



**Final Statement of Reasons for Rulemaking**  
Including Summary of Comments and Agency Responses

PUBLIC HEARING TO CONSIDER THE REGULATION TO  
REDUCE GREENHOUSE GAS EMISSIONS FROM VEHICLES  
OPERATING WITH UNDER INFLATED TIRES

**Public Hearing Date: March 26, 2009**  
**Agenda Item No.: 09-3-2**

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State of California  
AIR RESOURCES BOARD

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**I. GENERAL DISCUSSION**

This Final Statement of Reasons provides an update to the *Staff Report: Initial Statement of Reasons for Proposed Rulemaking – Proposed Regulation for Under Inflated Vehicle Tires* (Staff Report). The Staff Report was released to the public on February 5, 2009 and is incorporated by reference herein.

**I.a Description of Board Action**

At its March 26, 2009 public hearing, the Air Resources Board (ARB or Board) adopted Resolution 09-25 approving the adoption of section 95550, title 17, California Code of Regulations (CCR), which establishes requirements designed to reduce greenhouse gas emissions from vehicles operating with under inflated tires (Proposed Regulation). In summary, automotive service providers (ASPs) in California offering to perform automotive maintenance or repair services on passenger vehicles (less than 10,000 pounds gross vehicle weight rating) would be required to perform a tire pressure service (check and inflate) on the vehicle. The regulation further requires all ASPs to document that a tire inflation service was performed and what the tire pressures were after the service was completed.

The rulemaking was initiated by the publication of the Notice of Public Hearing to Consider the Adoption of Proposed Regulation to Reduce Greenhouse Gas Emissions from Vehicles Operating with Under Inflated Tires (45-Day Notice) on February 5, 2009. Written comments were received during the 45-day public comment period, which closed on March 26, 2009; the date of the public hearing on the proposed regulation. The Board also received oral comments made by concerned stakeholders and affected businesses on the day of the public hearing.

In response to comments received after publication of the Staff Report, ARB staff presented proposed 15-day modifications to the Board members at the public hearing. The Board unanimously approved the regulation with staff's

proposed modifications with the understanding that staff would evaluate how costs associated with the tire reference resource can be minimized, address concerns of acceptable forms of record keeping, and resolve issues raised by affected businesses.

In addition, staff also proposed to continue to work with the Bureau of Automotive Repair (BAR) to address issues pertaining to the service providers' role in implementing the check and inflate requirement. BAR is concerned that under the Automotive Repair Act, licensed automotive service providers are prohibited from performing repair services unless authorized by the customer, and are required to allow the customer the chance to decline the service.

## **I.b Modifications to the Original Proposed Regulation**

The resolution directed the Executive Officer to incorporate the modifications into the proposed regulatory text, with such other conforming modifications as may be appropriate (including modifications resulting from addressing stakeholder comments as directed by the Board at the March 26, 2009 hearing), and to make the modified regulatory language available for a supplemental comment period of 15 days (First 15-Day Modifications). The Notice of Public Availability of Modified Text for the Regulation to Reduce Greenhouse Gas Emissions from Vehicles Operating with Under Inflated Tires (First 15-Day Notice), which is incorporated by reference herein, was released for public comment on October 23, 2009 and remained open through the close of business on November 09, 2009.

### Summary of First 15-Day Modifications

In the First 15-Day Notice, ARB proposed the following modifications to the text of the regulation:

1. Provided additional clarification in subsection 95550 (a) by specifying that under inflated tires are to be inflated to the recommended tire pressure rating, not the tire manufacturers maximum rated pressure commonly found on the tire sidewall.
2. Simplified the Applicability of the Proposed Regulation in subsection 95550 (b)(2) by deleting subparts (E) and (F); vehicles with a GVWR over 10,000 pounds and tires determined to be unsafe by an ASP, respectively.
3. Modified the following definitions in subsection 95550 (c) as indicated below. Definitions stated as “old” are definitions from the original Proposed Regulation Order contained in the Staff Report for the Proposed Regulation. Definitions considered “new” are revised definitions provided in the First 15-Day Modifications.
  - Deleted old definition (1) for “ANSI B40.1 Grade B Tire Pressure Gauge.” A replacement definition with modifications is provided for “Tire Pressure Gauge” (see new definition (11)).
  - Provided additional clarification by excluding “repairs” from old definition (3) for “Auto Body and Paint Facility” (see new definition (2)).
  - Extended old definition (5) for “Auto Parts Distributor” to include “Auto Parts Retailer” (see new definition (4)).

- Modified old definition (6) for “Auto Wrecker or Dismantler” to conform to the similar definition provided in section 220 of the California Vehicle Code (see new definition (5)).
- Modified old definition (8) for “Automotive Service Provider (ASP)” to exclude individuals not engaged in business that perform or offer to perform automotive maintenance or repair services (see new definition (7)).
- Modified old definition (9) for “Gross Vehicle Weight Rating (GVWR)” to conform to the similar definition provided in section 350 of the California Vehicle Code (see new definition (8)).
- Provided new definition (9) “Recommended Tire Pressure Rating” which specifies the recommended level to which the vehicle’s tires must be inflated, and the location on the vehicle where the specification can be found. If the vehicle manufacturer’s recommended tire pressure rating is not available, or the vehicle is equipped with tires not meeting the vehicle manufacturer’s tire specifications for that vehicle, then the Recommended Tire Pressure Rating shall mean the Tire Inflation Reference.
- Modified old definition (9) “Tire Inflation Guidebook or Yearbook” to “Tire Inflation Reference” that could be any industry recognized resource (for example, book or electronic media) that contains tire pressure inflation specifications for original and non-original equipment sized tires and wheels (see new definition (10)).
- Provided new definition (11) “Tire Pressure Gauge” for a device that is capable of measuring the air pressure of passenger vehicle tires.
- Provided a new definition (12) for “Total Permissible Error” to imply the allowable accuracy error indicated by the total difference in the true value and the indicated value during measurement.
- Provided additional clarification in old definition (11) for “Under Inflated Tire” by specifying that an under inflated tire is one whose tire pressure is one pound per square inch (psi) or more below the Recommended Tire Pressure Rating (see new definition (13)).
- Modified old definition (12) for “Unsafe Tires” to mean any tire considered unsafe in accordance with standard industry practices, due to tire tread wear or irregularity, age, or damage. Examples of unsafe tires include any tire with exposed ply or cord, sidewall crack, bulge, knot, or ply separation (see new definition (14)).

- Modified old definition (13) “Vehicle Service Invoice” to imply a document maintained by the automotive service provider and given to the customer that provides a list of the service repairs performed and the associated costs (see new definition (15)).
  - Provide new definition (16) “Vehicle Tires” to mean the four<sup>1</sup> operating tires on the vehicle.
4. Modified subsection 95550 (d)(1) to require that by July 1, 2010, all automotive service providers are required to do the following:
- Check and inflate with air or nitrogen each vehicle’s tires to the recommended tire pressure rating at the time of performing any automotive maintenance or repair service.
  - Indicate on the vehicle service invoice that a tire inflation service was completed and the tire pressure measurements after the service was performed. If the tire inflation service was not performed, the automotive service provider must further indicate on the vehicle service invoice the reasons why the service was not completed<sup>2</sup>.
  - Perform the tire pressure service using a tire pressure gauge that has a total permissible error no greater than +/- two (2) pounds per square inch (psi).
  - Have access to an industry recognized Tire Inflation Reference resource that is current within three years of publication, and
  - Keep a copy of the vehicle service invoice for a minimum of three years, and make the vehicle service invoice available to ARB, or its authorized representative upon request.
  - Deleted requirement (d)(1)(F) pursuant to the similar requirement in (d)(1)(E) above.
5. Provided a new subsection 95550 (d)(2) that stipulates an automotive service provider need not meet the requirements of subsection 95550 (d)(1) above when performing a free check and inflate service at the request of the customer.
6. Provided a new subsection 95550 (d)(3) that stipulates conditions when an automotive service provider need not perform the check and inflate

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<sup>1</sup> In response to first 15-day public comments received, this definition was later modified to mean all operating tires on the vehicle. The change is presented as a change in the Second 15-Day Modifications.

<sup>2</sup> This requirement was modified in the Second 15-Day Modifications.

service requirements of subsection 95550 (d)(1) above. The check and inflate service requirements are not required when:

- The tires are on a vehicle with a GVWR over 10,000 pounds, or
  - The tires are determined by the automotive service provider to be unsafe, as defined in new definition (14) above, or
  - The customer provides documentation that the tires have received a check and inflate service within the preceding 30 days<sup>3</sup>.
7. Provided further clarification in subsection 95550 (d)(4) that customers with vehicle tires inflated with pure nitrogen gas are subject to the requirements in subsection (d)(1)(A through E), but may refuse the inflation portion of the service if a nitrogen inflation system (i.e., a source of pure nitrogen) is not available at the time of the service.
  8. Replaced old subsection 95550 (e) with a new section that specifies penalties and injunctions that reads as follows:

#### **Penalties and Injunctions**

- Penalties may be assessed for any violation of this article pursuant to Health and Safety Code section 38580. Each day that a violation occurs can be considered to be a separate offense.
  - Any violation of this article may be enjoined pursuant to Health and Safety Code section 41513.
9. Deleted old subsection 95550 (f) related to Enforcement.
  10. Provided further clarification in new subsection 95550 (f) that nothing in this section allows automotive service providers to operate in violation of other applicable laws, including those in the Health and Safety Code (HSC), the Business and Professions Code (BPC), and any other applicable law, ordinance, rule, or requirement as stringent as, or more stringent than the requirements in subsection (d) of the regulation.

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<sup>3</sup> This requirement was modified in the Second 15-Day Modifications.



## **I.c Second 15-Day Modifications to the Proposed Regulation**

The First 15-Day Modifications to the originally proposed regulation did not include any provisions for the customer to decline the tire pressure service under ordinary circumstances. The Bureau of Automotive Repair (BAR), California Department of Consumer Affairs, recommended further modifications that would require automotive service providers to check and inflate the vehicle tires unless the customer expressly declines the service. In response to the BAR recommendations, regulatory requirements were proposed to clarify that a customer may decline the tire pressure service if the customer has performed a tire pressure service within the last 30 days, or will perform a tire pressure service within the next 7 days (Second 15-Day Modifications). The Notice of Public Availability of Modified Text for the Regulation to Reduce Greenhouse Gas Emissions from Vehicles Operating with Under Inflated Tires (Second 15-Day Notice), which is incorporated by reference herein, was released for public comment on January 14, 2010 and remained open through the close of business on January 29, 2010. A summary of the additional changes in the Second 15-Day Modifications is presented below:

### Summary of Second 15-Day Modifications

In the Second 15-Day Notice, ARB proposed the following modifications to the text of the regulation:

Staff modified the Requirements and Compliance Deadlines (subsection 95550 (d)) to ensure that automotive service providers comply with the regulation and customers have the right to decline the tire pressure service (check and inflate) under certain conditions. Specifically, the following modifications were proposed:

1. The regulatory requirements in subsection (d)(1) were modified to only clarify what the proposed regulation requires the automotive service provider to do. In addition, the requirement in subsection (d)(1)(B) for automotive service providers to indicate on the vehicle service invoice why the service was not completed was moved and deferred to section (d)(6).
2. The regulatory requirements in subsection (d)(3)(C) were modified to specify that the tire pressure service (check and inflate) requirement does not apply to the customer who declines the check and inflate service pursuant to subsection (d)(5).
3. The regulatory requirements in subsection (d)(5) were added to specify that a customer may decline the check and inflate service under the following conditions:
  - (A) He or she has performed (or had performed) a tire pressure check and

inflate service within the last 30 days, or

- (B) He or she will perform (or will have performed) a tire pressure check and inflate service within the next 7 days.
- 4. The regulatory requirement in subsection (d)(6) was added to clarify that if a tire pressure service (check and inflate) was not performed pursuant to subsections (d)(2-4), the automotive service provider must indicate on the vehicle service invoice why the service was not completed.
- 5. In response to public comments received during the first 15-day public comment period, staff modified definition (c)(16) in the Final Regulation Order to mean all operating tires are subject to the tire pressure service (check and inflate).
- 6. The requirement in subsection (d)(3)(B) in the Final Regulation Order is being modified to clarify that the definition for “Unsafe Tire” is found in subsection (c)(14), not subsection (c)(13) as indicated.
- 7. Provided clarification in subsection (d)(3)(C) that subparts (A), (B), and (C) are not joined to subsection (d)(4) by the conjunctive clause “or.”
- 8. Provided clarification in the definition for Tire Inflation Reference found in subsection (c)(10) that “book or electronic” are *examples* of any industry recognized resource.

#### **I.d Fiscal Impacts of Proposed Modifications**

ARB staff has determined that the First and Second 15-Day Modifications are not likely to have any additional fiscal impact on any local public agencies, or on State government agencies such as the ARB and the Bureau of Automotive Repairs (BAR). Both State agencies identified are tasked with enforcing the State regulations that govern automotive service providers (ASPs) and automotive repair dealerships (ARDs).

## **I.e Consideration of Alternatives**

Alternatives to this regulatory action were considered in the Staff Report, in accordance with Government Code section 11346.2. After responding to the comments received, ARB staff concludes that no reasonable alternative considered by the agency, or that has otherwise been identified and brought to the attention of the agency, would be more effective in carrying out the purpose for which the regulatory action was proposed, or would be as effective and less burdensome to affected private persons than the regulation adopted by the Board.

Staff did additionally assess the feasibility of requiring inflation pressure loss rate (IPLR) performance standards for replacement tires sold in California. During the March 2009 Board Hearing, staff asserted it would work with the California Energy Commission (CEC) to develop an IPLR standard as part of their Fuel Efficient Tire (FET) Program. AB 844<sup>4</sup> provides the CEC the authority to develop and implement a comprehensive fuel efficient tire program, including standards for passenger vehicles and light duty trucks.

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<sup>4</sup> Assembly Bill 844, Replacement Tire Efficiency Program, (Nation, Chapter 645, Statutes of 2003).

## II. SUMMARY OF PUBLIC COMMENTS AND AGENCY RESPONSES

### a. Public Comments (45-Day Period and Board Hearing)

The 45-day public comment period for the Proposed Regulation was opened on February 05, 2009, and concluded with the Board Hearing on March 26, 2009. Staff received written comments prior to the Board Hearing as well as oral comments on the day of the Public Hearing. Persons submitting written and oral comments during the public comment period are identified in Table 1 below.

**Table 1**  
**Individuals Submitting 45-Day Period Public Comments**

<b>Comment Number</b>	<b>Name</b>	<b>Affiliation</b>	<b>Date / Type of Comment</b>
1	Beaulieu, Mark	Auto Repair Shop	02-06-09 Written
2	Clemmons, Phil	Private Citizen	03-02-09 Written
3	Montgomery, Pete	Montgomery Consulting / N2 Revolution	03-16-09 Written
4	Miller, Jackie	Automobile Service Councils of California (ASCCA)	03-24-09 Written
5	DeCota, Dennis	California Service Station and Auto Repair Association	03-24-09 Written
6	Morrison, Jonathan	California New Car Dealers Association (CNCDA)	03-24-09 Written
7	Norberg, Tracy	Rubber Manufacturers Association (RMA)	03-25-09 Written
8	Williams, Pamela Boyd	California Retailers Association	03-25-09 Written
9	Flanigan, Mike	Flanigan Law Firm for Les Schwab Tire Centers	03-26-09 Written <sup>5</sup>
10	Williams, Pamela	California Retailers Association	03-26-09 Oral
11	Flanigan, Mike	The Flanigan Law Firm (Les Schwab Tire Centers)	03-26-09 Oral
12	Montgomery, Pete	Montgomery Consulting (N2 Revolution)	03-26-09 Oral
13	Zielinski, Daniel	Rubber Manufacturers Association (RMA)	03-26-09 Oral

<sup>5</sup> Written comment was provided on the day of the public hearing to consider Proposed Regulation.

Following the list are summaries of each relevant comment grouped by subject, along with the individual or group of individuals sharing the same concern. Staff responses to the objections and recommendations made are presented below the comment summaries. Each staff response is an explanation of either the changes made as a result of an objection or recommendation, or the reasons for making no change.

## **1. Regulatory Applicability and Requirements**

### Comment No. 1-1 (Applicability to All ASPs):

- The Proposed Regulation should apply to all ASPs registered with the Bureau of Automotive Repair (BAR) that perform automotive repair services [Miller, ASCCA].
- The Proposed Regulation fails to fulfill the clarity requirement of the APA by exempting auto body repair and paint facilities from the regulatory requirements. The applicability of this exemption is confusing and inconsistent, since such businesses do not typically perform or offer to perform automotive maintenance or repair. Auto body repair and paint facilities regularly engage in the repair of crash parts as well as vehicle frames and some mechanical parts such as engine radiators. Without clarifying which repairs are meant to be allowed, ARB will create widespread confusion in the industry as to which businesses are exempt from the requirements of the Proposed Regulation [Morrison, CNCDA].

### Staff Response to Comment No. 1-1:

The Proposed Regulation, in subsection 95550 (d) makes it clear that all ASPs are covered. Staff disagrees with the comment that the Proposed Regulation requirements for clarity have not been met because it exempts certain automotive facilities. The definitions of those facilities make clear that if these exempt facilities perform covered services then those facilities will be subject to the proposed Regulation.

### Comment No. 1-2 (BAR Authority to Enforce):

- BAR should have regulatory oversight of the automotive repair facilities in the State. BAR has the expertise and personnel to enforce the provisions of the regulation, not the Air Resources Board [Miller, ASCCA].

Staff Response to Comment No. 1-2:

ARB agrees that BAR has the automotive repair facility expertise to oversee the regulatory requirements. ARB is continuing to work with BAR to seek its assistance with implementing the Proposed Regulation.

Comment No. 1-3 (Individual / Non-Business Automotive Repairers):

- The regulatory applicability appears to include non-professional “do-it-yourself repairers” within the scope of the regulation. An automotive repair dealership (ARD) registration is not required of such individuals. By subjecting a large number of non-ARD repairers to invoicing requirements, ARB is greatly exceeding the scope of its authority granted by the statute. This is a violation of the APA [Morrison, CNCDA].

Staff Response to Comment No. 1-3:

Additional clarity is provided in the proposed modifications to distinguish “Automotive Service Providers” and non-professional, “do-it-yourself repairers.” Non-professional self-service mechanics are not subject to the requirements of the Proposed Regulation.

Comment No. 1-4 (“Fly-By” Exemption):

- The Board members should exempt “fly-by” customers from the requirements of the Proposed Regulation. These “fly-by” customers are customers who come into their store and ask to have their air pressure checked in the tires, and then leave. It makes little sense to complete a work order for something that takes five minutes and is free [Flanigan, Les Schwab Tire Centers].

Staff Response to Comment No. 1-4:

The issue of “fly-by” customers has been addressed in the First 15-Day Modifications. The proposed modifications no longer require that the regulation apply to those customers who only request a courtesy, free of charge tire pressure service (check and inflate) from the ASP.

Comment No. 1-5 (Tire Pressure Gauges):

- Tire pressure gauges that meet national standards for accuracy should be acceptable under the Proposed Regulation [Miller, ASCCA].

- The language in the Proposed Regulation is ambiguous as it appears to require ASPs using higher quality Grade A tire pressure gauges<sup>6</sup> to trade down to lower quality Grade B gauges [Morrison, CNCDA].
- ARB should allow ASPs to use tire gauges with equivalent accuracy instead of requiring tire pressure gauges certified to the ANSI B40.1 Grade B standard. ASPs should have the flexibility to use comparable tire gauges, whether dial-type or digital, to measure the tire air pressure for purposes of this regulation [Norberg, RMA].
- ASPs should be allowed to use less expensive tire pressure gauges. Imposing the requirement of using and maintaining high accuracy ANSI gauges of only one type with a two-year life expectancy would add to unnecessary costs [Williams, CRA].
- The expensive gauges mandated in the Proposed Regulation are unnecessary to accomplish the stated goals. The cost of the specified gauges was found to be twice as expensive as the cost estimated in the Staff Report. The industry however, utilizes a much cheaper “pencil” type tire pressure gauge, similar to the ones distributed by staff during an outreach event promoting tire pressure check and proper inflation practices. The pencil type gauges are easy to calibrate and replace at minimal cost if found to be defective [Flanigan, Les Schwab Tire Centers].

Staff Response to Comment No. 1-5:

The requirement for ASPs to use and maintain tire pressure gauges that meet the ANSI B40.1 Grade B standard for accuracy has been removed. In the First 15-Day Modifications proposed, staff included a provision for automotive service providers to use and maintain tire pressure gauges of any type (analog dial-type, digital, pencil gauge, or heavy duty) as long as the total permissible error does not exceed +/- two (2) psi. This modification offers ASPs more latitude on the selection and use of a wide range and types of tire pressure gauges.

Comment No. 1-6 (Tire Reference Guides):

- The tire reference guides need to be traceable [Miller, ASCCA].
- The Proposed Regulation requires ASPs to obtain a “tire inflation reference manual.” While believing that it is important for ASPs to have access to information that would help determine proper tire inflation levels

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<sup>6</sup> Grade A tire pressure gauges that meet the ANSI B40.1 Standard as specified in ASME B40.100-2005.

for specific vehicles, the RMA recommends that ASPs not be required to obtain such manuals. Instead, ARB should provide information about where to obtain recommended inflation pressures for specific vehicles, including a reference to the Tire Guide<sup>7</sup>. ARB should require that the ASP have current tire inflation pressure information available on site but allow flexibility on the type of medium or resource utilized to obtain the information (for example, the information could come from the Tire Guide, a website, or an online CD-ROM).

ARB also requires that the tire inflation reference manual be a current publication from the last three years. RMA believes that since vehicles change from year to year and inflation pressure recommendations can also change between model years, it is important that ASPs have current information on tire inflation recommendations. RMA also requests that the reference in the Staff Report that “manuals are available through most tire manufacturers” be removed from the document, as most tire manufacturer product catalogs only provide the maximum inflation pressure for tires, not the recommended inflation pressure for tires installed on specific vehicles. Furthermore, the second example of a tire inflation reference manual cited in the Staff Report (2008 Year Book published by the Tire and Rim Association) does not provide information specific to individual vehicle application of tires. This publication would not provide the information necessary for an ASP to properly inflate vehicle tires. Therefore, RMA recommends ARB remove any reference to the Tire and Rim Association’s Year Book for purposes of providing proper tire inflation pressures for specific vehicles.

RMA would also like ARB to allow ASPs to utilize an in-house developed online computer application that provides the manufacturer recommended tire inflation pressure along with the tire size, load index, and speed rating specified by the vehicle manufacturer based on the vehicle make and model entered into the system. Such systems are routinely used at by most tire dealers at their retail stores. ASPs that use such a system should not be made to purchase the tire inflation reference manual [Norberg, RMA].

- It is unnecessary for the State to mandate the purchase of a tire inflation reference manual for businesses to inform their employees how to do tire pressure checks. The use of this manual is duplicative since the recommended tire pressure information is on the tire itself, or is on the vehicle door panel, or is calculable. Nor is it necessary for the manual to be current in the prior three years [Williams, CRA].

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<sup>7</sup> The 2008 Tire Guide was illustrated as a Tire Inflation Reference Manual in the Staff Report (see Section V.C). The tire guide is available at <http://www.tireguides.com/>.



- There is no need for industry members to have to periodically purchase the tire pressure reference manual in order to determine the pressure requirements of a given vehicle tire. The maximum pressure for OEM tires can be found on the tire sidewall and on the driver's side door placard affixed on the door pillar. In case of non-OEM replacement tires of the same size and ply, the OEM recommendations apply. For non-OEM sized (and ply) tires, the standard practice is to inflate to the recommended pressure posted on the tire sidewall adjusted by calculations for gross vehicle weight. Simply stated, a costly manual is not necessary, and the ARB has not met its burden as set forth in the California Administrative Procedures Act section 11346.3 (a) which reads as follows:

*State agencies proposing to adopt or amend any administrative regulation shall assess the potential for adverse economic impact on California business enterprises and individuals, avoiding the imposition of unnecessary regulations or reporting, recordkeeping or compliance requirements.*

There is a far greater chance that an ASP mechanic will misread a technical manual than misread the pressure (psi) stamp on the tire sidewall or door placard [Flanigan, Les Schwab Tire Centers].

#### Staff Response to Comment No. 1-6:

Staff agrees that the tire pressure reference resource must be a traceable, credible publication. Staff has also been directed by the Board to minimize the costs to approximately 40,000 ASPs. Proposed First 15-Day Modifications no longer require that ASPs obtain a "tire inflation guidebook that is current within three years." Instead, ASPs must only have access to an industry recognized, tire inflation reference "resource" that is current within three years of publication. This resource could be a manual, a CD-ROM, or an online tool that utilizes a public or private database or an in-house developed application for determining the proper tire inflation pressure (reference pressure). Staff also believes that newer model year vehicles are likely to have the recommended tire pressure rating more readily available than older vehicles, so a tire inflation reference that is current within three years should also suffice.

The use of this resource is intended for ASP mechanics and technicians to determine the correct tire inflation pressure when this information is not readily available to them, either from the side door panel (door jamb), glove box, or because the replacement tire is a non-OEM sized tire, or a non-OEM same size tire with a different load index. At times, this information may be hard to read or locate (i.e., due to fading of the ink, tearing of the label, use of small typeface, or missing placard). This condition is likely to exist on some older model year vehicles rather than newer vehicles. Therefore, staff

believes that the ASP's access to a tire inflation reference resource that is current within the past three years should suffice in these situations.

Staff appreciates RMA expertise that some of the examples of tire inflation reference guides cited in the Staff Report may not provide the necessary information for an ASP to properly inflate the tires. Staff intends to address this issue with suitable examples in the "best practices" tire inflation guidance document to be developed.

Comment No. 1-7 (Non-OEM Tires and Load Indices):

- The Proposed Regulation does not address the issue of oversized tires as well as the modification of the vehicle to accommodate such tires [Miller, ASCCA].
- In the case of vehicles with tires that are not the original equipment (OEM) size and load index, proper tire inflation guidance is important. Due to the differences in the tire size and load index that can occur when a replacement tire is installed that is not the OEM size, inflation pressure recommendations are often different between the OEM sized tire and the non-OEM sized replacement tire. Additional consideration of what requirements should be included in the regulation with regard to non-OEM sized tires and rims is warranted. Tire and vehicle safety, environmental benefits, and ASP capabilities must all be considered when creating guidance on this complex topic, which should be addressed by staff as part of the "tire inflation guidelines" contemplated in the Staff Report.

RMA would also like staff to address the issue that arises when a consumer installs a replacement tire that is the same size as the OEM tire but has a different load range, which may not be immediately noticeable by the ASP. For example, an individual with a ½ ton or ¾ ton pickup truck or van that originally had load range E tires and a placard pressure of 80 psi, but replaced them with a P-metric (35 psi max) or load range C (50 psi max) version of the same tire size. If the ASP were to inflate the tire to the vehicle's placard pressure in this case, it would create an unsafe condition because the inflation pressure would exceed the maximum allowable inflation pressure for the tire [Norberg RMA].

Staff Response to Comment No. 1-7:

Staff agrees that in regards to non-OEM sized tires/rims and load indices, proper tire inflation guidance is important. The Recommended Tire Pressure Rating for non-OEM or non-standard sized tires and wheels, or tires with a different load index than that originally specified for the vehicle can be obtained from the Tire Inflation Reference. Staff is also developing a "best

practices” reference guidance document to address issues such as the use of current, industry recognized tire inflation references.

ARB also notes and appreciates the example provided by RMA that illustrates the importance for ASPs to check the load index of the replacement / non-OEM tire. The examples provided by RMA will also be illustrated in the “best practices” guidance document to be developed.

Comment No. 1-8 (Hot Tire Inflation):

- The Proposed Regulation should include a uniform procedure to service vehicles with “hot tire” conditions [Miller, CSSARA].
- The Staff Report states that tires operating as a “hot tire” should be filled only to the manufacturer recommended pressure. RMA would like staff to clarify that the tire pressure be inflated to the vehicle manufacturer recommended level only if the tire is found to be under inflated when checked. RMA does not recommend that the “hot tire” be deflated to the vehicle manufacturer recommended level.

As a general rule, tires should never be deflated as part of a check and inflate program. Instead, if a tire pressure is measured higher than the recommended vehicle placard inflation pressure, the ASP should be directed to make a note of it on the invoice, but not adjust it. This would be consistent with RMA’s Tire Care and Safety Guide publication<sup>8</sup> [Norberg, RMA].

Staff Response to Comment No. 1-8:

Staff has maintained that the tire pressure service (check and inflate) be performed without making any correction for “hot tire” conditions (see Staff Report, Section XII). The recommended front and rear tire pressure inflation levels commonly found on the vehicle’s side door jamb or glove box (placard pressure) is an inflation specification for “cold” tire conditions. The Proposed Regulation only requires that ASPs correct the under inflation condition to the recommended tire pressure level.

As stated in the Staff Report, ARB intends to develop a tire inflation reference guidance document and make it available at the ARB website. The guidance document will address issues such as “hot tire” inflation in greater detail.

Staff also agrees with the RMA comment. A “hot tire” should never be deflated to match the vehicle’s manufacturer recommended cold tire inflation

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<sup>8</sup> <https://www.rma.org/publications/Tire%20Pub%20Catalog%20Jan2005.pdf>

pressure, as this may lead to a condition of under inflation when the vehicle tires have cooled.

Comment No. 1-9 (Recommended Tire Pressure Rating):

- There is uncertainty about which entity is referenced when staff cites the “manufacturer’s recommended pressure” in the Proposed Regulation. The “manufacturer’s recommended pressure” could apply to either the vehicle manufacturer or the tire manufacturer, and creates a practical problem for the ASP. If ARB intended the definition to apply to the vehicle manufacturer, then the recommended pressure may not apply to vehicles that have been altered or have their wheels replaced. If the definition applied to the tire manufacturer, the recommended pressure may apply only to a particular vehicle, or may be interpreted as referring to the tire’s maximum inflation pressure, potentially leading to over-inflation damage [Morrison, CNCDA].

Staff Response to Comment No. 1-9:

A new definition “Recommended Tire Pressure Rating” that replaces the older definition “Manufacturer’s Recommended Pressure” has been provided in the First 15-Day Modifications. The new definition provides additional clarity by stating the location on the vehicle where the recommended tire pressure rating can be found, and where to find the correct tire pressure rating when it cannot be found in the vehicle or is not applicable to the tires in the vehicle anymore. In such instances, the “Recommended Tire Pressure Rating” refers to the Tire Inflation Reference.”

In no instance is the sidewall rated tire pressure ever recommended in the Proposed Regulation. The sidewall rated tire pressure is the maximum tire pressure that the tire can withstand without failure. For non-OEM replacement tires or non-OEM tire sizes, staff recommends the use of the Tire Inflation Reference, as required by the Proposed Regulation. Staff will additionally address the issue in the “best practices” tire pressure inflation guidance document which will be posted online at the ARB website.

Comment No. 1-10 (Unsafe Tires):

- The Proposed Regulation provides an exemption to the check and inflate requirement for tires deemed by the ASP to be unsafe. RMA disagrees with exempting such tires from the check and inflate program. RMA recommends that ARB promote tire safety, a stated benefit of the Proposed Regulation, by requiring ASPs to advise their customers to replace the tire(s) if the tire is determined to be unsafe. If the consumer

refuses to replace the tire or the tire cannot be replaced by the ASP, then the ASP should perform the tire pressure service (check and inflate) and recommend that the tire(s) be replaced as soon as possible [Norberg, RMA].

Staff Response to Comment No. 1-10:

If a determination is made by the ASP that the tire is unsafe for operation, then the vehicle is exempt from the requirements of the tire pressure service (check and inflate). Staff agrees with RMA that a properly inflated unsafe tire has a lower probability of failing than an under-inflated tire also determined to be unsafe for operation. However, ASP liability was an important consideration for granting ASPs this discretion. ASPs would still be required to document the reasons why the check and inflate service was not performed.

Comment No. 1-11 (Spare Tire):

- While the Proposed Regulation has no requirement to have the spare tire serviced, RMA would like temporary tires installed on the vehicle to not be exempted from the tire pressure service. However, if the spare tire is stowed in the trunk but not installed on the vehicle, then the exemption is permissible [Norberg, RMA].

Staff Response to Comment No. 1-11:

The spare tire is not subject to the requirements of the Proposed Regulation, unless it is considered as one of the vehicles operational tires. The ASP must ensure that the spare tire is properly inflated if it is in use.

Comment No. 1-12 (Customer Invoice):

- The Proposed Regulation order requires ASPs to document that the tire pressure service was completed and note the adjusted tire inflation pressures on the invoice. RMA has determined that some tire retailers provide consumers with a separate vehicle service checklist that is stapled to the customer invoice with a copy retained in their records. RMA recommends that ARB allow the ASP the flexibility to provide the requested information in a checklist format accompanying the invoice, rather than on the invoice itself [Norberg, RMA].
- ASPs should be given the option of either documenting the tire pressure check by using their own work order system, or by using the ARB prescribed format [Williams, CRA].

- The recordkeeping requirement specified in the Proposed Regulation is not only onerous and unnecessary, but will place a needless economic burden on industry members such as Les Schwab. Alternatively, ARB could provide “Official Tire Pressure Check and Inflate Program” receipt books to be purchased by ASPs. Upon completion of the tire pressure service, the customer will sign and be handed the original, and the ASP will retain a copy for audit purposes. For the company, it does not make sense to place the information in their more comprehensive invoices or work orders [Flanigan, Les Schwab Tire Centers].

Staff Response to Comment No. 1-12:

Staff agrees with this comment and has no objection to the requested information being provided in a separate checklist as long as the document is issued to the customer in the normal course of business and it identifies all service repairs performed by the ASP, as well as the associated costs. A copy of the document must be maintained by the ASP for a period of three years and made available to ARB or its authorized representative upon request.

The commenter also recommended that ARB require ASPs to hand out customer receipts with every tire pressure service. In response, the tire pressure regulation requirements were designed to be simple, use existing resources (such as invoices and service checklists), and establish traceability for enforcement purposes.

## **2. Legal Authority and Other Legal Issues**

Comment No. 2-1 (Customer Authorization / Consumer Protection):

- The Proposed Regulation does not address the issue of customer refusal to have the tire pressure service performed on his or her vehicle [Miller, ASCCA].
- The Proposed Regulation undermines existing automotive repair and consumer protection statutes. To protect consumers, the State of California requires that every automotive repair dealer registered with the BAR present the consumer with a written estimate describing all proposed services, and the estimated cost of parts and labor to be performed<sup>9</sup>. If the customer does not consent to any proposed service, he or she can direct the automotive repair dealership to re-write the estimate to reflect the services the customer wants, or remove any line item altogether.

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<sup>9</sup> See Business and Professions Code section 9884.9; 16 California Code of Regulations Section 3353.

Only upon customer consent (indicated by his or her signature on the invoice/service request), can the automotive repair dealership proceed with proposed services. This provision provides the consumer with important protection that pre-specifies costs and outlined scope of services with which the customer is comfortable. The mandatory requirement of the Proposed Regulation would cause the auto repair dealers to perform the service without customer consent, and be in violation of BPC code that could subject them to revocation of their license with BAR and potential lawsuits from the customer.

The Administrative Procedures Act (APA) requires that a regulatory proposal must be “in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.” By creating direct conflict with existing automotive repair statutes and regulations, the proposal violates the APA consistency requirement and is therefore invalid [Morris, CNCDA].

- Pursuant to the Business and Professions Code (BPC) section 9884.11, “no work for compensation shall be commenced and no charges shall accrue without specific authorization from the customer.” The Proposed Regulation on the other hand requires the ASP to indicate on the invoice that the check and inflate service was completed and note the tire pressures after the service was performed. The Staff Report for the Proposed Regulation also states that staff expects ASPs to recover their cost associated with the tire pressure service by passing them on to their customers either by increasing their service rates or by imposing an environmental fee on the invoice. ARB should clarify whether or not charges associated with the check and inflate service are subject to the estimate requirements of BPC section 9884.11 [Norberg, RMA].

#### Staff Response to Comment No. 2-1:

CNCDA comments that the tire pressure regulation undermines automotive repair and consumer protection statutes and places an automotive services provider in a position where it must violate either the ARB's tire pressure regulation or BAR's regulations for registered / licensed automotive service providers. Staff disagrees with CNCDA's comment. As noted, the purpose of BAR's automotive service regulations is to ensure that consumers are not subjected to unwanted services offered by the service provider.

The Automotive Repair Act requires that automotive services provided must not be at the discretion of the provider, but must be approved by the consumer. The tire pressure service mandated by the Proposed Regulation is not a discretionary service to be offered by the ASP, but rather, a mandatory program to be carried out by all providers engaged in automotive repair and maintenance. There is no greater risk to the consumer that the ASP will perform unwanted services after the Proposed Regulation is

implemented than there was before. Staff believes that the consumer protection provisions in BAR's regulations are still in place and just as effective.

The Proposed Regulation does not set a cost for the check and inflate service. Staff believes that such costs would be subject to market forces which will keep them reasonable.

Comment No. 2-2 (Regulatory Framework):

- The Proposed Regulation fails to satisfy the requirements of the Administrative Procedures Act (APA), which calls for every regulatory proposal to adhere to six standards for approval by the Office of Administrative Law (OAL), including the standards of authority, clarity, and consistency. The Proposed Regulation fails to satisfy these three fundamental standards.

Specifically, the definitions provided by ARB in the Proposed Regulation for "Automotive Maintenance or Repair Services" and "Automotive Service Provider," are additional examples where the proposed language can be reasonably and logically interpreted to have more than one meaning.

Furthermore, the Proposed Regulation uses undefined terms in a manner with which the industry is not familiar. As a result, the Proposed Regulation is written in a manner such that the meaning of the regulations is not easily understood by those directly affected, and thereby fails to fulfill the clarity requirement of the APA. Staff was ambiguous with the definition of "manufacturer's recommended pressure" as industry was left uncertain as to which manufacturer this refers to – the vehicle or tire manufacturer?

In addition, staff has incorrectly provided citations that combine Business and Professions Code applicability with the broader California Code of Regulation. Pursuant to OAL's regulation that provides guidance on the APA clarity requirements, a regulation shall be presumed not to comply with the clarity requirement if it uses language incorrectly, or if it can reasonably and logically be interpreted to have more than one meaning, or if it does not use citation styles which clearly identify published material cited in the regulation. The Proposed Regulation violates each of these three elements of the Clarity requirement, and therefore fails to satisfy the requirement of the APA.

By requiring ASPs to provide documentation of the vehicle service invoice to authorized enforcement personnel upon demand, the Proposed Regulation effectively exposes repair invoices containing nonpublic confidential information, including the customer's name, address, phone



number, and possibly the payment information. Such invoices are subject to rigorous state and federal laws that require ASPs to protect information. The Proposed Regulation would force ASPs to be in violation of these laws and therefore fails to meet the APA requirement that a regulatory proposal be “in harmony with, and not in conflict with or contradictory to, existing statutes, court decisions, or other provisions of law.”

Secondly, a long history of state and federal case law from the U.S. Supreme Court down to local Superior Courts supports the notion that business records are subject to the U.S. Constitution’s Fourth Amendment protections against warrantless searches and seizures, and are not openly available to inspectors or even police officers without a warrant or a subpoena. The Proposed Regulation would attempt to usurp such constitutional protection by requiring ASPs to provide such information to any party authorized by ARB “upon demand.” The Proposed Regulation would greatly expand the scope of authority granted to ARB by the legislature, in violation of the APA’s authority requirement, and would create conflict with existing law, in violation of the consistency requirement. Furthermore, violation of the requirements of the Proposed Regulation by the ASP could lead to potential monetary fines and even imprisonment. We even believe that the implied penalties are grossly excessive relative to the violation involved [Morrison, CNCDA].

#### Staff Response to Comment No. 2-2:

Authority, Clarity, and Consistency standards of the APA were invoked in reference to definitions and use of terms in the Proposed Regulation that include “authorized enforcement personnel,” “automotive maintenance or repair services,” “automotive service provider,” “manufacturer’s recommended pressure,” “penalties,” exemptions for auto body repair and paint facilities, applicability of regulation to “do-it-yourself repairers,” and the use of ANSI certified Grade B tire pressure gauges. The proposed modifications to the Proposed Regulation in the First 15-Day Modifications include revisions to these definitions, and provide further clarity on their intent and use in the Proposed Regulation (see Sections I.b and I.c above). Revised definitions for “Automotive Service Provider,” “Automotive Maintenance or Repair Services,” “Recommended Tire Pressure Rating,” and “Tire Inflation Reference” have been proposed.

Staff responses to CNCDA claims of other instances when ARB failed to satisfy the Authority, Clarity, and Consistency requirements of the APA are individually discussed below.

CNCDA claims that the Proposed Regulation attempts to usurp constitutional protections afforded by the Fourth Amendment and therefore is not in harmony with other provisions of law. ARB disagrees with CNCDA

assessment. It should first be noted that the invoices of concern to CNCDA are already being accessed by a number of governmental agencies, including BAR. CNCDA does not take issue with this and indeed seems to support this activity. ARB believes that the review of these invoices does not rise to the level of an unreasonable search or seizure. Routine recordkeeping is a fundamental compliance assurance activity. In this instance, the purpose is to assure that the automotive service providers are performing the required services. No personal consumer information is collected, let alone disseminated.

CNCDA further alleges that by failing to define “authorized enforcement personnel,” ARB has violated the clarity requirement of the Administrative Procedures Act. ARB disagrees with this allegation and believes that the term can be reasonably and logically interpreted on its face value. In any event, the Proposed Regulation will be reviewed by the Office of Administrative Law, which will make that determination.

Lastly, CNCDA determined that the penalties associated with the Proposed Regulation are grossly excessive. ARB disagrees with this assessment too. The penalty amounts are statutory maximums, not minimums, set by the Legislature, and are judicially reviewable.

#### Comment No. 2-3 (Severability Clause):

- ARB has included a provision stating that if any provision of the Proposed Regulation is determined to be invalid, unconstitutional, or otherwise unenforceable, that portion of the regulation will not affect the validity of the remainder of the regulation. Severability clauses are inappropriate in regulatory proposals subject to the APA, as regulatory proposals must be analyzed in their entirety, and severing one provision of a regulation may alter the appropriateness of the regulatory proposal as a whole. Accordingly, the severability clause impermissibly expands the scope of authority granted by the legislature, in violation of the APA’s authority requirement. Since HSC section 39601 requires that any regulation implementing AB 32 must comply with the provisions of the APA, the severability clause also conflicts with the implementing statute, thereby violating the APA’s consistency requirement as well. If a court declares a provision of the regulation to be invalid, ARB must follow the normal APA process and introduce a replacement regulation, which should stand or fall on its own merits [Morrison, CNCDA].

#### Staff Response to Comment No. 2-3:

Staff does not agree with CNCDA assessment. The regulation will be reviewed by the Office of Administrative Law (OAL), which will make the

determination whether severability clauses are inappropriate in regulatory proposals subject to the APA.

### 3. Nitrogen Tire Inflation

Comment No. 3-1 (Nitrogen Tire Inflation Systems):

ARB has overestimated the benefits while underestimating the costs associated with the proposed measure (check and inflate with air). In addition, ARB has overestimated the costs associated with the nitrogen inflation alternative that was being considered and that these factors inaccurately biased the proposed measure. Specifically, ARB neglected consideration of the following concerns:

- (Concern No. 1) Tire pressure checks currently being performed by ASPs.
- (Concern No. 2) The inaccuracy associated with the manual filling of tires with air. Automatic tire filling systems, which are a feature of nitrogen inflation systems, eliminate this manual error.
- (Concern No. 3) Manual tire pressure gauges need to be calibrated on a periodic basis.
- (Concern No. 4) In an unregulated environment, ASPs are likely to charge more than four dollars per car per year on average to perform the tire pressure service (check and inflate).
- (Concern No. 5) Non-compliance with the regulation given that ASPs are expected to do extra work on the car or work in a hurry. Since nitrogen permeates less than air, non-compliance with nitrogen filled tires conserves more fuel than tires filled with air.
- (Concern No. 6) Expectations that the costs of a nitrogen inflation system should drop by approximately 20 percent when nitrogen inflation systems are largely adopted by ASPs. ARB did not factor these lower costs into their economic assessment.
- (Concern No. 7) ARB overestimated the amount of time required to purge the air in a vehicle tire and refill with pure nitrogen, as well as the amount of time to “top-off” a vehicle with tires already filled with nitrogen. As a result, initial and subsequent labor costs were overestimated.
- (Concern No. 8) ARB did not consider the one-time tax credit of up to \$10,000 the State of California offers ASPs to purchase and install nitrogen inflation systems.

By correcting the labor and system costs, the cost-effectiveness of the nitrogen tire filling alternative would be better than that of the Proposed Regulation [Montgomery, N<sub>2</sub> Revolution].

Staff Response to Comment No. 3-1:

Staff believes that the costs, benefits, and cost-effectiveness of the proposed measure and the alternatives considered (including nitrogen tire inflation) were accurately reflected in the Staff Report. The costs savings and the emissions reduction benefits derived from the two primary alternatives (TPMS and Nitrogen Tire Inflation) considered were found to be greater; however, their costs were also higher, leading to higher cost-effectiveness ratios. In addition, ease of implementation was also considered prior to making a final recommendation to the Board. With reference to the specific concerns listed in the letter, staff provides the corresponding responses as follows:

- (Response to Concern No. 1) Staff did consider tire pressure checks currently being performed by ASPs. Table IX-1 in the Staff Report identifies the most common reasons why consumers visit ASPs. If the tire pressure check and inflate service was part of the routine service procedure offered by the ASP, then an adjustment to the annualized frequency of visits was made.
- (Response to Concern No. 2) Staff agrees that automatic filling systems can be more precise when filling a vehicle's tires. However, the requirements of the Proposed Regulation were developed to be technological neutral and minimize equipment costs for the ASPs. The Proposed Regulation requires, at a minimum, the use of tire pressure gauges with a total permissible error no greater than two (2) pounds per square inch (psi) to minimize the error that results from measurement.
- (Response to Concern No. 3) Staff agrees that a large number of tire pressure gauges being used are not calibrated and potentially inaccurate. See Response to Concern No. 2 above.
- (Response to Concern No. 4) ARB has no jurisdiction on how much an ASP may charge a customer to additionally perform the tire pressure service. Staff determined the average costs to an ASP for performing the tire pressure check and inflate service to be no more than \$2 per vehicle per visit. Staff believes that this cost can be and will be passed on to the consumer, and will be kept low based on market competition.
- (Response to Concern No. 5) Staff does not agree with this comment. Compliance with the regulatory requirements will be monitored by ARB's Enforcement Division.

- (Response to Concern No. 6) The cost analyses for the Proposed Regulation and for the alternatives considered were performed in accordance with ARB policies.

Several cost estimates for various makes, models, and capacities of nitrogen inflation systems were obtained from ARB surveys. Staff cannot speculate what the demand curve is or what the adoption rate for nitrogen inflation systems will be.

- (Response to Concern No. 7) Staff does not agree with this comment. The amount of time estimated to initially purge air from tires and re-fill with pure nitrogen was based upon research conducted by staff. Staff agrees that some ASPs may be more efficient at nitrogen tire inflation than others; however, the estimate is considered reasonable, and thus the costs are not overestimated. For subsequent “top-offs,” the same amount of time was utilized to perform a check and inflate service (5 minutes), whether it be with pure nitrogen or air.
- (Response to Concern No. 8) Staff could not verify that a one-time tax credit exists in the State of California.

Staff believes that the cost-benefit analysis performed, and the determination of total costs savings, emissions reduction benefits, and cost-effectiveness for the nitrogen tire alternative is fair and accurate, and made with the best of staff’s ability and available information. As far as updating the labor and system costs, staff disagrees that they were overestimated. Based on surveys and industry research, the cost-benefit analysis accurately represents the proposed and alternative measures.

In fact, staff believes that costs to equip fuel dispensing facilities with nitrogen inflation systems were underestimated due to amount of engineering and construction involved to permanently install such systems outdoors. If these true costs were known and considered, the cost-effectiveness of this alternative would be higher than what staff had initially estimated.

The cost-effectiveness determination of the Proposed Regulation and the alternatives considered was an important consideration made by staff in making a recommendation to the Board. However, other considerations such as implementation, and capital investment were also considered.

In addition, the Proposed Regulation does not deter any ASP from offering nitrogen tire inflation service to California drivers. Proposed 15-Day Modifications include allowing the use of nitrogen as an inflation gas (see subsection 95550 (d)(1)(A)).

Comment No. 3-2 (Exemption for Nitrogen Filled Tires):

- RMA opposes the exemption for consumers whose vehicle tires are filled with nitrogen. RMA believes that an under inflated tire inflated with nitrogen is not operating optimally, either from a safety or fuel economy perspective [Norberg, RMA].

Staff Response to Comment No. 3-2:

The Proposed Regulation only exempts vehicle tires filled with pure nitrogen from the inflation requirement of the tire pressure service, if pure nitrogen is not offered by the ASP. The ASP will be obligated to check the tire inflation pressure of such vehicles. The exemption was granted because the availability of the nitrogen tire inflation service is not widespread or expected to be widely adopted by ASPs in the near term.

**4. Miscellaneous Comments**

Comment No. 4-1 (ASP / Small Business Liability):

- The customer should be responsible for proper tire maintenance, unless a tire pressure service is specifically requested. The proposal could lead to potential legal issues, and all new vehicles will soon be equipped with tire pressure monitoring systems [Beaulieu, Auto Repair Shop].
- The California Service Station and Automotive Repair Association (CSSARA) expresses their opposition to the Proposed Regulation. Liability concerns for small businesses was one of the reasons cited for their opposition. The CSSARA believes that the State should enact a mandatory comprehensive vehicle inspection program that includes the inspection of tire pressures. Furthermore, CSSARA believes that the free enterprise system should be permitted to charge for the tire pressure service [DeCota, CSSARA].

Staff Response to Comment No. 4-1:

Staff has determined that tire inflation pressure loss affects all vehicle drivers, while under inflation impacts at least one out of every two drivers in the State of California. Not only does under inflation waste millions of gallons of fuel that contribute to GHG emissions, and increase tire waste due to faster tread wear, but under inflation is also considered to be a safety hazard to California citizens on the road.

Staff believes that the requirements of the Proposed Regulation are equitable to businesses small and large. The tire pressure service (check and inflate) required by the Proposed Regulation is expected to reduce fuel consumption and correspondingly reduce GHG emissions, as well as improve the safety of vehicles on the road. Properly inflated tires make the vehicle safer to operate than one with under inflated tires. Therefore, ASP liability is a lesser concern with vehicles operating with properly inflated tires.

Staff notes that federal law requires all Model Year 2008 and newer passenger vehicles to be equipped with tire pressure monitoring systems (TPMS). These systems are installed as a safety measure and trigger an alert to the vehicle driver when the tire pressure drops 25 percent below the recommended tire pressure level for the vehicle. Staff believes that at some point in the future, all passenger vehicles may be equipped with TPMS that alert drivers whenever a condition of under inflation exists (not just 25 percent below). However, this option is not standard equipment, and does not address the majority of older model year vehicles which must be retrofitted with tire pressure monitoring systems. The Proposed Regulation will correct the under inflation condition for a significant number of vehicles in a cost-effective and easily implemented manner.

In response to CSSARA recommendation for the State to enact a mandatory comprehensive vehicle inspection program that includes the inspection of tire pressures, staff replies that ARB, as a legal authority, is limited to establishing requirements that reduce or eliminate air pollutant emissions. Establishing a comprehensive vehicle inspection program is beyond the Board's legal authority.

On CSSARA's concern that the ASPs be permitted to charge for the tire pressure service, staff replies that the upfront capital investment / expenses required by ASPs to enact the provisions of the regulation as proposed are minimal and not excessive for any sized business<sup>10</sup>. ARB has no jurisdiction on what an ASP may charge to perform the tire pressure service and believes that most ASPs will pass on the costs to their customers. The Proposed Regulation does not prohibit ASPs from recovering such costs.

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<sup>10</sup> A discussion on the economic impact of the Proposed Regulation is presented in Section IX of the Staff Report.

Comment No. 4-2 (Financial Assistance for ASPs):

- ARB should consider potential grants or other financial assistance programs for ASPs to purchase capital equipment to be funded by the tire fee collected from replacement tire sales in California<sup>11</sup> [Norberg, RMA].

Staff Response to Comment No. 4-2:

Staff determined that the capital investment required for ASPs and smog-check centers in California to meet the requirements of the Proposed Regulation is not excessive or burdensome. Due to the nature of the automotive service business, most ASPs already own the required capital equipment such as compressors and tire pressure gauges. Other compliance costs were determined to be minor. Furthermore, ASPs need not even own the equipment as long as they have access to it. Staff believes that the tire fee collected from replacement tire sales serves a better purpose targeting tire recycling programs and consumer awareness.

Comment No. 4-3 (Legal Authority):

- A resident of Southern California commented about the complexity of the Proposed Regulation, and believes that organizations such as the Air Resources Board (implied), with too much regulatory authority, is the reason why California is in the worst shape it has ever been [Clemmons, Private Citizen].

Staff Response to Comment No. 4-3:

Staff believes that the regulatory language being proposed is straight forward and easy to implement. The regulation seeks to correct tire under inflation that currently exists for more than half the vehicles on California roads today. By requiring ASPs to perform the tire pressure service (check and inflate), staff believes that Californians will reduce greenhouse gas emissions, save fuel and money, extend the tread life of their tires, and make the roads safer for all drivers as well.

Comment No. 4-4 (Public Workshops and Workgroup Meetings):

- The Proposed Regulation was not vetted with the tire manufacturing and retail industry before being formally proposed by way of the 45-day public comment period. ARB did not make any meaningful contact with the

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<sup>11</sup> The State of California Board of Equalization collects a fee of \$1.50 per tire from businesses engaged in replacement tire sales in California. The fees are deposited into funds utilized by the California Integrated Waste Management Board and the Air Resources Board for tire programs.



manufacturers and retailers of tires and certainly did not make contact with our client. Even the Rubber Manufacturer's Association (RMA) told us that they had no discussions regarding the Proposed Regulation with ARB staff. [Flanigan, Les Schwab Tire Centers].

Staff Response to Comment No. 4-4:

Staff responds that pursuant to RMA's request, several meetings with ARB staff were held before the 45 day public comment period, on ARB premises to discuss and resolve issues related to tire inflation. The RMA has expressed their written comments for the record, and even thanked the Board for the opportunity to share their concerns with staff on the Proposed Regulation.

ARB has always maintained an open-door policy to aid in the development of its rules and regulations, and has always encouraged dialogue with industry and environmental groups, and other stakeholders. ARB solicited public opinion through public workgroup and public workshop meetings held in March 2008, June 2008, and October 2008. Comments, opinions, and open dialogue from the public meetings were used to formulate the requirements of the Proposed Regulation. In addition, ARB also conducted numerous private meetings and telephone conversations with various industry groups. Lastly, the concerns presented by the law firm representing their client have received full consideration and staff response, affirming that the public regulatory development process works.

Comment No. 4-5 (Support for Regulation):

- The California Retailers Association supports the Proposed Regulation by accepting the mandate that the industry perform checks and maintain records [Williams/Board Hearing, CRA].
- We thank ARB for the "comprehensive" Staff Report for the Proposed Regulation, and also thank staff for the technical analysis addressing nitrogen tire inflation as an alternative, and for reminding the ASPs that nitrogen tire inflation is an option for compliance. Support for nitrogen inflation is aligned with the goals of AB 32 which include job creation in the "green" manufacturing sector [Montgomery/Board Hearing, N<sub>2</sub> Revolution].
- The RMA thanks ARB for working with them in formulating the Proposed Regulation, and expressed support for the check and inflate service measure [Zielinski/Board Hearing, RMA].

Staff Response to Comment No. 4-5:

ARB appreciates the consultant's comments recognizing staff effort in addressing the issue of nitrogen tire inflation. ARB also appreciates CRA's and RMA's support for the proposed measure (check and inflate).

**b. First 15-Day Period Public Comments**

Written comments from the general public were also accepted by ARB during the first 15-day open public comment period following the issuance of the First 15-Day Notice. The modified regulation was released for public comment on October 23, 2009. The public comment period remained open until the close of business on November 09, 2009. Persons that commented on the modified regulation for under inflated vehicle tires by submitting written comments are listed in Table 2 below.

**Table 2  
Individuals Submitting First 15-Day Period Public Comments**

<b>Comment Number</b>	<b>Name</b>	<b>Affiliation</b>	<b>Date of Comment</b>
1	Miller, Rod	City of Folsom	10-23-09
2	Molyneux, Rodney	Private Citizen	10-26-09
3	Mathur, Ashok	RCN	10-26-09
4	Miller, Jackie	Automotive Service Councils of California (ASCCA)	11-03-2009
5	Flanigan, Michael	The Flanigan Law Firm for Les Schwab Tire Centers	11-04-2009
6	Herzlich, Harold	Herzlich Consulting	11-05-2009
7	Mehl, Sherry Stiger, Brian	BAR / DCA State of California	11-09-2009
8	Morrisson, Jonathon	California New Car Dealers Association (CNCDA)	11-09-2009
9	Leveille, Terry	California Tire Dealers Association	11-09-2009
10	Krause, Kevin	Ventech USA	11-09-2009

Following the list are summaries of each comment grouped by subject, the individual or group of individuals presenting the concern, as well as staff responses to the objections and recommendations made. Each staff response is an explanation of either the changes made as a result of an objection or recommendation, or the reasons for making no change.

## 1. Regulatory Applicability and Requirements

### Comment No. 1-1 (Applicability to Public Fleets):

- From the definition of “Automotive Service Provider” it isn’t clear whether the Proposed Regulation was applicable to government maintenance providers and government fleets. Vehicles in such fleets commonly have infrequent use and poorly maintained tires. What example does CARB set if it exempts such fleets from the requirements of the Proposed Regulation [Miller, City of Folsom].

### Staff Response to Comment No. 1-1:

Pursuant to the definition of “Automotive Service Provider,” the Proposed Regulation is applicable to any business that performs or offers to perform automotive maintenance or repair services. Government and private fleets and garages are considered to be “businesses that perform automotive maintenance or repair services,” even if the services are performed on their own vehicles. Therefore, government and private fleets and garages are subject to the requirements of the Proposed Regulation.

### Comment No. 1-2 (Definitions):

- The definition of “Pure Nitrogen” should be reinstated into the final regulatory language. It must be restored since nitrogen gas is an element of the requirements of the Proposed Regulation and consumers and ASPs may not clearly know what it implies. If the purity is not defined, it will be subject to misinterpretation, and may even result in fraudulent usage and overcharging of the consumer. As an example, ASPs could potentially charge consumers for 78 percent pure nitrogen (air is a mixture of 78 percent nitrogen and 21 percent oxygen). Reinstating the definition of what is considered to be “pure nitrogen” would reduce this uncertainty [Mathur, RCN].
- ARB should reinstate the definition of “Pure Nitrogen.” Lack of the definition would subject the industry to misinterpretation and reduce the oxidative degradation benefits of pure nitrogen. ARB should require that nitrogen purity be no less than 98 percent, since commercial nitrogen inflation systems readily and easily provide nitrogen of 98 to 99.9 percent purity. Lastly, lack of a specification on the purity level of nitrogen could lead to fraudulent practice within ASPs offering air to innocent consumers and claiming it be pure nitrogen [Herzlich, Herzlich Consulting].
- The definition for “Vehicle Tires” provided in the proposed 15-day modifications is too restrictive. By implying that the definition refers to the

four operating tires on the vehicle, and not the spare tire in the truck or attached to the vehicle, ARB is restricting the applicability of the proposed regulation by excluding those vehicles less than 10,000 pounds GVR that have dual rear wheels. ARB should modify the definition by excluding the specified number of operating tires on the vehicle [Morrison, CNCDA].

Staff Response to Comment No. 1-2:

Staff concluded that even though nitrogen gas is stated as a tire inflating medium in the Proposed Regulation, the Air Resources Board is not in the business of regulating the purity of nitrogen. Most nitrogen inflation systems that are available on the market claim to deliver nitrogen that is at least 95 percent pure (by weight). Some vendors advocate using nitrogen that is 93 percent pure (by weight). As far as the tire pressure service (check and inflate) requirement is concerned, air or nitrogen accomplish the same objective of restoring the tire to the recommended tire pressure rating.

Staff believes that if air is fraudulently being offered to the public as “pure nitrogen” or “nitrogen,” consumer protection agencies may take issue with false advertising and claims.

Staff acknowledge that the definition provided for “Vehicle Tires” in the proposed First 15-Day Modifications is restrictive. The proposed definition is being modified to mean all operating tires on the vehicle.

Comment No. 1-3 (Hot Tire Inflation):

- There is uncertainty in the Proposed Regulation and in the 15-Day Modifications as to when an ASP must perform the tire pressure check; while the tire is “hot” or after a while when the air in the tires has cooled. ARB staff have not addressed this concern adequately [Miller, ASCCA].

Staff Response to Comment No. 1-3:

The Proposed Regulation only requires that ASPs perform the tire pressure service by inflating under inflated tires to the recommend tire pressure rating. In most cases, this specification is the vehicle manufacturer’s recommended tire pressure rating for “cold” tire conditions. Specifying when the tire pressure service is to be performed would depend on the expected turnaround time for the vehicle to be returned to the customer, and is left to the discretion of the ASP. Staff expects that for an instant service facility (such as an express lube/oil change center), tires would be checked while the tires are “hot” and inflated to the Recommended Tire Pressure Rating (“cold” tire specifications) at the same time. For other job orders that may take a few

hours to perform, prudence dictates that the tire pressure service be the last service item performed by the ASP before the vehicle is returned to the customer.

Comment No. 1-4 (Non-OEM Sized Tires and Wheels):

- The Proposed Regulation does not address the issue of oversized tires as well as the modification of a vehicle to accommodate such tires [Miller, ASCCA].

Staff Response to Comment No. 1-4:

The issue of inflating non-standard sized or oversized tires or tires with a different load index than that specified in the OEM tires has been addressed in the Proposed Regulation. In each instance, the Proposed Regulation requires that the tires be inflated to the Recommended Tire Pressure Rating found from the Tire Inflation Reference. The “best practices” tire inflation guidance document to be published at the ARB website will also address the issue of non-standard sized tires and how to use the standard Tire Inflation Reference.

Comment No. 1-5 (Unsafe Tires):

- The firm believes that the new definition of “Unsafe Tire” as proposed in the 15-Day Modifications (see subsection (c)(14)) lacks clarity with respect to “industry standard practice.” Staff proposed that a tire may be considered unsafe in accordance with standard industry practices due to the influence of tread wear, age, tread irregularity, or damage. The firm does not agree that age is ever considered in “standard industry practice” for determining whether a tire is unsafe, and recommends that the reference to age of the tire be removed from the proposed 15-Day Modifications. The firm however, acknowledges that the issue of tire age and safety continues to be debated and concludes that even NHTSA states that “further research on tire aging is needed” [Flanigan, Les Schwab Tire Centers].

The definition of “Unsafe Tire” as specified in subsection (c)(14) should be modified to exclude “age” as a criteria for determining whether a tire is considered unsafe for operation. The issue of “age” is the subject of considerable debates, lawsuits, and legislation. Even NHTSA has proposed further testing to derive at any conclusive evidence regarding the impact of age on the safety of the tire (implied). In light of this argument, “age” should be struck from the proposed definition in subsection (c)(14). Lastly, the requirement in subsection (d)(3)(B) is in

error. The requirement implies that the tires are determined by the automotive service provider to be unsafe, as defined in subsection 95550 (c)(14), not subsection 95550 (c)(13) as stated [Leveille, California Tire Dealers Association].

Staff Response to Comment No. 1-5:

The decision to include “age” as a criteria is based on staff expectations that it may eventually become a formal criteria for determining tire safety, and NHTSA’s own admittance that “tire aging is a significant factor in tire related safety.”<sup>12</sup> By the firm’s own admittance, a citation was provided that some vehicle manufacturers are advocating tire replacement after 6 years of manufacture, while some tire manufacturers are recommending tire replacement after 10 years. NHTSA “is currently investigating the feasibility of a potential regulation related to tire aging by analyzing the safety problem, tire aging as a causal factor in crashes, and potential benefits and costs of a requirement for minimum performance based on an aging method.” Whether any proposal to regulate the age of a vehicle tire or mandate replacement ever becomes law is not an immediate concern to the regulation being proposed. Conclusive evidence has been presented that the age of the tire does have some material impact on its performance, even if the tire pressure has been maintained and the tread is found to be adequate. The firm’s claim in the argument that “further research on tire aging is needed” is not related to this conclusion, but to assess the feasibility of a potential regulation. Staff believes that the Proposed Regulation gives the discretion to use “age” as a criteria for determining whether a tire is safe or unsafe to the ASP.

Staff acknowledges that the requirement specified in subsection (d)(3)(B) to be in error. The requirement implies that the tires are determined by the automotive service provider to be unsafe, as defined in subsection (c)(14), and not subsection (c)(13) as stated. The modification has been presented as a change in the Second 15-Day Modifications.

Comment No. 1-6 (Exemptions):

- The compliance exemption provided in the proposed modifications for ASPs performing a free check and inflate service at the request of the customer could create confusion with some ARDs registered with BAR into believing that they are also exempted from the BPC’s invoicing

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<sup>12</sup> U.S. DOT / NHTSA, Research Report to Congress on Tire Aging, August 2007 (Report No. DOT HS 810 799)

mandate<sup>13</sup>, which does not create an exception for service performed without charge. This confusing exemption for free services or “fly-by” customers may inadvertently lead BAR to take disciplinary action against an ARD [Morrison, CNCDA].

- This concern is related to clarity with respect to the requirements in subsection (d)(3) of the First 15-Day Modifications. ASPs should not have to perform the tire pressure service when the customer’s tires are inflated with nitrogen. The firm proposes a new section (d)(3)(D) be added to clarify that tire service dealers will not be subject to the Proposed Regulation when tires have pure nitrogen (implied), and (d)(4) be modified to exempt ASPs when tires are filled with nitrogen [Flanigan, Les Schwab Tire Centers].

Staff Response to Comment No. 1-6:

An automotive service provider need not meet the requirements of performing the tire pressure service (check and inflate) if the automotive service provider is performing only a free check and inflate service at the customer’s request. By “free,” staff implies a courtesy service for which no monetary charges have accrued, are to be presented, or currency exchanged. Staff believe that the courtesy service being performed is a non-binding, informal agreement between two consenting parties over which ARB has no jurisdiction or proof of service by means of an established paper trail.

Staff further believe that the issue of “fly-by” customers is rampant and widespread Statewide<sup>14</sup>. If BAR finds it necessary to stop the practice of servicing “fly-by” customers or take disciplinary action against an ARD or an ASP for violating BPC by failing to record all work performed on the invoice, that decision remains within their discretion.

On the issue of exempting ASPs from complying with the check and inflate requirement of the regulation when the customer’s tires are filled with nitrogen, proposed 15-day modifications presented were designed to not absolve ASPs from the “check” requirement when the customer’s tires are filled with nitrogen. Section (d)(4) further gives customers the ability to refuse the inflation service if a nitrogen inflation system (i.e., pure nitrogen source) is not available at the time of service.

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<sup>13</sup> BPC section 9884.1 provides, in part that “[a]ll work done by an automotive repair dealer , including all warranty work, shall be recorded on an invoice and shall describe all service work done and parts supplied.”

<sup>14</sup> The Goodyear Auto Service Centers, and the Les Schwab Tire Centers are two discount tire service chains that offered free, courtesy, check and inflate services to the general public (or “fly-by” customers) in 2009.



Comment No. 1-7 (Tire Pressure Gauges):

- A number of findings in the proposed First 15-Day Modifications are in conflict with the findings of the leading federal agencies which renders the anticipated benefits to be grossly exaggerated and adoption of the regulation unjustifiable. Specifically, the State's endorsement of a 1 psi standard in conflict with the federal percentage of psi loss standard (implying that the 1 psi below the recommended tire pressure rating at which the Proposed Regulation requires ASP action is in conflict with the 25 percent under inflation level at which TPMS systems are required to alert the driver). The 1 psi under inflation level has an increasingly negligible impact on fuel economy as the tire inflation level gets larger (50 psi as opposed to 25 psi). ARB staff have neglected the fact that NHTSA expects 90 percent of drivers in vehicles equipped with TPMS to take immediate corrective action after receiving a TPMS alert. In determining the fuel savings and corresponding GHG emissions reduction from the alternatives to the Proposed Regulation, staff assumed that only 50 percent or half of the drivers would take corrective action after receiving a TPMS alert. Staff assumptions are unsubstantiated and inadequate to override the federal expectation.

Lastly, with regards to the requirement in the First 15-Day Modifications for ASPs to use tire pressure gauges that are accurate within +/- 2 psi, ARB's requirement is unnecessary and unrealistically expensive. Such gauges are not easily available in the marketplace, and are relatively expensive for their intended lifetime use. The use of pencil gauges with an accuracy of +/- 4 psi should be permitted, and that the State only require ASP action when the level of under inflation drops below 20 percent of the recommended tire pressure rating [Flanigan, Les Schwab Tire Centers].

- ARB should ease the accuracy requirement of the tire pressure gauges specified in section (d)(1)(C). They propose that the total permissible error in the tire pressure gauges be relaxed from +/- 2 psi to +/- 4 psi [Leveille, California Tire Dealers Association].

Staff Response to Comment No. 1-7:

Staff disagree with the firm's opinion. There is no "1 psi standard" endorsed in the Proposed Regulation. Nor does staff believe that any requirement in the Proposed Regulation is in conflict with the federal "percentage of psi loss standard." The 1 psi reference in the Proposed Regulation applies to the minimum graduation of a tire pressure gauge that the naked eye can comfortably read when making tire inflation measurements. For the purposes of the Proposed Regulation, a tire is considered to be under inflated if the actual pressure is 1 psi below the recommended tire pressure rating.

ASPs will be expected to perform the tire pressure service (check and inflate) if a condition of under inflation (1 or more psi pressure differential) is detected in any of the operating tires of the vehicle. Staff believes that it is incorrect to suggest that the 1 psi reference is in conflict with the federal "percentage of psi loss" standard when the Recommended Tire Pressure Rating and the vehicle's placard tire pressure ratings are both commonly provided in absolute psi values.

Staff stated that they expect only 50 percent of all drivers with TPMS equipped in their vehicles to take immediate corrective action. Staff assumes that the other half will ignore the TPMS alert. The firm questioned this staff assumption asserting that NHTSA assumed a 90 percent compliance for drivers who receive the TPMS alert. Staff do not disagree with this assumption. Staff believe that eventually, virtually all TPMS alerts would lead to mitigation of the under inflation condition, either by driver action, or by having the vehicle serviced at an ASP.

The firm's request to further ease the accuracy standard for tire pressure gauges is not an acceptable proposal. Staff believe that concessions were made from the original proposed requirement for ASPs to use and maintain analog, dial-type tire pressure gauges that meet the ANSI B40.1 Grade B standard for accuracy. The new proposal allows tire pressure gauges of any type (analog, digital, or pencil type) to be used as long as the total permissible error does not exceed +/- 2 psi. Staff believes that this requirement can be complied by maintaining an accurate Master Tire Pressure Gauge onsite and calibrating frequently used, less expensive tire pressure gauges against it. The "best practices" tire inflation guidance document to be made available by staff on the ARB website will address this issue in greater detail.

Staff notes that the requirement for tire pressure gauges not conforming to the ANSI B40.1 Grade B standard was relaxed in response to tire service industry concerns.

The firm's other proposal that the State only require ASPs to perform the tire pressure service when the tire pressure drops 20 percent below the Recommended Tire Pressure Rating is not acceptable, and duplicative to federal TPMS regulation efforts.

## 2. Legal Authority and Other Legal Issues

### Comment No. 2-1 (Customer Authorization):

- Under current law, BAR requires that automotive repair dealers obtain authorization from the customer before performing any diagnosis or repairs on the vehicle. The Proposed Regulation does not address the situation whereby the customer refuses to provide authorization to the automotive repair dealer to perform the tire pressure service (check and inflate). ASCCA specifically requested that an exemption be provided for such an instance and that this exemption also be reflected on the vehicle invoice [Miller, ASCCA].
- The ARB's requirement to have all automotive service providers check and inflate each vehicle's tires to the recommended tire pressure rating at the time of performing any automotive maintenance or repair service appears to be in conflict with section 9884.9 of the Automotive Repair Act, which states that "no work shall be done and no charges shall accrue before authorization to proceed is obtained from the customer." As a result, BAR's registrants and licensees are prohibited from performing any repair services unless authorization to proceed is indicated on the estimate provided by the customer with their signature.

Under the current proposal, it is unclear what the ASPs would do to comply with ARB's proposed regulation and laws if the customer refused to authorize the check and inflate service or did not want to pay for it. As a result, with the exception of a free tire pressure service being offered to the customer, the regulation would have the effect of either forcing the ASPs to check the tires without consent of the customer and in violation of BAR's Automotive Repair Act, or force ASPs to refuse to provide any services at all to the customer. These are legally untenable options that have the effect of either subjecting BAR's registered licensees and registrants to disciplinary action for performing the tire pressure service (check and inflate) without customer authorization, or have the effect of removing consent and control over the customer's vehicle completely, which is precisely what the Automotive Repair Act was designed to prevent. The implementation options proposed by ARB staff (i.e., nullifying customer authorization) are neither necessary nor required by AB 32 (Global Warming Solutions Act of 2006).

DCA and BAR have proposed that further modifications to the text at section 95550 (d)(1)(A) be made to require ASPs to check and inflate the vehicle tires unless the customer expressly declines the service

[Mehl / Stiger, BAR / DCA]<sup>15</sup>.

- California Courts, administrative agencies, and law enforcement have consistently held that proceeding with repair work without customer authorization is illegal. In *Zhadan v. Downtown L.A. Motors* (66 Cal. App. 3d 481), the Second District Court of Appeals provided what is now the most cited opinion on the subject. In *Zhadan*, the court was faced with the decision of whether to uphold a punitive damages award against a repair facility for commencing and charging for work without providing an estimate to the customer and obtaining their consent. In considering whether to award punitive damages, “due consideration must be given to the public policy embodied in the statutory provisions, the violations of which were the basis of plaintiff’s claim.”<sup>16</sup> The court citing the California Supreme Court decision in *Vasquez v. Superior Court* (4 Cal. 3d 800) stated:

“Protection of unwary consumers from being duped by unscrupulous sellers is an exigency of the utmost priority in contemporary society.” The provisions of [B&P Code] section 9884.9 are of course, designed to achieve such protection. We must, therefore, consider any violation of its provisions as a serious violation of the public policy of this State.

Accordingly, California’s courts have emphasized the importance of this fundamental consumer protection system; one which the ARB’s regulatory proposal would undermine.

If the written estimate (as required by the Proposed Regulation) contains a line item for the tire pressure service, the option of whether to approve the service is left to the customer. Not only would the Proposed Regulation prohibit an ARD from repairing a vehicle unless performing the check and inflate service, but would effectively prohibit consumers from having their vehicles repaired unless approving the check and inflate service [Morrison, CNCDA].

#### Staff Response to Comment No. 2-1:

ARB staff have met with BAR staff several times in an effort to address their concerns. Staff believes, and case law clearly confirms, that the ARA was adopted as a consumer protection law (see, for example *Parada v. Small Claims Court of Los Angeles* (1997) 70 Cal. App. 3d 766 at 768). The ARA

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<sup>15</sup> The Department of Consumer Affairs, Bureau of Automotive Repair (DCA / BAR) of the State of California expressed their concerns regarding the Proposed Regulation, and its impact on other public policy goals and statutory mandates. The agency is responsible for enforcing and administering the Automotive Repair Act (ARA) and California’s Motor Vehicle Inspection Program (Smog Check) . BAR has over 34,000 automotive repair dealers, including 7,300 smog check centers, and 1,000 lamp and brake stations. The Proposed Regulation would apply to most of BAR’s licensees and registrants.

<sup>16</sup> *Zhadan*, supra, at 497.

was passed to address unscrupulous conduct by ASPs, who would perform vehicle repairs not requested by the vehicle owner and then demand payment for them before releasing the vehicle back to the owner. Staff acknowledges the importance of the purposes and goals of the ARA.

However, the requirements of the Proposed Regulation in no way impinge upon the concerns addressed by the ARA. The Proposed Regulation imposes a mandatory duty upon ASPs. There is no opportunity for the type of unscrupulous conduct targeted by the ARA through compliance with the Proposed Regulation.

A basic tenet of statutory construction provides that when faced with apparently facially conflicting laws, one looks to intent of each law, not simply the words, to determine whether a conflict actually exists.

“Of course, the cardinal rule of construction is that the court should ascertain the intent of the promulgating body so as to effectuate the intended purpose of the statute or regulation. (East Bay Garbage Co. v. Washington Township Sanitation Co., 52 Cal.2d 708, 713; California Sch. Employees Assn. v. Jefferson Elementary Sch. Dist., 45 Cal.App.3d 683, 691; Code Civ.Proc., s 1859). This rule has been extended to \*345 construction of administrative regulations.” California State Restaurant Assn. v. Whitlow (1976) 58 Cal. App. 3d 340 at 344.

“The fundamental purpose of statutory construction is to ascertain the intent of the lawmakers so as to effectuate the purpose of the law. [Citations]. In order to determine this intent, we begin by examining the language of the statute. [Citations.]” (Calatayud v. State of California (1998) 18 Cal.4th 1057, 1064, 77 Cal.Rptr.2d 202, 959 P.2d 360.) Although the intent ultimately prevails over the letter of the law (id. at p. 1065, 77 Cal.Rptr.2d 202, 959 P.2d 360), the \*1214 statutory language may be sufficiently clear and unambiguous to obviate the need for further inquiry. Spanish Speaking Citizens’ Foundation v Low (2000) 85 Cal. App. 4th 1179 at 1213.

As these cases state, mere conflict in verbiage is not the concern. The concern is whether the laws are working at cross purposes and clearly that is not the case here. The ARA and the Proposed Regulation reflect two very different, but equally important, state policies (viz.) consumer protection and reduction of greenhouse gases. Implementation of the Proposed Regulation in no way increases the risk of consumer fraud. In summary, there is no real conflict between the Proposed Regulation and the ARA.

#### Comment No. 2-2 (Inconsistent Terminology):

- The regulatory proposal presented in the proposed modifications fails to adhere to the Non-duplication requirement of the APA. Specifically, definitions in the proposed modifications presented for Automotive Service Provider (ASP) and Vehicle Service Invoice have identical meanings and implications to similar definitions presented in the Business & Professions Code (BPC), and yet have no reference to the BPC statute, leading to

unnecessary confusion and uncertainty for the industry. Each minor difference in descriptions of commonly known industry terms leads industry to question whether differences exist between practices pursuant to the BPC and those practices that ARB now requires. Since ARB's stated goal is to regulate behavior of the existing automotive repair industry, ARB should use existing descriptions and definitions from the BPC. If ARB seeks to create an overlapping regulatory scheme, it should justify and clarify exactly what it seeks. Fulfillment of the APA's Nonduplication Standard requires a statement of and justification for any overlapping and duplicative regulatory requirements. Neither the Staff Report nor any subsequent ARB document provides such statements or justifications. Therefore, the regulatory proposal fails to adhere to the Nonduplication requirement of the APA [Morrison, CNCDA].

Staff Response to Comment No. 2-2:

Staff responds that CNCDA agrees that definitions in the proposed modifications presented for Automotive Service Provider (ASP) and Vehicle Service Invoice have identical meanings and implications to similar definitions presented in the Business & Professions Code (BPC). The fact that no reference to the BPC statute was made does not necessarily violate the Nonduplicative requirement of the APA. Nor does staff believe that the proposed definitions lead to unnecessary confusion and uncertainty for the industry. The purpose for the custom definition for Vehicle Service Invoice was to make the document all encompassing; it could be a document that meets the requirements of BPC section 9884.8, or it could be a document (for example, a service checklist) commonly used in the daily course of business by an ASP. Both forms of documentation would be acceptable forms of record keeping for ARB compliance and enforcement purposes. Similarly, staff believe that the Proposed Regulation and the definition of ASP is applicable to most BAR registered ARDs. However, not all ARDs are subject to the requirements of the Proposed Regulation (for example, the regulation does not apply to ARDs such as auto body paint and repair shops whereas they would be subject to other BAR requirements). Therefore, staff believes that it was necessary to make the distinction for the proposed definitions.

Comment No. 2-3 (Customer Invoicing):

- Requiring the actual inflation pressure to be provided on the invoice requires additional paperwork, detailed communications with the service writer who types up the invoice using the ASPs computer invoicing system, and yet another chance for an inadvertent error. To allow for easier industry compliance, ASPs should be allowed to enter "tires inflated to specifications" or some other standard language instead. The regulation also requires ASPs not performing the tire pressure service

to provide the reason on the invoice. This requirement in subsection 95550 (d)(1)(B) is immediately followed by subparagraph (C) which mandates the performance of the check and inflate service [Morrison, CNCDA].

Staff Response to Comment No. 2-3:

Staff believes the requirement for ASPs to indicate on the vehicle service invoice that a tire inflation service was completed and also record the tire pressure measurements after the service was performed was based on two considerations; (1) to protect the ASP if a procedural, compliance, or enforcement related issue arises, and (2) what is considered to be an industry “best practice” that could easily set the industry standard. The proposed requirement satisfies both these considerations.

Staff further believes that CNCDA has misunderstood the requirement of when the tire pressure service is to be performed by an ASP. The actual check and inflate requirement is stipulated in subsection (d)(1)(A) of the Proposed Regulation. Indicating the reason for not performing the service on the Vehicle Service Invoice is a requirement of subsection (d)(1)(B). Subsection (d)(1)(C) provides specification for the use and accuracy of tire pressure gauges when the check and inflate service is performed. Staff believes that the requirement to indicate the reason for not performing the tire pressure service on the Vehicle Service Invoice is a self-standing clause whose intent is clear and logical. ARB reiterates that there is no expectation that the tire pressure service be performed if the ASP or servicing mechanic has a valid reason for not performing the service.

Comment No. 2-4 (Relationship to Other Law):

- The “Relationship to Other Law” subsection in the proposed 15-day modifications is confusing. Subsection (f) of the proposed modifications provides that the regulation not allow ASPs to violate other applicable laws, and specifically cites the BPC. This leaves the ASPs confused as to what is ARB’s intended goal. Since compliance with the regulation may necessitate violation of the BPC, could it mean that ARDs (implied ASPs) are not required to comply with the regulation if doing so will lead to a violation of other laws? Or does ARB simply mean that the regulatory proposal does not nullify the required compliance with other laws? The APA establishes a “clarity” requirement, mandating that the regulatory language is readily understandable by those directly affected. Due to the confusing nature of this provision, and the lack of accompanying guidance on the matter, the APA’s clarity requirement is not fulfilled [Morrison, CNCDA].

Staff Response to Comment No. 2-4:

Staff contends that complying with the requirements of the Proposed Regulation does not lead to a violation of BPC statues and any other applicable law identified in subsection (f) of the Proposed Regulation.



### 3. Miscellaneous Comments

#### Comment No. 3-1 (TPMS Systems):

- The Proposed Regulation duplicates related federal rules, regulations, and activities. The federal government has enacted “sweeping” legislation and is about to undertake a national public information and education program about tire under-inflation.

Pursuant to the TREAD Act<sup>17</sup>, the National Highway and Traffic Safety Administration (NHTSA) was directed to develop regulations for installing tire pressure monitoring systems (TPMS) on new passenger vehicles and light duty trucks. These devices are capable of alerting drivers (by means of an onboard warning light) when the tire pressure falls 25 percent below the recommended tire pressure. TPMS installations on new vehicles have been phased in since 2005, and by the end of August 2007, approximately 70 percent of new vehicles rolled off the production lines with TPMS. With ARB staff claim that fuel savings from the Proposed Regulation expected to be approximately 0.6 percent, the national TPMS imperative accomplishes the same objectives, unnecessitating the need for the Proposed Regulation.

Furthermore, in June 2009, the DOT and NHTSA, published in the Federal Register<sup>18</sup>, an announcement to adopt the Tire Fuel Efficiency Consumer Information Program, as directed by Congress, the purpose of which is to inform consumers about the effect of replacement tire choices that impact fuel efficiency, and also requires NHTSA to include a tire maintenance consumer education program as well. The tire maintenance program will address the need that “all tires require proper inflation and maintenance to achieve their intended level of efficiency, safety, and operating performance.”

The Proposed Regulation imposes a high cost on businesses and costs savings claimed in the Staff Report are “speculative.” In light of the federal TPMS and tire maintenance programs, the Proposed Regulation is duplicative and expensive, with no more of a marginal impact on fuel consumption than the two federal programs. The State should step aside and allow the federal programs to run their course, thereby achieving the goals of AB 32 at the expense of the federal government. The Proposed Regulation does not meet the Nonduplication standard of the Administrative Procedures Act (APA), which means the regulation should not serve the same purpose of a State or federal statute [Flanigan, Les Schwab Tire Centers].

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<sup>17</sup> In 2000, Congress enacted the Transportation Recall Enhancement Accountability Documentation (TREAD) Act.

<sup>18</sup> Federal Register (FR), Volume 74, No.118.

Staff Response to Comment No. 3-1:

The Proposed Regulation does not duplicate the recently enacted federal legislation requiring TPMS systems to be installed on new passenger vehicles. Staff fail to see the impact of the TPMS regulation on California drivers in a way that the Proposed Regulation does. First, at the rate at which vehicles in California are turning over (i.e., newer vehicles replacing older vehicles from service) staff estimate that it may take up to a decade for TPMS systems to be standard equipment in a large majority of the passenger vehicles on California roads. Secondly, the TPMS regulation was enacted as a safety measure and not as a fuel savings or GHG emissions reduction measure. Third, the trigger for the TPMS to be activated and alert the driver is a level of inflation 25 percent below the recommended tire pressure rating for the vehicle. For most passenger cars the TPMS alert is not expected to be activated until the level of under inflation drops by ~ 8 psi or drops below 24 psi<sup>19</sup>.

Herein staff find the shortcomings of the TPMS regulation. For a large number of vehicles on the road, both NHTSA and staff surveys indicate the mean level of under inflation to be between 1 and 8 psi. Installed TPMS (even if the rate of adoption in all vehicles is 100 percent) are not likely to notify drivers when the level of under inflation is either moderate (1 to 6 psi) or severe (6 to 8 psi). In these circumstances, the tire pressure service (check and inflate) captures what the TPMS will not. Lastly, staff stated that they expect only 50 percent of all drivers with TPMS equipped in their vehicles to take immediate corrective action. Staff assumes that the other half will ignore the TPMS alert.

A detailed discussion on the costs, benefits, and cost-effectiveness of TPMS systems along with the underlying assumptions has been presented in the Staff Report (see Section X - Alternatives to Proposed Regulation). In addition, reasons why ARB cannot depend on an outreach and consumer education program alone are also presented in the Staff Report (see Section X.A). Staff are encouraged by the federal government's recently announced intention to undertake a national public information and education program about tire under inflation. Staff notes that any federal effort<sup>20</sup> to implement a tire under inflation mitigation program for passenger vehicles will likely be subject to the same costs and cost-effectiveness measures. In that respect, the Proposed Regulation for Under Inflated Vehicle Tires for the State of California achieves fuel and tire savings, GHG emissions reductions, and costs savings for consumers in an easily implementable way.

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<sup>19</sup> Staff assumes that the recommended tire pressure rating for most passenger vehicles is 32 psi.

<sup>20</sup> Reference to the 2009 Tire Fuel Efficiency and Consumer Information Program.

In response to the firm's comment that the Proposed Regulation imposes a high cost on businesses, and cost savings claimed in the Staff Report are "speculative," staff disagrees. Staff determined that most ASPs will incur minor capital costs to comply with the requirements of the Proposed Regulation. Staff believes that most ASPs will have the ability to pass on these costs to their customers, either by billing for labor charges or by imposing a small environmental fee. With costs pass-through assumptions, the Proposed Regulation imposes no "high costs on businesses." Lastly, the firm claimed that costs savings claimed in the Staff Report are "speculative." Staff determined costs savings by determining the amount of fuel savings that result from proper tire inflation practices. Staff believes that the fuel savings were conservatively estimated. The firm's claim that the federal government study assumes equivalent or higher fuel savings<sup>21</sup> from the TPMS program alone attests that staff's estimate of overall fuel savings (0.6 percent) is a conservative estimate.

Staff concludes that the Proposed Regulation is needed to further achieve GHG emissions reductions. The Proposed Regulation serves a purpose different from the recently enacted TPMS legislation. Staff also determined that outreach and consumer education programs to mitigate tire under inflation alone cannot be counted upon to effect the goals of the Proposed Regulation.

Comment No. 3-2 (Support for Proposed Modifications):

- We applaud the State of California's leadership in reducing climate change emissions by lowering fuel and maintenance costs and by reducing wear in underinflated tires. Any revisions to the original Proposed Regulation should only be made to strengthen the program and broaden its reach versus weakening its applicability. [Krause, Ventech].

Staff Response to Comment No. 3-2:

Staff appreciates the support extended for the Proposed Regulation. None of changes being proposed in the proposed First 15-Day Modifications have any material impact on the quantity of fuel saved, GHG emissions reduced, program cost-effectiveness, or expected costs savings produced for consumers.

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<sup>21</sup> The firm cited the U.S. General Accountability Office's February 9, 2007 correspondence to the U.S. Senate regarding Underinflated Tires in the United States (GAO-07-246R Underinflated Tires). The report estimates fuel waste from passenger cars and light trucks due to tire under inflation to be approximately 0.9 percent of the overall fuel consumption (more than the estimate stated in the Staff Report).

Comment No. 3-3 (Opposition to Proposed Regulation):

- The Proposed Regulation is unenforceable and a waste of tax payer money. People would be better served if fuel dispensing station are forced to fix their air compressors [Molyneux, Private Citizen].

Staff Response to Comment No. 3-3:

Staff responds by stating that tire under inflation is a serious problem that affects all drivers in California at some point. National and local staff surveys discussed in the Staff Report attest to the impacts of passenger vehicle tire under inflation. Approximately one of every two drivers were found to have moderately or severely under inflated tires which waste fuel, reduce tire life, and contribute to excess GHG emissions. Consumer awareness and outreach program alone cannot be counted upon to mitigate the problem. Furthermore, California law requires fuel dispensing facilities to offer free air with fuel purchase. In spite of the States' best intentions, the problem of tire under inflation persists. The Proposed Regulation easily corrects the problem of this consumer neglect, while saving consumers money and contributing to fewer GHG emissions.

Staff has no doubts that the requirements of the Proposed Regulation will be widely adopted and easily enforced. With regards to the citizen's concern regarding wasting tax payer money, staff responds that the cost-effectiveness of the Proposed Regulation was found to yield net costs savings to consumers.

**c. Second 15-Day Period Public Comments**

Written comments from the general public were also accepted by ARB during the second 15-day open public comment period following the issuance of the Second 15-Day Notice. The modified regulation was released for public comment on January 14, 2010. The public comment period remained open until the close of business on January 29, 2010. Persons that commented on the modified regulation for under inflated vehicle tires by submitting written comments are identified in Table 3 below.

**Table 3**  
**Individuals Submitting Second 15-Day Period Public Comments**

<b>Comment Number</b>	<b>Name</b>	<b>Affiliation</b>	<b>Date of Comment</b>
1	O'Grady, Joe	Private Citizen	January 13, 2010
2	Holzhauser, Eric	Private Citizen	January 13, 2010
3	Saline, Steve	School Teacher	January 13, 2010
4	McElliott, David	Private Citizen	January 13, 2010
5	Lenow, Patrick	Private Citizen	January 13, 2010
6	Shurtleff, Steven	Private Citizen	January 13, 2010
7	Flores, Robert	Private Citizen	January 13, 2010
8	Smith, Steve	Private Citizen	January 13, 2010
9	Sullivan, Kathy	Private Citizen	January 13, 2010
10	Gilbert, Ralph	Private Citizen	January 13, 2010
11	Brakeman, Richard	Private Citizen	January 13, 2010
12	Shearer, Stanton	Private Citizen	January 13, 2010

**Table 3**  
**Individuals Submitting Second 15-Day Period Public Comments (Continued)**

<b>Comment Number</b>	<b>Name</b>	<b>Affiliation</b>	<b>Date of Comment</b>
13	Crest, Gary	Private Citizen	January 13, 2010
14	Musser, Randy	Private Citizen	January 13, 2010
15	Musser, Patti	Private Citizen	January 13, 2010
16	Reames, Randy	Private Citizen	January 13, 2010
17	Kalianov, John	Taxpayer	January 13, 2010
18	Morrison, Steve	Private Citizen	January 13, 2010
19	Ternus, Conni	Private Citizen	January 13, 2010
20	Chen, Daniel	Private Citizen	January 13, 2010
21	Bourdon, Yao	Private Citizen	January 13, 2010
22	Pealer, Richard	Private Citizen	January 13, 2010
23	Berlin, Jack	Private Citizen	January 13, 2010
24	Sparks, C	Private Citizen	January 13, 2010
25	Stout, Curtis	Private Citizen	January 13, 2010
26	Grabowski, Steven	Private Citizen	January 13, 2010
27	Collins, Judie	Private Citizen	January 13, 2010
28	Miller, Steve	Private Citizen	January 13, 2010
29	Markham, John	Private Citizen	January 13, 2010
30	Dhooge, John	Private Citizen	January 13, 2010
31	Berlin, Jack	Private Citizen	January 13, 2010

**Table 3**  
**Individuals Submitting Second 15-Day Period Public Comments (Continued)**

<b>Comment Number</b>	<b>Name</b>	<b>Affiliation</b>	<b>Date of Comment</b>
32	Fleischer, Michele	Private Citizen	January 13, 2010
33	Hakeem, James	Private Citizen	January 13, 2010
34	Henriques, James	Private Citizen	January 13, 2010
35	Clark, Kevin	Private Citizen	January 13, 2010
36	Lizarraga, Liza	Private Citizen	January 13, 2010
37	Cleveland, Ronald	Private Citizen	January 13, 2010
38	Hass, Tony	Private Citizen	January 13, 2010
39	Driussi, Alessandria	Private Citizen	January 13, 2010
40	Grubbs, Rick	Private Citizen	January 13, 2010
41	Mendia, Adolfo	Private Citizen	January 13, 2010
42	Berlin, Jack	Private Citizen	January 13, 2010
43	Gaudig, John	Private Citizen	January 13, 2010
44	Yocom, Darrell	Private Citizen	January 13, 2010
45	Freie, Mark	Private Citizen	January 13, 2010
46	Greer, Michael	Private Citizen	January 13, 2010
47	Mohawk, Michael	Private Citizen	January 13, 2010
48	Pullen, Amanda	Private Citizen	January 13, 2010
49	Dennis, Terry	Private Citizen	January 13, 2010

**Table 3**  
**Individuals Submitting Second 15-Day Period Public Comments (Continued)**

<b>Comment Number</b>	<b>Name</b>	<b>Affiliation</b>	<b>Date of Comment</b>
50	Morris, Jeffrey	Private Citizen	January 13, 2010
51	Warner, Nikki	Private Citizen	January 13, 2010
52	Forsgren, Dave	Private Citizen	January 13, 2010
53	Bean, Janet	Private Citizen	January 13, 2010
54	Hess, Tom	Private Citizen	January 13, 2010
55	Chandler, Christopher	Private Citizen	January 13, 2010
56	Fleagle, Todd	Private Citizen	January 13, 2010
57	Morris, Jeffrey	Private Citizen	January 13, 2010
58	Thomas, Gino	Private Citizen	January 13, 2010
59	Goodin, Terry	USCG Master	January 13, 2010
60	Bourdon, Scott	Private Citizen	January 13, 2010
61	Rodemeyer, William	Private Citizen	January 13, 2010
62	Macris, William	Private Citizen	January 13, 2010
63	Bitzer, Rolf	Private Citizen	January 13, 2010
64	Thornton, Gary	Editor, Los Angeles Almanac	January 13, 2010
65	Burns, H	Private Citizen	January 13, 2010
66	Sanders, Joanne	Private Citizen	January 13, 2010
67	Fischer, Hart	Clean Air Congress Member	January 13, 2010
68	Magdaleno, Tom	Private Citizen	January 13, 2010



**Table 3**  
**Individuals Submitting Second 15-Day Period Public Comments (Continued)**

<b>Comment Number</b>	<b>Name</b>	<b>Affiliation</b>	<b>Date of Comment</b>
69	Burns, Steven	Concerned Citizen	January 13, 2010
70	Pershing, Kevin	Private Citizen	January 13, 2010
71	Steinberg, Jim	Private Citizen	January 13, 2010
72	Mann, Andrew	Private Citizen	January 13, 2010
73	Stuimer, Harry	Private Citizen	January 13, 2010
74	Jesus, Barbara	Private Citizen	January 13, 2010
75	Baker, Phil	Private Citizen	January 13, 2010
76	Demaray, Warren	Private Citizen	January 13, 2010
77	Readler, Garrett	Private Citizen	January 13, 2010
78	Corliss, Tim	Private Citizen	January 13, 2010
79	Bill, Bill	Private Citizen	January 13, 2010
80	Proano, Carlos	Private Citizen	January 13, 2010
81	Forbes, Tom	Private Citizen	January 13, 2010
82	Doherty SR., William M.	Private Citizens	January 13, 2010
83	Williams, David,	Private Citizen	January 13, 2010
84	Arcudi, Bill	Private Citizen	January 13, 2010
85	Christensen, Cory,	Private Citizen	January 13, 2010
86	Ciufo, Deborah	Citizen of California	January 13, 2010

**Table 3**  
**Individuals Submitting Second 15-Day Period Public Comments (Continued)**

<b>Comment Number</b>	<b>Name</b>	<b>Affiliation</b>	<b>Date of Comment</b>
87	Caine, David	American Citizen	January 13, 2010
88	Chen, Bill	Private Citizen	January 13, 2010
89	Cottrell, Sandra	California Citizen	January 13, 2010
90	Beltz, Dana	Private Citizen	January 13, 2010
91	Skrady., Deb	Private Citizen	January 14, 2010
92	Shaw, Dan	Private Citizen	January 14, 2010
93	Stevens, Keith	Private Citizen	January 14, 2010
94	Goodner, Michael	Private Citizen	January 14, 2010
95	Teichner, Donald	Private Citizen	January 14, 2010
96	Cottingham, Jim	Private Citizen	January 14, 2010
97	Poulsen, Chelsey	Private Citizen	January 14, 2010
98	Haynes, Jim	Retired / Concerned Citizen	January 14, 2010
99	Brodowski, Joel	Private Citizen	January 14, 2010
100	Damisch, Jason	Private Citizen	January 14, 2010
101	Chan, Brenda	Private Citizen	January 14, 2010
102	Fessenden, Larkin	Private Citizen	January 14, 2010
103	Heagey, Robert	Private Citizen	January 14, 2010
104	Swiecki, Kimberly	Private Citizen	January 14, 2010

**Table 3**  
**Individuals Submitting Second 15-Day Period Public Comments (Continued)**

<b>Comment Number</b>	<b>Name</b>	<b>Affiliation</b>	<b>Date of Comment</b>
105	Schneggenburger, Guy	Private Citizen	January 14, 2010
106	Leider, Robert	Private Citizen	January 14, 2010
107	Duryea, Mike	Private Citizen	January 14, 2010
108	Allen, David	Private Citizen	January 14, 2010
109	Blaney, Roger	Private Citizen	January 14, 2010
110	Rairez, Jesse	Private Citizen	January 14, 2010
111	Galindo, Richard	Private Citizen	January 14, 2010
112	Kramer, Frederick	Private Citizen	January 14, 2010
113	Bookman, Alexis	Private Citizen	January 14, 2010
114	Cianciolo, Gary	Private Citizen	January 14, 2010
115	McCune, Chris	Private Citizen	January 14, 2010
116	Palminteri, Jim	Private Citizen	January 14, 2010
117	Jones, Malcolm	Private Citizen	January 14, 2010
118	Cromwell, Megan	North Bay Patriots	January 14, 2010
119	Burgess, Mike	Private Citizen	January 14, 2010
120	Fleagle, Todd	Private Citizen	January 14, 2010
121	Reames, Randy	Private Citizen	January 14, 2010
122	Anderson, Sandra	Private Citizen	January 14, 2010

**Table 3**  
**Individuals Submitting Second 15-Day Period Public Comments (Continued)**

<b>Comment Number</b>	<b>Name</b>	<b>Affiliation</b>	<b>Date of Comment</b>
123	Pater, Michael	Private Citizen	January 14, 2010
124	Mohawk, Michael	Resident of California	January 14, 2010
125	Brommer, Steve	Private Citizen	January 14, 2010
126	Passmore, Patty	Private Citizen	January 14, 2010
127	Chen, Daniel	Private Citizen	January 15, 2010
128	Beatty, Irina	Private Citizen	January 15, 2010
129	McFarland, Andy	Concerned California Small Business Owner	January 15, 2010
130	Reese, Richard	Private Citizen	January 17, 2010
131	Axe, Merjoe	Private Citizen	January 13, 2010
132	Pealer, Richard	Private Citizen	January 13, 2010
133	Shoemate, Brady	Private Citizen	January 13, 2010
134	McDonald, Jim	Private Citizen	January 14, 2010
135	Gust, Mike	Private Citizen	January 14, 2010
136	Daniel-Underwood, Lynda	Private Citizen	January 14, 2010
137	Massie, Chris	Private Citizen	January 14, 2010
138	Barlow, Mike	Private Citizen	January 14, 2010
139	Leighland, M	Private Citizen	January 14, 2010
140	Leighland, M1	Private Citizen	January 14, 2010

**Table 3  
Individuals Submitting Second 15-Day Period Public Comments (Continued)**

<b>Comment Number</b>	<b>Name</b>	<b>Affiliation</b>	<b>Date of Comment</b>
141	Tunick, Adam	Private Citizen	January 13, 2010
142	Miller, Brant	Private Citizen	January 19, 2010
143	Leveille, Terry	TL & Associates	January 21, 2010
144	Kilbury, Rita	Private Citizen	January 21, 2010
145	Magdaleno, Tom	Private Citizen	January 21, 2010
146	Hanson, Gordon	Private Citizen	January 22, 2010
147	Flanigan, Mike	Les Schwab Tire Centers	January 22, 2010
148	Logue, George	Private Citizen	January 22, 2010
149	Bishop, Keith	Private Citizen	January 22, 2010
150	Saleh, Fred	Consumer	January 22, 2010
151	Peacock, Timothy	Private Citizen	January 24, 2010
152	Sok, Mary	Private Citizen	January 25, 2010
153	Berlenbach, Dan	City of Oxnard	January 25, 2010
154	Fiore, Paul	Tire Industry Association	January 26, 2010
155	Lu, Cynthia	Private Citizen	January 26, 2010
156	Zavala, Pedro	Democrat	January 27, 2010
157	<u>Stutts, Gerald</u>	Private Citizen	January 27, 2010
158	<u>Coutts, Dave</u>	Private Citizen	January 27, 2010

**Table 3  
Individuals Submitting Second 15-Day Period Public Comments (Continued)**

<b>Comment Number</b>	<b>Name</b>	<b>Affiliation</b>	<b>Date of Comment</b>
159	<u>Stark, Jim</u>	Private Citizen	January 27, 2010
160	<u>Maben, Rick</u>	Private Citizen	January 28, 2010
161	<u>Hunter, Jeff,</u>	California Tow Truck Association	January 28, 2010
162	<u>Morrison, Jonathan</u>	CNCDA	January 28, 2010
163	<u>Hall, Mark</u>	Automotive Professional	January 28, 2010
164	<u>Miller, Jackie</u>	ASCCA	January 29, 2010
165	<u>Brady, Michael,</u>	Private Citizen	January 29, 2010
166	<u>Norberg, Tracey</u>	Rubber Manufacturers Association	January 29, 2010
167	<u>Sampson, Glenn,</u>	Private Citizen	January 29, 2010
168	Pealer, Richard	Private Citizen	January 26, 2010
169	Derosiers, J.D.	Private Citizen	January 26, 2010
170	Huynh, Patrick	Private Citizen	January 26, 2010
171	Parker, Irey	Private Citizen	January 26, 2010
172	Carlos, Michael	Private Citizen	January 26, 2010

Staff notes that Government Code section 11346.9(a)(3) requires the agency to summarize each objection or recommendation only if they are specifically directed at the ARBs proposed action or the procedures followed in proposed or adopting the action. ARB may dismiss irrelevant comments as a group.

A comment is irrelevant if it is not specifically directed at the proposed action or the procedures followed in proposed or adopting of the action. Staff evaluated every comment to determine if it pertained to the proposed modifications made since the proposed regulation and subsequent modifications that were made available to the public by means of the 45-Day Notice and the First 15-Day Notice. Virtually all comments received during the second 15 day modification period reflected a general opposition to the regulation and did not pertain to the modification proposed in the second 15 day notice. These comments resulted

from an on-air radio event in Southern California in January 2010. For the record, the list of individuals submitting such comments in the second 15-day public comment period, along with the text of their comments in their entirety can be accessed at the following link:

<http://www.arb.ca.gov/lispub/comm/bccommlog.php?listname=tirepres09>

Staff has made a determination that the following comments pertain to proposed changes in the Second 15-Day Notice. Summaries of each comment grouped by subject, the individual or group of individuals presenting or sharing the same concern, as well as staff responses to the objections and recommendations made are presented below. Each staff response is an explanation of either the changes made as a result of an objection or recommendation, or the reasons for making no change.

## **1. Regulatory Applicability and Requirements**

### Comment No. 1-1 (Customer Affirmation and Documentation):

- The proposed amendments to the regulation create unnecessary costs and administrative burdens for both repair shops and consumers by requiring an unreasonable amount of documentation. The requirement for consumers to prove that they had performed a tire pressure check and inflate service within the last 30 days by providing supporting documentation to the ASP is unnecessary. The customer should have the right to decline the service without any conditions attached. We further request that subsection 95550 (e) Penalties and Injunctions be deleted [Miller / Johnson, ASCCA].
- It is outrageous that I will have to carry proof that my tires have been checked for the correct tire pressure [Rodemeyer, Private Citizen].
- I work on my own cars and I am not going to carry around documentation that I inflate my tires properly [Magdaleno, Private Citizen].
- I have successfully checked my own tire pressure for more than 30 years. Do you propose that I now find a professional tire service facility every 30 days to check, inflate, and document the condition of my tires [Thornton, Los Angeles Almanac]?
- The latest amendments to the regulation create a new category of circumstances that may lead to an exception from the check and inflate requirements — allowing customers to decline the service if they “affirm” that their tires were checked and inflated within the past 30 days or will be checked and inflated within the next 7 days. Industry is left unclear as to the consequences of this latest exception [Morrison, CNCDA].

Staff Response to Comment No. 1-1:

Proposed amendments in the Second 15-Day Modifications do not require the customer to provide supporting documentation to the ASP if the tire pressure service has been performed in the previous 30 days.

As the regulation provides, if a customer states that they have either had their tires checked within the last 30 days or will have the tires checked within the next 7 days, then the customer may decline the service. Staff believes this to be a very simple approach to meeting the goals of the regulation while providing the customer with options to address issues that have been raised in prior comments. Commenters' efforts to confuse the issue notwithstanding, the provision is clear and straight forward.

The ability to assess penalties and injunctions in subsection 95550 (e) are necessary to ensure compliance with the regulation. Staff notes that other concerns raised by the Automotive Service Councils of California (ASCCA) have been addressed in staff responses provided in the 45-day and first 15-day public comments sections.

Comment No. 1-2 (Age as a Criteria to Determine Unsafe Tire):

- While we support the proposal for ASPs not to inflate unsafe tires, we suggest that ARB eliminate the casual factor of "age" for determining whether a tire is safe or unsafe in definition (c) (14). The issue is subject of significant debate, lawsuits, and legislations [Leveille, TL & Associates].
- The regulation proposes to include "age" for determining the safety of a tire. There are no industry standards regarding the age of a tire and safety. Until definitive scientific data is produced, we respectfully request that "age" be removed as an element for determining "unsafe tires." [Flanigan, Les Schwab Tire Centers].
- We strongly believe that the inclusion of "age" alone as a criterior for declaring a tire unsafe is an assumption that is not supported by any scientific consensus. TIA respectfully suggests that "age" be struck out from the definition provided in (c) (14) for "Unsafe Tires" [Fiore, Tire Industry Association].
- RMA does not support the concept that an ASP should be able to decline properly inflating a tire because that provider deems a tire "unsafe." We recommend that ARB address this issue by limiting the liability of the ASP by allowing the ASP to disclose concerns about the tire conditions and recommend that the tire be replaced. If ARB allows an ASP not to inflate



a tire on the basis that it is unsafe, then RMA requests that “age” not be used as a criteria to make that determination. RMA is not aware of scientific or technical data that establishes or identifies a specific minimum or maximum service life for passenger and light truck tires, and requests ARB to remove the reference to “age” from the definition of “Unsafe Tire” [Norberg, RMA].

Staff Response to Comment No. 1-2:

The rationale for including “age” as a criteria for an ASP to determine whether a tire is unsafe for operation has been addressed in the First 15-Day Modifications (see Comment No. 1-5 and corresponding Staff Response to Comment No. 1-5 above).

Comment No. 1-3 (Exemptions):

- Despite ARB’s originally stated intentions in the Staff Report that the regulation would not apply to “wrecking and towing companies,” the current regulation still does not specifically exempt, nor clarify that the regulation would not apply to towing companies. The rule-making process almost certainly would have proceeded differently in terms of public comment had our members believed they were not exempt.

This regulation should not apply to towing companies due to safety and equipment concerns. Any additional time required for a tow truck operator and the consumer to be on the roadway only drastically compounds the hazardous situation. Additionally, not all tow trucks are equipped with the on-board air compressor systems that would be required to inflate all the tires on a customer’s vehicle to the proper inflation levels.

We request that towing companies be specifically exempted in subsection (b)(2), and that a definition for “Towing Company” be provided in subsection (c) of the regulation.[Hunter, CTTA].

Staff Response to Comment No. 1-3:

As intended in the Staff Report, wrecking and towing companies would be exempt from complying with the requirements of the Proposed Regulation.

## 2. Legal Authority and Other Legal Issues

### Comment No. 2-1 (Customer Authorization / Consumer Protection):

- The proposal conflicts with California's automotive repair consumer protection statutes, which prohibit commencement of any repair related service without customer authorization [Morrison, CNCDA].

### Staff Response to Comment No. 2-1:

ARB staff disagrees with this comment. See Staff Response to Comment No. 2-1 in the First 15-Day Period Public Comments section above (Section II.b).

### Comment No. 2-2 (Legal Issues Pertaining to Proposed Regulation):

- The legislature has unconstitutionally delegated uncontrolled power to the ARB to adopt regulations. The legislature has provided no limits on what the Board can regulate or standards for how the Board regulates. Because the legislature's delegation to the Board is so broad, there is simply no way for a reviewing court or anyone else to determine whether the Board has kept within its delegated authority. The Board members are not directly accountable to the people of California, and the absence of any standards makes it all but impossible to review the Board's actions.

The changes in the modified text are substantial and not sufficiently related to the original text. For example, the modified text includes a new requirement that customers affirm certain matters in order to decline service. Further, the modified text includes a new requirement with respect to disclosures on the vehicle service invoice. Affected consumers would not have determined from the original notice that these changes would have resulted. Accordingly, the modified text should have been made available for at least 45 days.

The Proposed Regulation will adversely affect consumers. Nothing in the Proposed Regulation requires the ASP to disclose to the consumer (either orally or in writing) that the service may be declined. Consumers are unlikely to engage in comparison shopping once the vehicle has been brought in for service. As a result, significant price gouging is likely to occur if the Proposed Regulation is adopted.

With the Proposed Regulation, the Board is implicitly concluding that the people of California do not, and cannot make rational decisions with respect to maintaining their own personal property [Bishop, Private Citizen].

Staff Response to Comment No. 2-2:

With respect to the comment regarding unconstitutional delegation, ARB would note that it is implementing specific legislation, the California Global Warming Solutions Act, in adopting the tire inflation regulation. This law provides the scope of ARB's rulemaking authority. With respect to the comment that the changes are substantial and not sufficiently related, ARB would note the following:

- (a) The change allowing the customer to decline service based on either recently having the service performed or agreeing to have the service performed in the near future was made in response to prior comments. The regulation imposes a requirement on the ASP; not the customer. This change simply facilitates a customer's ability to decline service.
- (b) The regulation has always provided that the check and inflate service be indicated on the service invoice. Because of the changes to the requirements to perform the check and inflate, it is appropriate that the service invoice reflect whether the check and inflate service was performed at all and if not, why not.

Both of these changes are logically-derived iterations of the originally noticed proposed regulation and reflect concepts founded in the originally noticed proposed regulation.

**3. Miscellaneous Comments**

Comment No. 3-1 (Unworkable Regulation):

- I am opposed to the Tire Pressure Regulation. The Regulation will prohibit me from performing check and inflate on my own tires, forcing me to accept the service from a repair dealership who I doubt will be able to determine the proper inflation pressure for the tires on my vehicle. The (proposed) law is unenforceable. I favor the State sponsor an awareness campaign instead [McCune, Private Citizen].
- I am opposed to the Regulation's compliance requirements. Performing a check and inflate service at any automotive maintenance or repair service is impracticable and cost prohibitive. In addition, it would not achieve the reduction of green house gases the Regulation's objective seeks [Maben, Private Citizen].

Staff Response to Comment No. 3-1:

Staff responds by stating that all automotive service providers are required to perform a tire inflation service on all passenger vehicles that are brought in to a facility for automotive maintenance or repair service. A tire pressure service may be declined if a tire pressure service has been performed within the last 30 days or the customer affirms that a tire pressure service will be performed in the next 7 days.

All automotive service providers are required to have access a Tire Inflation Reference that is current within three years of publication. This reference serves as a resource to determine tire pressure inflation specifications for original equipment tires and wheels and non-original equipment sized tires and wheels and load indices. Staff believe that most ASPs and tire service specialists possess this knowledge in-house or are competent to utilize such a resource.