



California New Car Dealers Association

January 28, 2010

Mr. James Goldstene
Executive Director
California Air Resources Board
1001 I Street
Sacramento, CA 95814

Re: Comments on Proposed Tire Pressure Regulation

Dear Mr. Goldstene,

The California New Car Dealers Association (CNCDA) is a statewide trade association which represents the interests of over 1,100 franchised new car and truck dealer members. CNCDA members are primarily engaged in the retail sale of new and used motor vehicles, but also engage in automotive service, repair, and parts sales. We provided separate comments in March and November which raised substantial policy and procedural problems with the proposed regulation and subsequent amendments. While each subsequent draft has improved upon the prior draft, the latest draft remains unacceptable and unsound. In addition to our previous comments, many of which still apply, we have identified additional concerns, described below. In light of these concerns, we again ask for ARB to withdraw the proposed regulation and to hold industry workshops to address the objections raised by CNCDA and other interested parties.

Administrative Procedures Act:

As discussed in our March comments, ARB's statutory authority for implementing the regulation¹ mandates strict compliance with requirements of the Administrative Procedures Act (APA)² when promulgating regulations to implement the Global Warming Solutions Act of 2006 (AB 32). The importance of meeting the emission reduction requirements of AB 32 does not allow ARB to cast aside or water-down the APA's procedural requirements. Unfortunately, the amended draft proposal again fails to meet these standards.

- **Regulatory Proposal Undermines Automotive Repair and Consumer Protection Statutes:**

The proposed regulations generally require all Automotive Service Providers (ASPs) to "check and inflate each vehicle's tires to the recommended tire pressure rating . . . at the time of performing any automotive maintenance or repair service."³ Unless the vehicle or tire meets certain uncommon conditions,⁴ customers may only refuse this service if they affirm that the tire was inflated within the last 30 days, they affirm that they will do so within the next seven days, or their tires are inflated with nitrogen. While the latest draft regulation removed the mandate that the customer provide documentation that the tires were checked and inflated, the proposal still conflicts with California's automotive repair consumer protection statutes, which prohibit commencement of any repair-related service without customer authorization. Although the recent amendments are an improvement

¹ Health and Safety Code Section 39601.

² Government Code Sections 11340, *et seq.*

³ Proposed 17 California Code of Regulations Section 95550(d)(1).

⁴ Vehicles over 10,000 lbs GVWR, or deemed unsafe by ASP.

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over the last draft, nothing in the regulation addresses the inherent conflict presented to Automotive Repair Dealers faced with a consumer who refuses to either affirm that they have or will check or inflate their tires, and refuses to allow the dealer to do so. Until this is addressed, the proposed regulation continues to conflict with existing statutes and regulations pursuant to the Automotive Repair Act.

- **Customer “Affirmation” Requirement Fails to Meet APA Clarity Requirement:**

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. Does ARB envision that a verbal affirmation is sufficient, or that the affirmation must be in writing? Does a consumer who provides a false affirmation, or who fails to live up to their promise to inflate their tires in the future face potential ARB enforcement action? Since the impact upon consumers and industry of this “affirmation” exception will vary widely depending upon ARB’s response to these questions, commenting on the provision is extremely difficult. Without further clarification, the proposal fails to live up to the “clarity” requirements of the APA.⁵ The APA requires that a regulatory proposal must be drafted so that the meaning of the regulations is easily understood by those directly affected, and that “regulations shall be presumed not to comply with the ‘clarity’ standard” if capable of having more than one meaning or using undefined terms not generally familiar to those directly affected by the regulation. Since consumers are left without knowing whether they face potential enforcement action for giving false affirmations, and industry is left without knowing what ARB means by “affirmation,” the proposal clearly fails to live up to the APA’s standards of clarity and the regulation must be presumed not to comply with the APA.

- **Conclusion:**

Thank you for this opportunity to comment on the proposed regulation. We look forward to working with ARB to address our concerns in the near future. If you have any questions or comments concerning this letter or tire inflation issues in general, please feel free to contact me at (916) 441-2599, or at jmorrison@cncda.org.

Sincerely,



Jonathan Morrison
Staff Counsel

⁵ See Government Code Sections 11349, 11349.1 and 1 California Code of Regulations Section 16.