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Re: Technical Commentary on Proposed Amendments to the Formaldehyde Emissions from Composite Wood Products Regulations, as published in Canada Gazette, Part I, Vol 157, June 17, 2023

Gentlemen and Ms. Blais:

We are pleased to submit these comments from the Right Reg Coalition. We appreciate the government's outreach to industry and offer us an opportunity to submit comments on the Formaldehyde Emissions from Composite Wood Products Regulations as well as the proposed amendments published in the Gazette on June 17, 2023 (collectively "CANFER"). We welcome all opportunities to bring the final version of CANFER into closer alignment with the U.S. EPA's TSCA Title VI regulations and provide a structure that permits meaningful enforcement.

We are providing two submissions for consideration. Our key concern is to see the government address the record-keeping provisions however, we would also like to highlight a collection of specific technical recommendations and consider adding/editing to the definition section. This document outlines those technical and administrative concerns.

INTRODUCTION

As an introduction, the Right Reg coalition includes industry trade associations as well as individual companies. We represent all segments of the wood working industries and the extended supply chain within the Canadian market. Products include composite wood panels, cabinets, flooring, furniture and more. Our member companies range from primary and secondary manufacturers, laminators, and fabricators to distributors, importers and retailers. Our desire and intent is to work with the government of Canada and officials to address inconsistencies between TSCA Title VI and CANFER and to remove the unintended burdens the current language imposes on Canadian businesses. Harmonization with TSCA Title VI would fully accomplish the intended purpose of the Canadian regulation and simplify implementation and on-going compliance for all parties.

A. CANFER Technical Amendments

Regarding technical amendments, many of our prior technical concerns have been addressed in the proposed amendments published in June 2023. We sincerely thank Health Canada for acknowledging these concerns and taking concrete steps to provide clarity and consistency to regulated stakeholders. Specifically, we approve of the proposed amendments:

- Removal of the requirement that mill quality control laboratories be accredited, although we do have a comment on the exact language provided below.
- Addition of quarterly testing in the NAF and ULEF sections.
- Specifying that retesting on non-compliant lots must be performed using the same methodology that was used in the failed test.
- Increasing the time within which to notify downstream purchasers of a non-compliant lot to within 72 hours after the day on which the non-compliance was known.
- Elimination of the need to identify a contact person at the Third-Party Certifier ("TPC").

There are only a few remaining items that pose inconsistencies or conflicts between CANFER and TSCA Title VI, which we have highlighted below. Given the similarities between the two regulations, we strongly encourage Health Canada to further align the CANFER regulatory text with that of TSCA Title VI to avoid conflicting language that leads to confusion or inconsistencies in implementation.

A1. CANFER Frequency of Quarterly Testing Poses a Potential Conflict with TSCA Title VI

The existing text in CANFER Section 7(2) specifies, "The selection, testing, and verification must be performed four times annually…" and further specifies date periods in which these activities must be completed. The proposed amendments to CANFER Section 7(2) published by the Government in June 2023 state, "The testing and verification must be performed during the 90–day period that begins on the day the specimen is selected and the selection must be performed four times annually…" and retains the specified date periods in which these activities must be completed.

The proposed amendments suggest the specified date ranges are intended to refer to the dates by which a Third-Party Certifier (TPC) conducts its quarterly site audit/sample collection. In doing so, the proposed text continues to place significant burden on both the TPC and the regulated panel manufacturer to schedule and conduct the audits in a timeframe that does not consider a manufacturer's production schedules nor does it allow the TPC the flexibility to schedule audits most efficiently given those schedules. Most manufacturers do not produce TSCA Title VI or CANFER-certified panels on an ongoing basis. This is especially true of overseas producers. In most cases, certified panel manufacturers only produce certified panels periodically, and the limitations placed on both the panel producer and TPC to manage and track scheduled sample collection within "the 90–day period that begins on the day the specimen is selected" is simply not realistic nor does it add value to the effectiveness of TPC oversight.

Conversely, TSCA Title VI [40 CFR 770.20 (c)] simply states that verification testing must be conducted "quarterly" but does not specify date ranges nor does it place a 90-day time limit between sample collection events. This approach ensures adequate TPC oversight and verification testing on a quarterly basis but does not unnecessarily constrain either the TPC or panel producer to accommodate production schedules. If the concern is that the existing TSCA Title VI regulatory text is not prescriptive enough, then we suggest one of two approaches:

1) Revise CANFER Section 7(2) to specify, **"The testing and verification must be performed four times annually with sample collection occurring approximately every three months."**

This proposed text makes it clear that the intervals for sample collection should be scheduled approximately every 3 months but does not unnecessarily restrict a TPC and panel producer

from scheduling the sample collection to accommodate production schedules and other factors through the reference to specified date ranges or a concrete time limit.

or

2) Revise CANFER Section 7 **to clearly specify that manufacturers who have achieved CANFER compliance via certification according to TSCA Title VI are recognized as compliant without qualification**, and that the additional requirements, such as the 90-day time limit and specified date ranges for sample collection, are applied specifically to those manufacturers who have obtained a Declaration of Certification to CANFER but that are not otherwise certified according to EPA TSCA Title VI.

Otherwise, if a manufacturer relies on TSCA Title VI certification as their path to CANFER compliance, which may or may not include sample collection within the restrictive time limits currently referenced in CANFER, the Government (or outside parties) could allege that TSCA Title VI certified manufacturers which conduct testing according to the TSCA Title VI "quarterly" test requirements do not comply with CANFER.

If either of our above suggestions is not acceptable, then we request that Health Canada include a clarification of the intent of this regulatory text in its forthcoming guidance document. We hope to see it stated clearly that the 90-day reference is not intended to represent a "Hard stop" in terms of the timeframe for quarterly testing so long as testing occurs four times per year at intervals of approximately every 90 days.

A2. <u>CANFER Test Sample Rejection Criteria Are Overly Prescriptive And Do Not Align With TSCA Title VI</u>

Regarding test sample receipt and inspection by an accredited laboratory, CANFER Section 15 (3) specifies, "The person responsible for the specimen must reject the specimen if (a) the wrapping in which the specimen is shipped is damaged; (b) the specimen is damaged or contaminated…" We submit that this is an extremely harsh and unnecessary requirement.

TSCA Title VI specifies requirements for sample selection and packaging, but it allows the accredited test laboratory, with oversight by the TPC, to determine the suitability of the sample upon arrival without placing an absolute "must reject" set of criteria upon the TPC. Test samples are frequently shipped internationally, and small damage may happen. The TPC must be empowered to determine if the sample is acceptable. Further, if the TPC is required to conduct sample collection and testing with within a narrow and inflexible time period as the current and proposed regulatory text of Section 7(2) specifies, AND if the sample is accepted only if there is no damage by couriers, there is a significant chance that manufacturers could lose their certification through no fault of their own. To resolve this concern, we suggest amending the text in CANFER Section 15 (3) to specify the following:

> The person responsible for the specimen must evaluate the specimen upon receipt to verify the specimen is properly wrapped as required by the test method to be employed and there is no evidence that the specimen has been damaged, contaminated, or that the wrapping is damaged in any manner that could adversely impact the test results. If unacceptable damage or contamination is observed to either the specimen or the wrapping, or if conditioning of the specimen cannot be initiated within the time limit section out in subsection (4), then the person responsible must reject the specimen.

This proposed language sets forth the relevant criteria to be applied by the accredited laboratory for determining the suitability of the specimen for testing but clarifies that the decision for determining suitability is left to the discretion of the test laboratory.

A3. CANFER Label Record-Keeping Requirement Should Better Align With TSCA Title VI

We further propose a modification (additional word provided in bold) to align with TSCA Title VI regarding label record keeping:

> **Existing language:**
> (iv) a copy of each label required under subsection 20(1); and
>
> **Modified language:**
> (iv) a **representative** copy of labels used under subsection 20(1); and

We feel that the requirement to maintain representative samples of labels provided is logical, aligns with TSCA Title VI, and is a reasonable administrative burden. This issue is addressed in greater detail in our document on record-keeping fixes, but we feel it is important to note it here as it can also be considered a technical fix to better align CANFER with TSCA Title VI.

B. CANFER "Application"

CANFER Section 3 specifies the regulation applies "in respect of any composite wood product (CWP) that contains formaldehyde." This overly generalized statement of applicability is misleading and inaccurate as the rule details extensive requirements for composite wood products that are produced with "No Added Formaldehyde" resins. Therefore, this definition could be interpreted to mean that composite wood products made using no added formaldehyde resins are not obligated to follow the requirements.

Further, certain items such as curved plywood are specifically exempted as defined in CANFER Section 4, yet some of those exempted products are produced with formaldehyde resins and therefore could be wrongly captured by current language and lead to market or industry confusion.

Finally, as all wood naturally contains formaldehyde, this rule could go beyond the focus of manufacturing conditions as it pertains to resin systems and production methods used to produce a composite wood product.

Possible language:

> 3 Subject to section 4, these Regulations apply in respect to the formaldehyde emission standards, testing and certification provisions, and other requirements for the manufacture (including import), distribution, and sale of composite wood products, component parts that contain composite wood products, and finished goods that contain composite wood products as specified in the definition.

If the Government is unable to address this change specifically in the Rule itself, it is requested to have it addressed in Guidance to avoid confusion and to ensure no legal challenges are made against companies that are exempt by other definitions in the rule despite working with a composite wood product that contains formaldehyde. Further the guidance should make it clear in common language that companies utilizing regulated products come in under the Application despite having no-added formaldehyde resins.

C. Proposed Additions/Edits to "Definitions" within the Rule

The following are suggested additions and/or edits to the terms and definitions described in CANFER Section 1. These changes are proposed to improve alignment with TSCA Title VI where possible, and to further clarify routes of compliance as specified by CANFER and the responsibilities under each route.

C1. In the proposed amendments, Health Canada proposes to define the term "Accredited Laboratory" as follows:

Accredited Laboratory

means a laboratory that meets the following conditions at the relevant time:

(a) it is accredited

(i) under the International Organization for Standardization standard ISO/IEC 17025, entitled *General requirements for the competence of testing and calibration laboratories*, by an accrediting body that is a signatory to the International Laboratory Accreditation Cooperation Mutual Recognition Arrangement, or

(ii) under the *Environment Quality Act*, CQLR, c. Q-2; and

(b) the scope of its accreditation includes testing to measure formaldehyde emissions from composite wood panels or laminated products. (*laboratoire accrédité*)

The proposed language in sub-bullet (b) of this definition could be construed to mean that a laboratory which conducts formaldehyde emissions testing of composite wood products, regardless of the test method applied, is qualified to conduct testing to verify compliance to CANFER regulations. To resolve this, we propose to modify sub-bullet (b) as follows:

(b) the scope of its accreditation includes testing to measure formaldehyde emissions from composite wood panels or laminated products using one of the primary test methods specified in subsection 7 (1) (b) of these Regulations. (*laboratoire accrédité*)

C2. The following terms are proposed to be added to the current list of terms and definitions provided in CANFER Section 1:

Fabricator

means a person or entity who incorporates composite wood products into component parts or into finished goods. This includes laminated product producers, but persons or entities in the construction trades are not fabricators by renovating or remodeling buildings.

Lot

means the composite wood panels produced from the beginning of production of a product type until the first quality control test; between one quality control test and the next; or from the last quality control test to the end of production for a particular product type.

No-added formaldehyde-based resin (NAF)

means a resin formulated with no added formaldehyde as part of the resin crosslinking structure in a composite wood product that meets the emission standards.

Panel

means a thin (usually less than two inches thick), flat, usually rectangular piece of particleboard, medium-density fiberboard or hardwood plywood. Embossing or imparting of an irregular surface on the composite wood products by the original panel producer during pressing does not remove the product from this definition. Cutting a panel into smaller pieces, without additional fabrication, does not make the panel into a component part or finished good. This does not include items made for the purpose of research and development, provided such items are not sold, supplied, or offered for sale.

Phenol-formaldehyde (PF) resin

means a resin that consists primarily of phenol and formaldehyde and does not contain urea-formaldehyde.

Seller

means a Distributor or Retailer that sells, offers for sale, or supplies composite wood products, component parts or finished goods that contain composite wood products, except that 1) persons or entities in the construction trades are not considered sellers by selling, renovating, or remodeling buildings and 2) persons or entities in the antique or second-hand retail business are not considered sellers by selling or renovating second-hand goods and other finished goods after they have been acquired by a consumer for a purpose other than resale.

Third-Party certifier (TPC)

means a conformity assessment body that provides both product certification services and laboratory testing services (either directly or through contracted services). A TPC providing oversight pursuant to these Regulations must meet the qualifications specified in Section (18)

Ultra-Low-emitting formaldehyde resin

means a resin in a composite wood product that meets the emission standards in Section (11) of the Regulations.

woody grass

means a plant of the family Poaceae (formerly Gramineae) with hard lignified tissues or woody parts.

Regarding proposals above, please note that our proposed language for the term “Sellers” helps to clarify which entities fall within that category which will support clarity in the technical sections. The approach we have proposed also helps avoid additional editing of the record keeping sections since it allows the continued use of the term “Sellers” to refer collectively to distributors and retailers. It further eliminates any potential confusion regarding the intent to exclude builders and installers from the definition.

C3. <u>The following terms currently appear in CANFER Section 1 and are proposed to be edited for clarity and to align with TSCA Title VI, where possible:</u>

Component Part

means an object, other than a panel, that contains one or more composite wood products and is used in the construction or assembly of finished goods. Component parts that are sold directly to consumers are considered finished goods. (*composant*)

Veneer

Means a sheet of wood or woody grass with a maximum thickness of 6.4 millimeters (1/4 inch) that is rotary cut, sliced, or sawed from a log, bolt, flitch, block, or culm; including engineered veneer.

<u>CONCLUSION</u>

We appreciate the opportunity to provide these comments. We want to make it clear again that the industry supports the regulation. The requests presented here are for largely structural fixes only, to align CANFER and TSCA Title VI where possible and to eliminate sources of potential confusion both with regulated industry and the consumer. We believe that the technical fixes outlined here are necessary to ensure that the regulated industries understand their exact responsibilities under the rules and that the Third-Party Certifiers responsible for oversight are able to provide professional services that do not conflict with their existing TSCA Title VI programs.

We appreciate your consideration of these comments and also of our significant concerns regarding current and proposed record-keeping requirements that are outlined in our second submission of comments.

Respectively submitted

The Right Reg Coalition
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