

October 9, 2013

Document Control Office (7407M)
Office of Pollution Prevention and Toxics (OPPT)
Environmental Protection Agency
1200 Pennsylvania Ave. NW.
Washington, DC 20460-0001

Re: Comments on Formaldehyde Emission Standards for Composite Wood Product Rule – Docket #EPA-HQ-OPPT-2012-0018

To whom it may concern:

Thank you for the opportunity to comment on the proposed rule establishing formaldehyde emission standards for composite wood products. Overall, we strongly support the proposed rule and encourage the U.S. Environmental Protection Agency (EPA) to move quickly to finalize the rule.

We make the following recommendations and discuss each of them in more detail later in our comment.

1. EPA, not the Office of Management and Budget (OMB), must make the science-based decisions regarding association between asthma and formaldehyde. EPA should revise its analysis to make clear that more than 21,000 children are expected to avoid developing asthma each year when the proposed rule is implemented. These health benefits should exceed \$250 million annually for American families.
2. EPA needs to craft a new alternative to ensure the 7,000 to 14,000 hardwood laminators do not make products that exceed the emission standards while giving these operations the time and the options to comply in a more reasonable manner. EPA should revise the rule to exempt hardwood plywood where the veneer is attached using Ultra Low-Emitting Formaldehyde (ULEF) resin systems and provide three years for the compliant systems to be verified and implemented.
3. EPA should hold firm on its commitment to transparency, especially with respect to health and safety studies. Purchasers should have access to testing information although EPA should clarify the scope of that access.
4. EPA should establish a de minimis level for fabricators, distributors, and retailers, above zero, using the Toxic Release Inventory thresholds as a model. Exempt facilities should be required to take reasonable precautions to ensure they are purchasing compliant composite wood panels and be exempt from the labeling requirements.
5. EPA should only allow panel producers to ship panels before test results are returned if there is a means to prevent non-complying panel or products using non-complying panels from reaching retailers. The current language appears unworkable.
6. For manufactured housing, recreational vehicles and mobile trailers covered by the rule, EPA should require a single document that provides the information contained on all of the labels for composite wood products in the products.

The following explains the basis for the recommendations above.

1. Asthma and formaldehyde: EPA must make science-based decisions

On May 5, 2012, the U.S. Environmental Protection Agency (EPA) submitted its draft proposed rule establishing formaldehyde emissions standards for composite wood products to the White House's Office of Management and Budget (OMB) for regulatory review.¹ EPA concluded that the draft proposal, if

¹ OMB, Report for RIN 2070-AJ92. Accessed on August 2, 2013. See <http://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201304&RIN=2070-AJ92>.

implemented, would prevent at least 14,844 children aged 6 to 15 from developing asthma every year.² In addition, it estimated an additional 6,468 children aged 2 to 5 would avoid asthma each year.³ Overall, the agency predicted the economic benefit to families would approach \$255 million annually.⁴

These economic benefits are not surprising when you understand how dangerous asthma can be, especially to children. It leaves the victims desperately gasping for air as their airways shrink during an attack. Asthma seriously affects a victim's quality of life. It also costs our country tens of billions of dollars per year in medical costs, lost work and school days, and early deaths. Each year, patients with asthma make 14.1 million visits to physician offices, 1.3 million visits to emergency departments, and over 3,000 will die.⁵ For these reasons, we agree with the American Academy of Pediatrics in its comments on the rule that "reducing childhood exposure to airborne pollutants including formaldehyde is critically important" to achieving the organizations of priority of protecting children from the harmful effects of asthma.⁶

When EPA published the proposed rules on June 10, 2013, the agency claimed no economic benefits from reducing childhood (or adult) asthma. The original proposal included the \$255 million in estimated benefits. After missing a January 1, 2013 deadline imposed by Congress to finalize the proposed rule,⁷ it appears that the agency excluded the savings in order to get OMB approval.⁸ EPA simply stated:

There is not sufficient information at this time on the relationship between formaldehyde *[sic]* exposure and reduced fertility to include a valuation estimate in the overall benefits analysis. The analysis also includes a qualitative discussion of respiratory related effects related to formaldehyde exposure. Although uncertainty remains regarding how best to quantify the effect of formaldehyde exposure on fertility and respiratory outcomes, reducing these effects is an important non-monetized impact that contributes to the overall benefits of the rule.⁹

There appears to be no dispute that formaldehyde exposure is associated with asthma. The difference between OMB and EPA appears to be the dose response relationship – in other words, the estimated reduction in people developing asthma from a given reduction in formaldehyde exposure. That is not a question OMB should be answering. We think the scientists at EPA are best situated to conduct that analysis and make the decision. Based upon the available research, we believe EPA has gotten the science right.

In summary, EPA, not the Office of Management and Budget (OMB), must make the science-based decisions regarding association between asthma and formaldehyde. EPA should revise its analysis to

² EPA, Economic Analysis of the Formaldehyde Standards for Composite Wood Products Act Implementing Regulations Proposed Rule, RIN 2070-AJ92, EO 12866 REVIEW DRAFT at Table 3-50 on page 321 of 415 of the PDF.

³ Id. The difference between the "lower estimate" and the "higher estimate" is that the higher estimate included children aged 2 to 5.

⁴ Id. Includes benefits from avoided asthma for all ages. For just children the benefits would be \$222.9 million. Estimates based on a 3% discount rate.

⁵ Centers for Disease Control and Prevention, Office of Surveillance, Epidemiology and Laboratory Services. Vital Signs: Asthma in the US: Growing every year. May 2011.

⁶ American Academy of Pediatrics, Comments on Docket ID No. EPA-HQ-OPPT-2012-0018, September 16, 2013

⁷ 5 U.S.C. §2697(d)

⁸ EPA, EO 12866 Documentation Changes Made during Review - Economic Analysis of the Formaldehyde Standards for Composite Wood Products Act for Implementing Regulations Proposed Rule, RIN 2070-AJ92, deletions beginning on p 3-48 (275 of 415 in PDF).

⁹ EPA, Economic Analysis of the Formaldehyde Standards for Composite Wood Products Act Implementing Regulations Proposed Rule, RIN 2070-AJ92, EO 12866 REVIEW DRAFT on page 3-62 (page 288 of 415 in PDF)

make clear that more than 21,000 children are expected to avoid developing asthma each year when the proposed rule is implemented. These health benefits should exceed \$250 million annually for American families.

2. Hardwood laminators: Craft a new option for ULEF resin systems

Congress expressly gave EPA the authority to determine “whether the term “hardwood plywood” should exempt “engineering veneer or any laminated product,” directing the agency to use “all available and relevant information.”¹⁰ It provided EPA with a default definition of “laminated product” that was based on the California Air Resources Board (CARB) standards.¹¹ CARB exempted those facilities that only make a laminated product from its emissions testing and third-party certification requirements.¹²

While EPA has not given explicit criteria with which to determine whether to exempt laminated products, the law is clear that the objective is to ensure that the final product comply with the emission standards for hardwood plywood.¹³ The agency should not allow facilities that only laminate an existing panel (referred to as “laminators”) to create a product that emits levels of formaldehyde that exceed the emission standards set in the law. The credibility of the rule rests on public confidence that the composite wood products meet the standards.

Congress made the decision to defer to EPA’s judgment because the industry stakeholders disagreed during the development of the law whether CARB properly made the exemption. The hardwood plywood panel producers who were fully regulated by the CARB rule claimed that the exemption was a “giant loophole.”¹⁴ The trade associations representing the laminators claimed that CARB got it right.

It should be no surprise to the latter group of stakeholders that EPA decided to limit the exemption for laminators to only those who use No-Added Formaldehyde (NAF) resin systems. EPA did not have available or relevant information on formaldehyde emissions associated with other resin systems upon which to base another cutoff. For this reason, EPA had little choice given the evidence the laminators had provided but to require 7,000 to 14,000 laminators to conduct testing and obtain third-party certification.

A study conducted by CARB in 2011-12 – well after CARB finalized its own rules – is posted in the rulemaking docket¹⁵ and affirms EPA’s conclusions for urea formaldehyde (UF) resins used by laminators. The study evaluated laminated product panels prepared by member companies of the American Home Furnishings Alliance (AHFA) – one of the industry trade associations representing laminators discussed above. CARB found that “several of the laminated products emitted considerably more formaldehyde than was emitted by the platforms, due to the UF resin used to affix the veneer.”¹⁶

We believe a balance needs to be struck between industry’s concerns and the public interest. We believe that providing laminators with a wholesale exclusion from the rule cannot be justified in light of these data. We understand that:

- Industry and public interest stakeholders did not fully appreciate that the issue could bring seven to fourteen times more facilities into the scope of the rule;

¹⁰ 15 U.S.C. §2697(a)(3)(C)(i)(1).

¹¹ 15 U.S.C. §2697(a)(3)(C)(ii).

¹² 78 FedReg 34825.

¹³ 15 U.S.C. §2697(b)(1).

¹⁴ 78 FedReg 34826.

¹⁵ California Air Resources Board, Summary of ARB Testing of Laminated Products, Docket No. EPA-HQ-OPPT-2012-0018-0515.

¹⁶ Id on 2.

- Current third-party certification and testing programs lack the capacity to ramp up in the time given in the proposed rule to meet this demand; and
- Third-party certification exemptions granted by CARB for NAF and ULEF resin systems¹⁷ are based on testing at specific manufacturing facilities and only apply at that facility rather than generically to all facilities in the system.

Therefore, we propose an alternative. In the proposed rule, EPA exempted laminators using NAF resin systems that comply with proposed 40 CFR §770.17(c). These emission standards are:

- (1) *No test result higher than 0.05 parts per million (ppm) of formaldehyde for hardwood plywood and 0.06 ppm for particleboard, medium-density fiberboard, and thin medium-density fiberboard.*
- (2) *No higher than 0.04 ppm of formaldehyde for 90% of the 3 months of routine quality control testing data required under paragraph (a)(4) of this section.*

EPA should expand the exemption to include laminators using ULEF resin systems that meet the emissions standard at proposed 40 CFR §770.18(d). These emission standards are:

- (1) *No test result higher than 0.05 ppm of formaldehyde for hardwood plywood or 0.06 ppm of formaldehyde for particleboard, medium-density fiberboard, and thin medium-density fiberboard.*
- (2) *For 90% of the 6 months of routine quality control testing data required under paragraph (a)(4) of this section, no higher than 0.04 parts per million of formaldehyde.*

For hardwood plywood laminators, these two emission standards are essentially the same.

In addition, EPA should allow manufacturers of NAF and ULEF resin systems to demonstrate to the agency that laminators following the manufacturer's instructions can consistently meet the emission standards described above. The law already acknowledges that manufacturers using ULEF resins that meet these standards may be exempt from third-party certification requirements.¹⁸ The essential difference is that EPA would approve the use of the manufacturers resin systems based on generic testing results rather than requiring facility-specific testing information. Instead of the laminators having to meet third-party certification standards, they would need to register with EPA, identify the EPA-approved NAF or ULEF resin system they are using, and certify that they are using it consistent with the manufacturer's instructions as well as using compliant core composite wood products onto which the veneer is attached.

Because this alternative approach is new, EPA should allow manufacturers of NAF and ULEF resin system two years to make the necessary demonstration to the agency. Then it should allow another year for laminators to implement the systems before registering with EPA. The three-year cumulative delay will allow the third party certification program to ramp up to meet the needs of those laminators who opt not to use the EPA-approved NAF or ULEF resin systems. With this delay for laminate products, the number of facilities that must be third-party certified in the near term falls considerably. As a result of these allowances, EPA can and should move the compliance date for facilities other than laminators from 12 months after the rule is finalized to the 6 month deadline intended by Congress.¹⁹

¹⁷ CARB, Composite Wood Products ATCM: List of TPC-Exempt NAF/ULEF Manufacturers approved by the CARB, accessed on September 14, 2013 at http://www.arb.ca.gov/toxics/compwood/naf_ulef/listofnaf_ulef.htm.

¹⁸ 15 U.S.C. §2697(a)(10)(C)(ii).

¹⁹ 15 U.S.C. §2697(b)(1).

In summary, EPA needs to craft a new alternative to ensure the 7,000 to 14,000 hardwood laminators do not make products that exceed the emission standards while giving these operations the time and the options to comply in a more reasonable manner. EPA should revise the rule to exempt hardwood plywood where the veneer is attached using Ultra Low-Emitting Formaldehyde (ULEF) resin systems, assuming the compliant systems are to be verified and implemented within three years.

3. Transparency: Clarify scope of access to test records by purchasers

The proposed rule gives purchasers of composite wood products the right to access from the panel producers the records of all of the producer's quarterly emissions testing and all ongoing quality control testing. These records must identify the:

- Third-party certifier conducting or overseeing the testing;
- Laboratory or quality control facility actually performing the testing;
- Date;
- Product type tested;
- Lot or batch number that the tested material represents;
- Test method used; and
- Test results.²⁰

While EPA does not define "purchasers," the preamble refers to them as "fabricators, distributors, importers, and retailers."²¹ We recommend that EPA should add a definition of "purchasers" to proposed 40 CFR §770.3 consistent with the language in the preamble. Without a definition, it could be narrowly interpreted to mean only those firms who purchase the panels directly from the producers. The provision would be less necessary for these firms since they should be able to access the information because they have a direct contractual relationship with the producer.

EPA appropriately views these records as "health and safety studies." The law defines this term as "any study of any effect of a chemical substance or mixture on health or the environment or on both, including underlying data and epidemiological studies, studies of occupational exposure to a chemical substance or mixture, toxicological, clinical, and ecological studies of a chemical substance or mixture, and any test performed pursuant to this chapter."²² The chapter refers to Chapter 53 of Title 15 of the United States Code. Subchapter VI of that chapter directs the agency to issue formaldehyde standards for composite wood product regulations. When finalized, the rule will require tests that measure the release of formaldehyde, which is a chemical substance.

We support EPA's approach of requiring that purchasers have direct access from the panel producers to the test data and that annual summaries of the data be made publicly available through the third-party certifier annual reports. Purchasers need access to these records so they can better understand what testing has been done and by whom. They will be better able to make choices about their suppliers. In addition, this transparency will build the integrity and credibility of the program.

However, we recommend that EPA modify the proposal to clarify the scope of the records that the panel producer must provide. Specifically, we question the use of the term "all" in proposed 40 CFR §770.40(a)(1) and suggest that the panel producer be allowed to narrow the request to only those records that are relevant to the lot or batch number of the panel that was or will be purchased.²³ At a minimum, the records should include the results of the first emission testing done before and after the panel was

²⁰ Proposed 40 CFR §770.40(a).

²¹ 78 FedReg 34838.

²² 15 U.S.C. §2602(6).

²³ Lot or batch number should be available on the product pursuant the label provisions of proposed 40 CFR 770.45.

made and the ongoing quality control testing conducted between these two tests. These changes would make the process less burdensome for the producer and more useful to the purchaser.

We also encourage EPA to make explicit that health and safety studies and the data they contain are not confidential business information unless they reveal process or portion information. EPA notes that health and safety studies are not eligible to be claimed and kept confidential under TSCA except to the extent that “data derived from such studies disclose confidential processes used in the manufacturing or processing of a chemical substance or mixture or, in the case of a mixture, the release of data disclosing confidential portion of mixture information.”²⁴ We do not see anything in the seven items that must be identified in the records that would fall into the process or mixture composition exceptions.

In summary, EPA should hold firm on its commitment to transparency, especially with respect to health and safety studies. Purchasers should have access to testing information although EPA should clarify the scope of that access.

4. De minimis: Use Toxics Release Inventory as a model

EPA is obligated by the law to include in its rule “exceptions from the requirements of regulations promulgated pursuant to this subsection for products and components containing de minimis amounts of composite wood products.”²⁵ Lacking information upon which to draw a dividing line, the agency set the *de minimis* level at zero.²⁶

We agree with EPA that the *de minimis* level should be zero for panel producers. However, we think the agency should establish a cutoff for fabricators, distributors, and retailers that purchase panels that comply with the emission standards in the rule. Rather than zero, we suggest that EPA look to the Toxic Release Inventory precedent. While a composite panel is not toxic chemical *per se*, the agency should conceptually apply similar quantity and concentration cutoffs for composite wood products in this rule. Specifically, it should set minimum standards for fabricators, distributors and retailers when they use less than a certain quantity (e.g., 10,000 pounds²⁷) of composite wood products annually at the facility or the products contain less than a certain percentage (e.g., 1% by weight²⁸) of composite wood products. The production of the core composite wood products should not be exempted.

EPA should modify proposed 40 CFR §770.30 so that fabricators, distributors and retailers must take reasonable precautions to ensure they are purchasing compliant composite wood products that fall below these *de minimis* levels. The records documenting those precautions should be simpler than for those firms above the threshold. Similarly, facilities operating at these production levels should be exempt from the labeling requirements at proposed 40 CFR §770.45(c).

In summary, EPA should establish a de minimis level for fabricators, distributors, and retailers above zero using the Toxic Release Inventory thresholds as a model. Exempt facilities should be required to take reasonable precautions to ensure they are purchasing compliant composite wood panels and be exempt from the labeling requirements.

5. Non-complying lots: Expand the definition and set a different performance standard

EPA’s proposed rule defines a non-complying lot as follows:

²⁴ 78 FedReg 34838.

²⁵ 15 U.S.C. §2697(d)(2)(L).

²⁶ 78 FedReg 34855.

²⁷ 40 CFR §372.25(b).

²⁸ 40 CFR §372.38(a).

“Non-complying lot to mean any lot or batch of composite wood product represented by a quarterly or quality control test value that exceeds the applicable standard for the particular composite wood product. In the case of a quarterly test value, only the particular lot or batch from which the sample was taken would be considered a non-complying lot. However, future production of the product type(s) represented by a failed quarterly test is not considered certified and must be treated as a non-complying lot until the product type(s) are requalified through a successful quarterly test.”²⁹

Proposed 40 CFR §770.22 states that non-complying lots are not certified composite wood products and, therefore, may not be offered for sale, sold or supplied until treated and retested. In addition, proposed 40 CFR §770.20(b)(3) and (c)(2)(iv) requires that lots of panels from which samples are selected for testing must be retained at the producer’s facility until the results are available.

We do not understand how this process will work for quarterly testing because the panels must be shipped to a third-party laboratory for testing. It appears that all of the lots made after the sampled lots must be held at the facility until the test results are available. Reasonable and normal time delays during shipping could result in significant accumulation of panels at the production facility.

We recommend that EPA consider a different approach. First, we are uncomfortable with the presumption that all panels produced before the lot with the failed quarterly test meet the emission standards. All panels since the previous passing quarterly test may not meet the emission standards and should not be automatically considered compliant. Second, we think that EPA should set a clear performance standard that the panels from non-complying lots not reach the retailer. If they do, then they must be recalled and the public alerted to the problem. Third, since the market is so diverse, the panel producer should be required to develop a plan to manage non-complying lots. The third-party certifier should verify that the plan is sufficient to ensure that non-complying lots not reach the retailer and should also provide the plan to EPA as part of its annual report.

In summary, EPA should only allow panel producers to ship panels before test results are returned if there is a means to prevent non-complying panels or products using non-complying panels from reaching retailers. The current language appears unworkable.

6. Manufactured housing and recreational vehicles: Provide option for single integrated label

Within 180 days of the final proposed rules, per Congress’ direction, the U.S. Department of Housing and Urban Development (HUD) must update its manufactured housing regulations at 24 CFR §3280.308.³⁰ We encourage EPA to closely coordinate with HUD. The simplest solution is for HUD to revise its rules to require use of compliant composite wood products. We also recommend that, coincident with the HUD rule, EPA add a new subparagraph (f) to proposed 40 CFR §770.1 that makes clear that the rule applies to composite wood products used in manufactured homes.

In addition, EPA should also add a new subparagraph (e) to proposed 40 CFR §770.45 addressing labeling for manufactured homes and recreational vehicles including travel trailers and other temporary housing often offered by emergency management agencies. These products typically contain extensive amounts of composite wood products from different sources. EPA needs to provide a simplified means for consumers to get detailed information. Therefore, the labeling provision should require that the purchaser of these products be given a single document that provides labeling information covering all composite wood products used in these items. The information must include the information described in proposed 40 CFR §770.45(a).

²⁹ 78 FedReg 34859.

³⁰ Pub. L. 111-199, § 4, July 7, 2010, 124 Stat. 1367.

In summary, for manufactured housing, recreational vehicles and mobile trailers covered by the rule, EPA should require a single document that provides the information contained on all of the labels for composite wood products in the products.

Other comments

As we reviewed the proposed rule, we had the following comments and questions:

- EPA should clarify the following:
 - Define what “raised” means in the definition of “panel” at proposed 40 CFR §770.3.
 - Define what “single production run” means in the definition of “lot” at proposed 40 CFR §770.3.
 - Define what “shift” means under “frequency of testing” at proposed 40 CFR §770.20(b)(2)(i). Not all shifts are 8 or 12 hours: factories often stagger shifts.
 - Define what “dead-stacked” and “air-tight” mean under “sample handling” at proposed 40 CFR §770.20(c)(3).
- We agree that:
 - Requiring importers to comply with the import certification regulations for “Chemical Substances in Bulk and As Part of Mixtures and Articles,” as found at 19 CFR §§12.118 through 12.127 is appropriate.
 - Woody grass veneer such as bamboo should be treated the same as wood veneer.
- The proposed rule and the accompanying proposed third-party certification rule appear to be designed for existing plants. It is not clear how a new plant will be handled since it will take some time to smooth out production and conduct the quarterly testing. EPA should clarify how this will be handled.

We encourage EPA to move quickly to finalize its composite wood products regulations to protect the public from formaldehyde. Based on EPA’s estimates, every day of delay in finalizing the rule will result in more than 58 children developing asthma.³¹

Thank you for the opportunity to comment. Please contact Jane Malone at jmalone@nchh.org for more information.

Sincerely,

American Society of Home Inspectors
Coalition to End Childhood Lead Poisoning
Environmental Defense Fund
Healthy Homes Collaborative
Healthy Schools Campaign
National Center for Healthy Housing
National Safe and Healthy Housing Coalition
Institute of Neurotoxicology and Neurological Disorders
Regional Asthma Management and Prevention
Sierra Club

³¹ EPA, Economic Analysis of the Formaldehyde Standards for Composite Wood Products Act Implementing Regulations Proposed Rule, RIN 2070-AJ92, EO 12866 REVIEW DRAFT at Table 3-50 on page 321 of 415 of the PDF. 21,312 children aged 2-15 divided by 365 days.