

California Environmental Protection Agency



## **Final Statement of Reasons for Rulemaking**

**PUBLIC HEARING TO CONSIDER PROPOSED AMENDMENTS TO THE  
REGULATION FOR LIMITING OZONE EMISSIONS FROM  
INDOOR AIR CLEANING DEVICES**

Public Hearing Date: December 9, 2009  
Agenda Item No.: 09-10-2

State of California  
AIR RESOURCES BOARD

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**I. GENERAL**

**Introduction and Background**

In this rulemaking, the ARB is adopting amendments to the existing indoor air cleaner regulation. The amendments include the following main elements:

Extending the certification labeling deadline for one year (to October 18, 2011), and allowing the use of adhesive labels in place of printing on the packaging for an additional year (to October 1, 2012), for air cleaners tested and certified by the October 18, 2010 compliance date;

Allowing electrical safety testing to be conducted at additional testing facilities under the oversight of a Nationally Recognized Testing Laboratory (NRTL);

Incorporating into the regulation three clarifications to the ozone test protocol, issued by Underwriters Laboratories, Inc. (UL) for the American National Standards Institute (ANSI)/UL Standard 867;

Allowing multi-function appliances that include an air cleaning component to be tested for electrical safety using ANSI/UL Standards more appropriate for such devices; and

Revising the definition of “mechanical filtration only” air cleaners to make the definition consistent with the rest of the regulation.

The rulemaking was initiated by a Notice of Public Hearing, released to the public on October 23, 2009 for a December 9, 2009 public hearing to consider the proposed amendments. The rationale for the proposed amendments is described in the “Staff Report: Initial Statement of Reasons for Proposed Rulemaking” (“Staff Report”), entitled *Proposed Amendments to the Regulation for Limiting Ozone Emissions from Indoor Air Cleaning Devices*, which was also released October 23, 2009 for public comment, and which is incorporated by reference herein. The text of the amended regulation was included as Appendix II to the Staff Report and amends sections 94801, 94804, 94805, and 94806, title 17, of the California Code of Regulations (CCR). The hearing notice and Staff Report were also posted on the ARB internet site for the rulemaking at: <http://www.arb.ca.gov/regact/2009/iacd09/iacd09.htm>.

This Final Statement of Reasons (FSOR) updates the Staff Report by identifying and explaining the rationale for modifications made to the originally proposed regulatory text. The FSOR also describes the one written comment received during the 45-day comment period preceding the December 9, 2009 hearing and the ARB's response. No comments were received at the public hearing on December 9, 2009, nor were any comments received during the three, separate 15-day comment periods discussed later in this FSOR.

## **Description of Board Action**

At its December 9, 2009 public hearing, the Board unanimously approved Resolution 09-65, thus approving the proposed amendments originally described in the Staff Report. These amendments modify sections 94801, 94804, 94805, and 94806, title 17, CCR (shown in Attachment A to the Resolution). The resolution and all other regulatory documents for this rulemaking are available online at the following ARB website: <http://www.arb.ca.gov/regact/2009/iacd09/iacd09.htm>.

At the hearing, the Board also approved several additional revisions to CCR, title 17, sections 94801 and 94805 (shown in Attachment B to the Resolution). In Resolution 09-65, the Board directed the Executive Officer to incorporate the additional modifications to the proposed regulatory text approved by the Board, with such other conforming modifications as may be appropriate, and to make the modified text available to the public for a period of at least fifteen days. The Executive Officer was then directed either to adopt the amendments with such additional modifications as may be appropriate in light of the comments received, or to present the regulations to the Board for further consideration if warranted in light of the comments. The modifications were made available for public comment beginning February 11, 2010, for a period of 15 days (15-day comment period). The 15-day notice of proposed modifications to the originally proposed amendments to the air cleaner regulation and the appendices to the notice are incorporated by reference here.

A second 15-day notice was issued on April 8, 2010 to make one further amendment to the test method section and add one reference to the rulemaking record. The modifications from the first 15-day notice were included and again made available for public comment. The second notice and its appendices are incorporated by reference here.

On June 3, 2010, a third 15-day notice was issued to add two references that were inadvertently omitted from the list of references in the Staff Report released on October 23, 2009 (these were discussed in the Staff Report and available for public review during the 45 day review period), and to correct one incomplete citation in the list of references. The third 15-day notice is incorporated by reference here. All of the modifications to the originally proposed regulatory text that were made available to the public during the three 15-day notices are described in Section II below.

## **Incorporation of ANSI/UL Standards by Reference**

The following ANSI/UL Standards are incorporated by reference in the regulation:

ANSI/UL 484, Standard for Safety for Room Air Conditioners, Eighth Edition, dated December 21, 2007 with revisions through March 27, 2009, and most recently approved by ANSI on March 27, 2009.

ANSI/UL 867, Standard for Safety for Electrostatic Air Cleaners, Fourth Edition, published on December 21, 2007, and the associated Certification Requirement Decisions published by UL on March 4, 2008; April 17, 2008; April 18, 2008; July 8, 2009; July 9, 2009; and November 23, 2009.

ANSI/UL 1017, Standard for Safety for Vacuum Cleaners, Blower Cleaners, and Household Floor Finishing Machines, Seventh Edition, dated December 7, 2001, with revisions through June 15, 2006, and most recently approved by ANSI on June 15, 2006.

ANSI/UL 1278, Standard for Safety for Movable and Wall- or Ceiling-Hung Electric Room Heaters, Third Edition, dated June 21, 2000 with revisions through July 30, 2008, and most recently approved by ANSI on July 30, 2008.

ANSI/UL 1993, Standard for Safety for Self-Ballasted Lamps and Lamp Adaptors, Third Edition, dated August 28, 2009.

The standards are incorporated by reference because it would be impractical to print them in the CCR. Existing ARB administrative practice has been to have such standards (that contain test procedures) incorporated by reference rather than printed in the CCR because these test procedures and protocols are highly technical and complex. They include laboratory procedures required for electrical safety testing and ozone testing of small appliances and have a very limited audience. Because ARB has never printed complete test procedures or protocols in the CCR, the affected public is accustomed to the incorporation format utilized herein. Moreover, printing portions of the documents in the CCR when the bulk of the procedures are incorporated by reference would be unnecessarily confusing to the affected public. The full documents are available for public inspection from the Clerk of the Board at 1001 I Street, 23<sup>rd</sup> floor, Sacramento, California 95814. They are also available for purchase at the UL Standards website at: <http://www.comm-2000.com>.

### **Economic and Fiscal Impacts**

ARB staff reviewed the potential economic impacts of the proposed regulatory amendments on the State and on businesses. As described in the Staff Report (pages 22 to 26), the proposed amendments are all zero cost or would potentially result in small, but unquantifiable, cost savings to manufacturers. The amendments would extend the package labeling compliance dates for certified air cleaners (thus avoiding costs of re-packaging and/or losses due to return of inventory to manufacturers); allow electrical safety testing at additional testing facilities currently used by the industry, thus avoiding shipping costs to more distant facilities; make small, time-saving refinements to the ozone test protocol, thus reducing testing costs for some manufacturers whose devices require less testing; and allow for the most appropriate electrical safety

standard to be used for multi-function appliances. All of these measures would save some manufacturers time, and in some cases, reduce their costs of compliance relative to the costs of compliance with the original regulation.

As stated on page 22 of the Staff Report, manufacturers are not expected to pass on any savings that result from these amendments to distributors, sellers, retailers, or the consumer. Staff have further assessed the potential impact of the amendments on distributors, sellers, and retailers since the release of the Staff Report and have concluded that distributors, sellers, and retailers will not be directly impacted by the amendments because the original testing and certification compliance date is still in the future, and manufacturers are expected to provide compliant products to their distributors, sellers and retailers by the compliance date.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Board has determined that the proposed regulatory action will not create costs or savings to any state agency or in federal funding to the state, or costs or mandate to any local agency or school district whether or not reimbursable by the state pursuant to part 7 (commencing with section 17500), Division 4, title 2 of the Government Code, or other non-discretionary costs or savings to state or local agencies. The Board has determined that this regulatory action to amend the air cleaner regulation will not create any additional costs to the ARB beyond the costs already borne by the ARB to implement and enforce the regulation.

The Board has made a determination that the proposed amendments would have zero costs. All manufacturers of indoor air cleaning devices marketed for sale in California would be subject to the proposed amendments and should benefit from the amended regulations. The Board's Executive Officer has determined that this regulatory action to amend the air cleaner regulation will not have a significant statewide adverse economic impact directly affecting businesses, including the ability of California businesses to compete with businesses in other states, or on representative private persons.

The Board has also determined, pursuant to title 1, CCR, section 4, that the proposed regulatory action will affect small businesses. However, similar to the impact on larger manufacturers, it is concluded that the proposed amendments will also benefit manufacturers that are small businesses.

In accordance with Government Code section 11346.3, the Board has determined that the proposed regulatory action will not affect the creation or elimination of jobs within the State of California, the creation of new businesses or elimination of existing businesses within the State of California, nor the expansion of businesses currently doing business within the State of California.

### **Consideration of Alternatives**

The Board has determined that no alternative considered by the agency would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons or businesses than the action taken by the Board.

## II. MODIFICATIONS MADE TO THE ORIGINAL PROPOSAL

As previously discussed, the Board approved the originally proposed regulatory action as well as staff's suggested modifications presented at the public hearing as shown in Appendix B to Resolution 09-65. Subsequent to the hearing, as directed by the Board, the modifications made to the originally proposed regulatory text were explained and made available to the public in a 15-day comment period by the issuance of a "Notice of Public Availability of Modified Text and Availability of Additional Documents" on February 11, 2010. Subsequently, the staff issued a "Second Notice of Public Availability of Modified Text and Availability of Additional Documents" on April 8, 2010, for a 15-day comment period. This second notice included one amendment to the test method section and added one reference to the rulemaking record. A "Third Notice of Public Availability of Additional Documents" was issued on June 3, 2010 to add two additional references to the record that were inadvertently omitted from the Staff Report released to the public on October 23, 2009. In order to provide a complete FSOR for this rulemaking, these modifications and clarifications are summarized below by section.

### Definitions (section 94801):

1. In Section 94801(a)(3b), the November 23, 2009 date reference for the Filter Test Iterations Certification Requirement Decision (CRD) has been added to the definition of "ANSI/UL Standard 867". This CRD was issued by UL after the public notice and Staff Report were released in October 2009.

The original regulatory proposal included the incorporation into the regulation of three CRDs to the ozone test protocol contained in Section 37 of ANSI/UL Standard 867. The CRDs are written clarifications or interpretations that address specific questions or relatively minor issues relating to testing procedures and are intended to provide guidance to testing laboratories. At the time the Staff Report and public hearing notice were released on October 23, 2009, the third CRD was pending, but had not yet been issued by UL. The Staff Report provided a general summary of the expected CRD (Appendix V, page 60). The CRD (relating to testing of devices with multiple filter options) was subsequently issued by UL on November 23, 2009. It was made available for public comment in the first and second 15-day notices as Appendix II.

2. In Sections 94801(a)(3c) and (3d), minor corrections have been made to the wording in the definitions of ANSI/UL Standards 484 and 1278 to clarify the version of the standards being referenced. The corrections were made available for public comment in the first and second 15-day notices.
3. In Sections 94801(a)(3e) and (3f), definitions have been added for ANSI/UL Standards 1017 (Vacuum Cleaners, Blower Cleaners, and Household Floor Finishing Machines) and 1993 (Self-Ballasted Lamps and Lamp Adaptors). A multi-function appliance (i.e. an appliance with a primary purpose other than air cleaning) that includes an air cleaning component and meets the definition of an

indoor air cleaning device must be tested to the applicable ANSI/UL electrical safety standard for its primary purpose. In the original proposed regulatory language described in the Staff Report released on October 23, 2009, ANSI/UL Standard 484 (for room air conditioners) and ANSI/UL Standard 1278 (for electric room heaters) were added to the regulation to address those types of multi-function devices. During the rulemaking staff became aware of vacuum cleaners and lamps that include air cleaners. The applicable electrical safety standards (ANSI/UL Standards 1017 and 1993, respectively) are being added because Standards 507 and 867 are not appropriate for testing electrical safety of these multi-function devices. As noted below, references to the ANSI/UL Standards 1017 and 1993 are also being added to the rulemaking record which the Board compiled for this rulemaking. These modifications were made available for public comment in the first and second 15-day notices.

4. In Section 94801(a)(17), the definition of “listing mark” has been modified to indicate that the required safety criteria for multi-function devices are found in their respective standards (ANSI/UL Standards 484, 1017, 1278, and 1993). This change was made available for public comment in the first and second 15-day notices.

**Test Method (section 94805):**

5. Section 94805(b) states that testing to determine compliance with the regulation must be performed following ANSI/UL Standards 867 or 507, whichever is applicable. At the December 9, 2009 hearing, the Board approved adding ANSI/UL Standards 484 and 1278 as the applicable standards to address room air conditioners and portable heaters as multi-function appliances. Section 94805 is being further modified to add ANSI/UL Standards 1017 (vacuum cleaners) and 1993 (self-ballasted lamps), because ANSI/UL Standards 507 and 867 are not adequate for such multi-function appliances and could result in insufficient testing of electrical safety. This modification was made available in the first and second 15-day notices.
6. Section 94805(d) - At the December 9, 2009 hearing, the Board approved allowing additional test facilities to perform electrical safety testing if they were recognized under Supplemental Programs 2 through 6 of the Occupational Safety and Health Administration’s (OSHA’s) NRTL Program. In 2009, OSHA added an additional Supplemental Program (Program 10, Satellite Notification and Acceptance Program, or “SNAP”), allowing additional facilities with a majority NRTL ownership, or facilities that are “organizationally encompassed” by an NRTL, to perform the electrical safety testing if they are qualified to do the testing as determined by the NRTL and approved by OSHA. (“Organizationally encompassed” means that a site is within the NRTL’s organizational structure and subject to the NRTL’s control, and applies, for example, where a host country may not allow majority ownership by an NRTL). This added Supplemental Program was announced by OSHA on January 9, 2009 in the Federal Register (74 Federal Register 923-927) and became effective on May 11, 2009. This modification to section 94805(d) allows electrical safety

testing to also be conducted at approved Program 10 (SNAP) facilities as long as the testing is conducted by the SNAP facility itself or under Programs 2 through 6 testing arrangements overseen by the SNAP facility. Using a Supplemental Program 10 (SNAP) facility, like the Supplemental Programs 2 through 6 facilities already approved by the Board, permits faster processing for testing and issuance of the authorization to mark (i.e., its safety certification), while maintaining NRTL control. The SNAP program was supported by manufacturers, and they have begun to use SNAP facilities for testing of their air cleaners. Inclusion of these Supplemental Program 10 facilities is consistent with current industry testing practice and in most cases saves manufacturers time (and sometimes money) due to the faster time for testing and certification of their products. This modification was made available for public comment in the second 15-day notice.

### **Additions to the Rulemaking Record**

In addition to the modifications released for public review and comment during the first two 15-day comment periods (on February 11, 2010 and April 8, 2010, respectively), the ARB also provided notice that the third CRD, entitled *Filter Test Iterations*, was being added to the rulemaking record and was being made available for public review. Notice that references to ANSI/UL Standard 1017 (Vacuum Cleaners) and ANSI/UL 1993 (Self-Ballasted Lamps and Lamp Adaptors) were being added to the rulemaking record was also contained in the first two 15-day notices.

Reference to the January 9, 2009 Federal Register announcement describing the federal OSHA's "Nationally Recognized Testing Laboratory: Satellite Notification and Acceptance Program," Supplemental Program 10, was noticed as being added to the rulemaking record in the second 15-day notice issued on April 8, 2010.

Finally, notice that references to ANSI/UL Standards 484 (Room Air Conditioners) and 1278 (Movable and Wall- or Ceiling-Hung Electric Room Heaters) were being added to the rulemaking record was included in the third 15-day notice issued on June 3, 2010. These two standards were discussed in the original Staff Report and were included in the original proposed regulatory text, but were inadvertently omitted from the list of references at the time. Additionally, the listing for one reference listed in the original Staff Report was corrected.

## **III. SUMMARY OF COMMENTS AND AGENCY RESPONSE**

### **45-day Written Comment Submittals**

Only one individual provided a written comment during the 45-day public comment period prior to the December 9, 2009 hearing. The comment is summarized and responded to as follows:

Comment: The commenter, Mr. Ben Freeman of Hunter Fan, stated that he agreed with the ARB staff's proposed amendment to incorporate into the ozone test protocol in



Section 37 of ANSI/UL 867 the CRDs entitled *Definition of Steady State at 7-8 Hours and Chamber Setup*.

The third CRD described in the Staff Report was not available prior to the December 9, 2009 public hearing, but its anticipated content was described in Appendix V of the Staff Report. Mr. Freeman commented that a *Filter Test Iterations* CRD should reduce the amount of testing so that if a unit can be run without a filter, only that configuration should be tested as it would have the highest ozone emissions. He further stated that if the air cleaner cannot be run without a filter, then the least reactive form of filter should be used. He noted that there is limited value in testing with and without filters when the worst case is almost always without filters.

Agency Response: The *Filter Test Iterations* CRD was published by UL on November 23, 2009 and was made available for further public review and comment. The CRD as published is consistent with the commenter's suggestion: if an air cleaner can be operated without its filters in place, then that is how it is tested; otherwise, the least reactive filter is used. The ARB appreciates the comment.

### **Oral Testimony Received at the December 9, 2009 Board Hearing**

There was no oral testimony received at the public hearing.

### **Notice of Public Availability of Modified Text and Availability of Additional Documents (February 11, 2010 – February 26, 2010)**

There were no comments received.

### **Second Notice of Public Availability of Modified Text and Availability of Additional Documents (April 8, 2010 – April 23, 2010)**

There were no comments received.

### **Third Notice of Public Availability of Additional Documents (June 3, 2010 – June 18, 2010)**

There were no comments received.