

**IWPA and NWFA
are please to offer a webinar on the EPA
proposed regulation of formaldehyde in
composite wood products.**

The webinar will begin shortly.



Welcome to the Webinar

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In 2010 Sara Kemme joined the team developing the formaldehyde regulations.

Her areas of expertise include import/export issues and third-party certification.

Formaldehyde Standards for Composite Wood Products Act Implementing Regulations

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Overview of Presentation

1. Background on the Formaldehyde Standards for Composite Wood Products Act (TSCA Title VI) and the California Air Resources Board (CARB) Airborne Toxics Control Measure (ATCM).
2. EPA's proposed implementing regulations.
3. Questions?



Background on TSCA Title VI

- On July 7, 2010, the Formaldehyde Standards for Composite Wood Products Act was signed into law to become the Toxic Substance Control Act (TSCA) Title VI.
- TSCA Title VI establishes numerical formaldehyde emission standards for hardwood plywood, particleboard, and medium-density fiberboard (MDF) that are identical to the California Air Resources Board (CARB) Phase II limits.
- TSCA Title VI directs the implementing regulations to cover a number of areas that help ensure compliance with the formaldehyde emission standards.
- EPA developed the proposed regulations in coordination with CARB.
- EPA harmonized regulations with CARB regulations wherever practicable.



Background on CARB ATCM

- CARB established an ATCM for composite wood products sold, offered for sale, supplied, used or manufactured for sale in California.
- The CARB regulations established provisions for composite wood products that includes, among other things, requirements for third-party testing and certification, labeling, chain-of-custody documentation, and recordkeeping.
- The TSCA Title VI emission standards mirror the CARB ATCM Phase II emission standards, are set in the statute and cannot be changed. However, EPA is promulgating regulations to implement the supplementary provisions.



TSCA Title VI Compared to the CARB ATCM

- The TSCA Title VI formaldehyde emissions limits mirror those of CARB Phase II.
- TSCA Title VI does not exempt “laminated products.” The statute directs EPA to determine whether the definition of “hardwood plywood” should exempt any “laminated product, ” while ensuring that our regulations are promulgated in a manner that ensures compliance with the statutory emissions standards.
- The TSCA Title VI sell-through periods (minimum of 180 days after rule promulgation) are statutorily based on the date of manufacture, not the date of sale (as in the CARB ATCM).

FSCWPA Proposal

- Reduced testing requirements for small HWPW producers
- NAF/ULEF applications reviewed by TPC
- Engineered veneer is covered under HWPW
- 3-year record retention period
- Can use one label for both programs
- ABs accredit TPCs for 3 year period



How This Could Affect You

Manufacturers

- Must produce a product that meets the emissions standards.
- Subject to provisions such as those on sell-through dates (including a prohibition on stockpiling), quality control testing, product certification by third-party certifiers, chain-of-custody requirements, recordkeeping and labeling.

Importers, processors, distributors and retailers

- Subject to chain-of-custody, recordkeeping and labeling requirements.

Manufacturers of laminated products

- May be subject to the same requirements listed above for manufacturers. However, EPA is proposing a definition of hardwood plywood that would not include some products that fall under CARB's definition of laminated products.



Overview of Proposal

- The proposed regulations address the following statutorily identified areas:
 - Third-party certification
 - Testing
 - Sell-through provisions (including a prohibition on stockpiling)
 - Labeling
 - Chain-of-custody requirements and recordkeeping
 - No-added formaldehyde-based (NAF) resins and ultra low-emitting formaldehyde (ULEF) resins
 - Laminated products
 - De minimis exemption
 - Import requirements
 - Enforcement

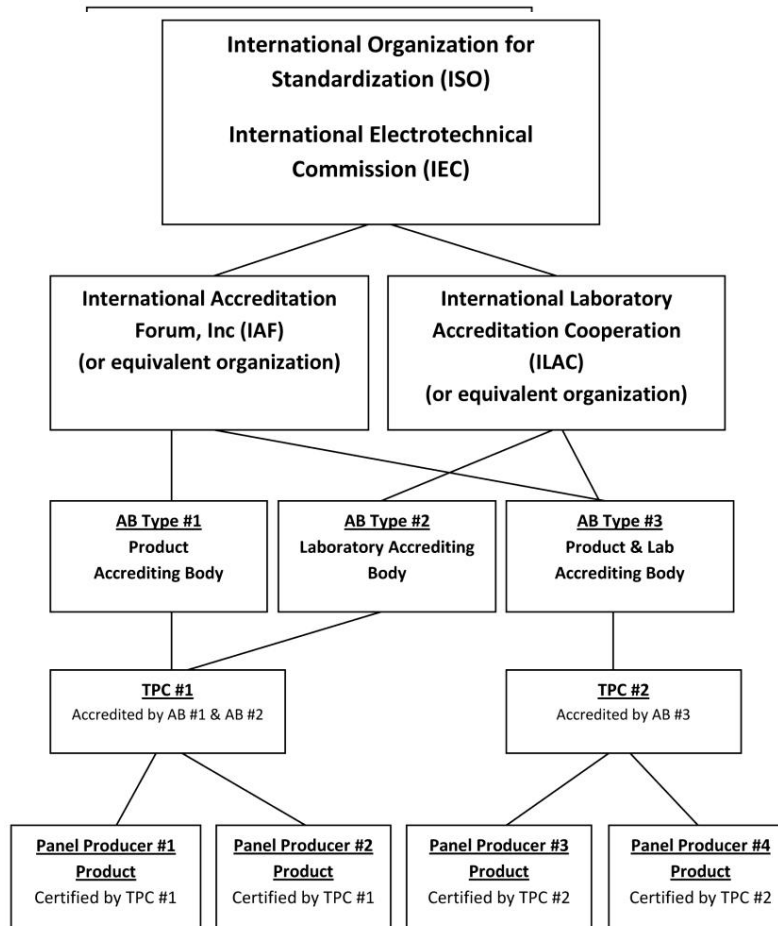


Third-Party Certification

- EPA's proposed TPC program does not preempt CARB's TPC program.
- EPA has worked closely with CARB to harmonize the programs to the extent feasible and dialogue is continuing throughout EPA and CARB's rulemaking processes.
- EPA is proposing to grandfather TPCs that are already CARB-approved and allow them to continue to certify panel producers for a period of one year after the effective date of the federal rule.



Third-Party Certification



Testing

- **TSCA Title VI:**

- Requires compliance with emissions standards to be shown by quarterly emissions tests via test method ASTM E-1333-96 (2002) or, subject to a showing of equivalence, ASTM D-6007-02.
- Quality control tests must be conducted pursuant to ASTM D-6007-02, ASTM D-5582, or such other test methods as may be established by EPA.
- Except as otherwise provided, EPA will establish the number and frequency of tests required to demonstrate compliance with the emission standards.

- **EPA's proposal:**

- Hardwood plywood testing frequency would be the same as required by CARB; except EPA would add an additional reduced testing provision for panel producers who manufacture smaller amounts of panels.
- Particleboard and medium-density fiber board (MDF) testing frequency would be the same as required by CARB.
- Equivalence would be shown through a method similar to CARB's.



Manufactured-by Date and Stockpiling

- **TSCA Title VI:**

- Directs EPA to prohibit stockpiling, which is defined in the statute as manufacturing or purchasing composite wood products between July 7, 2010 and the manufactured-by date at a rate significantly greater than during a base period.
- Directs EPA to establish the manufactured-by date; and to define “significantly greater” and establish the base period to determine what constitutes stockpiling.

- **EPA’s proposal:**

- The manufactured-by date would be one year after publication of the final rule.
- The base period would be the 2009 calendar year.
- “Significantly greater” would be defined as an average annual rate 20% greater than the amount manufactured or purchased during the base period.
- Therefore, “stockpiling” would be defined as manufacturing or purchasing composite wood products between July 7, 2010 and 1 year after the final regulations are promulgated at an average annual rate 20% greater than the amount manufactured or purchased during the 2009 calendar year.



Labeling

- **TSCA Title VI:**
 - Implementing regulations must contain provisions relating to labeling.
- **EPA's Proposal:**
 - Panels or bundles of panels that are sold, supplied, or offered for sale in the United States would be labeled with:
 - the name of the panel producer;
 - the lot or batch number;
 - the number of the TSCA Title VI accredited TPC; and
 - markings indicating that the product complies with the TSCA Title VI emission standards.
 - Labels for products produced under the NAF or ULEF exemption would also have to include the designation “no-added formaldehyde” or “ultra-low emitting formaldehyde.”
 - EPA's proposed labeling requirements harmonize with CARB requirements and one label could be used.



Chain of Custody and Recordkeeping

- **TSCA Title VI:**
 - Implementing regulations must contain provisions relating to recordkeeping.
- **EPA is proposing:**
 - Panel producers would maintain records of:
 - Testing.
 - Production, including dates, lot/batch numbers, and changes in materials or processes.
 - Purchaser and transporter information.
 - Disposition of non-complying lots/batches.
 - Information demonstrating eligibility for reduced testing for NAF products.
 - Laminators and those using the NAF or ULEF exemptions must maintain records demonstrating eligibility.
 - Importers and fabricators must maintain:
 - Records identifying the panel producer and the date the products were produced and purchased.
 - Bills of lading or invoices that contain a supplier affirmation of compliance.
 - Distributors and retailers must retain invoices and bills of lading.
 - All would maintain copies of labels used.
 - Most records would have to be kept for a period of three years from the date that they are generated.



Proposed NAF and ULEF Provisions

- **TSCA Title VI (like the CARB ATCM) :**
 - Allows EPA to provide exemptions from third-party certification and reduce testing requirements for composite wood products made with lower emitting resins after an initial mandatory testing period as long as EPA determines that compliance with emission standards would be maintained.
- **EPA's Proposal:**
 - Would provide producers of panels made with NAF-based resins with an exemption from third party certifier (TPC) oversight and formaldehyde emissions testing for each qualifying product type after the statutory initial testing period of 3 months.
 - Would provide producers of panels made with ULEF resins with an exemption from third party certifier (TPC) oversight and formaldehyde emissions testing for each qualifying product type after the statutory initial testing period of 6 months.
 - As under CARB, a reduced testing option without a TPC exemption would be available; EPA is requesting comment on the utility of this option.
 - EPA is also requesting comment on research showing that when humidity and temperature increase, formaldehyde emissions from ULEF products can increase.



Laminated Products

- **TSCA Title VI :**

- Defines laminated product as a product produced by attaching a wood veneer to a composite wood product platform.
- Defines laminated product as a component part used in the construction or assembly of a finished good that is produced by the manufacturer or fabricator of the finished good.
- Gives EPA the authority to use all available and relevant data to determine whether the definition of hardwood plywood should exempt engineered veneer or any laminated product and to modify the definition of laminated product.

- **CARB ATCM:**

- *Requires* manufacturers of hardwood plywood who affix veneers to conduct formaldehyde emissions testing and comply with TPC certification requirements.
- *Exempts* a facility that affixes veneers to purchased platforms and then uses the panels to make a finished good from the TPC certification requirements – even if the product is identical HWPW.
- California is reexamining this exemption from emissions testing for laminated products.



Laminated Products cont.

- **EPA's Proposal:**

- EPA is proposing to exempt only those laminated products in which a wood veneer is attached to a certified platform without the addition of formaldehyde (i.e., by using a NAF resin).
 - Facilities making laminated products by attaching wood veneers to certified platforms using formaldehyde-based resins would be considered to be making hardwood plywood and would have to comply with the testing and third-party certification requirements.
- EPA believes that the potential for formaldehyde emissions to increase from attaching a wood veneer to a platform exists regardless of whether a hardwood plywood panel producer or a laminator attaches the veneer.
- EPA does not have a sufficient basis on which to categorically exempt all laminated products from the definition of hardwood plywood and still meet the statutory requirement to promulgate implementing regulations “in a manner that ensures compliance with the emission standards.”



De Minimis Exemption

- **TSCA Title VI:**

- Exempts certain products from the emission standards, such as:
 - Windows that contain less than 5 percent by volume of composite wood products.
 - Exterior and garage doors that are made from NAF or ULEF composite wood products.
 - Exterior and garage doors that contain less than 3 percent by volume of composite wood products.
- Allows EPA to promulgate an exception from the implementing regulations (**but not the emission standards**) for products containing *de minimis* amounts of composite wood products.

- **CARB:**

- Has the same exemptions for windows and exterior and garage doors, but does not have a general *de minimis* exemption.



De Minimis Exemption cont.

- **EPA's Proposal:**

- Does not include a proposed exemption from any of the regulatory requirements for products containing *de minimis* amounts of composite wood products.
- EPA does not have data on the emission levels from “*de minimis*” products.
- EPA is also unaware of any information indicating that such products would meet the statutory emission standards.



Other Provisions

- **Definition of Hardboard**

- **Title VI:** directs EPA to define hardboard, which is exempt from the TSCA Title VI emissions standards.
 - Thin MDF (which is covered by the statute) and some hardboards are not easily distinguishable.
 - *Hardboard* is proposed in the rule to mean a panel composed of cellulosic fibers made by dry or wet forming and hot pressing of a fiber mat, either without resins, or with a phenolic resin (*e.g.*, a phenol-formaldehyde resin) or a resin system in which there is no added formaldehyde as part of the resin cross-linking structure, as determined under one of the following ANSI standards: ANSI A135.4 (Basic Hardboard), ANSI A135.5 (Prefinished Hardboard Paneling), or ANSI A135.6 (Hardboard Siding).

- **Testing Finished Goods**

- EPA is not familiar with a currently-accepted test method for determining whether the panels incorporated into finished goods, such as furniture, are compliant with the emission standards.
- **EPA's Proposal** does not include a provision for testing finished goods.



Import Requirements

- **TSCA Title VI:**

- Directs EPA, in coordination with Customs and other federal agencies, to revise the TSCA § 13 regulations as necessary to ensure compliance, thereby “leveling the playing field” among domestic vs. imported products.

- **TSCA § 13 Regulations:**

- Are promulgated by Customs and Border Protection;
- Require importers to certify that shipments of chemical substances subject to TSCA are in compliance with TSCA; and
- Generally exempt “articles”, but recognize that EPA has the authority to make the requirements applicable to articles.



Import Requirements cont.

- **EPA's Proposal:**

- TSCA § 13 import certification would be required for composite wood products that are articles.
- EPA believes:
 - Most, if not all, products subject to TSCA Title VI would be considered articles.
 - TSCA § 13 import certification is a valuable compliance monitoring tool.
 - Requiring import certification for articles subject to TSCA Title VI would serve as an important reminder of the TSCA Title VI requirements to the importer.



Enforcement

- A violation of any provision of the implementing regulations would be a violation of TSCA.
- TSCA provides for:
 - Civil penalties of up to \$37,500 per violation per day.
 - Criminal penalties for knowing and willful violations.
 - Injunctive relief (court orders compelling compliance with TSCA).



Input We Need From You

- The public comment period began on June 10, 2013 for the proposals.
 - For 60 days, comments on the proposals will be accepted electronically at www.regulations.gov under docket # EPA-HQ-OPPT-2011-0380 (for TPC provisions) or docket # EPA-HQ-OPPT-2012-0018 (for everything else). EPA is planning to extend the comment periods.
 - Comments will also be accepted by hand-delivery or by mail, see the proposals for details.
- EPA requests comment on any and all of the proposed requirements. EPA will carefully consider all comments received and issue a final rule.



Questions?

Thank you!

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