

April 24, 2007

Ms. Peggy L. Jenkins
California Air Resources Board
Research Division, Fifth Floor
1001 I Street, P.O. Box 2815
Sacramento, CA 95814

Dear Ms. Jenkins,

The Association of Home Appliance Manufacturers (AHAM) is the trade association representing the manufacturers of major, portable and floor care home appliances, and suppliers to the industry. As part of our portable division, AHAM represents roughly 20 manufacturers who produce air cleaners for sale in California. AHAM also operates a certification program for air cleaners, along with the Clean Air Delivery Rate web site (www.cadr.org) which helps consumers make informed choices when purchasing air cleaners. AHAM worked closely with Assemblywoman Pavley and the Air Resources Board (ARB) during the legislative process for Assembly Bill (AB) 2276 and we appreciate the opportunity to share our comments regarding the development of the regulations set forth in the law.

Enclosed in this letter are the comments of the members of AHAM on the Proposed "Regulation for Limiting Ozone Emissions From Indoor Air Cleaning Devices," dated March 21, 2007. We want to thank the staff of the ARB for your continued diligence on this important regulation and willingness to obtain comments from all stakeholders.

AHAM offers the following comments on the specific sections of the proposed regulation:

Section 94801 Definitions

AHAM believes that the ARB should only require testing for the "basic model" of a product, therefore we support adding a definition of this term. We suggest the following definition, which is commonly used among industry certification and testing procedures. "Basic Model: A basic model is a single unit that represents a unique performance design configuration. Models identical to the basic model in functional design and performance characteristics are considered derivative models including models of different brand names manufactured by the same company. Collectively these models are called a "Model Group". Different brand-name models may be in a Model Group. A unit should not be designated as a separate basic model if it has the same internal air cleaning design and performance but differs from it only in decorative treatment; rather, it should be considered a derivative of the basic model."

(13) AHAM believes that the definition of indoor air cleaning device should be restricted to an energy using device. This would avoid the unintended inclusion of non-power products, which may clean the air by use of chemicals, or special surfaces. We suggest the following: “ ‘Indoor air cleaning device’ means an energy using product whose stated function is to reduce the concentration of airborne pollutants, including but not limited to allergens, microbes (e.g. bacteria, fungi, viruses, and other microorganisms), dusts particles, smoke, fumes, gases or vapors, and odorous chemicals.”

AHAM believes the definition of mechanical filtration needs to be edited. As you know, there are some mechanical filters that are electrostatically treated and have electrostatic properties. Therefore, we suggest the following:

(16) “ ‘Mechanical filtration’ means removal of suspended particles from air without the use of electrical energy potential, i.e. air is forced through a filter medium. Materials used in the construction of the filter media may include substances such as activated charcoal, paper, foam, synthetics, ceramics, or natural fibers.”

AHAM believes that the common term “ppm” should be used throughout the document with the “ppm” being defined as ppmv in the definition section. This will be consistent with the new UL Certification Bulletin, March 2007. Therefore, we suggest the following:

(22) “ ppm is a unit of concentration measure meaning parts per million by volume. For the purpose of this regulation the volume medium considered is air and the substance of interest is ozone.”

Section 94802 Standards for Indoor Air Cleaning Devices

AHAM believes that the effective date for this regulation needs to be significantly later than the date shown of September 30, 2008 and it must be enacted according to the date of manufacture.

(1) This ARB regulation will not be finished until at the earliest, December 2007. If all manufacturers were to begin testing units to the new UL test protocol, and even if numerous laboratories were available, it is not possible for all basic models to have completed testing and for the State of California Air Resources Board to have completed all certifications by September 30, 2008. Furthermore, additional time is needed to make the necessary artwork and printing changes to the product packaging which is required under the regulations. The effective date of the regulation should be no earlier than 13 months after the final regulation is put into effect by action of the Air Resources Board.

(2) By using the terms, “offer for sale, or introduce into commerce in California...” the ARB is suggesting that this regulation would become effective according to the date the product is sold. It is very important that the regulation take effect on a date of manufacturer for the following reasons:

- a. A date of manufacture is a certain date with a fixed definition. However, “offer for sale” is an ambiguous term that may include many points throughout the distribution channels. The “offer for sale” date includes step distribution channels and sales after the primary retail sale. This could cause California to spend large resources attempting to enforce a vague definition of a date, and miss the real intent of the regulation.
- b. The date of manufacture is under the control of the same entity that will do the design, testing and certification with California. The sale date is not within the power of the manufacturer to control, and yet, the manufacturers will be the ones penalized.
- c. A manufacturer does not have the ability to remove all inventory from the retail shelves in California. Such action could result in the national retailers sending hundreds of thousands of units back to the manufacturer. It is virtually impossible for a manufacturer or retailer to send “unused” inventory to another state. Movement of inventory results in damage, loss, and interrupts the inventory management systems.
- d. The effect of this regulation would seriously burden the manufacturers (and retailers) that are attempting to comply with this regulation. Small retailers that do not have the benefit of complex and sophisticated inventory management systems would be negatively impacted.
- e. Date of manufacture is used by all safety certification bodies to enact new effective dates. This regulation requires that manufacturers have their products safety certified by an NRTL and this regulation should be consistent with this approach.
- f. The net impact of the marginal number of units affected by including a date of sale provision would be far out-weighted by the complexities of enforcement, cost of regulatory compliance, and time spent in inventory management.

We believe a better use of resources would be to have the ARB concentrate on consumer education while following the model of the California Energy Commission and other ARB Consumer Products Regulations and make the effective date coincide with the date of manufacture.

Section 94804 Certification Requirements

- (a) We request that the first sentence read, “Each manufacturer or certification organization of an indoor air cleaning device subject to Section 94802 is required to submit an application for certification to the ARB Executive Officer, P.O. Box 2815, Sacramento CA 95812, Attn: Indoor Air Cleaning Device Certification.”

AHAM is requesting the opportunity for a certification organization to submit the information on behalf of the manufacturer if it were approved by the ARB to do so. This approach will not only cut costs and workload for manufacturers but could reduce burden on the ARB and expedite the certification review process.

- (b) We request that the information contained in this paragraph be changed to delete the reference to how a mechanical air cleaner is constructed. This is already covered in the Definitions section and is not necessary to repeat here. In addition, AHAM suggests that

the information to be submitted be more clearly defined. We suggest that the paragraph should read,

- (b) “Any indoor air cleaning device using only mechanical filtration for pollutant removal is exempt from the testing requirement for the ozone emission standard of 0.050 ppm_v as determined in Section 94805, based on their known *de minimis* ozone emissions. ~~Such devices would include those that utilize a filter media, such as cloth, paper or activated carbon, and a fan to move air through the filter media.~~ Verification of this mechanical-filtration-only exclusion from ozone emission testing will be made by the ARB Executive Officer based on the submission of product design specifications and documentation by the manufacturer, distributor or retailer. Documentation to the ARB shall include ~~complete written and graphical materials that fully describe the final design and specifications~~ a description of the air cleaning performance technology employed, block diagram, or schematic of the model. To be certified under this regulation, manufacturers of such indoor air cleaning devices must submit the information required in sections 94804 c(1) to 94804 c(3) below. These products are still subject to the labeling requirements specified in Section 94806(b).”

(c) (3) Indoor air cleaning device information:

AHAM suggests that the information to be submitted be limited to the following:

- (A) “Brand name
- (B) Model name
- (C) Model number
- (D) Discussion of the principles of operation and design
- (E) Device schematics”

AHAM members do not believe it is appropriate to discuss “favorable” or “unfavorable” operating conditions. This is not clearly defined and there is no information to suggest what affects such a situation may have on ozone production. Marketing materials and/or operations manuals may or may not be available at the time a new model is sent for certification.

(4) Indoor air cleaning device test information:

AHAM does not believe this information requested in the proposed regulation is relevant or that it would be available to the manufacturer from a testing laboratory. The UL Certification Bulletin of March 2007 indicates that if a unit fails a test, a second test may be conducted. The technical details of the failure may not be made available to the

manufacturer. We believe this information is outside the boundaries and scope of the regulation. We suggest that the ARB significantly limit the information being sought in this section. Furthermore, the request for information of “chain of custody,” is not documented or available once the manufacturer has released the unit to the certification organization.

(4) (E). The ARB is requesting information on the description of the test chamber, background ozone measurements, air exchange rate, and ozone half-life. We suggest instead that the ARB request a statement from the testing/certification agency that the tests were conducted in accordance with the procedures in the March 2007 UL Certification Bulletin. Testing labs are already accredited by bodies with rigorous compliance requirements and by organizations with accreditation audit experience.

Requiring “documentation of any violations of the specified test conditions” is not possible. The manufacturer who is submitting this information does not receive this information from the testing lab.

(4) (F) This section should be deleted. Again, if the submitter would include information to state that testing were conducted in accordance with the March 2007 UL Certification Bulletin, this should suffice.

(d) The time periods allowed in this section of the draft regulation are a severe impediment to the manufacturers. Minimization of the time from inception of a product design, through capital equipment production, to testing, to final production, and shipment is absolutely critical. Asking a manufacturer to produce “production run” samples from off-production tooling, produce test results, and then wait 4 months for the ARB to tell them that they may begin production is untenable. This would tie up millions of dollars in capital tooling for months of unproductive time waiting for the ARB to review the test data and application. The timing specified in this section would not only have a huge economic affect on large manufacturers but could devastate small and medium sized manufacturers. The ARB must find a way to review and respond to applications in a maximum of 2 weeks.

One additional suggestion to the ARB to address this problem would be to establish a “parallel path” method of making application to ozone certification. For example, a manufacturer should be able to submit an Early Application in which they can give some information on the unit that is known at the beginning stages. The ARB could issue a Case Number or File Number, and manufacturers could submit additional data when it is available. In this way, the ARB can review the application, relevant documentation and construction details **before** the testing data or sales literature information is available and would therefore reduce the time to completion of the final ARB certification. In fact this procedure should be managed through a web page allowing manufacturers, with password protection, to update their files on a real-time basis. Each time the data is added, the review officer at the ARB can review this information for compliance. Then,

at the time the final pieces of information are available, the manufacturer can then alert the review officer at ARB and the final review can occur.

(e) We believe this section should read,

“Notification must be provided to the Executive Officer if the indoor air cleaning device fails any follow-up testing conducted to verify compliance with Section 37 of UL Standard 867 and the March 2007 Certification Bulletin of UL, where applicable.”

It is not appropriate to require that any failure of any test be notified to the ARB. Discussion of test results between a client and a testing/certification organization are an on-going process and in most cases do not involve withdrawal of the safety certification. In addition, these discussions are proprietary. For example, the issuance of a factory “Variation Notice” by the follow-up service inspector for paperwork issues is not the same as a withdrawal of certification.

(f) We suggest this paragraph be edited to read:

“ARB may revoke certification for any device deemed noncompliant in the future when tested according to procedures described in Section 94805, or if ~~any other certification requirements are no longer met.~~ the NRTL safety certification of the product has been withdrawn.”

Knowledge of the full listing status of a product is made public by a testing/certification organization, but individual test results and communications between the testing/certification organization and the manufacturer are privileged and confidential.

Section 94805. Test Method

(a) AHAM requests that this paragraph be re-written as follows:

(a) “Testing to determine compliance with the requirements of this article, shall be performed following the UL Standards: UL 867 or UL 507 in their entirety, which is hereby incorporated by reference.”

There are many mechanical air cleaning products that are UL listed to UL 507 and this standard should be incorporated by reference.

(b) AHAM requests that this paragraph be re-written slightly.

“Testing of indoor air cleaning devices must be conducted by a laboratory currently recognized as an NRTL by the U.S. Occupational Safety and Health Administration (OSHA), and that is certified to perform testing for ~~the entire~~ UL Standard 867 and the 2007 UL Interpretation of Section 37 or UL 507, where applicable.”

It is our understanding that OSHA accredits testing and certification organizations based on the standard, not on sections within the standard.

Section 94806

AHAM requests that the title of this section be changed to “Certification Marking.” The term “label” implies one and only one method of marking.

This section seems to incorporate both ozone testing and safety certification, but the various paragraphs do not explain which is being required. We offer the following suggestions:

- (a) “All indoor air cleaning devices for use in occupied spaces are required to display an ozone emissions certification mark label on the product packaging after completion of requirements of Section 95804 prior to sale in California, unless satisfying the requirements for exemption as specified in Section 94803.”
- (b) “The ozone emissions certification mark label shall state, ‘Complies with Federal Ozone emissions limits, ARB Certified.’ The capital letters should be of a minimum height of 4mm. Lower case letters should be of a minimum height of 3mm. The type face or font should be legible.” ~~be at least 0.5 inches by 2 inches in size, easily readable, and shall state “California Certified” in bold type whose uppercase letters are not less than 4 mm high, followed by “Under 0.050 ppmv Ozone” in type whose uppercase letters are not less than 3 mm high; recommended typographical font sizes are 12 and 9 point, respectively.~~

As previously stated, AHAM maintains that AB 2276 as signed into law states that the marking shall read “This air cleaner complies with the federal ozone emissions limit.” However, we recognize that disclosure of California certification remains an important component of these regulations for the ARB.

Section (c). We believe most of the safety certification organizations do not mandate a safety certification mark that contains the actual standard under which the product has been

evaluated. Some safety certifiers use a code that is not easily transparent to discern the standard. Therefore, this section needs to be modified and should read,

- (c) “All indoor air cleaning devices for use in occupied spaces are required to display ~~a the UL 867~~ safety certification mark on the device, consistent with the UL requirements of the appropriate NRTL safety certification organization, after completion of requirements of Sections 94804 and 94805 and prior to sale in California, unless the device satisfies the requirements for exemption as specified in Section 94803. Devices qualifying as a “mechanical filtration only” device as described in Section 94804(b) shall be certified under UL standard 507 and display the ~~UL 507~~ certification mark of the appropriate NRTL safety certification organization.”, ~~or the mark of any UL standard that addresses electrical safety for mechanical air cleaners that succeeds UL 507.~~

AHAM opposes the provisions of sections (d) and (e) and suggests these provisions be deleted. Under the regulations of sections (d) and (e), manufacturers would be required to make California specific statements for products predominantly for sale outside the State of California. The state currently does not have such authority to require these statements. Furthermore, AB 2276 gives the ARB no authority over internet or catalog requirements. We do, however, recognize the need to inform California consumers of which items are prohibited for sale in the state and believe the regulations related to package marking adequately address this matter.

Thank you for the opportunity to comment on this proposed regulation. We would be pleased to answer any questions you may have on these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Wayne Morris". The signature is written in a cursive, flowing style.

Wayne Morris
Vice President, Division Services