

July 2, 2007

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

Dear Ms. Lum,

The Association of Home Appliance Manufacturers (AHAM) represents the manufacturers of major, portable and floor care home appliances, and suppliers to the industry. AHAM's membership includes manufacturers of portable air cleaners sold in California. AHAM also administers a portable air cleaner performance rating certification program which verifies the certified Clean Air Delivery Rate (CADR) of participants through an independent testing laboratory. The program, found at www.cadr.org, is designed to assist consumers in making informed purchasing decisions. AHAM worked closely with Assemblywoman Pavley and the Air Resources Board (ARB) during the legislative process for Assembly Bill (AB) 2276 and appreciates the opportunity to provide comments regarding the development of the regulations to implement the law.

The June 5, 2007 ARB Draft Regulation on Ozone Emissions is considerably different from the March draft. The June draft contains a number of new provisions which were not only a surprise but which add significantly to the burden on manufacturers, and which do not enhance the regulation. Some of these elements are not based on AB 2276 Law. While AHAM understands the desire of the ARB to protect the citizens of California from the hazards of excessive ozone emission, we also believe it is important *NOT* to create unnecessary burdens on manufacturers of air cleaners which produce trace amounts of ozone.

Section 94801 Definitions

AHAM supports the changes to the definitions section in the proposed regulation. We believe that these changes have strengthened the regulation.

AHAM (as later described) believes that the ARB should include a definition of the term "label."

Section 94802 Standards for Indoor Air Cleaning Devices

AHAM understands the interest of the ARB in promulgating this regulation as quickly as possible. However, the effective date cannot be set at this time. The ARB has stated that the regulation cannot become effective without the completion of at least three events. These are (1) the proposed changes to the UL 867 standard announced June 25, 2007 must be finalized, (2) the UL 867 standard changes must be approved through the ANSI process, and (3) audits of the testing laboratories to be used by manufacturers must be completed. None of these have taken place as of this time and there is no date certain when they will. We are also not aware of any laboratory that is currently able to test to this proposed standard. It is crucial to understand that these events must occur before manufacturers can begin to take steps to comply with a suggested date of manufacture or date of sale. As of today, manufacturers cannot even arrange testing with a laboratory.

AHAM believes it is wrong to set an effective date within the regulation without first accomplishing and knowing the effective dates of the necessary pre-requisite elements. It would seem more logical and feasible to create a time linkage between the effective dates and the interim events the ARB deems necessary to finalize the regulations. AHAM is presently preparing a time sequence analysis in the form of a Gantt chart to show the important linkage of these steps in order to suggest how to properly organize the sequence of events to expedite this regulation.

This also applies to the establishment of a “date of sale.” While the ARB understands the date of sale must be significantly after the effective date for manufacture, it is simply not possible for manufacturers to be completely sure that all inventory from the manufacturing facility, the vast majority of which are located in Asia, the manufacturer’s distribution, the retailer’s distribution system, and inventory at the retailer stores will be removed by the “Date of Sale” in six months as proposed by the ARB. This is clearly unreasonable for such a consumer durable product.

Setting a “date of sale” that is too soon will likely result in retailers sending all inventory (whether compliant or not) back to the manufacturer. While we have heard statements that the manufacturers can ship non-compliant product to another state, it is virtually impossible for a manufacturer or retailer to send “unused” inventory to another state. Movement of inventory often results in product damage or loss, and can interrupt inventory management systems. This will be a significant financial penalty for AHAM members which have already demonstrated the products they produce emit only trace amounts of ozone. In addition, 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. Companies that rely on step distribution or sale to independent business owners are more negatively impacted.

Furthermore, the ARB seems to indicate that they will not even accept a certification application from a manufacturer until UL has completed the ANSI accreditation of the UL 867 standard and not until the laboratories have completed a successful audit. We believe it is unacceptable for the ARB to expect the manufacturers to be fully compliant with the regulation 15 months from

now without having a date certain by which manufacturers can actually conduct testing or make an application.

That is why AHAM supports the ARB implementing an effective date process that recognizes the uncertainties involved in the testing and approval system rolling out and the realities of the supply chain in consumer durables. We look forward to providing a program sequencing analysis that can be the basis for the effective date system.

Section 94804 Certification Requirements

The ARB has deleted the reference to the time that it will take the ARB staff to respond to the applications for certification. Again, AHAM believes it is inequitable to do this and to expect manufacturers and retailers to commit to dates of manufacture and dates of sale.

We do not believe it is appropriate or necessary to include information on whether a unit has failed a test "...for any reason." Units may exceed the permissible levels of ozone in developmental testing. Developmental testing is a period of time in which the manufacturers may test out new constructions, new technologies, or can have component problems resulting in slight increases in ozone emissions which they will repair. This testing information is proprietary and confidential and is between the certification or testing laboratory and the manufacturer. The ARB is requiring a company to divulge proprietary information in a public forum. This is highly inappropriate. AHAM suggest that ARB only require whether a unit exceeded the 50 ppb limit during final safety certification testing.

Section 94806 Labeling Requirements

AHAM continues to request that the ARB change the title of this section to "Certification Marking." The term "label" implies one and only one method of marking, a physical adhesive label. An alternative would be to include a definition in Section 94801 to the effect that "Label: any marking system that is used to identify required information on the product or packaging, as specified in this regulation."

As previously stated, AB 2276 as signed into law, states that the marking shall read "This air cleaner complies with the federal ozone emissions limit." The ARB continues to add words to what is specified in the law. The words in the law were discussed at length by the Legislature and Office of the Attorney General. A number of the suggestions that the ARB has subsequently suggested were discussed and rejected during the drafting of the law.

It is inappropriate to include words such as "...for sale in California" on units that will be sold in multiple states and most air cleaners are sold nationwide. This will cause confusion in the marketplace and cause difficulties with the consumers, retailers, and distributors. This will especially cause problems for manufacturers who intend to sell the same units in other countries.

Section (d) states that the air cleaning device will "...display the ANSI/UL Standard 867 safety certification mark on the device..." Many NRTL safety certification agencies do not use a

specific safety certification mark to a particular safety standard. Adding this additional product marking is not consistent with current safety listings and will only add clutter to the product/package marking and confuse consumers. There are ways to trace a control number or listing number to a standard. AHAM recommends instead that the ARB state, “Manufacturers will provide information to show that units have been safety certified to UL Standard 867 or UL 507, as appropriate, upon request.”

Section (e) would require that manufacturers provide the information on the marking on “...all internet web pages, mail order catalogs, and related materials used for the advertising and sales of the devices.” This proposal is far too broad and unspecified a requirement. Manufacturers are not able to control the internet web pages and mail order catalogs or related sales materials by distributors or retailers. This needs to be modified or removed.

Section (f) includes the provision that all products not in compliance need to carry the required marking, “This device does not meet California requirements and cannot be shipped to California addresses.” This is not the jurisdiction of the ARB. There are many units that are made available for sale in the US as well as in other countries, but which manufacturers may choose not to make available in California. It is beyond the scope of ARB authority to try to regulate products not sold in your state. If ARB insists, then it would be less intrusive to require that the marking read, “Any indoor air cleaning device for use in occupied residential or commercial spaces, that could be sold in California, and is advertised or sold via the Internet but that has not been certified according to 94804 must display the following advisory in a prominent place on the primary web pages, and catalog pages: ‘This device does not meet California requirements and cannot be shipped to California addresses.’”

Section 94807 Notice to distributors, retailers and sellers

This section is new and highly inappropriate. This section requires that the manufacturers notify all retailers, distributors, and sellers of the regulation. We do not understand how this is the duty of the manufacturers. The provision as stated would require manufacturers to divulge to the ARB the list of all sales accounts, all distributors and all retailers. This would then become public information. It seems intended to delegate enforcement responsibilities from the ARB to manufacturers. AHAM is very willing to work with the ARB in preparing and distributing a letter to our member’s first line retailers or distributors and to the California Retailers Association.

Section 94808 Recordkeeping Requirements

This new section requires that manufacturers divulge their proprietary information on sales, production, quality control, and testing records to the ARB. This is inappropriate and may cause a breach of confidentiality. We suggest that the ARB notate that the information may be made available to the ARB upon request and will be protected as confidential if a request is made from the manufacturer or retailer.

Enforcement

The ARB has not included in the draft regulation or mentioned at the public workshops any plans for enforcement of this regulation. We believe the ARB should release these plans and the steps it will take to enforce these provisions once this regulation becomes final.

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 fluid and cursive, with the first name "Wayne" and last name "Morris" clearly distinguishable.

Wayne Morris
Vice President, Division Services