



AB 147 (Floyd). The Contractors State License Law requires a contractor whose operations include asbestos-related work involving 100 square feet or more of surface area of asbestos-containing materials to register with DOSH by filing an application containing specified information. This information includes providing health insurance coverage to cover the entire cost of medical examinations and monitoring required by law and being insured for workers' compensation, or providing a \$500 trust account for each employee engaged in asbestos-related work. AB 147 would permit an employer, in addition to the trust account, to provide a surety bond or other approved security, so long as these methods guarantee coverage of the above costs.

Section 6501.8(b) of the Labor Code defines the term "asbestos containing construction material" to mean any manufactured construction material which contains more than one-tenth of 1% asbestos by weight. This bill would amend the definition to mean any manufactured construction material which contains 1% or more asbestos by weight. This bill is pending in the Assembly Committee on Labor and Employment.

AB 148 (Floyd). Section 6501.9 of the Labor Code requires the owner of a commercial or industrial building or structure, employer, or contractor who is engaged in, or contracts for asbestos-related work to make a good faith effort to determine if asbestos is present before the work is begun or incur certain penalties. This bill would also require the owner of a public building to make an effort to determine the presence of asbestos.

Section 6510 of the Labor Code permits DOSH, after inspection or investigation, to apply for an injunction to restrain any activity for which an employer does not have a valid permit as required. This bill would also permit DOSH to apply for an injunction where an employer does not have a valid asbestos registration.

AB 148 would also amend section 6511 of the Labor Code to impose specified civil penalties where an employer performed asbestos-related work without a valid registration. This bill is pending in the Assembly Committee on Labor and Employment.

LITIGATION:

At this writing, *Ixta, et al. v. Rinaldi*, No. C002805 (Third District Court of Appeal), remains pending before the California Supreme Court. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 92; Vol. 8, No. 3 (Summer 1988) pp. 98-99; and Vol. 8, No. 1 (Winter 1988) p. 85 for background information.) The case has

received much attention following the passage of Proposition 97 in November, and the parties await action by the court.

RECENT MEETINGS:

At its October 13 meeting in San Francisco, OSB granted permanent variances to the following entities: Manroa-Dhillon Investments and San Francisco Unified School District from section 3000(c)(13), Title 8 (Elevator Safety Orders); and Oustomah Lodge No. 16 from section 3000(d)(11), Title 8 (Elevator Safety Orders).

Also at the October meeting, the OSB denied various petitions concerning proposed stricter requirements on workers who operate cranes. The majority of the Board members denied the petitions on the basis that the extent of any problem involving crane operators is not apparent at this time. Furthermore, most Board members opined that existing regulations are adequate to address any problem that does exist.

One Board member, Roy Brewer, disagreed with the Board's decision on the petitions, and argued that a crane in improper hands is a very dangerous instrument to both employees and the public. He stated that the tremendous increase in the use of cranes on potentially dangerous jobs merits the formation of an advisory committee to explore the area and determine whether stricter requirements are justified. Finally, he stated that there are many other areas where licensing is necessary which require less skill than a crane operator, which currently requires no license. In response to Mr. Brewer's concerns, Board member Edward Maher stated that he feels existing regulations are sufficient to ensure that crane operators are properly trained.

At its November 17 meeting in San

Diego, OSB granted permanent variances to the following entities: General Cinema Theatres, Residence Inn by Marriott, Inc., Santa Monica-Malibu Unified School District, Furnishings 2000, City of Monterey, Studio 101, A General Partnership, and First San Francisco/Berkeley Medical Center from section 3000(c)(13), Title 8 (Elevator Safety Orders); and Masonic Temple Association of Livermore, Inc., from section 3000(d)(11), Title 8 (Elevator Safety Orders).

At its December 15 meeting in Sacramento, OSB granted permanent variances to the following entities: City of Sacramento from sections 3364(a) and 3366(f), Title 8 (General Industry Safety Orders); Aerojet TechSystems Company from section 460(c) and (d), Title 8 (Unfired Pressure Vessel Safety Orders); and Ship Parts, Inc., from section 462(m)(3)(C), Title 8 (Unfired Pressure Vessel Safety Orders).

Also at its December 15 meeting, OSB discussed a proposed petition decision for adoption, in which petitioners International Woodworkers of America and Senator Barry Keene requested an amendment to the Logging and Sawmill Safety Orders regarding spiking trees. In particular, petitioners suggested that the Board examine current regulations in this area and consider further regulations to protect workers from injuries by a saw that explodes after hitting a spike or other object in a log being milled. The Board granted the petition to the extent that it was referred to an advisory committee for further study.

FUTURE MEETINGS:

March 23 in San Diego.

April 20 in Sacramento.

May 18 in Los Angeles.

June 22 in San Francisco.



DEPARTMENT OF FOOD AND AGRICULTURE

DEPARTMENT OF FOOD AND AGRICULTURE

Director: Jack Parnell
(916) 445-7126

The Department of Food and Agriculture (CDFA) promotes and protects California's agriculture and executes the provisions of the Agriculture Code which provide for the Department's organiza-

tion, authorize it to expend available monies and prescribe various powers and duties. The legislature initially created the Department in 1880 to study "diseases of the vine." Today the Department's functions are numerous and complex.

The Department works to improve the quality of the environment and farm community through regulation and control of pesticides and through the ex-



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clusion, control and eradication of pests harmful to the state's farms, forests, parks and gardens. The Department also works to prevent fraud and deception in the marketing of agricultural products and commodities by assuring that everyone receives the true weight and measure of goods and services.

The Department collects information regarding agriculture, and issues, broadcasts and exhibits that information. This includes the conducting of surveys and investigations, and the maintenance of laboratories for the testing, examining and diagnosing of livestock and poultry diseases.

The executive office of the Department consists of the director and chief deputy director who are appointed by the Governor. The director, the executive officer in control of the Department, appoints two deputy directors. In addition to the director's general prescribed duties, he may also appoint committees to study and advise on special problems affecting the agricultural interests of the state and the work of the Department.

The executive office oversees the activities of seven operating divisions:

1. Division of Animal Industry—Provides inspections to assure that meat and dairy products are safe, wholesome and properly labeled and helps protect cattle producers from losses from theft and straying;

2. Division of Plant Industry—Protects home gardens, farms, forests, parks and other outdoor areas from the introduction and spread of harmful plant, weed and vertebrate pests;

3. Division of Inspection Services—Provides consumer protection and industry grading services on a wide range of agricultural commodities;

4. Division of Marketing Services—Produces crop and livestock reports, forecasts of production and market news information and other marketing services for agricultural producers, handlers and consumers; oversees the operation of marketing orders and administers the state's milk marketing program;

5. Division of Pest Management—Regulates the registration, sale and use of pesticides and works with growers, the University of California, county agricultural commissioners, state, federal and local departments of health, the United States Environmental Protection Agency and the pesticide industry;

6. Division of Measurement Standards—Oversees and coordinates the accuracy of weighing and measuring goods and services; and

7. Division of Fairs and Expositions—

Assists the state's 80 district, county and citrus fairs in upgrading services and exhibits in response to the changing conditions of the state.

In addition, the executive office oversees the Agricultural Export Program and the activities of the Division of Administrative Services, which includes Departmental Services, Financial Services, Personnel Management and Training and Development.

The State Board of Food and Agriculture consists of the Executive Officer, Executive Secretary, and fifteen members including the Board President who voluntarily represent different localities of the state. The State Board inquires into the needs of the agricultural industry and the functions of the Department. It confers with and advises the Governor and the director as to how the Department can best serve the agricultural industry and the consumers of agricultural products. In addition, it may make investigations, conduct hearings and prosecute actions concerning all matters and subjects under the jurisdiction of the Department.

At the local level, county agricultural commissioners are in charge of county departments of agriculture. County agricultural commissioners cooperate in the study and control of pests that may exist in their county. They provide public information concerning the work of the county department and the resources of their county, and make reports as to condition, acreage, production and value of the agricultural products in their county.

MAJOR PROJECTS:

OAL Disapproves Pesticide Regulations. On November 21, the Office of Administrative Law (OAL) disapproved several proposed regulations approved by CDFA in October, which were intended to implement the Pesticide Contamination Prevention Act. The Act was enacted by the legislature in 1985 to prevent further pesticide pollution of the groundwater aquifers which may be used for drinking water supplies. The proposed regulations would have restricted use of the pesticide atrazine and were found to be necessary by the Department because atrazine had been found in the groundwaters of California.

Under the Act, if an economic poison is found below a certain soil depth or in the groundwater of the state, the CDFA Director must determine whether the economic poison resulted from agricultural use in accordance with state and federal laws and regulations. If such a determination is made, the Director may

allow the continued registration, sale, and use of the substance only if certain conditions are met.

According to OAL, the regulations failed to meet the necessity, clarity, consistency, and reference standards of Government Code section 11349.1. Regarding the necessity standard, OAL found that the atrazine regulation establishing the size of the pesticide management zone (PMZ) as one square mile was not supported by any facts, studies, or expert opinion. A PMZ is an area in which atrazine has been detected and in which (under the regulation) atrazine use is to be eliminated. According to OAL, the record contained numerous public comments criticizing the proposed size of the PMZ as inadequate to prevent groundwater pollution and also contained a recommendation by a subcommittee of the Director's Pesticide Registration and Evaluation Committee that atrazine use be banned in larger areas in order "to achieve a high probability that groundwater pollution will not occur."

According to OAL, the proposed regulations were not clear or consistent in their provisions for the issuance of a permit for possession and use of atrazine. Proposed section 6416 would have provided that a permit must be obtained for the possession or use of atrazine when it is intended for agricultural, outdoor institutional, or outdoor industrial use within a PMZ. In OAL's opinion, this section is inadequate because it does not specify from whom the permit is to be obtained; not does it comply with the Permit Reform Act, due to its failure to specify time periods governing the application and issuance process.

Regulation Changes Approved. OAL has recently announced its approval of several regulatory packages discussed in detail in previous issues of the *Reporter*:

—On September 19, OAL approved section 6524, Title 4 of the California Code of Regulations (CCR), requiring applicants for an agricultural pest control business license to provide proof that they are financially able to respond in damages for illness, injury, or property damage resulting from licensed pest control activities. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 95 and Vol. 8, No. 3 (Summer 1988) p. 100 for background information.)

—In November, OAL approved section 6900, which sets a maximum release rate of organotin from TBT antifouling paints. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 96 for background information.)

—On December 1, OAL filed with the Secretary of State section 6000.5 defining



several terms relevant to the use of pesticides. (See CRLR Vol. 8, No. 4 (Fall 1988) p. 96 for background information.)

Proposition 65. On September 30, Attorney General John Van de Kamp sued 25 tobacco companies and 8 retailers for failing to comply with Proposition 65's warning requirement. (See CRLR Vol. 8, No. 3 (Summer 1988) p. 100 and Vol. 8, No. 2 (Spring 1988) pp. 94 and 110-11 for background information on Proposition 65.) In response, major supermarket Vons temporarily removed these violating products from its shelves; Safeway and Lucky threatened to take similar action. Tobacco companies thus agreed to label the products with the warning required by Proposition 65. As a result, most cigars and possibly some pipe and loose cigarette tobacco sold in the United States will soon carry cancer warning labels.

Proposition 65 Regulations. In its ongoing effort to specifically define Proposition 65's relevant terms, the Health and Welfare Agency (HWA) has recently adopted or amended (and the OAL has approved) several regulations in Title 22 of the California Code of Regulations (see CRLR Vol. 8, No. 4 (Fall 1988) p. 94 for background information). Sections 12701, 12703, 12705, 12707, 12709, 12711, 12713, 12721, 12801, 12803, 12805, and 12821 clarify the term "no significant risk" contained in Proposition 65, which pertains to specific amounts of chemicals designated as cancer-causing under the law which do not pose a risk serious enough to warrant a warning label or sign.

Section 12703 concerns qualitative risk assessment, defining the methods which may be used to assess the levels at which a chemical poses no significant risk of cancer. An assessment shall be based on evidence and standards of comparable scientific validity to the evidence and standards which form the scientific basis for listing the chemical as known to the state to cause cancer.

Section 12707 concerns routes of exposure—that is, the way persons come into contact with a cancer-causing chemical. Under this section, where scientifically valid absorption studies are used to demonstrate that absorption of a chemical through a specific route of exposure (such as ingestion) may be reasonably anticipated to present no significant risk of cancer at levels of exposure not in excess of current regulatory levels, HWA may identify the chemical as presenting no significant risk by that route of exposure.

Section 12601 concerns the nature of

the "clear and reasonable warning" which Proposition 65 requires businesses to post when products or substances containing chemicals which are known to the state to present significant risk are found on their premises.

Under section 25249.5 of the Health and Safety Code, Proposition 65 prohibits any person doing business from discharging into a source of drinking water a chemical known to the state to cause cancer, except as provided in section 25249.9 of the Code. Regulatory section 12201, as amended, alters in part the previous definition of "discharge" to read: "A discharge or release into water or onto land which more likely than not will pass into a source of drinking water 'probably' will pass to that source."

Section 12401 concerns the discharge of water containing a listed chemical at the time of receipt; that is, when a person otherwise responsible for the discharge or release receives water containing a listed chemical from another source (such as a public water system or a commercial water supplier). Under this section, that person does not "discharge" or "release" for purposes of Proposition 65, to the extent that the person can show that the listed chemical was in the water received.

Section 12403 concerns discharges from hazardous waste facilities. Under this section, it will be presumed the chemical did not pass into any source of drinking water, provided that operator of the facility can show its facility is subject to and in compliance with state and federal laws and regulations adopted to avoid contamination of ground and surface water.

Section 12405 concerns the discharge of an economic poison (such as pesticides). Under this section, where the discharge complies with all applicable state and federal statutes and regulations, the poison is presumed not to pass into a source of drinking water, unless it can be shown the person responsible for using the poison had actual knowledge that similar applications under similar circumstances had resulted in a significant amount of the poison passing into a drinking water source.

CDFA Agriculture Export Program Awards \$4 Million in Matching Funds. On October 31, CDFA announced its award of over \$4 million in state matching funds to 104 cooperators under CDFA's Agricultural Export Program. When the cooperators add their matching share, funds will amount to a minimum of \$8,092,000 targeted for promotion of California agricultural exports

around the world. Pacific Rim countries account for 39% of the matching money, closely followed by Canada with 37%. A total of \$1,120,745 went for promotions of fresh and processed fruit, followed by \$760,500 for wines, and \$638,000 for dried fruit.

CDFA's Agricultural Export Program began on January 4, 1986, as a result of AB 1423, to help reverse the huge drop California's farm exports had suffered by actively encouraging exporters to find new markets for the state's agricultural products. Since the Program's inception, almost \$15 million in matching funds has been awarded in a total of 346 contracts. (For background information, see CRLR Vol. 7, No. 2 (Spring 1987) p. 85; Vol. 6, No. 4 (Fall 1986) p. 70; and Vol. 6, No. 1 (Winter 1986) p. 60.)

LEGISLATION:

AB 42 (Jones) would amend the current definition of the term "significant amount" in Proposition 65, by revising the current exemption from liability for unlawful exposure to a chemical known to the state to cause cancer. For purposes of the exposure exemption, this bill would exempt exposures of reproductive toxins that will have no observable effect assuming exposure at the level in question multiplied by a safety factor. The bill would specify that 1,000 is the safety factor, unless the HWA establishes a specific safety factor through regulation. AB 42 reintroduces last session's AB 2714 (Jones), which was dropped by its author.

RECENT MEETINGS:

At its October 6 meeting in Sacramento, State Board of Food and Agriculture President Richard Peters criticized Sacramento Mayor Ann Rudin for joining the Cesar Chavez hunger fast as a private citizen to protest the use of pesticides on California grapes. President Peters stated that he has seen no evidence that the boycott has had an adverse economic impact on the grape industry, and expected the boycott to dissipate.

Chief Deputy Director Daniel Haley reported that Lucky, the largest retail grocer in California, has established a pesticide testing program under which produce samples from Lucky's warehouses are tested weekly by CDFA for pesticide residue and the results are telecopied to Lucky within hours of the tests. Additionally, Lucky initiated a statewide consumer education program and employee communication program to address concerns about pesticides. Other retailers have expressed interest



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in becoming involved in similar food safety programs, and members of the Board indicated CDFA would provide the same testing services for other interested retailers that it provides for Lucky. The Lucky-sponsored program also provides an avenue of communication informing the public of CDFA's activities in the food safety area—a welcome benefit to CDFA which has no advertising budget. (For related discussion, see *supra* report on CALIFORNIA PUBLIC INTEREST RESEARCH GROUP.)

Associate Director Rex Magee reported that 47 medflies had been trapped in the San Fernando area, and that CDFA would spray approximately 35 square miles of the core area in an effort to eradicate the insects. Mr. Magee also stated that larvae were discovered in fruit, and that seven days after spraying, sterile medflies would be introduced to mate with the emerging population. Mr. Magee stated that CDFA is conducting investigations to determine why the medflies had reached third generation before being discovered. He stated that the same trap line had been tested in June and that no medflies were then present. He suspected first-class mail as the likely culprit carrying the medflies into the area.

Dr. William Liebhardt and Dr. Montague Demment of UC Davis gave a presentation on "sustainable agriculture"—environmentally sensitive agriculture processes that will enhance agricultural profitability and quality while sustaining and improving the environment. Such processes address concerns of commercial farmers looking for less expensive, environmentally sensitive alternatives to pesticides. Both President Peters and Board member Tom DiMare stated they have used sustainable agricultural processes, which have resulted in reducing pesticide application to their respective personal business farm crops. Member Charles Hess noted that growers now have both regulatory and economic incentives to reduce pesticide use, and encouraged promotion of the sustainable agriculture alternatives.

Joan Craig, Director of California Women for Agriculture's (CWA) Consumer Task Force, gave a presentation on CWA's "Supermarket Saturday" project, which is designed to increase awareness of California's agriculture, its economic contribution to the state, and the agricultural industry's desire to provide safe, quality food at the most reasonable price to the consumer. CWA is a volunteer group organized to work for the survival of agriculture in California.

At its November 3 meeting in Sacramento, Maurice Roos of the Department of Water Resources told the Board that the odds of an adequate water supply in 1989 are approximately 70%. In his presentation, Roos noted that the last two seasons have been critically dry, with statewide river runoff slightly under half the average in both years. Nevertheless, in northern California the past two dry seasons were not as dry as two-season droughts experienced in the past. Historically, said Roos, three consecutive years of critical drought are rare.

The combination of two dry years in a row means that some water supply systems lack the reserves to meet all needs. Statewide reservoir storage is at about two-thirds average, which is down from last year. However, storage totals are greater than they were during the last drought in 1976 because of increased capacity. Long-range precipitation forecasts indicate near normal amounts for the winter, but the Great Basin will remain dry. Given such a prediction, runoff would probably be adequate to meet most water needs for 1989.

In other matters, Assistant Director Isi Siddiqui explained new federal legislation which makes it a criminal offense—subject to fines up to \$1,000, a jail term of one year, or both—to send quarantined fruits and plant material in first-class mail. The new law authorizes CDFA to force the U.S. Postal Service to profile and hold suspected packages while a criminal inspection warrant is being obtained. The law was passed to help California prevent the importation of fruit flies into the state.

At its December 1 meeting in Sacramento, the Board's discussion updated several 1988 pending issues. President Peters reported that the new immigration law is now in effect and requires that prior to being hired, all workers must have I-9 forms and all other immigration papers up to date.

Member Richard Keehn reported on his recent trip to Bordeaux, France, as a guest of the University of Bordeaux. Mr. Keehn informed the Board that all of the wine made in Bordeaux is chemically analyzed for pesticides and all other ingredients before being exported.

Member DiMare reported on his recent visit to Central America and expressed his opinion that due to its lower labor costs and lack of governmental regulation, Central America could become competitive with the United States in certain agricultural products.

Also discussed was a program in which the Produce Market Association

and United Fresh Fruit and Vegetables have joined to raise \$1.2 million to inform retailers and consumer groups about food safety. Grocers Safeway, Bel Air, and Vons have joined Lucky Stores' food safety program, and the Alliance for Food and Fiber has committed to raising \$250,000 to help expand the program.

Director Jack Parnell reported that Board member Tom DiMare and industry representative Micky George have been nominated by CDFA and the Board to sit on the California Economic Development Corporation's *Vision: California 2010* Task Force. Mr. Parnell outlined the "menu" for the 2010 report as follows: (1) education; (2) transportation; (3) water policy; (4) environmental policy; (5) farm labor/labor forces; (6) biotechnology; (7) international trade/global marketplace; and (8) land use/population growth and change. (For information on *Vision: California 2010*, see CRLR Vol. 8, No. 4 (Fall 1988) p. 97.)

President Peters expects the preparation of this supplemental report to be a major undertaking by the Board, and called for the commitment of all Board members to the realization of the project. Mr. Peters explained that he expects that committees will be appointed consisting of members of the Board and key industry representatives. Each committee will be expected to focus on a specific area of agricultural concern, solicit "white papers" and information from different sources currently involved with those issues, and compile a composite of all the views expressed, which will then be developed by the committees into a final report. The Board hopes the resulting report will serve as a guide for the future of California agriculture. President Peters stated that CDFA Director Jack Parnell has committed to the project and will work to find funds to support it.

Bob Graves, Chairman of the Board of Real Fresh, Inc., reported on new opportunities in the Soviet Union market for California agriculture resulting from a major restructuring and expansion of the Soviet food industry announced by Mr. Gorbachev in early 1988. Under the new "for-profit" food economy system, Soviet businesses have broad authority to contract for the purchase and installation of Western food processing and packaging equipment. Financing of this system will come from the West. West German bankers recently announced a \$1.6 billion credit line to the Soviet Union, and London bankers financed \$500 million in joint ventures with the



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