

Air Cleaner Regulation Additional Responses to Questions Received

July 23, 2009

Applicability

Question #1:

Does the regulation apply to air cleaning devices that are manufactured in California, but are only sold outside of California?

Response: Yes, by being manufactured in California the regulation applies to such devices under section 94800, but if the devices are not sold here they would not have to meet the standard specified in section 94802 and would not have to be tested and certified. However, if the non-certified devices do show up in commerce and for sale in California, then they would be in violation of the regulation and fines could be imposed or other enforcement actions taken. We would caution that air cleaners manufactured in California, but not expected to be sold in the state, may have a greater likelihood of being brought back into California for subsequent sale depending on where they are distributed. Given the size of the California market, we recommend that all such devices be tested and certified.

The labeling provision of the regulation would also apply even if the devices were not sold in California (section 94806[e]). Any device for non-industrial use that is advertised or sold via the Internet or by catalog that has not been tested and certified, must display the following advisory in a prominent place on the primary web pages, catalog pages, and related materials where such a device is advertised or displayed for sale: "Does not meet California requirements; cannot be shipped to California."

Notification

Question #2:

Section 94807 requires manufacturers to provide a copy of the final regulation order by mail or email to all of their known distributors, retailers, and sellers, and to submit documentation of the notification to the ARB, along with their mailing list with complete contact information for each address, or complete contact information for each email address. What if a distributor or seller is unwilling to provide, or allow the manufacturer to provide, their contact information? What is the manufacturer's obligation, and what is the distributor's/seller's obligation?

Response: Manufacturers, and in turn distributors, sellers and retailers, are obligated to comply with the regulation. Manufacturers must provide ARB with whatever contact information they have for all known distributors, retailers and sellers. Manufacturers would be in violation of the regulation if they do not provide the necessary information to the ARB. The notification requirement exists to assure that all parties in the distribution and retail chains are informed about the regulation and that it is a violation to sell a non-

certified device in California after the October 2010 compliance date. If the distributor or seller is concerned about privacy, the regulation does contain a provision that contact information may be kept confidential upon request.

Question #3:

If an air cleaner product is sold via the internet and sent to a distribution center, and the manufacturer does not know where the air cleaners go from the distribution center, what distribution list or contact information does the manufacturer have to give to the ARB?

Response: In this case the manufacturer would provide contact information for the distribution center and does not need to provide contact information for individual purchasers unless they in turn can sell or distribute the air cleaner. For internet sales, we would recommend that sellers require the purchaser to specify if the purchased air cleaner is for personal use or for resale. In short, the manufacturer is required to provide the contact information for all of its known distributors, sellers and retailers, but not the end users.

Question #4:

Do our regulations providing for manufacturers to deem certain information confidential (such as contact information for distributors) prevent us (ARB) from sending letters to their distributors?

Response: No, the ARB can send letters to distributors, sellers and retailers if needed. Any communication sent to a distributor does become a separate record that can be requested by a member of the public, but the distributor's name and contact information would be removed or blocked if confidentiality had been requested.

Question #5:

Can you please clarify the notification requirement for distributors in Section 94807? Some "distributors" in some companies are actually end users rather than actual distributors; would they have to be notified?

Response: Within 12 months of the effective date (i.e. by October 18, 2009), manufacturers of indoor air cleaning devices manufactured, sold, supplied, offered for sale, or introduced into commerce in California must provide a copy of the regulation order to all their known distributors, retailers, and sellers. Documentation of the mailed or emailed notice, along with contact information for those receiving the notice, must also be submitted by October 18, 2009.

A "distributor" is defined in the regulation as "any person to whom an indoor air cleaning device is sold or supplied for the purposes of resale or distribution in commerce" (section 94801[a][10]). Even if a distributor starts out as just an end user, they may be, or become, a distributor. Factors to consider, for example, would be whether they place multiple orders, order multiple units at a time, have a business license or commercial identification, have an obvious commercial relationship with another organization, and

so on. If it appears that they may re-sell the device, they need to be included in the manufacturers' notification.

Question #6:

After notifying our distributors by October 18, 2009 as required, we must also give notice in the future to any new distributors, retailers, or sellers with whom we do business. What is the timeframe for notifying new distributors after October 18, 2009?

Response: There is no specific time limit specified in the regulation for future notifications of new distributors, retailers, and sellers. However, notification should be made as soon as possible after entering into a business relationship with a new distributor, retailer, or seller, and prior to distribution and sale of air cleaners by that entity. It is in the manufacturer's best interest to notify them as soon as possible. It is suggested that documentation of such notification be submitted to ARB on a quarterly basis. If no new distributors, retailers or sellers have been added during a quarter, no notification to ARB is required.

Testing and Certification

Question #7:

Does the same Nationally Recognized Testing Laboratory (NRTL) have to do both the electrical safety testing AND the Section 37 ozone testing required by ANSI/UL Standard 867? In other words, can the electrical safety and ozone tests be conducted by different laboratories as long as they are NRTLs that meet the requirements of section 94805[d]?

Response: The electrical safety and ozone tests can be conducted by different NRTLs if that is more convenient for the manufacturer, but the Section 37 ozone test must be done by an NRTL that has been reviewed, audited and certified by ARB. As of this date, two laboratories have been approved by ARB. NRTLs may, but are not obligated to, accept test data, component or program approvals, or other information or data from another NRTL, as long as it is satisfied with their appropriateness. Manufacturers utilizing two different laboratories for the electrical and ozone tests must be sure that one of the laboratories is willing to accept the other laboratory's results, and willing to allow their listing or certification mark to be used in such a situation. All certified devices must carry the mark of the responsible laboratory.

Question #8:

Manufacturers of mechanical filtration-only air cleaning devices tested prior to the enactment of the air cleaner regulation may submit documentation demonstrating the device's compliance with ANSI/UL Standard 507. The certification application requires a signed letter or form from the test laboratory, but the laboratory's testing results were not signed. Is there an alternative method of documentation that would be acceptable to ARB?

Response: For mechanical only devices that were tested prior to the effective date of the regulation (October 18, 2008), we will accept copies of the Notice of Authorization from the NRTL and/or a copy of the full report received from the test facility.

Question #9:

In a similar question, a manufacturer asked, if they no longer have the Notice of Authorization (NOA) form from UL, would ARB accept the product listing on UL's online certification directory which shows the device as having passed ANSI/UL 507.

Response: If the manufacturer no longer has the UL Notice of Authorization or the equivalent documentation from the testing laboratory that tested the device, ARB will accept the full report from the facility that tested the device. If the full report cannot be provided, ARB may accept the product listing on UL's online certification directory (or other comparable documentation from other testing laboratories), as long as we are able to confirm the listing provided by the manufacturer, and it is for the same device. When manufacturers provide this documentation, they should make sure that the entire URL of the printout is visible along with the legal disclaimer at the bottom of the applicable UL/test facility page.

Exemptions

Question #10:

The ARB received an inquiry whether the commercial use of an ozone generator (used to add ozone to the supply air in an occupied building) to address odor control would conform to the regulatory exemption for in-duct devices being "devices designed, marketed, and used solely as a physically integrated part of a central heating, air conditioning, or ventilating system" (section 94803(b) of the regulation).

Response: In this particular instance, because the duct must be modified for the air cleaner to be attached, it is not a "physically integrated" part of an HVAC system. "Physically integrated" refers to an air cleaner that is part of the original HVAC system and ductwork or was designed to be part of a specific HVAC system. Manufacturers are encouraged to contact ARB's staff with the specific details of their system if they have any question about an air cleaner qualifying for the in-duct exemption.

Labeling

Question #11:

According to section 94806 of the regulation, indoor air cleaning devices are required to display an ozone emissions certification label, and the label shall state "This air cleaner complies with the federal ozone emissions limit. ARB certified". One model of a portable air conditioner includes an air cleaner within the appliance. The manufacturer asked if they can replace the wording "This air cleaner complies..." with "This room air conditioner..."?

Response: The most appropriate label wording would read: "The air cleaner included in this unit complies with the federal ozone emissions limit. ARB certified". This wording would avoid any confusion about the air conditioner being a source of ozone. Companies with similar situations should check with ARB regarding an appropriate label for their devices.

Question #12:

Does the manufacturer of the air conditioner (containing the air cleaner) need to have it tested and certified by ARB if the manufacturer does not advertise the air cleaner function? They will still mention the air cleaner in the owner's manual because it must be cleaned at certain intervals.

Response: Yes, the air cleaner portion must be tested and certified. In this case, the testing facility will test the air cleaner portion of the device without the air conditioning being turned on. For some others, the test facility may have to identify another appropriate way to test the device under Standard 867.

Question #13:

Regarding the October 18, 2010 full compliance date, on that day, if a retailer has a product on the shelf (outside the control of the manufacturer) that has not been labeled, whose responsibility is it to make sure it is labeled and that it is done correctly?

Response: Air cleaners sold after the full compliance date of October 18, 2010 must be certified and labeled. Manufacturers, distributors, retailers and sellers all bear some responsibility for assuring that complying devices are offered for sale. If non-complying products are found being offered for sale, ARB will evaluate what actions were taken by the parties involved (e.g. whether distributors, retailers and sellers were notified of the regulation). Other actions can also be taken by ARB. We recommend that manufacturers provide an appropriate number of stick-on labels, as permitted in Section 94801(a)(16), to any of their distributors or sellers that may need them.

Enforcement

Question #14:

There is a concern among manufacturers and others about enforcement procedures in the field, and what happens if a noncompliant air cleaner is found. They are concerned about loss of product and sales if ARB is in error. What action is taken? What triggers products being pulled from shelves? What if the manufacturer disagrees with our findings? Do we have a chamber and will we test the devices ourselves? What kind of appeal process is there if in the end the manufacturer still disagrees with ARB?

Response: The ARB is responsible for ensuring that portable air cleaners sold in California after October 2010 are certified as having been tested and found to emit less than 50 ppb of ozone, and that they also comply with other requirements of the air cleaner regulation (title 17, sections 94800 – 94810, California Code of Regulations). Enforcement of the regulation ensures that ozone emissions are controlled to protect

public health, and that there is a level playing field among manufacturers and the sellers of air cleaners.

To enforce the air cleaner regulations, ARB staff may carry out various activities including searching the Internet, reviewing submittals from manufacturers, conducting random inspections of retail outlets throughout California, and purchasing air cleaners offered for sale (through retail outlets, direct marketing, or the Internet). Inspectors will look for compliance with labeling requirements, and purchased air cleaners may be tested according to the ozone testing protocol specified in the regulation (ANSI/UL Standard 867). Records documenting a manufacturer's efforts to inform distributors and other sellers about the air cleaner regulation may be examined.

After initial investigation, if an air cleaner is found to be in violation, ARB may seek additional information from the manufacture. A notice of violation may be issued. Appropriate civil or administrative action can be taken by the ARB to enforce notices of violation issued under this regulation. Civil penalties can be imposed as provided in state law (Health and Safety Code sections 42402 *et seq.*) Criminal cases may be referred to the appropriate prosecuting agency and would be subject to penalties under Health and Safety Code sections 42400 *et seq.*