

State of California  
AIR RESOURCES BOARD

**Notice of Public Availability of Modified Text and  
Availability of Additional Documents**

**PUBLIC HEARING TO CONSIDER ADOPTION OF A REGULATION TO LIMIT  
OZONE EMISSIONS FROM INDOOR AIR CLEANING DEVICES**

Public Hearing Date: September 27, 2007  
Public Availability of Modified Text Date: June 30, 2008  
Deadline for Public Comments: July 15, 2008

**Introduction**

At its September 27, 2007 public hearing, the Air Resources Board (ARB or the Board) approved the adoption of new sections 94800, 94801, 94802, 94803, 94804, 94805, 94806, 94807, 94808, 94809, and 94810 of title 17, California Code of Regulations which establish an ozone emission concentration standard, and requirements for certification, labeling and recordkeeping for indoor air cleaning devices that are introduced into commerce in California and used in occupied spaces. This notice describes the changes proposed to staff's original proposal, including revisions approved by the Board at its September 27, 2007 hearing and several minor revisions identified by staff as necessary to assure the clarity and accuracy of the proposed regulations.

**The Original Proposal**

In the August 10, 2007 Staff Report: Initial Statement of Reasons for Proposed Rulemaking, Proposed Regulation to Limit Ozone Emissions from Indoor Air Cleaning Devices, ARB staff released a proposed air cleaner regulation for public review. Shortly thereafter, on August 28, 2007 staff released a revised version of Section 94802 of the proposed regulation that corrected a drafting error in the August 10, 2007 version. The corrected version clarified that the proposed regulation would prohibit the manufacture for sale in California of noncertified air cleaning devices twelve months after the effective date of the regulation (which for this regulation is anticipated to be the date the regulation is approved by the Office of Administrative Law, expected to occur in August 2008). The corrected Section 94802 also allowed a "sell-through" period for non-complying air cleaners beginning on the manufacturer compliance date and running for nine months. In other words, the corrected proposed regulation would have required that any air cleaning device sold in California 21 months after the effective date of the regulation would have to be certified by the Board as complying with all of the regulatory requirements, and non-certified air cleaners could no longer be sold in California.

## **The Board's Action**

At the September 27, 2007 public hearing, in response to comments received prior to the hearing, staff proposed changing the compliance date from 12 months to 24 months after the effective date of the regulation. Manufacturers and others had commented that additional time was necessary to complete the required testing of air cleaners for certification. At the hearing, the Board unanimously approved the proposal with modifications made to the original proposal contained in the August 10, 2007 Staff Report, including modifications to extend the compliance date from 12 to 24 months after the effective date of the regulation, and to delete the subsequent nine month sell-through period, among others. These modifications were approved by the Board as part of Resolution 07-40 (Appendix I), and were proposed in response to comments received after the publication of the Staff Report but before the September 27, 2007 hearing. Attachment B of Resolution 07-40 contains the modifications staff suggested at the hearing. The Resolution and its attachments approving sections 94800 through 94810, as modified by the Board, is also available online at the following ARB internet site:

<http://www.arb.ca.gov/regact/2007/iacd07/iacd07.htm>

The Resolution directed the Executive Officer to incorporate the modifications into the proposed regulatory text, with such other conforming modifications as may be appropriate, and to make the modified regulatory language available for a supplemental comment period of 15 days. The Resolution also directed staff to report back to the Board regarding progress of the certification program after completing the first year of certification activities.

## **Modified Text Now Available for Comment**

The staff has completed the modified regulatory text and is making it available for public comment; it is attached as Appendix II. The modifications being made available include both those in Attachment B to the Resolution (appearing in Appendix I) approved by the Board and additional conforming or related modifications prepared by staff subsequent to the hearing. Some of the proposed modifications are either identical to text in Attachment B or implement a specific and approved modification in Attachment B; additional proposed modifications are new conforming modifications. All modifications are shown in single underline to indicate additions and in ~~single strikethrough~~ to indicate deletions, compared to the originally proposed regulatory text and all modifications are described below.

Subsequent to the Board hearing, revisions to Section 37 of American National Standards Institute/Underwriters Laboratories, Inc. (ANSI/UL) Standard 867 were published by UL on December 21, 2007. Section 37 is the ozone emission concentration test method referenced in the proposed regulation. The final, approved Section 37 contained additional minor revisions compared to the version of Section 37 provided in the Initial Statement of Reasons for this regulation as Appendix E. As described below, the modified text of the proposed regulation is included as Appendix II

to this notice. Appendix III provides the December 21, 2007 version of Section 37 of ANSI/UL Standard 867, and Appendix IV provides the three Certification Requirement Decisions (CRDs) issued by UL that are associated with Section 37 as discussed below.

The regulatory documents for this rulemaking are all also available online at this ARB internet site:

<http://www.arb.ca.gov/regact/2007/iacd07/iacd07.htm>

The Board Resolution 07-40 approving sections 94800 through 94810, as modified by the Board, is also available online at this ARB internet site.

### **Summary of Rationale for the Proposed Modifications**

The following explains and identifies the modifications by section number, and is provided to give stakeholders the opportunity to review it and respond with comments.

1. In Section 94801, a definition for the ANSI/UL Standard 867 has been added to specify that all references to ANSI/UL Standard 867 are to the December 21, 2007 version of the standard plus the three associated Certification Requirement Decisions issued by UL for Section 37 of that standard through April 2008.
2. In Section 94801, subsection (a)(15)(l) was added. This adds odor control in the motor vehicle reconditioning and detailing industry (provided no people are physically present) to the definition of industrial use. During the rulemaking process, staff became aware of this additional industrial use of ozone in the automobile reconditioning and detailing industry.
3. The definition of "Label" in Section 94801(a)(16) has been modified to allow adhesive stickers to be used to satisfy package labeling requirements until April 1, 2011 instead of until January 1, 2010. The revised provision would allow products manufactured prior to April 1, 2011 to be labeled using adhesive stickers rather than printing on the package.
4. The compliance date in Section 94802 is changed from 12 months to 24 months after the effective date of the regulation, as approved by the Board. Extending the compliance date was recommended by staff at the September 27, 2007 public hearing in response to public comments and staff's analysis indicating that additional time would be necessary to be able to test all of the air cleaners covered by the regulation.
5. The nine-month sell-through provision in Section 94802 is deleted, as directed by the Board.
6. In Section 94804(b), language indicating that "mechanical filtration only" devices must meet ANSI/UL Standard 507 or any electrical safety standard that succeeds that standard has been revised to remove the reference to future standards. UL

has indicated that Standard 507 may be combined with Standard 867 in the future, so that all air cleaner testing is covered under a single standard; if such an action is taken, ARB will consider the need to update this regulation at that time. Section 94804(b) also now specifically requires documentation that “mechanical filtration only” air cleaners have met ANSI/UL Standard 507.

7. In Section 94804, Certification Requirements, subsection (c)(1), the name and telephone number for the primary contact are added as additional items of information.
8. In Section 94804, Certification Requirements, subsection (c)(3), manufacture date and serial number are added as two additional items of information required about the indoor air cleaning devices being tested.
9. Section 94805(b) of the proposed regulation is revised to specify the versions of ANSI/UL Standards 867 and 507 that are to be used for meeting the test requirements in the regulation. Testing must be performed following the ANSI/UL Standard 867 for electronic air cleaners or 507 for mechanical filtration air cleaners, whichever is applicable, and ozone emissions will be determined using the testing protocol provided in Section 37 of ANSI/UL Standard 867. Both standards (867 and 507) are included in Section 94805 by reference. An earlier version of Section 37 was made available on August 10, 2007 for review under this regulation because, at the time of the September 2007 public hearing, Section 37 was undergoing revision. The revisions were completed and approved by ANSI/UL in late December 2007. The current approved version of the applicable standard is ANSI/UL Standard 867, Fourth Edition, published December 21, 2007. Section 37 of the December 21, 2007 version of ANSI/UL Standard 867 is being made available for review as part of this package of final changes to ARB’s proposed regulation (see Appendix III). The September 27, 2007 version of ANSI/UL Standard 507, Ninth Edition, is specified as the version of that standard that will be used to test mechanical filtration air cleaners.
10. Section 94805(c) is revised to additionally include three CRDs that have been issued by UL to clarify certain provisions of the Section 37 (ANSI/UL Standard 867) ozone test. On March 4, 2008, UL published a CRD clarifying provisions contained in Section 37.2.2 of ANSI/UL Standard 867 regarding how the air leakage rate of a test chamber is to be determined. Subsequently, on April 17, 2008, UL published a CRD that clarifies sections 37.4.8 and 37A.5 regarding the fan and output speeds at which air cleaners with multiple operational settings must be tested. Finally, UL published a CRD, dated April 18, 2008, that clarifies the requirements for the room dimensions for the peak ozone test described in Section 37A.1. The three CRDs are included in this package as Appendix IV and are also being made available for review and comment.
11. In Section 94805(d), language is added to specify that annual submittal of internal audit reports and associated follow-up audit reports may be required of

test laboratories. This provision will provide assurance that the test chambers continue to meet performance requirements and that the Section 37 test continues to be conducted as required.

12. In Section 94806, a six-month extension for meeting the labeling requirement is added for models that have been submitted for testing, but have not yet received ARB certification by the end of the 18<sup>th</sup> month from the effective date of the regulation. This extension applies only to the labeling requirements; devices must still be tested and must complete the ARB certification process by the end of the 24<sup>th</sup> month after the effective date of the regulation, and must meet all labeling requirements within six months of the postmark date of notification of ARB certification.

Staff has made other nonsubstantial modifications throughout the regulation to correct grammatical and typographical errors, correct references and citations, and improve the overall clarity of the document.

### **Additions to the Rulemaking Record and Corrections**

1. The Initial Statement of Reasons released for public review on August 10, 2007 erroneously referenced the 1980 ANSI/UL Standard 867. The correct citation should be as follows: ANSI/UL, 2004. UL Standard for Safety for Electrostatic Air Cleaners, UL 867, Fourth Edition, February 27, 2004.
2. A more recent version of ANSI/UL Standard 867 was released on December 21, 2007 and is the version incorporated by reference into the revised regulation; it is being added to the rulemaking record. It will be cited as: ANSI/UL 2007a. UL Standard for Safety for Electrostatic Air Cleaners, UL 867, Fourth Edition, December 21, 2007. The complete ANSI/UL Standard 867 may be obtained at <http://www.comm-2000.com>.
3. The proposed regulation (Section 94805) includes ANSI/UL Standard 507 as the test method to be used for verification of compliance for devices that are mechanical-filtration devices only. A copy of Standard 507 is being added to the rulemaking record and will be cited as follows: ANSI/UL, 2007b. UL Standard for Safety for Electric Fans, UL 507, Ninth Edition, September 27, 2007. A copy of ANSI/UL Standard 507 may be obtained at <http://www.comm-2000.com>.
4. In the Initial Statement of Reasons, two references were included to the U.S. Food and Drug Administration regulations governing labeling of medical devices (21 CFR 801) and the maximum acceptable level of ozone for specific devices (21 CFR 801.415). A revised Title 21 of the Code of Federal Regulations is issued on approximately April 1 each year. Staff relied on the 2007 versions during the development of this regulation, but the 2005 versions were cited in the Initial Statement of Reasons. The correct citation should have been to the year 2007.

The corrected citations are as follows:

FDA (U.S. Food and Drug Administration), 2007a. 21 CFR 801.415, Maximum acceptable level of ozone. April 1, 2007.

FDA, 2007b. 21 CFR 801. Medical Devices. Labeling. April 1, 2007.

Both of these are available at:

<http://www.accessdata.fda.gov/scripts/cdrh/cfdocs/cfcfr/CFRSearch.cfm?CFRPart=801>.

5. In the Initial Statement of Reasons, the reference for Boeniger, 1995 was omitted from the reference list. That citation is:

Boeniger MF, 1995. Use of ozone generating devices to improve indoor air quality. *J American Industrial Hygiene Association* 56: 590-598.

6. The following references are being added into the hearing record which the Board has compiled for this rulemaking action, including all the information upon which the proposal is based. This material is available for inspection at the offices of the Air Resources Board, 1001 I Street, Sacramento, CA 95814 upon request to the following contact persons from 8:00 am to 5:00 pm Monday through Friday Ms. Lori Andreoni, Manager, Board Administration & Regulatory Coordination Unit (BARCU), (916) 322-4011, or Ms. Trini Balcazar, Regulations Coordinator, BARCU, (916) 445-9564:

California Department of Health Services (CDHS), 2006. "Pandemic Influenza Preparedness and Response Plan," September 26, 2006. Excerpts from document: Table of contents (pgs i – vi); Chapter 1 (pgs 1-16); Chapter 4 (pgs 74-75) and Chapter 5 (pgs 78-92), including Appendix C "Recommendations for Infection Control in the Healthcare Setting." [http://ww2.cdph.ca.gov/HealthInfo/discond/Documents/pandemic\\_influenza\\_preparedness\\_response\\_plan\\_06.pdf](http://ww2.cdph.ca.gov/HealthInfo/discond/Documents/pandemic_influenza_preparedness_response_plan_06.pdf)

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Wilson, A. L., Bell, J., Hosler, D., and Weker, RA, 2003. Infiltration, Blower Door and Air Exchange Measurements in New California Homes, in *Proceedings of IAQ Problems and Engineering Solutions Specialty Conference*, Air and Waste Management Association and U. S. EPA, Research Triangle Park, NC, July.

### **Comments and Subsequent Action**

In accordance with Section 11346.8 of the Government Code, the Board directed the Executive Officer to adopt Sections 94800 through 94810, title 17, California Code of Regulations, after making them available to the public for comment for a period of at least 15 days. The Board further provided that the Executive Officer shall consider such written comments as may be submitted during this period, shall make such modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if warranted.

Written comments on the modifications approved by the Board may be submitted by postal mail, electronic mail, or facsimile as follows:

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

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

Facsimile submittal: (916) 322-3928

Please note that under the California Public Records Act (Government Code section 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 the ARB in one of the three forms described above and received by the 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 and relating to Appendices to this notice shall be considered by the Executive Officer.

Appendices (4)

I – Resolution 07-40

II – Staff’s Modifications to the Proposed Regulation Order

III – December 21, 2007 version of Section 37 of ANSI/UL Standard 867

IV – CRDs issued by UL that are associated with Section 37 of ANSI/UL Standard 867