

## TITLE 17. CALIFORNIA AIR RESOURCES BOARD

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

The Air Resources Board (ARB or Board) will conduct a public hearing at the time and place noted below to consider amendments to the indoor air cleaner regulation adopted by the Board in September 2007, including an extension of the compliance date for the labeling requirements and refinements to the ozone emissions test method.

DATE: December 9, 2009

TIME: 9:00 a.m.

PLACE: California Environmental Protection Agency  
Air Resources Board  
Byron Sher Auditorium  
1001 I Street  
Sacramento, California 95814

This item will be considered at a two-day meeting of the Board, which will commence at 9:00 a.m., December 9, 2009 and may continue at 8:30 a.m., December 10, 2009. This item may not be considered until December 10, 2009. Please consult the agenda for the hearing, which will be available at least 10 days before December 9, 2009, to determine the day on which this item will be considered.

If you require special accommodation or need this document in an alternate format or language, please contact the Clerk of the Board at (916) 322-5594 or by facsimile at (916) 322-3928 as soon as possible, but no later than 10 business days before the scheduled Board meeting. TTY/TDD/Speech to Speech users may dial 711 for the California Relay Service.

### **INFORMATIVE DIGEST OF PROPOSED ACTION AND POLICY STATEMENT OVERVIEW**

**Sections Affected:** Proposed adoption of amendments to California Code of Regulations, title 17, sections 94801, 94804, 94805, and 94806. Two Certification Requirement Decisions (CRD) issued by Underwriters Laboratories, Inc. (UL) in 2009, entitled Chamber Setup (issued July 8, 2009) and Definition of Steady State at Hours 7-8 (issued July 9, 2009) for the American National Standards Institute (ANSI)/UL Standard 867, will be incorporated by reference. A third CRD entitled Filter Test Iterations, soon to be issued by UL, will also be incorporated by reference.

## **Background**

Some air cleaning devices generate large quantities of ozone, either purposely or as a byproduct of their design, and have been shown to produce unhealthful ozone concentrations that exceed the health-based state and federal ambient air quality standards for ozone. Exposure to such elevated levels of ozone is a public health concern. Ozone is highly reactive and can damage the lungs and airways. It inflames and irritates respiratory tissues, and can worsen asthma symptoms, including coughing, chest tightness and impaired breathing. Elevated exposures have the potential to induce permanent lung damage, and chronic ozone exposure can increase the risk of premature death in persons in poor health. Ozone can also damage plants, fabrics and building materials such as paint, walls, and flooring. Ozone has been recognized and regulated as an outdoor air pollutant for many years.

Because of concern for public health, Assembly Bill 2276 was signed into law in 2006 to enact Health and Safety Code sections 41985-41986, which directed ARB to regulate ozone emissions from portable air cleaners sold in California that are used in occupied spaces, by December 31, 2008.

**Summary of Existing Regulation:** On September 27, 2007, the Board approved a regulation, which became effective on October 18, 2008, that requires all portable indoor air cleaners sold in California after October 18, 2010 to be tested, certified, and labeled as complying with an ozone emission concentration limit of 0.050 parts per million. The air cleaners must also meet applicable electrical safety requirements. Electronic air cleaners must be tested according to the ANSI/UL Standard 867 for their ozone emissions and electrical safety. Testing for ANSI/UL Standard 867 must be conducted by a Nationally Recognized Testing Laboratory (NRTL) recognized by the United States Occupational Health and Safety Administration and approved by ARB to conduct the ozone emissions test specified in Section 37 of ANSI/UL 867. Air cleaners that use only filter materials to remove contaminants, called “mechanical filtration only” air cleaners, must be tested under ANSI/UL Standard 507 for their electrical safety; because they are known to emit little or no ozone, this type of air cleaner is not required to undergo ozone emissions testing.

Under the regulation, manufacturers must also notify all of their known distributors, retailers, and sellers about the regulation, provide them with a copy of the regulation, and send documentation of this notification and contact information for their distributors, retailers, and sellers to ARB, by October 18, 2009. Finally, manufacturers, distributors, retailers, sellers, and testing laboratories must maintain production, quality control, sales, and testing records for at least three years, and make them available to ARB upon request.

**Testing and Certification Status:** Air cleaner testing for ozone emissions for the regulation is available from two testing laboratories, UL and Intertek Testing Services (Intertek). The UL testing facility has been available for testing since the effective date of the regulation in October 2008, the Intertek facility was approved to provide testing

on July 2, 2009. As of September 30, 2009, five manufacturers have applied and received certification for a total of 94 air cleaner models. Thirteen models required ozone testing and 81 were “mechanical filtration only” devices that did not require ozone testing. These totals do not include models currently in the certification review process.

The staff currently estimates that about 70 to 109 air cleaner models still need to obtain ozone testing by the compliance date. This estimate is lower than the original estimate of 136 models discussed in the 2007 staff report, and accounts for the models already tested, a reduced estimate for ozone generator models that are anticipated to be re-designed and certified, and a reduction in the number of manufacturers active in the California market.

**Changes Needed:** Early in 2009, manufacturers of air cleaners expressed concern regarding their ability to meet the compliance dates in the regulation due to the delay in the availability of a second laboratory to conduct the ozone emissions test and higher than expected testing costs. Manufacturers also indicated their concern that the slowdown in the economy has resulted in an increased number of unsold air cleaners in the distribution and retail inventories, which poses additional challenges in meeting the regulation’s requirements for labeling. Accordingly, manufacturers requested an extension of the October 18, 2010 compliance date. To hear and consider concerns from all interested parties, ARB staff conducted a public workshop on June 12, 2009 to discuss the status of implementation of the regulation and possible amendments to the regulation, and to obtain comments. The workshop was followed by a three week written comment period, during which comments were received from nine individuals or organizations.

In July, 2009, the second laboratory, Intertek Testing Services, was approved to conduct the Section 37 ozone emissions test. Because of this addition of a second laboratory and the reduced estimate indicated above for the number of models expected to require the ozone test, staff concluded that an extension of the time allowed for testing and certification is not needed, and the manufacturers who made the original request concurred. However, additional time is needed for manufacturers to meet the labeling requirement for air cleaners already in the distribution or retail chain at the time the specific models are certified.

Additionally, early testing under the revised ANSI/UL Standard 867 Section 37 ozone emissions test identified areas in Section 37 where the test protocol was not clear, or unexpectedly caused the test for some models to take longer than anticipated. To clarify the test protocol, UL has issued two Certification Requirement Decisions to better specify steps that must be taken related to chamber set-up and meeting the steady state definition at hours 7 to 8 of the chamber test, and they will soon issue a third CRD on selecting the appropriate filters for testing for models marketed with multiple filter options.

Finally, ARB has become aware of multi-function appliances that include an air cleaning component (such as an electric heater with an ionizer) and must meet the requirements of the regulation, but are tested for electrical safety under industry test standards other than ANSI/UL Standards 507 and 867. A modification to the regulation is needed to allow such devices to undergo electrical testing under the appropriate ANSI/UL test standard, depending on the specific type of appliance.

### **Description of the Proposed Regulatory Action**

In response to manufacturers' requests, ARB staff propose to extend the deadline for package certification labeling for one year, to October 18, 2011, and to allow the use of adhesive certification labels (rather than printing on the package) until October 1, 2012. These extensions apply only to air cleaner models that are tested and certified by the October 18, 2010 compliance date; all air cleaners must still be tested and certified by the current deadline of October 18, 2010. These measures will avoid the unnecessary costs of re-packaging certified air cleaners that are already in the distribution and retail chains at the time of certification, and will avoid loss of sales that would likely occur if re-packaging were required. The extension of the time allowed for use of adhesive labels rather than labels printed on the packaging will enable manufacturers to better time their design and printing costs for the new packaging and spread those costs over a longer period of time.

Several additional proposed amendments have also been identified by staff as necessary to improve implementation of the regulation. These amendments would: (1) allow the electrical safety tests to be conducted at additional facilities under the oversight of an NRTL; (2) incorporate the three clarifications described above to the ozone test protocol issued by UL; (3) allow alternate, appropriate electrical safety testing for multi-function appliances that include an air cleaning component; and 4) revise the definition of "mechanical filtration only" air cleaners.

The first of these amendments would allow electrical safety testing of air cleaners to be conducted not just by NRTLs, but also by facilities that meet the requirements of Supplemental Programs 2 through 6 of the United States Occupational Safety and Health Administration's Nationally Recognized Testing Laboratory (NRTL) recognition program (Federal Register 60:12980-12985). This amendment would, in effect, increase the number of allowable testing facilities for the electrical safety testing, but with testing and program oversight by an NRTL. This is consistent with current industry practice. Ozone emissions testing would continue to be limited to NRTL Program 1 and 2 facilities that have been audited and approved by ARB.

The next amendment would incorporate into the regulation the three CRDs issued by UL and described above, which clarify chamber set-up, steady state determinations, and filter selection for the ozone testing protocol of Section 37 of ANSI/UL Standard 867. These clarifications to the test protocol are minor refinements that would have the effect of increasing consistency of testing across laboratories and shortening the time necessary for some ozone tests.

The regulation also would be amended to allow the appropriate industry electrical safety tests other than ANSI/UL Standards 507 and 867 to be used for multi-function appliances that include an air cleaning component but are normally tested for electrical safety under industry standards other than ANSI/UL Standards 507 and 867.

Finally, staff propose a minor revision to the definition of “mechanical filtration only” in section 94801 of the air cleaner regulation to include all pollutants (not just particles) by replacing the phrase “suspended particles” with “contaminants”. This will make the definition internally consistent, and consistent with the rest of the regulation.

There would be no negative public health or environmental impacts anticipated from any of these proposed amendments.

### **COMPARABLE FEDERAL REGULATIONS**

Health and Safety Code section 41986 requires that the proposed regulation be consistent with federal law. The United States Food and Drug Administration has promulgated a maximum acceptable level of ozone of 0.05 ppm for medical devices, as well as certain labeling requirements for such devices (21 CFR § 801.415). The emission standard and labeling requirements in the existing regulation that apply to air cleaners that are medical devices are consistent with this federal standard and are not proposed for change.

### **AVAILABILITY OF DOCUMENTS AND AGENCY CONTACT PERSONS**

ARB staff has prepared a Staff Report: Initial Statement of Reasons (ISOR) for the proposed regulatory action, which includes a summary of the potential environmental and economic impacts of the proposal and supporting technical documentation. The report is entitled: “Staff Report: Initial Statement of Reasons, Proposed Amendments to the Regulation for Limiting Ozone Emissions from Indoor Air Cleaning Devices.”

Copies of the ISOR and the full text of the proposed regulatory language, in underline and strikethrough format to allow for comparison with the existing regulations, may be accessed on ARB’s website listed below, or may be obtained from the Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California 95814, (916) 322-2990, at least 45 days prior to the scheduled hearing on December 9, 2009.

Upon its completion, the Final Statement of Reasons (FSOR) will be available and copies may be requested from the agency contact persons in this notice, or may be accessed on ARB’s website listed below.

Inquiries concerning the substance of the proposed regulation may be directed to the designated agency contact persons, Ms. Peggy Jenkins, Manager of the Indoor Exposure Assessment Section, at (916) 323-1504 or Mr. Jim Behrmann, at (916) 322-8278.

Further, the agency representative and designated back-up contact persons, to whom nonsubstantive inquiries concerning the proposed administrative action may be directed, are Ms. Lori Andreoni, Manager, Board Administration and Regulatory Coordination Unit, (916) 322-4011, or Ms. Trini Balcazar, Regulations Coordinator, (916) 445-9564. The Board has compiled a record for this rulemaking action, which includes all the information upon which the proposal is based. This material is available for inspection upon request to the contact persons.

This notice, the ISOR and all subsequent regulatory documents, including the Final Statement of Reasons, when completed, are available on ARB's website for this rulemaking at <http://www.arb.ca.gov/regact/2009/iacd09/iacd09.htm>.

### **COSTS TO PUBLIC AGENCIES AND TO BUSINESSES AND PERSONS AFFECTED**

The determinations of the Board's Executive Officer concerning the costs or savings necessarily incurred by public agencies, businesses, and private persons in reasonable compliance with the proposed regulatory action are presented below.

Pursuant to Government Code sections 11346.5(a)(5) and 11346.5(a)(6), the Executive Officer has determined that the proposed regulatory action would not create costs or savings to any state agency, or in federal funding to the State. The regulation would not create 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 nondiscretionary cost or savings to State or local agencies.

In developing the proposed amendments, ARB staff evaluated the potential economic impacts on representative private persons and businesses. The Executive Officer has initially determined that the proposed amendments are likely to produce small, but currently unquantifiable, time and cost reductions for manufacturers, distributors, and sellers of portable indoor air cleaners if the products are marketed for sale in California. Product costs to consumers are likely to either remain the same or decrease slightly. No costs to businesses and representative private persons or consumers to comply with the proposed amendments are expected.

The Executive Officer has made an initial determination that the proposed regulatory action would 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. Of an estimated 60 manufacturers of indoor air cleaning devices, only three manufacturers are based in California. All manufacturers of indoor air cleaning devices marketed for sale in California would be subject to the proposed amendments to the regulation, so there should be no effect on the business competitiveness of the California-based manufacturers.

In accordance with Government Code section 11346.3, the Executive Officer has determined that the proposed regulatory action would 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, or the expansion of businesses currently doing business within the State of California. A detailed assessment of the economic impacts of the proposed regulatory action can be found in the ISOR.

The Executive Officer has also determined, pursuant to California Code of Regulations, title 1, section 4, that the proposed regulatory action would affect small businesses. Impacts from the proposal are likely to be positive because the proposed amendments would more likely decrease, rather than increase, costs relative to the original regulation.

In accordance with Government Code sections 11346.3(c) and 11346.5(a)(11), the Executive Officer has found that the proposed amendments would establish no new reporting requirements.

Before taking final action on the proposed regulatory action, the Board must determine that no reasonable alternative considered by the Board, or that has otherwise been identified and brought to the attention of the Board, would be more effective in carrying out the purpose for which the action is proposed, or would be as effective and less burdensome to affected private persons than the proposed action.

### **SUBMITTAL OF COMMENTS**

Interested members of the public may present comments orally or in writing at the meeting, and they may be submitted by postal mail or by electronic submittal before the meeting. To be considered by the Board, written comments or materials not physically submitted at the meeting must be received **no later than 12:00 noon, December 8, 2009**, and addressed to the following:

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 (Government 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.

The Board requests, but does not require, 20 copies of any written submission. Also, ARB requests that written and electronic statements be filed at least 10 days prior to the meeting so that ARB staff and Board members have time to fully consider each comment.

The Board encourages members of the public to bring to the attention of staff in advance of the hearing any suggestions for modification of the proposed regulatory action.

### **STATUTORY AUTHORITY AND REFERENCES**

This regulatory action is proposed under the authority granted in Health and Safety Code section 41986. This action is proposed to implement, interpret, and make specific sections 41985, 41985.5, and 41986 of the Health and Safety Code; and sections 91000 et seq. of title 17, subchapter 4 (Disclosure of Records) of the California Code of Regulations; 29 CFR 1910.7, 21 CFR 801.415; section 201 U.S.C. 321.

### **HEARING PROCEDURES**

The public hearing will be conducted in accordance with the California Administrative Procedure Act, title 2, division 3, part 1, chapter 3.5 (commencing with section 11340) of the Government Code.

Following the public hearing, the Board may adopt the regulatory language as originally proposed, or with non-substantial or grammatical modifications. The Board may also adopt the proposed regulatory language with other modifications if the text as modified is sufficiently related to the originally proposed text that the public was adequately placed on notice that the regulatory language as modified could result from the proposed regulatory action. In the event that such modifications are made, the full regulatory text, with the modifications clearly indicated, will be made available to the public for written comment at least 15 days before it is adopted.

The public may request a copy of the modified regulatory text from ARB's Public Information Office, Air Resources Board, 1001 I Street, Visitors and Environmental Services Center, First Floor, Sacramento, California 95814, (916) 322-2990.

CALIFORNIA AIR RESOURCES BOARD

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James N. Goldstene  
Executive Officer

Date: October 13, 2009

*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 our website at [www.arb.ca.gov](http://www.arb.ca.gov).*