State of California
AIR RESOURCES BOARD

Resolution 09-65

December 9, 2009

Agenda Item No.: 09-10-2

WHEREAS, sections 39600 and 39601 of the Health and Safety Code authorize the Air Resources Board (ARB or Board) to adopt standards, rules and regulations and to do such acts as may be necessary for the proper execution of the powers and duties granted to and imposed upon the Board by law;

WHEREAS, sections 41985 – 41986 of the Health and Safety Code direct ARB to regulate ozone emissions from indoor air cleaning devices sold in California;

WHEREAS, exposure to ozone continues to be a significant public health concern because ozone is a highly reactive molecule that can damage the lungs and airways. Ozone can inflame and irritate respiratory tissues, and can worsen asthma symptoms. It can cause coughing, chest tightness and impaired breathing. Exposure to elevated levels has the potential to induce permanent lung damage, and chronic exposure can increase the risk of premature death in persons with poor health. Some air purifiers emit levels of ozone several times the ambient air quality standard levels for healthful air;

WHEREAS, at the September 27, 2007 public hearing the Board adopted Resolution 07-40 in which the Board approved adoption of a regulation to limit ozone emissions from indoor air cleaning devices as detailed in sections 94800 through 94810, title 17, California Code of Regulations, including the incorporated test methods, American National Standards Institute/Underwriters Laboratories, Inc. (ANSI/UL) Standard 867 (Fourth Edition, December 21, 2007) and ANSI/UL Standard 507 (Ninth Edition, September 27, 2007) for “mechanical filtration only” devices, and the Certification Requirement Decisions (CRD) associated with Standard 867 and issued by UL on March 4, 2008, April 17, 2008, and April 18, 2008;

WHEREAS, at the September 27, 2007 public hearing the Board directed the Executive Officer to take final action to adopt the regulatory amendments and other conforming modifications considered by the Board, after making the changes available to the public for a period of at least 15 days and after considering any submitted public comments;

WHEREAS, after two 15 day public comment periods, the regulation was formally adopted by the Executive Officer on August 7, 2008. The final regulation order was subsequently submitted to the Office of Administrative Law, approved, and became effective October 18, 2008;

WHEREAS, the regulation requires that (1) any air cleaner sold in California for use in occupied spaces after October 18, 2010, must be tested and certified as having an emission concentration limit of not more than 0.050 ppm; (2) the air cleaner package must be labeled as being in compliance with the regulation also by October 18, 2010 (adhesive stickers may be used for an additional six months until April 1, 2011); and (3) manufacturers must, by October 18, 2009, notify all of their known distributors, retailers and sellers about the regulation and provide them with a copy of the regulation;

WHEREAS, the Board directed the staff in Resolution 07-40 to report to the Board one year into the certification period, on the status of the implementation of the regulation, including: the progress of the test laboratories in developing test capabilities for the 2007 revised Section 37 of ANSI/UL Standard 867; the number of manufacturers that have requested testing and submitted applications for certification; the number of air cleaning devices tested and certified by that time; and an assessment of testing laboratory capability and a recommendation regarding the need for further extension of the manufacturer effective date;

WHEREAS, two testing laboratories (UL and Intertek Testing Services) are currently approved by ARB to conduct testing, and as of September 30, 2009, a total of 94 air cleaner models from five manufacturers have been certified. Thirteen of these models required ozone testing and the remainder were “mechanical filtration only” devices that did not require ozone testing. In addition to the models already certified, six manufacturers have submitted 20 applications for 43 additional models that are being reviewed and are pending certification at this time;

WHEREAS, in early 2009 air cleaner manufacturers expressed concern that the weakened economy has slowed consumer demand for air cleaners, resulting in an increased number of unsold air cleaners in the distribution and retail inventories that may not be able to be sold by October 18, 2010;

WHEREAS, a public workshop was held on June 12, 2009 to obtain input from manufacturers and other stakeholders regarding the need for possible extensions and other amendments to the regulation, and additional concern was expressed by manufacturers regarding the availability of only one laboratory (UL) to conduct the ozone testing required in Section 37 of ANSI/UL Standard 867;

WHEREAS, Intertek Testing Services was approved to conduct that required ozone emission concentration test on July 2, 2009;

WHEREAS, the delay in certifying the second testing facility and the slowed economy may have contributed to a slow start in compliance testing and certification of air cleaners;

WHEREAS, ARB staff and the manufacturers who previously expressed concern have now determined that air cleaners intended for sale in California can comply with the

emission concentration limit in the regulation and be certified by the October 18, 2010 compliance date, but some will not be properly labeled as required if they were shipped prior to the compliance date;

WHEREAS, in response to concerns over having sufficient time to change packaging to meet the labeling requirement, ARB staff are proposing to extend the deadline for package labeling of certified air cleaners for one year, to October 18, 2011, and to allow the use of adhesive certification labels (rather than printing on the package) for an additional 18 months beyond the original adhesive label compliance date, to October 1, 2012;

WHEREAS, four additional amendments have been identified by staff as necessary to improve the implementation of the regulation; the first amendment would incorporate three clarifications issued by UL for the ozone test protocol used by the air cleaner regulation. The clarifications (1) address specifications for test chamber set-up prior to running an ozone test; (2) revise the definition of "steady state" for the ozone test to avoid the situation where very low emitting air cleaners (that emit just a few parts per billion ozone) must go through a full 24-hour test rather than an 8-hour test as originally intended; and (3) specify filter testing when multiple types of filters are offered as alternate or optional filters with an air cleaner model;

WHEREAS, a second amendment identified as necessary by staff would increase the number of allowable testing facilities for electrical safety testing by allowing electrical safety testing of air cleaners to be conducted not just by Nationally Recognized Testing Laboratories (NRTLs), but also by facilities that meet the requirements of Supplemental Programs 2 through 6 of the federal Occupational Safety and Health Administration's NRTL recognition program. These test facilities are currently used by approved testing laboratories to conduct the ANSI/UL Standards 507 and 867 electrical safety tests;

WHEREAS, the third amendment identified by staff would allow alternate, applicable (UL) electrical safety testing for multi-function appliances that include an air cleaning component;

WHEREAS, the last amendment would refine the definition of "mechanical filtration only" in section 94801 of the regulation to include all pollutants (not just particles) by replacing the phrase "suspended particles" with "contaminants" in order to be fully consistent with other portions of the regulation;

WHEREAS, the Board has considered the impact of the proposed amendments on the economy of the State and the potential for adverse economic impacts on California business enterprises and individuals;

WHEREAS, the California Environmental Quality Act and Board regulations require that no project which may have significant adverse environmental impacts be adopted as

originally proposed if feasible alternatives or mitigation measures are available to reduce or eliminate such impacts;

WHEREAS, a public hearing and other administrative proceedings have been held in accordance with the provisions of Chapter 3.5 (commencing with section 11340), part 1, division 3, title 2 of the Government Code; and

WHEREAS, in consideration of the Initial Statement of Reasons and written comments it has received, the Board finds that:

The potential economic impacts of the proposed amendments have been analyzed as required by California law, and the conclusions and supporting documentation for this analysis are set forth in the Initial Statement or Reasons for this regulatory action;

No reasonable alternative considered or that has otherwise been identified and brought to the attention of ARB would be more effective in carrying out the purpose for which the regulations are proposed, or be as effective and less burdensome to affected private persons and businesses than the proposed regulations; and

The proposed amendments will not result in any significant adverse environmental impacts.

WHEREAS, the Board further finds that:

The proposed amendments will provide manufacturers with the necessary time to comply with the requirements of the regulation, in part made necessary by the delay in certifying a second testing facility and the slowing economy; and

The additional amendments provide for the proper level and type of testing according to the ANSI/UL Standards in the regulation.

NOW, THEREFORE, BE IT RESOLVED that the Board affirms the original intent of the regulation to reduce public exposure to ozone emitted by certain types of air cleaners, and notes that ozone is a highly reactive molecule that can, among other effects, seriously damage the lungs and airways and worsen asthma symptoms; and

BE IT FURTHER RESOLVED that the Board hereby approves the adoption of amendments to sections 94801, 94804, 94805, and 94806, title 17, California Code of Regulations, as set forth in Attachment A hereto, with the proposed modifications set forth in Attachment B hereto.

BE IT FURTHER RESOLVED that the Board directs the Executive Officer to take final action to adopt the amended sections set forth in Attachment A, with the proposed

modifications set forth in Attachment B hereto, and such other conforming modifications as may be appropriate, after making the modified regulatory language and any additional supporting documents and information available for public comment for a period of 15 days, provided that the Executive Officer shall consider such written comments regarding the modification and additional supporting documents and information as may be submitted during this period, shall make modifications as may be appropriate in light of the comments received, and shall present the regulations to the Board for further consideration if he determines that this is warranted.

I hereby certify that the above is a true and correct copy of Resolution 09-65, as adopted by the Air Resources Board.

/s/

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Lori Andreoni, Clerk of the Board

Resolution 09-65

December 9, 2009

Identification of Attachments to Board Resolution 09-65

Attachment A: Proposed Regulation Order for the Regulation for Limiting Ozone Emissions from Indoor Air Cleaning Devices," as set forth in Appendix II to the Initial Statement of Reasons, released October 23, 2009**.**

Attachment B: Staff's Suggested Modifications to the Original Proposal, presented at the December 9, 2009 public hearing.

ATTACHMENT A TO RESOLUTION 09-65

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

[Note: Proposed amendments are shown in underline to indicate additions and ~~strikeout~~ to indicate deletions.]

Subchapter 8.7 Indoor Air Cleaning Devices

Amend sections 94801, 94804, 94805, and 94806, title 17, California Code of Regulations, as follows:

Article 1. Indoor Air Cleaning Devices

§ 94800. Applicability.

Except as provided in Section 94803, this article shall apply to any person who manufactures, sells, supplies, offers for sale, or introduces into commerce in the state of California indoor air cleaning devices, including both medical and non-medical devices, used or intended for use in occupied spaces.

NOTE: Authority cited: Section 41986, Health and Safety Code. Reference: Sections 41985, 41985.5, and 41986, Health and Safety Code.

§ 94801. Definitions.

(a) For the purpose of this article, the following definitions apply:

(1) "Air exchange rate" means the rate at which outdoor air replaces the volume of indoor air within a given space.

(2) "ANSI" means American National Standards Institute.

(3a) "ANSI/UL Standard 507" means the version of ANSI/UL Standard 507 for Safety for Electric Fans, Ninth Edition, published on September 27, 2007 by Underwriters Laboratories, Inc. (UL).

(3b) "ANSI/UL Standard 867" means the version of ANSI/UL Standard 867 for Electrostatic Air Cleaners, Fourth Edition, published on December 21, 2007 by

Underwriters Laboratories, Inc. (UL), and the associated Certification Requirement Decisions published by UL on March 4, 2008; April 17, 2008; ~~and~~ April 18, 2008; July 8, 2009; July 9, 2009; and (date to be determined), 2009.

(3c) "ANSI/UL Standard 484" means the version of UL's Standard for Room Air Conditioners, 8th Edition, published December 21, 2007, and most recently approved by ANSI on March 26, 2009.

(3d) "ANSI/UL Standard 1278" means the version of UL's Standard for Movable and Wall- or Ceiling-Hung Electric Room Heaters, 3rd Edition, published June 21, 2000, and most recently approved by ANSI on July 30, 2008.

(4) "ARB" means the California Air Resources Board.

(5) "Certification mark" means the symbol used by a recognized testing organization to indicate that a representative sample of the product bearing the symbol meets certain quality or safety criteria. For this regulation the organizations of interest are the nationally recognized testing laboratories that verify compliance with the applicable ANSI/UL Standards for indoor air cleaning devices.

(6) "CCR" means the California Code of Regulations.

(7) "CFR" means the U. S. Code of Federal Regulations.

(8) "Concentration" means the amount of a specified substance in a unit amount of another substance.

(9) "de minimis" refers to a quantity so little, small, miniscule or tiny that the law does not refer to it and will not consider it.

(10) "Distributor" means any person to whom an indoor air cleaning device is sold or supplied for the purposes of resale or distribution in commerce.

(11) "Emission" means the release or discharge of a substance into the environment.

(12) "Executive Officer" means the Executive Officer of the Air Resources Board or the Executive Officer's designee.

(13) "Half-life" means the time required for the concentration of a substance to be reduced to half of its initial value.

(14) "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, from the air inside an enclosed space. Such devices include, but are not necessarily limited to, portable devices of any size intended for cleaning the air nearest a person, in a room of any size, in a whole house or building, or in a motor vehicle; and stand-alone devices designed to be attached to a wall, ceiling, post, or other indoor surface.

(15) "Industrial use" or "industrial application" means the use of ozone in the following manner:
  (A) purification of water in an industrial plant, water treatment facility, municipal water facility, or similar facility, and swimming pools and spas
  (B) the destruction of microbes on produce in an agricultural processing plant, refrigerated transport truck, or related facility
  (C) chemical oxidation and disinfection in the electronics, pharmaceutical, biotechnology and chemical industries
  (D) bleaching and other processing purposes in the pulp and paper industry
  (E) odor control from industrial stack gases or wastewater treatment facilities
  (F) odor and smoke control in the hotel industry, provided no people are physically present
  (G) mold remediation, provided no people are physically present
  (H) fire and smoke damage remediation, provided no people are physically present
  (I) odor control in the motor vehicle reconditioning and detailing industry provided no people are physically present.

(16) "Label" means an area containing the required statement in an easily readable format, separate from unrelated text. This is printing on the product packaging, or, for air cleaners ~~manufactured~~ sold prior to ~~April 1, 2011~~ October 1, 2012, may be an adhesive sticker.

(17) "Listing mark" means the symbol used by Underwriters Laboratories, Inc. to indicate that a representative sample of the product bearing the symbol meets certain UL safety criteria. The safety criteria are found in UL nationally recognized Standards 867 and 507 for air cleaning device safety.

(18) "Manufacturer" means any person who imports, manufactures, assembles, produces, or packages an indoor air cleaning device.

(19) "Medical device" means "device" as defined in subsection (h) of Section 321 of Title 21 of the United States Code.

(20) "Mechanical filtration only" means removal of ~~suspended particles~~ contaminants from air only via filtration with physical barrier, non-electronic techniques, 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.

(21) “Model group” means indoor air cleaning devices sharing the same design, operational features, device output, and performance characteristics, and manufactured by the same manufacturer. Units in the same model group may be marketed under different brand names. Units that differ only in decorative treatments such as color, remote control, or other cosmetic features not related to ozone output would belong to the same model group.

(22) “NIST” means the U. S. National Institute of Standards and Technology.

(23) “Non-medical device” means any indoor air cleaning device that does not meet the definition of “medical device” above.

(24) “NRTL” means Nationally Recognized Testing Laboratory, as recognized by U. S. OSHA per section 1910.7 of Title 29 of the Code of Federal Regulations.

(25) “Occupied space” means an enclosed space intended to be occupied by people for extended periods of time, e.g., houses, apartments, hospitals and offices.

(26) “OSHA” means U. S. Occupational Safety and Health Administration.

(27) “Packaging” means the materials around the consumer or institutional product which serve only to contain, enclose, incorporate, deliver, dispense, wrap or store the product. “Packaging” includes any article onto or into which the principal display panel and other accompanying literature or graphics are incorporated, etched, printed or attached. “Packaging” does not refer to a secondary container used for shipping purposes.

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

(29) “Retailer” means any person who sells, supplies, or offers for sale, indoor air cleaning devices, directly to consumers.

(30) “Supply” means to make available for purchase or use.

(31) “UL” means Underwriters Laboratories, Inc.

(32) “U. S.” means United States of America.

NOTE: Authority cited: Section 41986, Health and Safety Code. Reference: Sections 41985, 41985.5, and 41986, Health and Safety Code; 21 C.F.R. § 801.415; 29 C.F.R. § 1910.7; and 21 U.S.C. § 321.

§ 94802. Standards for Indoor Air Cleaning Devices.

Except as provided in Section 94803 (Exclusions and Exemptions), title 17, California Code of Regulations, no person shall manufacture for use in California 24 months after the effective date of this regulation, or sell, supply, offer for sale, or introduce into commerce, any indoor air cleaning device for use or intended for use in occupied spaces unless the device is certified by ARB to produce an ozone emission concentration not exceeding 0.050 ppm, as specified in Section 94804; is labeled as required in Section 94806; meets all requirements of this article; and continues to meet all requirements of this article, including the ozone emissions limit as determined by the test procedure in Section 94805.

NOTE: Authority cited: Section 41986, Health and Safety Code. Reference: Sections 41985, 41985.5, and 41986, Health and Safety Code; 21 C.F.R. § 801.415.

§ 94803. Exclusions and Exemptions.

(a) *Industrial use*: The provisions of this article do not apply to indoor air cleaning devices manufactured, advertised, marketed, labeled, and used solely for industrial use as defined in Section 94801(a)(15) above, provided that they are marketed solely through industrial supply outlets or businesses and prominently labeled as “Solely for industrial use. Potential health hazard: emits ozone.”

(b) *In-duct systems:* Air cleaning devices designed, marketed, and used solely as a physically integrated part of a central heating, air conditioning, or ventilating system, such as an “in-duct system,” are exempt from this regulation.

NOTE: Authority cited: Section 41986, Health and Safety Code. Reference: Sections 41985, 41985.5, and 41986, Health and Safety Code.

§ 94804. Certification Requirements.

(a) Each manufacturer 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. Information submitted on the certification application must be true and correct. Applications may be submitted by a professional association or certification organization on behalf of a manufacturer, as long as all required information and signatures from the manufacturer and test laboratory representatives are included. Upon verification of compliance with the test methods described in Section 94805, from a laboratory meeting the performance specifications in Section 94805(d), ARB will issue an Executive Order that the indoor air cleaning device has completed certification for sale of the device within

California. Certification will be granted to manufacturers, who have the responsibility to comply with all provisions of this article.

(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 as determined in Section 94805, based on their known de minimis ozone emissions. 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 ARB shall include a description of the air cleaning performance technology employed, as well as a block diagram and schematic of the model. Indoor air cleaning devices qualifying as "mechanical filtration only" devices shall be certified under ANSI/UL Standard 507, which is hereby incorporated by reference as defined in Section 94801. Multi-function devices that include an air cleaning component that would qualify as "mechanical filtration only" but would normally be tested for their electrical safety under another ANSI/UL Standard shall be tested for electrical safety under the applicable ANSI/UL Standard. Mechanical filtration only d~~D~~evices certified to ANSI/UL Standard 507 or to another applicable ANSI/UL Standard for their electrical safety prior to the enactment of this regulation are eligible for certification without further testing provided documentation of compliance with ANSI/UL Standard 507 or the relevant ANSI/UL Standard is submitted and the model continues to comply with requirements of that standard. To be certified under this regulation, manufacturers of such indoor air cleaning devices must submit the information required in Sections 94804(c)(1) through 94804(c)(3) below, and Sections 94804(c)(4)(A) and 94804(c)(4)(F) below. These products are still subject to the labeling requirements specified in Sections 94806(b) and 94806(d).

(c) The application for certification of air cleaning devices other than those covered in Section 94804(b) above must include the information in subsections (c)(1) through (c)(5) below, and any other information deemed necessary by the ARB Executive Officer. If the requested information is not applicable to the indoor air cleaning device in question, the applicant must indicate "not applicable". If the Executive Officer concurs with the applicant's judgment, the Executive Officer may waive the requirement to provide the information requested.

(1) Manufacturer name, mailing address, physical address, phone number, email address, and website, and name and phone number of the primary contact person for purposes of this certification;

(2) Applicant or representative name, mailing address, physical address, phone number, and email address, if different from manufacturer;

(3) Indoor air cleaning device information:

(A) Brand name
(B) Model name
(C) Model number
(D) Serial number of devices submitted for testing (where applicable)
(E) Manufacture date of devices submitted for testing
(F) Model group, and other models included in model group, where applicable
(G) Discussion of the principles of operation and design
(H) Device schematics depicting operation
(I) Maintenance requirements
(J) Operations manual, if available
(K) Marketing materials, if available

(4) Indoor air cleaning device test information:

(A) Test facility identification and proof of current Nationally Recognized Testing Laboratory (NRTL) accreditation
(B) Ozone emission concentrations for all units tested, as measured according to Section 94805, including both the 24-hour measurement as well as information regarding whether any transitory measurements exceeded 0.050 ppm
(C) Whether a device failed the ozone emission test for any reason during final certification testing, and if so, the reason (e.g., excess transitory excursions, motor failure during the test, device not received with packaging intact, electrical part overheated/unsafe to continue, etc.)
(D) Chain of custody of test device(s)
(E) Statement from the testing laboratory that the ozone emissions were determined in accordance with the protocols in the December 21, 2007 Revision of Section 37 of ANSI/UL Standard 867, and the associated Certification Requirement Decisions published by UL
(F) Notification by a testing laboratory or certification organization of compliance with the electrical safety provisions of ANSI/UL Standard 867, ~~or~~ ANSI/UL Standard 507, or other applicable ANSI/UL Standard, where applicable, for all units tested.

(5) Any additional information the laboratory needs to communicate.

(d) A written notification will be provided within 30 days of receipt indicating whether the certification application has been accepted for review or, if incomplete, what additional information is required. Within 30 days after application acceptance, written notification of certification approval or disapproval will be provided. These time periods may be extended by the Executive Officer if deemed necessary because of extenuating circumstances.

(e) Notification must be provided to the Executive Officer within 30 days if the indoor air cleaning device fails any post-certification testing conducted to verify compliance with ANSI/UL Standard 867 or ANSI/UL Standard 507, whichever is applicable.

(f) 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 ARB certification requirements are no longer met.

NOTE: Authority cited: Section 41986, Health and Safety Code. Reference: Sections 41985, 41985.5, and 41986, Health and Safety Code; 21 C.F.R. § 801.415.

§ 94805. Test Method.

(a) For the purpose of compliance with this regulation only a single model of indoor air cleaning device within a model group, if one exists, must be evaluated under the test methods.

(b) Testing to determine compliance with the requirements of this article, shall be performed following the ANSI/UL Standard 867 or ANSI/UL Standard 507, whichever is applicable, in their entirety, which are hereby incorporated by reference as defined in Section 94801. Appliances with a primary purpose other than air cleaning that include an air cleaning component that meets the definition of an indoor air cleaning device given in Section 94801 shall meet the applicable ANSI/UL electrical safety standard for its primary purpose, including but not limited to ANSI/UL Standards 484 and 1278, which are hereby incorporated by reference as defined in Sections 94801(3c) and 94801(3d).

(c) Ozone emissions will be determined using Section 37 of ANSI/UL Standard 867 and the associated Certification Requirement Decisions, which are hereby incorporated by reference as defined in Section 94801.

(d) 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), to perform testing for the entire ANSI/UL Standard 867, ~~or~~ ANSI/UL Standard 507, or other UL or ANSI/UL Standard, ~~where~~ as applicable. If included within its scope of recognition, ~~S~~such an NRTL may also utilize OSHA Supplemental Programs #2, 3, 4, 5, and 6, as published in Volume 60, Federal Register, pages 12980 to 12985 (March 9, 1995), which is hereby incorporated by reference, for the ANSI/UL Standard 507, 867, or other ~~ozone testing~~electrical safety testing required in this regulation. ~~Laboratories, including those qualifying for use in OSHA Program #2, also must pass~~ However, the ANSI/UL Standard 867 Section 37 ozone testing required in this regulation may only be performed by an NRTL or an NRTL utilizing a Supplemental Program 2 testing laboratory that has passed an ARB audit to verify their ability to accurately

perform the ozone emissions testing procedure as described in ANSI/UL Standard 867 Section 37. ARB audit may include, and is not necessarily limited to, review of written test protocol operating procedures, test chamber and analyzer configuration, background ozone measurements, air exchange rate, ozone half-life test results, equipment calibration and maintenance records, and other related information; and an onsite review. The audit may also include a requirement for annual submittal of internal audit reports on the ANSI/UL Standard 867 Section 37 test protocol and the performance of the chamber(s) in which ANSI/UL Standard 867 Section 37 tests are conducted, and any related follow up internal audit reports.

NOTE: Authority cited: Section 41986, Health and Safety Code. Reference: Sections 41985, 41985.5, and 41986, Health and Safety Code.

§ 94806. Labeling and Safety Mark Requirements.

(a) All indoor air cleaning devices are required to display an ozone emissions certification label [as defined in Section 94801(a)(16)] on the product packaging after completion of requirements of Section ~~95804~~94804 prior to sale in California, unless satisfying the requirements for exemption as specified in Section 94803. Indoor air cleaning devices submitted to an approved laboratory for certification testing within 12 months of the effective date of this regulation, but unable to obtain certification pursuant to Section 94804 by the end of the 18th month after the effective date of this regulation, shall be allowed an additional 180 days after the postmark date of notification of product certification by ARB to meet the labeling requirements of this section. Indoor air cleaning devices that have been certified by October 18, 2010 may still be sold without the required labeling on the package until October 18, 2011, and may use an adhesive label until October 1, 2012.

(b) For non-medical devices, the label shall be at least 1 inch by 2 inches in size, easily readable, and shall state “This air cleaner complies with the federal ozone emissions limit. ARB certified” in bold type whose uppercase letters are not less than 3 mm high.

(c) For medical devices, the label shall be in compliance with federal law, including Section 801.415 of Title 21 of the Code of Federal Regulations. The label shall also state “ARB certified”.

(d) All indoor air cleaning devices (both medical and non-medical) are required to display the ANSI/UL Standard 867 safety certification or listing mark on the device, consistent with the ANSI/UL Standard 867 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 “mechanical filtration only” devices as described in Section 94801(a)(20) and Section 94804(b) shall display the ANSI/UL Standard 507 certification mark.

(e) Any indoor air cleaning device for non-industrial use that is advertised or sold via the Internet or by catalog but that has not been certified according to Section 94804 must display the following advisory in a prominent place on the primary web pages, catalog pages, and related materials where such device is advertised or displayed for sale: “Does not meet California requirements; cannot be shipped to California.”

NOTE: Authority cited: Section 41986, Health and Safety Code. Reference: Sections 41985, 41985.5, and 41986, Health and Safety Code; 21 C.F.R. §§ 801 and 801.415.

§ 94807. Notice to distributors, retailers, and sellers.

Within 12 months of the effective date of this regulation, manufacturers of indoor air cleaning devices manufactured, sold, supplied, offered for sale, or introduced into commerce in California must submit documentation that they have provided to all of their known distributors, retailers, and sellers true and accurate copies of the final regulation adopted by ARB and filed with the California Secretary of State. Accepted documentation of a mailed notification will include a hard copy of the materials mailed and the associated mailing list with complete contact information for each address submitted to the ARB Executive Officer. Accepted documentation of an email notification will include a copy of the email and the complete contact information for each email address submitted to the ARB Executive Officer. Such information may be kept confidential upon request as specified in Sections 91000 et seq. of title 17, chapter 1, subchapter 4 (Disclosure of Records) of the California Code of Regulations. For new distributors, retailers and sellers who become known to manufacturers after manufacturers’ initial notification to their distributors and retailers, manufacturers must provide similar notice to them and provide contact information to the ARB. Non-compliance with this provision may result in rejection or revocation of certification.

NOTE: Authority cited: Section 41986, Health and Safety Code. Reference: Sections 41985, 41985.5, and 41986, Health and Safety Code; Sections 91000 et seq. of title 17, chapter 1, subchapter 4 of the California Code of Regulations.

§ 94808. Recordkeeping Requirements.

Manufacturers, distributors, retailers, sellers, and test laboratories are required to maintain production, quality control, sales, or testing records for products sold, supplied, offered for sale, introduced into commerce, or manufactured for sale within California for at least three years, and to make them available to ARB upon request. Such information may be kept confidential upon request as specified in Sections 91000 et seq. of title 17, chapter 1, subchapter 4 (Disclosure of Records) of the California Code of Regulations.

NOTE: Authority cited: Section 41986, Health and Safety Code. Reference: Sections 41985, 41985.5, and 41986, Health and Safety Code, Sections 91000 et seq. of title 17, chapter 1, subchapter 4 of the California Code of Regulations.

§ 94809. Rejection, Revocation, Recall, and Penalties.

An application for certification may be denied, or a certification may be revoked or suspended, for failure to comply with any provision of this article. If the Executive Officer determines that a violation of this article has occurred, he or she may order that the products involved in or affected by the violation be recalled and replaced with products that comply with this article. In the event of a violation of this article, all other penalties authorized by law apply as well.

NOTE: Authority cited: Sections 41986 and 42300 et seq., Health and Safety Code. Reference: Sections 41985, 41985.5, and 41986, Health and Safety Code.

§ 94810. Severability.

Each part of this article shall be deemed severable, and in the event that any part of this article is held to be invalid, the remainder of this article shall continue in full force and effect.

NOTE: Authority cited: Section 41986, Health and Safety Code. Reference: Sections 1985, 41985.5, and 41986, Health and Safety Code.