consumers.

*a. How would the changes affect the costs and benefits of the Guides for consumers?*

See response to question 3a.

*b. How would the changes affect the costs and benefits of the Guides for businesses, especially small businesses?*

These changes should not affect any costs for business, including small businesses, because new labeling is not being required only a minimum amount of more specific labeling.

*c. What evidence do you have or know of that supports these changes?*

Not applicable.

*6. What benefits, if any, have the Guides provided to businesses, and in particular to small businesses? What evidence do you have or know of that supports these benefits?*

The Guides have allowed rebuilders and remanufacturers, most of whom are small businesses, to demonstrate that their parts meet a minimum quality standard; have allowed them to offer longer warranties on their parts to their customers because the condition indicated by these

terms is now more readily accepted by consumers as indicating a product with a higher quality than one which is merely repaired; and have created a more professional and responsible rebuilding/remanufacturing industry.

The Guides also provide the rebuilding industry with a clear means of complying with the Champion Spark Plug case (331 U.S. 125, 67 S. Ct 1136). In that case, the Supreme Court held that rebuilt products could be sold without removing the trademark of the original manufacturer as long as the identity of the rebuilder was adequately disclosed. The requirements of Section 20.3 allow rebuilders to comply with that case. Without that section, any disclosure made by a rebuilder might be challengeable by the original manufacturer as being insufficient under Champion.

7. *What changes, if any, should be made to the Guides to increase their benefits to businesses, especially small businesses?*

American remanufacturers face increased competition from foreign companies which import new, used and remanufactured parts. In many cases, these parts are not properly labeled and do not comply with the Guides. Used or minimally repaired parts can be marketed to be of the same quality as the same as new or remanufactured ones thus unfairly competing with those products which are of a higher quality. Companies which are complying with the Guides would be benefitted if it was clear that the Guides apply to imported as well as domestic products. Therefore we would recommend the Commission:

- i. Amend Section 20.0 to make it clear that the Guides apply to any industry product imported into the United States.
- ii. Initiate efforts to insure greater awareness of the Guides among importers of industry products.
- iii. Establish inspection and enforcement protocols with the Customs Service to ensure that Customs is aware of the Guides and can point out violations to importers and/or take other enforcement actions, if necessary, especially with respect to rebuilt/remanufactured parts that may appear to be new.
- iv. Monitor compliance by importers of industry products

a. *How would the changes affect the costs and benefits of the Guides for consumers?*

APRA believes that the changes would benefit consumers by further assuring them of the quality of the parts they are purchasing and would impose no additional costs on them.

*b. How would the changes affect the costs and benefits of the Guides for businesses, especially small businesses?*

The changes would require importers of industry products to properly label their goods and they might incur some initial minimal additional cost in changing their labels but there would be no ongoing costs.

*c. What evidence do you have or know of that supports these changes?*

No specific evidence but over the years the Association's members have encountered many instances where the foreign parts were not properly labeled.

*8. What costs, including costs of compliance, have the Guides imposed on businesses, especially small businesses? What evidence do you have or know of that supports these costs?*

There are no significant burdens or costs imposed on any businesses complying with the Guides.

*9. What changes, if any, should be made to the Guides to reduce the costs imposed on businesses, particularly small businesses?*

Because the Guides impose no significant costs on businesses, no changes are necessary to reduce those costs.

*a. How would the changes affect the costs and benefits of the Guides for consumers?*

Not applicable.

*b. How would the changes affect the costs and benefits of the Guides for businesses, especially small businesses?*

Not applicable

*c. What evidence do you have or know of that supports these changes?*

Not applicable.

*10. What evidence, if any, has become available since 2002 concerning consumer*



*perceptions of Industry Products (used vehicle parts and assemblies of parts, such as engines and transmissions, contain used parts)? Does this new information indicate that the Guides should be modified? If so, why does the information indicate the Guides should be modified, and how should they be modified?*

The motor vehicle service industry is now over one hundred years old. Vehicle parts have been rebuilt/remanufactured in large numbers since at least World War II. While significant changes have occurred in the design of such parts, their functioning through the use of computers and other electronic devices in the vehicle and the method by which repairs to them are made, the efforts that go into producing a rebuilt/remanufactured part, a reconditioned part or even a repaired part have not changed significantly. For that reason we are not aware of any evidence that the consumer perception of Industry Products has changed in any significant manner since 2002 and do not believe such to be the case.

11. *The Guides now require that certain disclosures be clear and conspicuous. Should the Guides define “clear and conspicuous”? Why or why not? What information should be in a definition of “clear and conspicuous”?*

When the Guides were amended in 2002 extensive changes were made to Section 20.1 regarding the disclosure requirements. Previously Section 20.1(b)(2) stated

“The disclosure required by this section shall be of such size or color contrast and so placed as to be readily noticeable to purchasers or prospective purchasers reading advertising, sales promotional literature or invoices containing same, or reading any representation as to content on the container in which an industry product is packed, or inspecting an industry product before installation, or with a minimum of disassembly after installation.”

As amended in 2002 only “clear and conspicuous” disclosure is now required. APRA has no idea why this change was made by the Commission. The earlier language was certainly clearer and provided industry participants with a better understanding of how the quality of the part and the identity of the producer of the part had to be identified. We would recommend that language substantially similar to the earlier language be included to define a minimum of what “clear and conspicuous” means.

12. *Should the Guides be changed to specify when an installer of an Industry Product (e.g. mechanic or technician) must disclose the use of the Product to a consumer?*

Participants in the industry operate on a national and even international basis. Therefore, it is necessary for the Commission to adopt guidelines which are applicable to the entire country.

However, installation of industry products is done by local businesses dealing with, for the most part, local customers. The state or even local government is in a better position to determine if regulation of disclosure by installers is necessary and what form it should take. Many states and municipalities have already adopted disclosure requirements for the installers within their jurisdiction and these differ in form and content. The Association believes that the states and localities are in a better position to determine if it is necessary to regulate disclosure for installers within their jurisdiction and what form that regulation should take. Therefore we believe that the Commission should not adopt disclosure regulations for installers.

*If so, a. What evidence, if any do you have that shows that disclosure of the installation of an Industry Product is not being made to consumers at an appropriate time?*

Not applicable.

*b. When should the installer disclose the use of an Industry Product?*

Not applicable.

*13. How have the Guides affected the flow of truthful information to consumers? How have the Guides affected the flow of deceptive information to consumers? What evidence do you have or know of that shows the effect of the Guides on the flow of either truthful or deceptive information to consumers?*

Absent the Guides, businesses that recover used vehicle parts and resell them for use in the vehicle aftermarket would have no obligation to disclose the actions that were taken to repair or reconstruct such part prior to their resale. Businesses which merely cleaned up a part or merely gave it minimal repair could market their products to consumers as equivalent to those which have been rebuilt/remanufactured and offer those products at a lower price because no extensive work would have been performed on them. The Guides create a greater likelihood that the consumer will be informed about the quality of the used product he or she is purchasing and will be better able to make a decision as to the value of spending more for a rebuilt/remanufactured part or spending less for one that is merely repaired or used and unrepaired.

The Guides have affected the flow of deceptive information to consumers to the extent that they do not allow an aftermarket parts vendor to advertise or sell a motor vehicle part without providing evidence as to the quality of that part. They also make it difficult for an unscrupulous service facility or retailer to misrepresent a part as new when the fact that it has been remanufactured and the name of the manufacturer are on the part.

We have no evidence of either of these effects because it is very difficult to surmise what would be happening now if the Guides were not in effect.

*14. What evidence is available concerning the degree of compliance with the Guides? What does this evidence indicate about the whether the Guides should be kept, changed, or eliminated?*

APRA has worked very hard over the years to encourage members of the industry to comply with the Guides and to properly mark their parts. A walk through any parts store will show that the packaging of parts is clearly marked to show whether they are rebuilt/remanufactured or new. The Guides also have a very positive impact on the advertising of parts because most parts producers now clearly indicate the type of the parts they are selling to retailers and service facilities and most retailers advertise the type of parts in their marketing materials for consumers. If the Guides were eliminated, in the short term, it is unlikely that the representations concerning the type of parts being sold would be as universal and over a longer period, the trend would be away from the full disclosure that the Guides require.

*15. Are any parts of the Guides no longer needed? Is so, which parts? What evidence do you have or know of that supports your views?*

The Association believes that all of the Guides should be retained.

*16. What changes, if any, should be made to the Guides to account for changes in technology or economic conditions?*

The Association does not believe that any changes are necessary to account for changes in technology or economic conditions. While the manner in which parts are rebuilt/remanufactured has become more sophisticated over the years due to changes in the technology affecting use of the parts, the processes required to remanufacture a part, i.e., disassembly, cleaning, restoring or replacing of missing or broken parts, machining or rewinding as necessary and testing have not changed.

*a. How would the changes affect the costs and benefits of the Guides for consumers?*

Not applicable.

*b. How would the changes affect the costs and benefits of the Guides for businesses, especially small businesses?*

Not applicable.

*c. What evidence do you have or know of that supports these changes?*

Not applicable.

*17. What acts or practices related to Industry Products do the Guides currently not address, but which they should address? What evidence do you have or know of that supports your views?*

See responses to questions 1, 3 and 11.

*18. Is there a need for efforts to educate consumers or businesses about the Used Auto Parts Guides? Is so, what types of educational activities should the Commission undertake?*

We believe that it is important that consumers, installers and the businesses involved in the motor vehicle parts and service industry be aware of the Guides, what they require and how they affect the decisions that are made by consumers when purchasing motor vehicle parts.

The Association believes that knowledge of and compliance with the Guides is critical to the perception of the products of its members in the motor vehicle aftermarket and the ability of consumers to make informed decisions about the part they are installing in their vehicles and the costs associated with the quality part they select.

For many years, APRA has published the Guides as part of its annual membership directory and promoted them to its members in its other publications and communications with its members. In the past it has also published brochures for both consumers and installers which set forth in simple, direct language the difference between the parts options which they have.

APRA believes that its efforts have created a good understanding in the service technician of the various types of parts available. However, it would like to see the Commission make a greater effort to publicize the Guides among consumers. This could include a specific discussion of the Guides in the part of the Commission's web site devoted to consumer information; promotion of the Guides to various private organizations which work to disclose product and service information to consumers so that they can make better and more informed choices; and publication in a consumer directed brochure or notice of simple and easily understood explanations of the parts of the Guides which apply to consumers.

*19. The current Guides expressly exclude tires because when the Guides were last*

*amended the Commission had separate guides relating the advertising and selling of tires. These tire guides have since been eliminated. Should the Used Auto Parts Guides be changed to include tires? Why or why not? What evidence do you have or know of that supports your views?*

The Guides should not be changed to include tires. Tires are a distinct product from the motor vehicle hard parts which are the subject of the Guides. Reconditioned tires do not fit easily within any of the descriptions applied to used vehicle hard parts and those descriptions have either never been used in describing tires or their description means something different when applied to tires. Application of the Guides to used tire would more likely create confusion and misunderstanding among consumers and the service industry and would not help either.

20. *The current guides state that they apply to Industry products “designed for use in automobiles, trucks, motorcycles, tractors or similar self-propelled vehicles”. 16 CFR 20.0. Is this list adequate to describe the vehicles to which the Guides should apply or should other vehicles be expressly mentioned? If so, what other vehicles should be mentioned, and why? What evidence do you have or know of that supports your views?*

The list of vehicles to which the Guides should apply should be expanded to include all farm vehicles, construction vehicles and off-road vehicles. The products for these vehicles are similar (and in some cases the same) as those for the vehicles presently covered by the rule and are usually rebuilt/remanufactured by the same companies. Addition of these vehicles to the Guides would make it clear that parts for them are covered and would provide the same benefits to the consumers and installers of the parts for those vehicles as for automobiles and trucks. Application of the Guides to these vehicles would not cause any significant costs to the businesses which deal in these products because most of these businesses already provide parts for vehicles presently covered by the Guides and the only small cost for the others would be a one-time change to their product labels.

21. *Do the used Auto Parts Guides overlap or conflict with other laws or regulations, whether federal, state or local? If so, how?*

There is no conflict or overlap of which we are aware.

a. *What evidence do you have or know of concerning the conflicts?*

Not applicable.

b. *Should the Guides be changed because of these conflicts/ If so, how?*

Not applicable.

*c. Have the Guides helped make the advertising and selling of Industry Products more consistent across the country? If so, how?*

Yes. Most companies selling rebuilt/remanufactured parts distribute their products over a wide geographical area and they compete with many other vendors in those areas. This competition has compelled the companies to be more consistent nationally in the claims and representations that they make for their products so that they can compete nationally with their competitors.

*22. Are there foreign or international laws, regulations or standards concerning the advertising and sale of Industry Products that the Commission should consider as it reviews the Guides? If so, what are they?*

Many countries have judicial decisions that relate to use of trademarks on rebuilt/remanufactured parts and while the affect of them varies from country to country the trend has been to allow the rebuilder/remanufacturer to retain the trademarks (as the Supreme Court did in the US in the Champion case) as long as he does not misrepresent to the consumer that the product was rebuilt/remanufactured by the original manufacturer. However, these decisions are based on the individual laws of each country and should not be considered by the Commission in its review of the Guides.

We are not aware of any other countries that have adopted rules or guidelines regarding used parts which cover the same areas as the Guides.

*a. Should the Guides be changed to harmonize with these foreign or international laws, regulation or standards? Why or why not?*

Even if other such rules or guidelines exist, we do not believe that they should be considered in the review of these Guides. The vehicle aftermarket in the United States, especially with respect to the reuse of parts, is very different than in other countries. In the US, the reuse of parts was driven by the service facilities and by independent companies which sought to develop a market for parts that was not dominated by the original manufacturer of those parts. In other areas the market is driven by other factors.

*b. How would harmonization affect the costs and benefits of the Guides for consumers?*

Not applicable.

*c. How would harmonization affect the costs and benefits of the Guides for businesses,*

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*particularly small businesses?*

Not applicable.

Please feel free to contact me if you have any questions or wish further information on any issues raised in this letter.

Very truly yours,

/s/

Michael J. Conlon