



February 15, 2008

Mary D. Nichols, Esq.
Chairwoman
California Air Resources Board
1001 "I" Street
P. O. Box 2815
Sacramento, CA 95812

Re: *Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products*; Release Date: January 31, 2008

Dear Chairwoman Nichols:

The International Wood Products Association (IWPA)¹ appreciates the opportunity to comment on the modified proposed regulations for the Airborne Toxic Control Measure (ATCM) to Reduce Formaldehyde Emissions from Composite Wood Products.

The composite wood importing industry is not asking for changes in emissions levels. IWPA members remain confident that the products they import from overseas can or already do meet the proposed ATCM standard related to emissions levels. IWPA members have serious concerns with the implications of a new global standard for certification as outlined in the ATCM.

Eliminate Third-Party Testing Requirement

U.S. importers provide hardwood plywood consistent with low formaldehyde-emitting Japanese F****, European E-1, and other global standards. U.S. importers have no concerns about the ability of overseas manufacturers to meet the ATCM formaldehyde emissions levels.

However, none of the other formaldehyde emissions standards in the world have the same certification requirement. They are performance-based standards; product must meet emissions levels or else. The ATCM places significant new requirements on producers around the world, not regarding the products they produce or the emissions levels, but the processes they follow to prove their products meet California's new standards.

¹ IWPA is the only association in the United States committed to the promotion and enhancement of sustainable trade in the imported hardwood and softwood products industry. Our diverse membership includes 225 U.S. importers, manufacturers, transportation companies, port authorities, customs brokers, and overseas producers of quality hardwood plywood, lumber, and other wood products.

Increases cost with no added benefit

Of major concern to IWPA members is the unnecessary, burdensome, costly, and inefficient requirement of third-party testing and certification. Requiring testing on already emission-compliant material raises the prices for California manufacturers and consumers while providing no added protection for California consumers.

Implementing an overseas testing requirement creates a significant financial burden, yet does not help California achieve the ultimate objective – lower emissions levels. It makes us question whether the goal is lower emissions or new processes with the sole purpose of limiting the ability of overseas companies to compete in the U.S. marketplace. We also question the ability to provide sufficient oversight overseas and believe that California's limited resources would be better focused on state-based enforcement measures, especially since they will accomplish the same end-result.

Establishes non-tariff trade barrier with developing countries

Requiring large-scale and small-scale chamber testing and third-party auditing in all countries supplying hardwood plywood to the U.S. places a significant non-tariff barrier against trade with those countries and raises possible WTO violations. Companies in these countries have proven they can provide compliant material to the U.S., but now they have to build expensive and redundant large and small chamber testing facilities and hire outside third parties to verify compliance. A large chamber might cost between \$75,000 and \$100,000 to build and certify, while a small chamber could cost between \$8,000 to \$10,000 to build and certify. It is highly unlikely that developing countries that do not have the same economy of scale of larger countries (e.g., China) will still be able to compete and supply these high-quality products to the U.S. market.

Let us reiterate: IWPA has no concerns about the ability of overseas manufacturers and U.S. importers to meet the emissions levels included within the ATCM. The concern is specifically related to third-party testing.

The ATCM can be just as effective as a performance-based standard only. Material in California must meet the standard, or there are consequences and penalties. As the proposed regulation is currently written, product can meet the standard, but if certain chain-of-custody documentation is not met showing third-party testing, then enforcement would still occur. This is specifically why IWPA feels the third-party certification requirements adds cost but no gain for California taxpayers.

World standard vs. ARB standard

If the third-party testing requirement cannot be eliminated, IWPA strongly urges ARB to consider other testing methods like desiccators. Desiccators are the most commonly used equipment to measure formaldehyde emissions and are used widely in Japan and in Europe. They are low cost, efficient, effective, and readily available to developing countries, e.g., ASTM D5582-00 (2006) Standard Test Method for Determining Formaldehyde Levels from Wood Products Using a Desiccator. Other test methods that already exist and are proven and used widely are JIS A 1460 (commonly referred to as the 24-hour desiccator test); EM 120; and WKI.

ARB's standard imposes U.S. standards (ASTM E 1333) on the world, requiring developing countries to construct large-scale or small-scale chamber tests to access the U.S. market. These chambers do not currently exist in all the countries that export to the U.S., requiring significant investment and potentially creating a WTO non-tariff barrier to trade.

Delay the Implementation Date for Phase I to 12 Months after Third-Party Certifiers are Approved

Imported products are already at a competitive disadvantage compared to domestic products as existing third-party certification auditors are currently found in the U.S. It is now February, 2008—less than 11 months until Phase 1 of the proposed regulation goes into effect—and the California Air Resources Board (ARB) has still not certified one auditor or testing facility overseas.

ARB staff knows that they are behind in the implementation schedule and recognize the importance of overseas outreach, including translating the standard. However, more than 20 countries supply product to the U.S., and only the ARB Fact Sheets have been translated (not the ATCM) and those Fact Sheets have been translated into only three languages. IWPA strongly urges ARB to delay implementation until twelve months after ARB approves a third-party certifier.

Overseas outreach

The top 20 hardwood plywood suppliers to the U.S. include:

CHINA, PEOPLES REPUBLIC / MALAYSIA / INDONESIA / CANADA / RUSSIAN FEDERATION / BRAZIL / ECUADOR / TAIWAN / FINLAND / GERMANY / SWEDEN / ITALY / GUATEMALA / SPAIN / POLAND / FRANCE / LATVIA / ESTONIA / PARAGUAY / GUYANA

The top 20 particleboard suppliers to the U.S. include:

CANADA / MEXICO / GERMANY / CHINA, PEOPLES REPUBLIC / SPAIN / VENEZUELA / ARGENTINA / AUSTRIA / SWEDEN / SWITZERLAND / ITALY / COLOMBIA / PORTUGAL / AUSTRALIA / MALAYSIA / SINGAPORE / KOREA, REPUBLIC OF / BRAZIL / NEW ZEALAND / HONG KONG

The top MDF suppliers to the U.S. include:

CANADA / CHILE / NEW ZEALAND / BRAZIL / SPAIN / CHINA, PEOPLES REPUBLIC / ARGENTINA / SWITZERLAND / GERMANY / BELGIUM-LUXEMBOURG / FRANCE / VENEZUELA / MALAYSIA / NETHERLANDS / AUSTRIA / AUSTRALIA / UNITED KINGDOM / PANAMA / INDONESIA / ITALY

Has ARB officially contacted each country through its embassy and related trade associations to inform them of new requirements? Has ARB determined the existing large-scale chamber capacity in each country? Has ARB developed a timeline for how long it will take to construct/certify acceptable facilities? We understand that the Fact Sheet has been translated into foreign languages. Will the regulation also be translated into foreign languages?

Has ARB begun educating composite wood fabricators, customers, and consumers in California about the regulations? Many in the domestic marketplace are unaware of the new regulation.

IWPA stands ready to assist ARB in the education of overseas mills on the ATCM regulation. Efforts are underway now to develop internal web-based education materials with links to ARB's web site.

Uncertainty of implementation timeline

There are too many uncertainties and too many questions that we cannot answer because of the incompleteness of the implementation timeline. Overseas suppliers are ready to continue providing compliant product to the U.S. and are concerned that the third-party certification requirement will limit the access of their low-emitting products to the U.S.

If a third-party certification requirement is contained in the final regulation, then overseas products must wait an unknown and indefinite time until approved testing facilities are built, third-party auditors are approved by ARB, and capacity exists for certification. In the meantime, it is important to make sure there is not a shortage of available product for California manufacturers and consumers as non-compliant material is waiting to be sold.

By delaying implementation for 12 months after a third-party certifier is approved, lengthening the "sell-through" period to 6 months for importers and 12 months for distributors, California manufacturers and consumers will continue to have access to quality imported wood products. ARB also needs to take into account that in order to meet the January 1, 2009, implementation date, compliant product from overseas must be shipped no later than October, 2008, to make the journey to the U.S.

An alternative for importers could be a moratorium on enforcement of the third-party certification requirement if the product is otherwise compliant. Therefore, product entering California with formaldehyde levels below the emissions levels but not certified would not be considered in violation of the regulations for the first year, through 2009. This would provide more time for third-party certifiers to come on line.

Here are the many hurdles IWPA sees for effective, timely implementation. Note that even following the timeline in the ATCM, product from an arbitrary country will not be available in the U.S. by January 1, 2009.

- Completion of 15-day comment period – February 15.
- Office of Administrative Law completes the 30-day legal review – March 15.
- A prospective third-party auditor applies to ARB for approval – March 15.
- Within 45 days of receiving an application, ARB shall inform the applicant that the application is complete and accepted for filing – April 30.
- Within 90 days after an application has been deemed complete, ARB shall act to approve or disapprove the application – July 30.
- Large-scale chambers must be built to specification and approved (in all countries that want to ship composite wood products to the U.S.).

- Overseas producers need to find an ARB-approved auditor (in all countries that want to ship composite wood products to the U.S.).
- A prospective overseas manufacturer applies to ARB for approval – July 30.
- Within 45 days of receiving an application, ARB shall act to approve or disapprove the application – September 15.
- Within 90 days after an application has been deemed complete, ARB shall act to approve or disapprove the application – December 15.
- Compliant product needs to be manufactured or shipped to the U.S. (Note that many importers use break bulk shipping, and this can take two months for arrival to U.S. port.) – February 15, 2009.

It seems highly unlikely, and in fact unreasonable, to expect that compliant material can enter the U.S. to meet the ARB implementation date of January 1, 2009. IWPA recognizes that domestic manufacturers, with ready access to third-party certification can meet the ARB timeline, but world producers need more time. These producers manufacture high-quality, low emitting product everyday; it is the new third-party certification requirement which creates the supply bottleneck.

While basic, it seems important to mention that ARB-compliant material cannot be imported until third-party auditors are approved and begin testing. IWPA members and their suppliers understand the expectations of third-party certification and are ready to comply (should the third-party certification requirement stay in the final rule). However, they are waiting for the testing process to begin. Why should importers be held to a competitive disadvantage for consequences in rulemaking that are beyond their control? How long will it be until auditors are approved in ALL foreign countries that ship to the United States?

Another example of defective timing relates to the ultra-low-emitting formaldehyde (ULEF) and No Added Formaldehyde (NAF) resins. Some manufacturers might think that using these resins exempts them from certification. However, the revisions to the regulations [Section 93120.3(c)(1) and (d)(1)] set out a requirement that the manufacturer work with a third-party certifier to generate three months of routine quality-control testing data to prove they meet the requirements. If ARB approves a third-party certifier with the 135-day process of accepting the application after the regulations become law (say on April 1, 2008), then the mill and the third-party certifier work for three months to generate the test data. The mill can apply for approval and an exemption which ARB will approve in 135 days if there are no issues. The best case for an exemption for ULEF and NAF according to the ARB timeline is 270 days plus a three-month testing period for a total time period of nearly one year. If this process starts on April 1, 2008, those manufacturers might be ready to start shipping an approved product by April 1, 2009. Add two months to get the product shipped to the U.S., and that compliant, certification-exempt product will be available in the U.S. on June 1, 2009. The California market cannot wait that long for the compliant product that the ATCM is designed to provide to consumers.

The ATCM requires large-scale or small-scale chamber tests, and these chambers have not been built overseas. How long will it be until these chambers are built in each country? How much capacity is needed in each country? The ATCM requires that all imported product be certified

by ARB-approved auditors. How long will it take to certify the mills that are interested in selling to the U.S. market?

The effective date for Phase 1 is January 1, 2009. Can this target date still be justified given that the regulations are not finalized yet, that no overseas auditors are approved, and that we have no clear understanding for capacity that exists overseas to meeting the standard nor do we know if each country has been informed by ARB of the standard?

Lengthen the “Sell-through” Provision for Importers

IWPA again requests, and now with more urgency, that ARB lengthens the “sell-through” period in the ATCM to six months for importers and 12 months for distributors. The sell-through provision for importers in the regulation has been reduced from five months to now three months to sell out inventory “manufactured before the Phase 1 and Phase 2 effective dates”. This means that hardwood plywood produced on or before December 31, 2008, must be sold by March 31, 2009. Hardwood plywood produced in China or Malaysia in December, 2008, will not arrive in the U.S. until February or March, 2009. ARB has failed to take into account the transit time from overseas to the U.S. and has failed to take into account the time required to sell in a depressed market.

Because of the slow-down in the housing industry and the sluggish economy, non-ARB compliant product (related to third-party certification and not necessarily to the emissions level) is sitting in warehouses around the country, including in California.

Importers need much more time than just a three-month sell-through period to move product. Not all products or species of hardwood plywood move as expected, and during these challenging economic times, some products have not sold for a year adding to ever-increasing costs to many California businesses. When the sell-through period is over on April 1, 2009, California businesses will be holding in inventory non-compliant material that was imported before the passage of the ATCM and the phase-in period creating a significant loss in potential sales and revenue for businesses already bearing the burden of supplying to industries impacted by a slow economy.

OTHER SUGGESTED MODIFICATIONS AND QUESTIONS SPECIFIC TO IMPORTERS

Metric vs. English Measure

The world measures formaldehyde concentration in water in milligrams (mg) and milliliters (ml). The ATCM will require certification for formaldehyde concentration in air in parts per million (ppm). Has ARB analyzed the capacity of overseas producers to measure in ppm? Has ARB developed a timeline for how long it will take to meet the requirements? Is ARB prepared to develop a correlation value for use by world producers? IWPA requests that ARB allow for a measure of formaldehyde concentration in water in milligrams per liter and urges that a specified standard be included in the regulation.

Labeling

In Section 93120.3(e)(1), there is a requirement that the bundle or panel must be labeled with the “Manufacturer name”. IWPA suggests that the regulation be amended so that a code for the manufacturer’s name may be used. That code would be maintained by the third-party certifier and the importer.

IWPA would be happy to discuss further the above concerns or other requirements in the proposed regulation at your convenience.

Sincerely,

A handwritten signature in black ink, reading "Brent J. McClendon". The signature is written in a cursive, flowing style.

Brent J. McClendon, CAE
Executive Vice President