

State of California
AIR RESOURCES BOARD

Third Notice of Public Availability of Modified Text

**Proposed Amendments to the Regulation to Reduce Greenhouse Gas Emissions
from Vehicles Operating with Under Inflated Tires**

Public Hearing Date: March 26, 2009
First Public Availability Dates: October 23, 2009 - November 09, 2009
Second Public Availability Dates: January 14, 2010 - January 29, 2010
Third Public Availability Date: June 21, 2010
Deadline for Public Comment: July 6, 2010

This notice is an announcement for the opening of a third supplemental period in which the public may comment on additional modifications being proposed to the Regulation to Reduce Greenhouse Gas Emissions from Vehicles Operating with Under Inflated Tires (Regulation) and supporting regulatory documents. The modifications are being proposed in response to the Decision of Disapproval of Regulatory Action¹ by the Office of Administrative Law (OAL).

The Board's Action

At its March 26, 2009 public hearing, the Air Resources Board (ARB or Board) adopted Resolution 09-25 approving the adoption of new section 95550, title 17, California Code of Regulations (CCR), which requires all Automotive Service Providers (ASP) to perform a tire pressure service (check and inflate) on all passenger vehicles that are brought into a facility for service or repair.

At the hearing staff presented the original Proposed Regulation Order published in the Staff Report² with modifications in response to comments received since the Staff Report was published. The Board approved the proposed regulation with modifications. Resolution 09-25 directed the Executive Officer to incorporate the modifications into the proposed regulatory text, with such other conforming modifications as may be appropriate (including modifications specified by the Board at the March 26, 2009 Board hearing), and to make the modified regulatory language available for a supplemental comment period for 15 days.

¹ <http://www.arb.ca.gov/regact/2009/tirepres09/tirepresdd.pdf>

² ARB, 2009. California Air Resources Board. Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Proposed Regulation for Under Inflated Vehicle Tires, February 2009.

First 15 Day Modifications

Staff revised the regulation approved by the Board for adoption with modifications, with the modified text clearly indicated, and made it available to the public for a supplemental 15 day comment period which began on October 23, 2009 (First 15 Day Modifications).

Modifications proposed in the First 15 Day Modifications included a provision for ASPs to use any type of tire pressure gauge (not just the analog, dial-type pressure gauges specified in the original proposed regulation), and an exemption for ASPs from complying with the requirements of the proposed regulation if only a no-cost, courtesy check and inflate service is being performed at the customer's request. Other proposed modifications included the requirement for ASPs to have access to an industry-recognized tire inflation reference resource (that could be either a guidebook or electronic media) to determine tire pressure inflation specifications for original equipment tires and wheels and non-original equipment tires and wheels.

The First 15 Day Modifications to the original Proposed Regulation Order 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, had proposed further modifications be made that require ASPs to check and inflate vehicle tires unless the customer expressly declines the service.

Second 15 Day Modifications

In response to the BAR recommendations, regulatory requirements were proposed to clarify that a customer may decline the tire pressure service if the customer affirms that a tire pressure service within the last 30 days was performed, or will be performed within the next 7 days (Second 15 Day Modifications).

After public comments related to proposed changes in the Second 15 Day Modifications were addressed, staff submitted the proposed Final Regulation Order along with the Final Statement of Reasons (FSOR)³, for regulatory approval to the OAL.

³ ARB, 2010. California Air Resources Board. Final Statement of Reasons for Rulemaking, Public Hearing to Consider the Regulation to Reduce Greenhouse Gas Emissions from Vehicles Operating with Under Inflated Vehicle Tires. February 2010.

OAL Decision of Disapproval

On March 22, 2010, OAL disapproved the regulatory action. A summary of the reasons cited in the OAL decision, along with staff responses, are set forth below.

Issue No. 1 - Clarity and Necessity Standards:

OAL found that the agency failed to comply with the clarity and necessity standards established by the California Administrative Procedure Act (APA) that governs rulemaking by a State agency. Specifically, OAL determined that the definition provided for an ASP does not clarify whether the regulation is applicable to government maintenance providers and government fleets, and a person directly affected by the regulation would not easily understand that the regulation applies to businesses and public sector operations alike. Further, OAL found that it is difficult for a person to understand why an ASP is required to record the reasons for not performing the tire pressure service on the vehicle service invoice when an exemption from complying with the requirements of the regulation has been provided to the ASP specifically servicing customers requesting only a courtesy, no-cost check and inflate service.

Staff Response to Issue No. 1:

Staff has proposed modifications to the regulatory text that address the definition of an ASP, as well as the exemption to ASPs performing no cost, courtesy check and inflate services for their clients. These changes can be found in the Summary of the Proposed Third 15 Day Modifications that follow.

Issue No. 2 – Substantial Change was Unavailable to the Public for Comment:

OAL stated that the regulation submitted to OAL for filing with the Secretary of State contained changes that were not made available to the public for comment as required by the APA. Subdivision (c) of Government Code section 11346.8 requires that substantial changes to the original text be made available to the public for comment before the changes are adopted. The changes in question were found in subsection 95550(d)(5) of the proposed Final Regulation Order, which provided that a customer may decline the check and inflate service if the ASP proposes a separate discrete charge for the service.

Staff Response to Issue No. 2:

An incorrect version of the Final Regulation Order was inadvertently filed with OAL. On recognizing the error, immediate corrective steps were taken by staff and the correct version of the Final Regulation Order for the proposed regulation was refiled with OAL. Language in the correct version of the Final Regulation Order was previously made available to the public for comment during the Second 15 Day Modifications public comment period.

Issue No. 3 – Incomplete Documentation:

OAL further stated that the documents submitted to OAL for filing with the Secretary of State contained an incomplete collection of documents referenced in the Staff Report. The reference document omitted was related to EMFAC2007, the Air Resources Board Emissions Factors Model used by staff to estimate the population of California vehicles affected by the Regulation.

Staff Response to Issue No. 3:

Staff acknowledges that this reference document was omitted in the final regulatory filing with OAL. The reference document will be provided when the rulemaking package is resubmitted to OAL.

Issues No. 4 and 5 – Inadequate Response to a Public Comment and Lack of an Explanation of the Need for the Regulation’s Severability Provision

In reviewing the FSOR, OAL found that staff had provided an incomplete response to one of the comments⁴ submitted during the 45-day public comment period. Subsection (g) of the proposed regulation contains a severability clause that if any portion of the regulation is held invalid by a court of competent jurisdiction, such holding will not affect the validity of the remaining portions of the regulation. The public comment asserts that such severability clauses are inappropriate for various reasons discussed in the comment. OAL found that the FSOR did not adequately address this comment. In addition, OAL stated that ARB did not comply with the “necessity” standard of the APA because the Staff Report: Initial Statement of Reasons did not contain an explanation of the need for the severability clause.

Staff Response to Issues No. 4 and 5:

Staff will address OAL’s concerns by providing a response to the public comment in an addendum to the FSOR, which will be included in the final regulatory package when it is resubmitted to OAL. The addendum will also provide an explanation of the need for the severability clause in the proposed regulation. Since both of the issues raised by OAL concern the severability clause and are closely related, ARB has prepared an

⁴ See Comment No. 2-3 [Morrison, CNCDA] in Section II of the FSOR (Footnote # 3).

explanation which both responds to the public comment and explains why the severability clause is necessary. This explanation is included as Attachment 2 to this notice so that it may be reviewed and commented on by the public. ARB will respond to any comments received on Attachment 2 in the addendum to the FSOR.

Summary of the Proposed Third 15 Day Modifications

Staff is proposing additional substantive and nonsubstantive modifications to the regulatory. The proposed regulatory text, including staff's modifications, is appended to this notice as Attachment 1. The proposed modifications that were made available in the First 15 Day Modifications are shown in underline to indicate additions and ~~striketrough~~ to indicate deletions. The proposed modifications that were made available in the Second 15 Day Modifications are shown in double underline to indicate additions and ~~double striketrough~~ to indicate deletions. The proposed modifications being made available in the Third 15 Day Modifications are shown in shaded underline to indicate additions and ~~shaded striketrough~~ to indicate deletions.

A summary of the proposed changes in the Third 15 Day Modifications to the original Proposed Regulation Order is presented below:

A. Substantive Modifications to the Regulatory Text

Staff modified the Definitions (subsection (c)), and Requirements and Compliance Deadlines (subsection (d)) to provide further clarity on the applicability, intent, and requirements of the Regulation. Specifically, the following substantive modifications are being proposed for section 95550:

- **Section 95550 (c)(7).** Staff modified the definition of "Automotive Service Provider" in subsection (c)(7) to clarify that an ASP is any business or government vehicle fleet maintenance provider that performs or offers to perform automotive maintenance or repair services.
- **Section 95550 (c)(15).** Staff provided a definition for "Vehicle Fleet" in subsection (c)(15) to clarify that "Vehicle Fleet" is one or more vehicles that is owned, leased, or managed as a unit within or by a business or government agency.

- **Section 95550 (d)(1).** Staff is proposing that the effective date for ASPs to begin complying with the regulation be changed from July 1, 2010 to September 1, 2010. The change is being made to ensure that the regulated community has sufficient time to implement procedures for meeting the regulatory requirements.
- **Section 95550 (d)(6).** The regulatory requirement in subsection (d)(6) was modified to require the ASP to indicate on the vehicle service invoice why the tire pressure service was not completed only when the vehicle is subject to the conditions established in subsections (d)(3)-(5), and not subsections (d)(2)-(4) as previously indicated. This modification clarifies that the ASP is not required to document the reasons for not providing the tire pressure service if only a courtesy, no-cost check and inflate service requested by the customer has been provided.

B. Nonsubstantive Modifications to the Regulatory Text

The proposed language in the Final Regulation Order will be adopted as subarticle 8 of article 4, chapter 1, subchapter 10, division 3, title 17 in the California Code of Regulations (CCR), and not article 1 as previously stated in the original Proposed Regulation Order.

Availability of Documents

The regulatory documents for this rulemaking, including Board Resolution 09-25 approving section 95550, title 17 California Code of Regulations, as modified, are available online at the following ARB website:

<http://www.arb.ca.gov/regact/2009/tirepres09/tirepres09.htm>

Comments and Subsequent Action

Written comments will only be accepted on the additional modifications summarized in this notice and shown in Attachment 1 to this notice, and on the staff responses set forth in this notice and Attachment 2 to this notice. Comments may be submitted by postal mail or electronic mail submittal as follows:

Postal mail: Clerk of the Board, Air Resources Board
1001 I Street, Sacramento, California 95814

Electronic submittal: <http://www.arb.ca.gov/lispub/comm/bclist.php>

Please note that under the California Public Records Act (Gov. Code § 6250 et seq.), your written and oral comments, attachments, and associated contact information (e.g., your address, phone, email, etc.) become part of the public record and can be released

to the public upon request. Additionally, this information may become available via Google, Yahoo, and any other search engines.

In order to be considered by the Executive Officer, comments must be directed to ARB in one of the two forms described above and received by ARB by 5:00 p.m., on the deadline date for public comment listed at the beginning of this notice. Only comments relating to the above-described modifications to the text of the regulations shall be considered by the Executive Officer.

If you need this document in an alternate format (i.e., Braille, large print, etc.) or another language, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 no later than five (5) business days from the release date of this notice. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

Si necesita este documento en un formato alterno (por decir, sistema Braille, o en impresión grande) u otro idioma, por favor llame a la oficina del Secretario del Consejo de Recursos Atmosféricos al (916) 322-5594 o envíe un fax al (916) 322-3928 no menos de cinco (5) días laborales a partir de la fecha del lanzamiento de este aviso. Para el Servicio Telefónico de California para Personas con Problemas Auditivos, ó de teléfonos TDD pueden marcar al 711.

Attachments

The energy challenge facing California is real. Every Californian needs to take immediate action to reduce energy consumption. For a list of simple ways you can reduce demand and cut your energy costs, see ARB's website at www.arb.ca.gov.