

April 11, 2007

Dr. Robert Sawyer, Chairman
California Air Resources Board
1001 I Street
P.O. Box 2815
Sacramento, CA 95812

RE: CWIC Comment Submission 1 of 2 on ATCM for Composite Wood Products

Dear Dr. Sawyer:

The following comments are submitted on behalf of the California Wood Industries Coalition ("CWIC" or the "Coalition") regarding certain terms and regulatory language in the proposed Air Toxic Control Measure to Reduce Formaldehyde from Composite Wood Products dated March 7, 2007 ("ATCM"). CWIC will be submitting additional comments on other features of the ATCM with which in some cases we agree and other cases we disagree.

The California Wood Industries Coalition was formed in 2002 specifically in response to the development of this regulation. It has addressed this issue and other regulatory actions in California that impact composite wood manufacturers. The Coalition consists of all the major industries affected by this rule: the Composite Panel Association, Hardwood Plywood and Veneer Association, Formaldehyde Council, Inc., American Home Furnishings Association, Kitchen Cabinet Manufacturers' Association, Wood Moulding and Millwork Manufacturers' Association, American Wood Furnishing and Suppliers Association, American Forest and Paper Association and APA-The Engineered Wood Association. The overwhelming majority of the manufacturing businesses affected by this rule are members of this coalition. Over 95% of the composite panel producers and hardwood plywood producers and similar proportions of the manufacturing industries for wood furniture, kitchen cabinets, wood moldings, formaldehyde based adhesives, formaldehyde and engineered wood products and the distributors for these materials are represented by the associations in the Coalition.

CWIC commends CARB and its staff's diligent efforts over the course of the last six years for working with industry to try and understand our business and provide the citizens of California with a regulation that accomplishes its objective in a manner that is realistic. We believe that with some relatively small rule changes, suggested in the comments filed here and in our subsequent submission, CARB will not cripple domestic production of composite wood products and the industries that depend on them

Dr. Robert Sawyer
April 11, 2007
Page 2

We are particularly concerned with the ceiling values for Phase 2, which do not take into account that industry products must be manufactured substantially below the regulatory ceilings because of the significant variability in raw materials, processing equipment and test methods -- and hence emissions.

We are concerned too about the cost of this rule. The cost of implementation was estimated at \$127 million a year in the agency's Initial Statement of Reasons ("ISOR"), but we believe the cost will be many times that amount. A full evaluation of economic impacts reveals that the impact of this proposed rule on the economy, composite wood manufacturers, fabricators and consumers will exceed \$2.5 billion a year. The cost effectiveness of eliminating formaldehyde from the air in California will be dozens of times that of all recent ATCM's. For example, even using CARB's erroneous cost figure, this rule will cost Californians 50 times more than the recent ATCM for per cent on a per pound bases.

Last, but most importantly, we are extremely disappointed that CARB did not even evaluate the substantial and highly regarded new science that has been conducted around the world on formaldehyde -- research that has been endorsed by regulatory officials around the world including by the U.S. EPA and Health Canada. The research shows that there is virtually no risk to the population of California from industry products in the manner they are produced and used by consumers. We will expand on these three points in our further substantive comments that will follow.

This submission deals specifically with the language of the proposal. CWIC appreciates the numerous clarifications that have been made in response to previous submissions. We believe, however, that there are still ambiguities and inconsistencies in some of the language that should be clarified in the best interests of both the regulators and the regulated community. Comments are submitted in running section order, although some are clearly of greater import than others:

1. Section 93120(d) – Applicability. We believe the wording of this new section for products destined out-of-state presents some unintended consequences:

This airborne toxic control measure does not apply to plywood, particleboard, medium density fiberboard, and finished goods made from these materials, that are manufactured, sold, offered for sale, or supplied for shipment and use outside of California.

(emphasis added). It is not at all clear that the clause "for shipment and use" applies to all of the antecedents. Read literally, this exempts all covered products manufactured outside of the state.

Dr. Robert Sawyer
April 11, 2007
Page 3

See also Section 93120.2(b)(1) which has similar language exempting products from the emission requirements.

2. Section 93120.1(a)(8) – Definition of Composite Wood Products – Softwood Plywood. Changes have been made from previous drafts to indicate that "structural plywood, structural panels, structural composite lumber, ..." are not included. CARB staff indicated that they could not reference the new PS-1 standard, since they did not have a copy of the new version. Inclusion of the reference to the product standards for exempted products would add clarity.

3. Section 93120.1(a)(11) – Definition of "Fabricator." We submit that school districts and local governmental agencies should not be exempted from the definition.

4. Section 93120.1(a)(17) – Definition of "Hardwood Plywood." This section defines the product as "...a composite wood product, panel, or other building material..." [Note the first comma separation.] CARB removed the previous reference to structural building material and also deleted "molding," but problems remain. There are now three separate and distinct approaches to this language in the definitions for hardwood plywood, medium density fiberboard ("...a composite wood product, panel, molding, or other building material...") and particleboard ("...a composite wood product panel, molding, or other building material...") [Note, no comma between product and panel.]. We recommend that there be a consistent and straightforward language for all three products:

...means a composite wood panel composed of....

If "composite wood product" stands alone, separated by a comma from "panel," it literally suggests that any composite product made of veneers, etc. is covered. Similarly any "other building material" made of veneers would similarly be within the definition. This concept is directly at odds with the definition of "Finished Goods" in section 93120.1(a)(14) – "any good or product, other than a panel, containing hardwood plywood, particleboard or medium density fiberboard." "Composite wood product" and "other building materials" would fit under both the product definition and the finished good definition.

5. Section 93120.1(a)(23) – Definition of Medium Density Fiberboard. See comment 5, above. In the current draft, the word "molding" was removed from the definition of hardwood plywood, but not from the definitions of MDF or particleboard.

The reference should be to the new standard – ANSI A208.2-2002. This change should also be made in the References in Section 93120.10.

Dr. Robert Sawyer
April 11, 2007
Page 4

6. Section 93120.1(a)(27) – Definition of Particleboard. See comments 5 and 6, above with respect to composite wood product, molding and other building material..

7. Section 93120.2(b)(2) – the HUD Exemption. We have pointed out in several previous submissions that under the current wording of the proposed regulation, a manufacturer of mobile home decking not meeting the CARB emission requirements would be in violation when the product was offered for sale or sold in the state. The CARB exemption only applies when the product is installed in the manufactured home. This regulation is preempted by federal law with respect to this application.

The following is our earlier commentary on this subject:

It is undeniable that the regulation of formaldehyde emissions from materials used in manufactured homes is preempted by federal occupation of the area.¹ The Draft includes a suggestion from Columbia Forest Products and the Formaldehyde-Free Coalition that the HUD exemption for composite wood products used in manufactured homes be limited to materials "...when installed in manufactured homes..." Although the language may have been derived from the HUD regulation itself, it does not work in the ARB Regulation. One must remember that HUD regulates manufactured homes, and therefore its regulation addresses components, as and when installed. In California, the ATCM would apply to manufacturers of composite wood products who would be selling their products to manufactured home producers prior to inclusion of the products in the structures. Under the current Draft, these manufacturers would be in violation when non-ARB complying product was manufactured, offered for sale and sold within the state.

We suggest the following language for the statutorily required HUD exemption:

The regulatory provisions in this ATCM do not apply to composite wood products [panels] intended for use in and

¹ 42 U.S.C. § 5403(d). The federal occupation of this regulatory area by HUD is comprehensive and relates to all regulatory provisions, not just emission standards.

Dr. Robert Sawyer
April 11, 2007
Page 5

sold or offered for sale for incorporation in manufactured homes subject to regulations of the federal Department of Housing and Urban Development (24 C.F.R. §3280.308).

8. Section 93120.9(a) – Compliance Test Methods. Three acceptable compliance test methods are provided in this section:

"...conducted using either (A) the ASTM E-1333-96 (large chamber test method) or (B) a test method correlated to ASTM E-1333-96. An alternate test procedure may also be used as specified in sections 93120.9(a)(1) through 93120.9(a)(3)."

What is the difference between the method allowed in (B) and the method "also" allowed in the following sentence? Indeed, section 93120.9(a)(1), which is referenced in the second sentence, requires such correlation.

We recommend that the language be changed to read:

"...conducted using either (A)the ASTM E-1333-96 (large chamber test method) or (B) a test method correlated to ASTM E-1333-96 and approved as specified in sections 93120.9(a)(1) through 93120.9(a)(3)."

The whole regulation is premised on the E-1333 test. All alternate test methods should be shown to correlate.

Methods other than the large chamber may be used for compliance testing if they can show "equivalent results." What is the measure of equivalence?

9. Appendix 1 – Sell-through for Importers. There is a substantial discontinuity of sell through time for importers, which if implemented, would lead to a tremendous dumping of non-complying products at a time when domestic products must meet the new standards. This is an extraordinarily important issue that must be addressed. The sell-through periods set forth in the rule as drafted are as follows:

Dr. Robert Sawyer
 April 11, 2007
 Page 6

	<u>Proposed Rule</u>	<u>CWIC Proposal See Item 10, below</u>
(a) Manufacturers of panels	1 month	3 months
(b)(1) Distributors of panels	5 months	
(b)(2) Distributors of finished goods	18 months	
(c)(1) Importers of panels	5 months	3 months
(c)(2) Importers of finished goods	18 months	18 months
(d) Fabricators of finished goods	12 months	18 months
(e)(1) Retailers of panels	12 months	
(e)(2) Retailers of finished goods	18 months	

There are two fundamental problems with this schedule. Imported panels, not meeting the standard will be able to be sold in the market for four months after the domestic panels have to be in compliance. Compare (a) with (c)(1). By any measure the cost of complying with this rule will be huge. The retention of this advantage for imports will lead to an even greater cost advantage than what is currently enjoyed by foreign producers. It will lead to a flooding of the market with non-complying panels for this grace period. It must be changed.

The second discontinuity relates to finished goods. American furniture and cabinet makers will be forced to use higher priced complying panels within 12 months of the respective deadlines. Their Chinese and other foreign competitors will have an extra six months – a full 18 months after the deadlines to continue to use non-complying components in their products. The impact of this provision would be devastating. A surge of dumped goods would be inevitable. The provision must be changed.

10. Appendix 1, Sell-through timing. Although clearly the equivalency of treatment of domestic and foreign interest are of most importance, some modifications of the sell-through periods are recommended. First, given the multiplicity of SKU's for many composite wood products, we suggest that a 90-day sell through be permitted for both manufacturers and importers of these items. Similarly, we suggest that fabricators and importers of finished goods be allowed to sell inventory for 18 months. The multiplicity of styles, finishes and designs is even more notable in this industry sector.

Separately, CWIC is working with staff to ensure a more rigorous certification document that would result in rule language that would supersede the sections of Appendix 2 noted in

Dr. Robert Sawyer
April 11, 2007
Page 7

Comments 11 and 12 below. However, as it stands, the current document ought to be changed in the following two ways:

11. Appendix 2 (g)(7) – Treatment of Non-complying Lots. The CPA Grademark program allows for the use of a sealant as an approved method of treating non-complying lots. This is a useful technique and we recommend its inclusion:

“Production which has failed the small scale test may be retested for certification if each panel is treated with a scavenger, sealant or handled by other means of reducing formaldehyde emissions (e.g., aging) which does not adversely affect the structural integrity of the product.”

12. Appendix 2 (g)(8)(C) – Small Scale Retesting. The current CPA program allows for an average when retesting and we suggest that be included in the Appendix as well: “The average of the three representative samples must test at below the TOL.”

13. Appendix 2(i) Chain of Custody - Organization. This critical aspect of enforcement is stuck away in the appendix for Quality Assurance for Manufacturers almost as an after thought. We suggest it be a separate section or appendix that elaborates on the several features of this chain of custody at the various levels of the supply chain.

14. Appendix 2(i) – Chain of Custody - Certification Number. There is also, we believe, an inadvertent drafting error in this appendix. As written, a third party certification number would have to appear not only on composite wood products (hardwood plywood, particleboard and medium density fiberboard) "...and goods made with complying composite wood products..." As we have noted in the past, finished products could have multiple composite wood products incorporated into each piece. These panel products would likely come from different sources and thus have been certified by different third parties. Having furniture and cabinet manufacturers put multiple third party certifier numbers on a piece would not be helpful. The representation of the third party is simply that they are using "compliant products." This system is similar to the provisions of the US EPA's Wood Furniture MACT in which furniture makers must aver that they are using "complying coatings" and keep records on them.

The California Wood Industry Coalition urges the Board to acknowledge the technological, foreign trade and economic implications of this rule, to make the technical changes described in

Dr. Robert Sawyer
April 11, 2007
Page 8

this submission, and to embrace the modest changes in Phase 2 ceiling limits that have already been proposed by the Coalition.

Very truly yours,



Brock R. Landry