

# Implementing the Formaldehyde Standards for Composite Wood Products Act (TSCA Title VI)

Small Entity Outreach Meeting  
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# Agenda

1. History of the Formaldehyde Standards for Composite Wood Products Act (FSCWA) (TSCA Title VI)
2. Differences between the FSCWA and California Air Resources Board (CARB) Air Toxics Control Measure (ATCM)
3. EPA's Regulatory Options under FSCWA
4. Input we need from you!



# Background

- On July 7, 2010, the Formaldehyde Standards for Composite Wood Products Act (FSCWA) was signed into law.
- The FSCWA became Title VI to the Toxic Substances Control Act (TSCA).
- Title VI establishes formaldehyde emission limits for hardwood plywood, particleboard, and medium-density fiberboard that are identical to the California limits.
- EPA is directed to promulgate implementing regulations for this Act by January 1, 2013.



# Background

- 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.



# Background

- The TSCA Title VI regulations will cover:
  - Sell-through provisions (including a prohibition on stockpiling)
  - Ultra low-emitting formaldehyde resins and no-added formaldehyde-based resins
  - Finished goods
  - Third-party testing and certification
  - Auditing of and reporting for third-party certifiers
  - Chain-of-custody requirements
  - Recordkeeping
  - Labeling
  - Enforcement
  - Laminated products
  - Hardboard
  - Other provisions



# Small Entities Potentially Subject to the Regulation

- Manufacturers
- Importers
- Processors
- Distributors
- Retailers



# 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, 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 may exempt laminated products from the definition of “hardwood plywood.”



# Formaldehyde Emissions Limits

The emissions limits for TSCA Title VI are identical to CARB Phase II

CARB Phase 1 (P1) and Phase 2 (P2) Formaldehyde Emission Standards for Hardwood Plywood (HWPW), Particleboard (PB), and Medium Density Fiberboard (MDF) <sup>1</sup>					
Effective Date	Phase 1 (P1) and Phase 2 (P2) Emission Standards				
	HWPW-Veneer Core (VC)	HWPW-Composite Core (CC)	PB	MDF	Thin MDF
1-1-2009	P1: 0.08 ppm	-----	P1: 0.18 ppm	P1: 0.21 ppm	P1: 0.21 ppm
7-1-2009	-----	P1: 0.08 ppm	-----	-----	-----
1-1-2010	P2: 0.05 ppm	-----	-----	-----	-----
1-1-2011	-----	-----	P2: 0.09 ppm	P2: 0.11 ppm	-----
1-1-2012	-----	-----	-----	-----	P2: 0.13 ppm
7-1-2012	-----	P2: 0.05	-----	-----	-----
(1) Based on the primary test method [ E 1333-96(2002)] in parts per million (ppm)					
<b>Source: CARB</b>					

TSCA Title VI Emission Limits by January 1, 2013	
Product(s)	Emission Limit
HWPW-VC	0.05 ppm
HWPW-CC	0.05 ppm
PB	0.09 ppm
MDF	0.11 ppm
Thin MDF	0.13 ppm



# TSCA Title VI Compared to the CARB ATCM

## Similarities

- The TSCA Title VI formaldehyde **emissions limits**, which must be promulgated by January 1, 2013, mirror those of CARB Phase II.
- As covered in the CARB ATCM, TSCA Title VI requires EPA to develop **supplementary provisions** addressing third-party testing and certification, chain-of-custody requirements (certification of compliance), recordkeeping, labeling, etc.
- EPA has discretion on how to implement those **supplementary provisions**.

## Differences/Potential Differences

- 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.”
- The TSCA Title VI sell-through periods (minimum of 180 days after rule promulgation) will be based on the date of manufacture not the date of sale (as in the CARB ATCM) and will be longer than the CARB ATCM original sell-through periods.
- EPA has the flexibility to provide incentives to manufacturers of products made with ultra low-emitting formaldehyde resins and no-added formaldehyde-based resins .



# EPA Rulemaking Flexibility: Labeling

- CARB requires that manufacturers label each panel or bundle at a minimum with:
  - Manufacturer name;
  - Product lot number or batch produced;
  - A marking to denote that the composite wood product complies with the applicable Phase 1 or 2 emission standards or was made using ULEF resins or no-added formaldehyde based resins; and
  - The ARB assigned number of the approved third party certifier for products other than NAF or ULEF.
- CARB requires that fabricators label their finished goods with a minimum of:
  - Fabricator's name
  - Date the finished good was produced
  - Marking to denote that the product was made with HWPW, PB, or MDF that complies with the applicable Phase 1 or Phase 2 emission standards.
  - Finished goods shall be labeled as having been made with no-added formaldehyde based resins or ULEF resins.
- **Question: How can EPA capitalize on preexisting record keeping and labeling when we design our labeling and record keeping requirements?**



# EPA Rulemaking Flexibility: Chain-of Custody and Recordkeeping

- **CARB ATCM:** manufacturers, for each composite wood product, must include a “statement of compliance” on the bill of lading or invoice with:
  - the CARB assigned number of the approved third-party certifier, if applicable; and
  - a statement that the composite wood products comply with the applicable Phase 1 or Phase 2 emission standards, and, if applicable;
  - whether the products were made using ultra-low emitting formaldehyde resins or no-added formaldehyde based resins.
- CARB requires importers to also provide a statement of compliance and that distributors, fabricators and retailers ensure compliance by maintaining documentation that products are in compliance.
- Manufacturers must keep records at their production facilities for two years including:
  - product information, tracking number, purchaser information, transporter, third-party certification identity, records of non-complying lots or batches and ULEF and NAF related records
- **Question: Do you have concerns that a chain of custody system could cause the release of confidential information related to your supply chain? How can we alleviate these concerns?**



# EPA Rulemaking Flexibility: Sell-Through Provisions

- EPA has the authority to establish by regulation sell-through dates
  - Based on the date of manufacture not the date of sale
  - Date of manufacture must be no earlier than the date 180 days after regulations are promulgated
  - Regulated products manufactured before the designated date shall not be subject to the formaldehyde emission standard requirements
- **Question: Is 180 days an appropriate date for a sell-through period?**



# EPA Rulemaking Flexibility: Stockpiling

- Under TSCA Title VI EPA must prohibit stockpiling
- Stockpiling is defined under TSCA Title VI as:

“[M]anufacturing or purchasing a composite wood product or finished good containing a regulated composite wood product between the date of enactment of the Formaldehyde Standards for Composite Wood Products Act and the date 180 days following the promulgation of the regulations pursuant to this subsection at a rate which is significantly greater (as determined by the Administrator) than the rate at which such product or good was manufactured or purchased during a base period (as determined by the Administrator) ending before the date of enactment of the Formaldehyde Standards for Composite Wood Products Act .”
- **Question: What would be an appropriate reference period for determining whether products are being stockpiled?**



# EPA Rulemaking Flexibility: No Added Formaldehyde and Ultra Low Emitting Formaldehyde Resins

- EPA may reduce the testing requirements for products made with no-added formaldehyde (NAF) or ultra low-emitting formaldehyde (ULEF) resins if manufacturers show that they meet more stringent specified emissions standards.
- A NAF resin may include resins made from soy, polyvinyl acetate or methylene diisocyanate. A ULEF resin may include melamine-urea-formaldehyde resin, phenol formaldehyde resin and resorcinol formaldehyde resin.
- EPA may exempt products from third party certification requirements if the product is made with ULEF or NAF resin and meets more stringent specified emissions standards.
- **Question: Do you use these resins? What other incentives, if any, should we consider?**



# EPA Rulemaking Flexibility: Finished Goods

- The formaldehyde emission standards apply regardless of whether an applicable hardwood plywood, medium-density fiberboard, or particleboard is in the form of an unfinished panel or incorporated into a finished good.
- **Question: Do you have any concerns about the inclusion of finished goods? Do you think there should be a de minimus exemption?**



# EPA Rulemaking Flexibility: Third Party Testing Test Methods

- Compliance with emissions standards will be shown by quarterly tests via test method ASTM E-1333-96 (2002) or, subject to a showing of equivalence by a means established through rulemaking, ASTM D-6007-02.
- Quarterly compliance test results obtained by any test method other than ASTM E-1333-96 (2002) must include a showing of equivalence by means established by EPA.
- Quality control tests shall 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.

## Questions:

- **Are there issues with using these test methods for any of your products?**
- **What factors should be taken into consideration for demonstrating equivalency?**
- **Are there other test methods that you are using to demonstrate compliance?**
- **What frequency for quality control tests and other compliance tests would you recommend?**



# EPA Rulemaking Flexibility: Third-Party Certification (TPC)

- EPA is considering, among other options, requiring TPCs to be audited by an accrediting body (e.g., ANSI)
- EPA's intent is to ensure consistency in the performance of TPCs regardless of where they are located, including if they are overseas
- **Question: Do you have any recommendations for an effective TPC program?**



# EPA Rulemaking Flexibility: Laminated Products

- Under the TSCA Title VI, a laminated product means a product in which a wood veneer is affixed to:
  - a particleboard platform;
  - a medium-density fiberboard platform; or
  - a veneer-core platform;
- And, that is:
  - a component part
  - used in the construction or assembly of a finished good; and
  - produced by the manufacturer or fabricator of the finished good in which the product is incorporated.
- Laminated products will be included as hardwood plywood in the federal law unless EPA decides to exempt them via rulemaking
- EPA can change this definition of laminated product.
- **Question: What are your concerns about the impact of this law on laminated products?**



# EPA Rulemaking Flexibility: Hardboard Definition

- EPA must establish a definition of “hardboard” via regulation.
- Items defined as hardboard are exempt from TSCA Title VI.
- The CARB ATCM defines hardboard as “a composite panel composed of cellulosic fibers, made by dry or wet forming and hot pressing of a fiber mat with or without resins, that complies with one of the following ANSI standards: “Basic Hardboard” (ANSI A135.4-2004), “Prefinished Hardboard Paneling” (ANSI A135.5-2004), or “Hardboard Siding” (ANSI A135.6-2006).”
- Under the CARB ATCM, hardboard is excluded from the definition of a “composite wood product.”
- Under TSCA Title VI, hardboard is exempted from the formaldehyde emission standards.
- **Question: What definition of “hardboard” would you recommend EPA use?**



# EPA Rulemaking Flexibility: *De Minimus* Amounts

- For products and components containing *de minimus* amounts of composite would products, EPA must create an exception for regulatory requirements.
- EPA may not create a *de minimus* exception from the emissions limits themselves
- **Question: What, if any, types of products do you think should be eligible for a de minimus exception to labeling, testing, or other requirements? Why? What unique difficulties would those products present that would justify a de minimus exception?**



Questions?

# Thank you!

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