

September 25, 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 Third-Party Certification Framework for Formaldehyde Standards for Composite Wood Product Rule – Docket #EPA-HQ-OOPT-2011-0380

To whom it may concern:

Thank you for the opportunity to comment on the third-party certification framework for formaldehyde standards for composite wood. Overall, we strongly support the proposed rule and encourage the U.S. Environmental Protection Agency (EPA) to move quickly to finalize the rule. Adoption of the certification process should not wait for the emission standards rule to be finalized since it will take time for the framework to be established.

As far as we can tell, when finalized this rule would represent the first time that EPA has relied on a third-party certification program as the primary means of compliance assurance for manufacturing facilities. We think it is appropriate in these circumstances.

Since it is the first program, it is setting an important precedent. Therefore, it is important to ensure that the controls are in place to ensure that it is effective and to reevaluate the rule in several years to determine if changes are needed.

We asked the California Air Resources Board (CARB) for any data it had on compliance. It provided us with the following information it developed on September 18, 2012.

Summary of Non-complying (NC) Events in 2011 by Region*			
Region	Number of certified mills	Number of mills with at least one NC event	% NC events
North & South America	92	17	18.5%
Europe	151	12	7.9%
Asia	557	8	1.4%
Total	800	37	4.6%

* Based on TPC annual reports for 2011.

The significant disparities in compliance rates with the California program by region raises a number of serious questions. Is the performance of the Asian-certified mills actually so

dramatically better than the American mills? Or are American third-party certifiers more rigorous in identifying and reporting events?

Given prior performance of Asian producers in products involving other toxic materials such as lead, cadmium and melamine, it is unlikely that they perform that much better than the rest of the world. In addition, it is curious that the North American mills were generally certified by one firm we understand is widely recognized as meticulous.

We think it prudent for EPA to work with CARB to evaluate and address the root causes of the differences. Until the disparities are understood and resolved, the system will lack credibility and cannot serve as a model. However, EPA should not delay finalizing the proposed rule. Rather, we recommend that it modify the proposed rule in four ways with the option that it can relax the requirements in the future when the information is available.

1. **In-person audits of TPCs:** Require the Accreditation Bodies to audit the performance of the Third-Party Certifiers (TPCs) in-person in their home location and during actual facility inspections to ensure they are capable of identifying compliance problems at the facility. This audit should specifically address the requirements of the formaldehyde standards and not just the TPC's ability to independently and diligently keep records and submit reports.
2. **Two-year cycle initially:** For the first six years, the TPC should be required to reapply for accreditation every two years. After three cycles (six years), EPA should allow the Accreditation Bodies to shift those TPCs who have demonstrated competency and consistency from a two-year to a three-year cycle. This approach provides an opportunity for Accreditation Bodies and TPCs to make adjustments.
3. **Pre-approval notification:** The proposed rule requires Accreditation Bodies to provide EPA with copies of a TPC's application for accreditation within 90 days of receipt and to notify EPA within five days after the TPC is accredited. We believe that EPA should make publicly available on its website the basic information on a TPC within 30 days of receiving a TPC application from an Accreditation Body and invite comments on the TPC. EPA should forward any comments it receives to the Accreditation Body. This approach will allow the public as well as the TPC's competitors and clients, especially former clients, to inform the agency and the Accreditation Body of potential problems that need to be carefully considered.
4. **Transparency:** Consistent with EPA's commitment to transparency, make the critical information on the performance of both the TPC and the producers publicly available, without, of course, revealing confidential business information. This approach builds credibility and allows scrutiny of the firms by the public and competitors. Specifically, we recommend that the following items be made available to the public on the Internet:
 - a. Annual reports by TPCs.
 - b. A list of panel producers that each TPC has certified as well as the compliant products produced and whether the products are made with No-Added Formaldehyde-based (NAF) resins or Ultra Low Emitting Formaldehyde (ULEF) resins.
 - c. A list of any significant non-complying products or events for each panel producer. We recommend that significant events include those where:
 - i. Non-complying product reached the consumer;
 - ii. Non-complying events were repeated or not resolved quickly; or

- iii. An unusual number of samples was missed or not properly analyzed.
- d. A list of laboratories and test methods used by each TPC.
- e. The results of inter-laboratory comparison or proficiency testing for the laboratories used by TPCs.

We also want to comment on several other issues:

- EPA and not the TPCs should determine whether a resin qualifies as NAF or ULEF. The proposed rule allows TPCs to make the decision. It is critical that there be consistency among TPCs. Otherwise, panel producers could shop around for TPCs that allow specific resins and there will be a push for TPCs to accept marginal resins. EPA may want to grandfather into the rule the existing resin approvals made by CARB and continue to coordinate decisions with CARB.
- Annual proficiency testing of laboratories as proposed by EPA is essential. If there is no proficiency testing, there will be little faith in the accuracy of the lab results and integrity of the program will falter. Therefore, EPA should delete the contingency when describing the inter-laboratory comparison or proficiency program. Specifically, delete the “if available” at 40 CFR 770.7(b)(3)(vi) and “if such an EPA recognized inter-laboratory comparisons or proficiency testing program is available” at 770.7(b)(3)(xi)(C).
- We support EPA’s suggestion that enhanced testing or inspection requirements would be appropriate for failed test results, but those requirements should be based on how far and how often the test results exceed the standards. Similar steps should be taken for failure to comply with the established quality control manual or inconsistencies in records. Inconsistencies in records may be more significant than a test result that comes in slightly over the standard.
- We believe that the list of records EPA would require to be submitted by the TPCs annually is appropriate, and, as stated above, that the agency should make the information available in a publicly viewable database.
- We agree with EPA that Accreditation Bodies and TPCs based outside of the United States should be required to designate an agent within the US to ensure compliance.

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

Sincerely,

Healthy Schools Campaign
National Center for Healthy Housing
National Safe and Healthy Housing Coalition
Sierra Club