



Soviets in the first nine months of 1988. Mr. Graves also discussed the United States' concerns associated with rebuilding the food economy of a potential enemy, and transferring technology, expertise, and agricultural production to the USSR.

FUTURE MEETINGS:
 April 6 in Sacramento.
 May 4 in Sacramento.
 June 1 in Sacramento.
 August 3 in Sacramento.
 September 7 in Sacramento.
 October 5 in Sacramento.



RESOURCES AGENCY

AIR RESOURCES BOARD

Executive Officer: James D. Boyd
Chairperson: Jananne Sharpless
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The California legislature created the Air Resources Board in 1967 to control air pollutant emissions and improve air quality throughout the state. The Board evolved from the merger of two former agencies, the Bureau of Air Sanitation within the Department of Health and the Motor Vehicle Pollution Control Board. The members of the Board have experience in chemistry, meteorology, physics, law, administration, engineering and related scientific fields.

The Board regulates both vehicular and stationary pollution sources. The primary responsibility for controlling emissions from nonvehicular sources rests with local air pollution control districts (California Health and Safety Code sections 39002 and 40000).

The Board develops rules and regulations for stationary sources to assist local air pollution control districts in their efforts to achieve and maintain air quality standards. The Board oversees their enforcement activities and provides them with technical and financial assistance.

The Board's staff numbers approximately 425 and is divided into seven divisions: Technical Services, Legal and Enforcement, Stationary Source Control, Planning, Vehicle Control, Research and Administrative Services.

MAJOR PROJECTS:

Amendments to ARB's In-Use Vehicle Recall Program Regulations. At its November 18 meeting, the ARB approved numerous changes to its in-use vehicle recall program regulations, which include amendments to existing sections 2111, 2112, 1956.8, 1958, 1960.1, and 1964 (Title 13 of the California Code of Regulations (CCR)) and several documents

incorporated therein, the repeal of existing section 2113, and the adoption of new section 2113. The regulatory changes, which are intended to result in early identification of failing emissions-related components and timely and efficient initiation of effective recalls, were the subject of public hearings at ARB's September 8 and November 18 meetings. After the November 18 hearing, the Board approved the changes subject to a supplemental fifteen-day notice period. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 98 for background information on the recall program and ARB's initial proposed regulatory changes.)

At the November 18 hearing, the Board considered and approved several changes to staff's original proposed amendments. Some of the more significant amendments include the following:

-The failure rate of emissions-related components which will subject the manufacturer to a requirement either to file a report with the ARB or recall the vehicles or engines will be phased in over the next few years. Starting with 1990-91 model-year vehicles or engines, an engine family or its subgroup is subject to a recall when a component failure rate is 4% of an engine family's vehicles or engines. It drops to 3% for 1992-93 model-year vehicles or engines; and 2% for 1994 and subsequent model-year vehicles or engines.

-Another amendment ties recalls based on emissions component failures to exceedances of emissions standards. A manufacturer may test properly maintained in-use vehicles with the failure to demonstrate that emissions standards are not exceeded. No recall would be required if the individual vehicles' or engines' projected emissions meet the standards within the useful life.

-The Board agreed to withdraw its proposal to link the failure of an emissions-related component to a violation

of the certification test procedures, by specifying that a certain number of in-use component failures would constitute a violation of the certification test procedures, which in turn would subject the engine family to a recall. This proposed change was withdrawn as unnecessary, because (as described above) under the new proposal, recalls will be based on exceedance of emissions standards instead of on an increase in emissions considered to be a violation of test procedures.

-The original staff proposal required use of the warranty claims system as a surrogate for early detection of component failures. ARB agreed to amend this proposal to provide criteria for the acceptance of alternative systems for detecting component failure that are equivalent in effectiveness to the warranty system.

At this writing, the approved regulatory package is being prepared for submission to the Office of Administrative Law (OAL).

Adjudicatory Hearing Procedures. At its November 18 meeting, the ARB considered the proposed adoption of sections 60040-60053, Title 17 of the CCR, to establish for the first time generally applicable procedures to govern the conduct of ARB adjudicatory hearings. These procedures will be applicable to ARB hearings conducted for the purpose of reviewing any of the following decisions of its Executive Officer (EO): vehicle or engine recalls under Health and Safety Code section 43105; revocation or suspension of a license as a vehicle emission test laboratory under section 2048, Title 13 of the CCR; and other decisions of the EO where the person directly affected by the action requests a hearing, the hearing is required by law, and neither the procedures set forth in the Administrative Procedure Act nor other procedures are specified.

The proposed procedures would require the affected person to petition for a hearing within twenty days after receipt of the EO's decision, which petition would operate to stay certain orders of the EO pending the hearing. The hearing shall be initiated within 65 days after receipt of the petition; the petitioner is entitled to 30 days' notice of the scheduled hearing. The ARB, a committee of no fewer than two members of the ARB, or an administrative law judge from the Office of Administrative Hearings may preside over the hearing. The ARB Chair may issue subpoenas for witnesses and for the production of documents; both



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sides must file a witness list and pre-hearing statement at least ten days prior to the hearing. After the hearing, the ARB must issue a written decision setting forth findings of fact and conclusions of law. The procedures allow either the petitioner or the EO to file a request for reconsideration.

Following a public hearing, the Board adopted the regulations subject to an additional fifteen-day comment period. The rulemaking package is currently being prepared for submission to OAL.

Proposed Amendments to New Direct Import Certification Regulations. Health and Safety Code section 43150 *et seq.* prohibits the sale of new motor vehicles in California unless the vehicle has been certified by the ARB as complying with the state's motor vehicle emissions standards. Most new passenger cars and medium- and light-duty trucks have been certified by the manufacturer of the vehicle ("original equipment manufacturer" or "OEM") pursuant to the standards set forth in section 1960.1, Title 13 of the CCR, and documents incorporated therein.

New direct import vehicles—that is, vehicles manufactured outside the United States and not certified for sale in this country by the OEM which are less than two years old—may be certified by non-OEM "modifiers" pursuant to section 1964, Title 13 of the CCR, and documents incorporated therein. Because of the small business nature of the modification industry, the certification program for new direct import vehicles requires less pre-certification durability testing than the OEM certification program, and focuses instead on in-use enforcement, including recall, to assure that the overall program for new direct import vehicles will be as stringent and protective of air quality as the OEM certification program. The certification program for new direct import vehicles thus requires the modifier to demonstrate its ability to correct emissions defects and to perform in-use recalls prior to sale by posting a surety bond in the amount of \$1,000 for each vehicle. Under existing regulations, the modifier may also avail itself of two alternative methods of ensuring its ability to correct defects and perform recalls.

In February 1988, the ARB received a petition requesting amendment of the recall bond and insurance requirements, to allow modifiers to purchase recall "warranty" insurance with a maximum liability of \$1,000 per vehicle. After a May 13 public hearing, the Board denied the petition, but directed staff to develop

alternatives to the recall bond and insurance provisions for consideration by the Board at a future meeting.

On November 17, the Board entertained staff's alternative proposals, which would give modifiers a fourth alternative in providing the required demonstration that it will have the resources necessary to correct defects and perform recalls. Staff's proposed amendments to the existing regulation (section 1964, Title 13 of the CCR) and the document incorporated therein (California Certification and Compliance Test Procedures for New Modifier Certified Motor Vehicles) would have allowed the modifier to demonstrate its ability to carry out a worst-case recall by providing specified information about the finances, organization, and management of the modifier to show that it is a strong and viable "going concern" which has the ability and resources necessary to continue in the modification business during the full recall period for the vehicles to be certified, or at least be in a position to recall vehicles during that period.

However, the ARB rejected the proposed amendment, finding that the existing alternatives are still viable and will ensure compliance with the intent of the law to a greater extent. Any financial burden on modifiers due to the existing certification program regulations may be offset with an appropriate price adjustment.

Implementation of AB 2595. In the first implementation of AB 2595 (Sher), the California Clean Air Act of 1988 (Chapter 1568, Statutes of 1988), the ARB recently amended section 2252 and adopted new sections 2255 and 2256, Title 13 of the CCR. Starting January 1, 1993, the new regulations would limit the permissible sulfur content of motor vehicle diesel fuel to 500 parts per million (ppm), and would limit the aromatic hydrocarbon content of motor vehicle diesel fuel to 10% by volume; small refiners would be subject to a 20% limit. The 10% aromatic hydrocarbon limit could be waived by the Executive Officer for a blend of diesel fuel containing an additive if the EO determines, upon application, that the blend results in no greater emissions of any criteria pollutant, criteria pollutant precursor, or toxic air contaminant than vehicular diesel fuel meeting the 10% limit.

The Board adopted these regulatory changes at its November meeting; the rulemaking package is being prepared for submission to OAL.

OAL Disapproves ARB Regulatory

Action. On September 22, the OAL disapproved ARB's August 19 adoption of section 2222(h) and (i), Title 13 of the CCR, which would have established procedures for the evaluation of non-original equipment catalytic converters and recycled used catalytic converters. OAL found that the rulemaking file failed to include all required documents and failed to summarize and respond to each comment made regarding the rulemaking action. The Board supplemented the rulemaking file and resubmitted it to OAL in January.

LEGISLATION:

SB 54 (Torres) would prohibit an air pollution control district or air quality management district from issuing or renewing a permit for the construction of, renewing a permit for the operation of, or issuing a determination of compliance for, a project which burns hazardous waste, unless the project will not prevent or interfere with the attainment or maintenance of state and federal ambient air quality standards; and unless the district performs a health risk assessment and determines that no significant increase in illness or mortality is anticipated as a result of air pollution from the project.

SB 231 (Roberti) would make a statement of legislative intent and require the ARB to adopt criteria to determine the existence of replacement products for specified chlorofluorocarbon (CFC) applications, and would prohibit the use of CFCs in product applications in which it is determined that replacement products exist.

SB 155 (Leonard) would impose emission charges on motor vehicles and fuels at designated rates based on specified pollutants emitted, as determined by the ARB.

FUTURE MEETINGS:

To be announced.

CALIFORNIA WASTE MANAGEMENT BOARD

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Created by SB 5 in 1972, the California Waste Management Board (CWMB) formulates state policy regarding responsible solid waste management. Although the Board once had jurisdiction over both toxic and non-toxic waste, CWMB jurisdiction is now limited to non-toxic waste. Jurisdiction over toxic waste now resides primarily in the toxic unit of the