

Prepublication Copy Notice:

The Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention, signed the following *Federal Register* document on May 17, 2017:

Title: **Compliance Date Extension; Formaldehyde Emission Standards for Composite Wood Products**

Action: Direct Final Rule

FRL: 9962-86

Docket No.: **EPA-HQ-OPPT-2017-0244**

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For further information about the docket and, if applicable, instructions for commenting, please consult the ADDRESSES section in the front of the *Federal Register* document.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 770

[EPA-HQ-OPPT-2017-0244; FRL-9962-86]

RIN 2070-AK35

Compliance Date Extension; Formaldehyde Emission Standards for Composite Wood Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Rule.

SUMMARY: EPA is taking direct final action on a revision to the formaldehyde emission standards for composite wood products final rule, published in the **Federal Register** on December 12, 2016. EPA is publishing this direct final action to extend the Toxic Substances Control Act (TSCA) Title VI final rule compliance dates including: extending the December 12, 2017 date for emission standards, recordkeeping, and labeling provisions until March 22, 2018; extending the December 12, 2018 date for import certification provisions until March 22, 2019; and extending the December 12, 2023 date for provisions applicable to producers of laminated products until March 22, 2024. Additionally, this direct final action will extend the transitional period during which the California Air Resources Board (CARB) Third Party Certifiers (TPC) may certify composite wood products under TSCA Title VI without an accreditation issued by an EPA TSCA Title VI Accreditation Body so long as the TPC remains approved by CARB, is recognized by EPA, and complies with all aspects of the December 12, 2016 final rule. Extension of these compliance dates and the transitional period for CARB

TPCs adds regulatory flexibility for regulated entities, reduces compliance burdens, and helps to prevent disruptions to supply chains.

DATES: This final rule is effective on [*insert date 45 days after date of publication in the **Federal Register***] without further notice, unless EPA receives adverse comment by [*insert date 15 days after date of publication in the **Federal Register***]. If EPA receives adverse comment, the Agency will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2017-0244, is available at <http://www.regulations.gov> or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Erik Winchester, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-6450; email address: winchester.erik@epa.gov.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address:

TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be affected by this direct final rule if you manufacture (including import), sell, supply, offer for sale, test, or work with the certification of hardwood plywood, medium-density fiberboard, particleboard, and/or products containing these composite wood materials in the United States. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Veneer, plywood, and engineered wood product manufacturing (NAICS code 3212).
- Manufactured home (mobile home) manufacturing (NAICS code 321991).
- Prefabricated wood building manufacturing (NAICS code 321992).
- Furniture and related product manufacturing (NAICS code 337).
- Furniture merchant wholesalers (NAICS code 42321).
- Lumber, plywood, millwork, and wood panel merchant wholesalers (NAICS code 42331).
- Other construction material merchant wholesalers (NAICS code 423390), *e.g.*, merchant wholesale distributors of manufactured homes (*i.e.*, mobile homes) and/or prefabricated buildings.
- Furniture stores (NAICS code 4421).
- Building material and supplies dealers (NAICS code 4441).

- Manufactured (mobile) home dealers (NAICS code 45393).
- Motor home manufacturing (NAICS code 336213).
- Travel trailer and camper manufacturing (NAICS code 336214).
- Recreational vehicle (RV) dealers (NAICS code 441210).
- Recreational vehicle merchant wholesalers (NAICS code 423110).
- Engineering services (NAICS code 541330).
- Testing laboratories (NAICS code 541380).
- Administrative management and general management consulting services (NAICS code 541611).
- All other professional, scientific, and technical services (NAICS code 541990).
- All other support services (NAICS code 561990).
- Business associations (NAICS code 813910).
- Professional organizations (NAICS code 813920).

If you have any questions regarding the applicability of this action, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. What Action is the Agency Taking?

EPA shares the concerns of industry stakeholders regarding the time needed to comply with the provisions of the formaldehyde emission standards for composite wood products final rule (89 FR 89674), promulgated on December 12, 2016, and agrees that regulated entities should have at least the same amount of time to comply as initially allotted in the final rule. Therefore, EPA is extending the compliance dates for the December 12, 2016 final rule including: extending the December 12, 2017 date for

emission standards, recordkeeping, and labeling provisions, until March 22, 2018; extending the December 12, 2018 date for import certification provisions until March 22, 2019; and extending the December 12, 2023 date for provisions applicable to producers of laminated products until March 22, 2024. Additionally, this direct final action will extend the CARB TPC transitional period under §770.7(d), which is currently set to end December 12, 2018, until March 22, 2019. EPA believes this action is necessary to provide adequate time, as explained in the December 12, 2016 final rule, for regulated entities to proceed with establishing business relationships with TPCs in order to certify composite wood products for use by downstream entities and prevent substantial disruption to the supply chain.

In addition, to clarify EPA's original intent regarding the compliance dates referenced in the December 12, 2016 final rule, and to better align with the final rule's preamble discussion, the Agency amended the text preceding the compliance dates from "after" to "beginning." EPA intends regulated entities to begin complying with the referenced rule requirements as of the dates listed in the final rule.

EPA is also amending subparagraph §770.15(e) to clarify that TPCs receive recognition after they apply to EPA, not after the conclusion of the transitional period as the codified text currently reads. EPA considers this an editorial change, and does not believe this is a substantive amendment to the codified text.

1. Direct Final Rule. EPA is publishing this direct final rule to allow regulated stakeholders the same amount of time to comply with the provisions of the formaldehyde emission standards for composite wood products final rule (89 FR 89674), promulgated on December 12, 2016, as initially allotted in the final rule. EPA received requests from

the composite wood industry and support from other stakeholders requesting the extension of the compliance dates. These requests came after EPA published a delay of the effective date from February 10, 2017 until March 21, 2017, in the **Federal Register** notice on January 26, 2017, “Delay of Effective Date for 30 Final Regulations Published by EPA between October 28, 2016 and January 17, 2017” (82 FR 8499). The effective date was further delayed until May 22, 2017, in the **Federal Register** notice on March 20, 2017, “Further Delay of Effective Dates for Five Final Regulations Published by EPA between December 12, 2016 and January 17, 2017” (82 FR 14324). EPA believes the extension of the compliance dates and the transitional period will provide panel producers and TPCs with the intended time period to establish their TPC programs and ensure there is no interruption of the supply chain of certified composite wood products to downstream entities (e.g., fabricators, importers, distributors, and retailers).

2. Proposed Rule. EPA believes that this action is non-controversial and does not expect to receive any adverse comments. However, in addition to this Direct Final Rule, elsewhere in this issue of the **Federal Register**, EPA is promulgating the action as a Notice of Proposed Rulemaking. If EPA receives no adverse comment, the Agency will not take further action on the proposed rule and the direct final rule will become effective as provided in this action. If EPA receives relevant adverse comment, the Agency will publish a timely withdrawal in the **Federal Register** informing the public that this direct final action will not take effect. EPA would then address all adverse public comments in a response to comments document in a subsequent final rule, based on the proposed rule.

B. What is the Agency's Authority for Taking this Action?

These regulations are established under authority of Section 601 of TSCA, 15

U.S.C. §2697.

III. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA, 44 U.S.C. 3501 *et seq.*, because it does not create any new reporting or recordkeeping obligations. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2070-0185.

C. Regulatory Flexibility Act (RFA)

The Agency certifies that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. This rule extends, in response to two delays of the rule effective date, the

compliance dates and transitional period for CARB TPCs to reflect the Agency's intended compliance periods post-effective date. This will reduce the burden on TPCs, panel producers, fabricators, importers, distributors, and retailers, because shortening of the compliance period by even a few months makes it more difficult for some of them to establish business relationships, certify product, and distribute certified product into commerce to downstream entities before the December 12, 2017 compliance date. EPA therefore concludes that this action will relieve or have no net regulatory burden for directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This final rule will not impose substantial

direct compliance costs on Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks.

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it does not concern an environmental health risk or safety risk. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As addressed in Unit II.A., this action would not materially alter the final rule as published, and will allow regulated entities the intended time to establish their supply-chain and certification programs under the final rule, post effective date.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

This action is not a “significant energy action” as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the supply, distribution or use of energy.

I. National Technology Transfer and Advancement Act (NTTAA)

This rulemaking does not involve technical standards that would require the consideration of voluntary consensus standards pursuant to NTTAA section 12(d), 15 U.S.C. 272 note.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

EPA has determined that the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). As addressed in Unit II.A., this action would not materially alter the final rule as published, and will allow regulated entities the intended time to establish their supply-chain and certification programs under the final rule, post effective date.

K. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. §804(2).

List of Subjects in 40 CFR Part 770

Environmental protection, Formaldehyde, Incorporation by reference, Reporting and recordkeeping requirements, Third-party certification, Toxic substances, Wood

Dated: May 17, 2017

Louise P. Wise,

Acting Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 770—FORMALDEHYDE STANDARDS FOR COMPOSITE WOOD PRODUCTS

1. The authority citation for Part 770 continues to read as follows:

Authority: 15 U.S.C. §2697.

2. In §770.2, paragraph (a) is revised to read as follows:

§ 770.2 Effective Dates.

(a) This rule is effective May 22, 2017.

* * * * *

3. In §770.2, paragraph (b) is revised to read as follows:

§ 770.2 Effective Dates.

* * * * *

(b) Laboratory and Product ABs that wish to accredit TPCs for TSCA Title VI purposes may apply to EPA beginning May 22, 2017 to become recognized. Laboratory and Product ABs must be recognized by EPA before they begin to provide and at all times while providing TSCA Title VI accreditation services.

* * * * *

4. In §770.2, paragraph (c) is revised to read as follows:

§ 770.2 Effective Dates.

* * * * *

(c) TPCs that are not approved by the California Air Resources Board (CARB) that wish to provide TSCA Title VI certification services may apply to EPA beginning

May 22, 2017 to become recognized. TPCs must be recognized by EPA and comply with all of the applicable requirements of this part before they begin to provide and at all times while providing TSCA Title VI certification services.

* * * * *

5. In §770.2, paragraph (d) is revised to read as follows:

§ 770.2 Effective Dates.

* * * * *

(d) Notwithstanding any other provision of this part, TPCs that are approved by CARB to certify composite wood products have until March 22, 2019 to become accredited by an EPA TSCA Title VI AB(s) pursuant to the requirements of this part. During this two-year transition period, existing CARB-approved TPCs and CARB TPCs approved during this transition period may carry out certification activities under TSCA Title VI, provided that they remain approved by CARB and comply with all aspects of this part other than the requirements of § 770.7(c)(1)(i) and (ii) and (c)(2)(iii) and (iv). After the two-year transition period, CARB-approved TPCs may continue to certify composite wood products under TSCA Title VI provided the TPC maintains its CARB approval, follows the requirements under this part, submits to EPA documentation from CARB supporting their eligibility for reciprocity and has received EPA recognition as an EPA TSCA Title VI TPC. All TPCs that are certifying products as compliant with TSCA Title VI, both during and after the transition period, are subject to enforcement actions for any violations of TSCA Title VI or these regulations.

* * * * *

6. In §770.2, paragraph (e) introductory text, (1), (2), (3), and (4) are revised to read as

follows:

§ 770.2 Effective Dates.

* * * * *

(e) Beginning March 22, 2018, all manufacturers (including importers), fabricators, suppliers, distributors, and retailers of composite wood products, and component parts or finished goods containing these materials, must comply with this part, subject to the following:

(1) Beginning March 22, 2018, laminated product producers must comply with the requirements of this part that are applicable to fabricators.

(2) Beginning March 22, 2024, producers of laminated products must comply with the requirements of this part that are applicable to hardwood plywood panel producers (in addition to the requirements of this part that are applicable to fabricators) except as provided at § 770.4.

(3) Beginning March 22, 2024, producers of laminated products that, as provided at § 770.4, are exempt from the definition of “hardwood plywood” must comply with the recordkeeping requirements in § 770.40(c) and (d) (in addition to the requirements of this part that are applicable to fabricators)

(4) Composite wood products manufactured (including imported) before March 22, 2018 may be sold, supplied, offered for sale, or used to fabricate component parts or finished goods at any time.

* * * * *

7. in §770.3 the term “Laminated Product Producer” is revised to read as follows:

§ 770.3 Definitions.

* * * * *

Laminated Product Producer means a manufacturing plant or other facility that manufactures (excluding facilities that solely import products) laminated products on the premises. Laminated product producers are fabricators and, beginning March 22, 2024, laminated product producers are also hardwood plywood panel producers except as provided at §770.4.

* * * * *

8. In §770.7, paragraph (d)(1) introductory text is revised to read as follows:

§ 770.7 Third-party certification.

* * * * *

(d) *Reciprocity for Third-Party Certifiers Approved by the California Air Resources Board (CARB) – (1) During Transitional Period.* The transitional period is defined as the period beginning on December 12, 2016 and ending on March 22, 2019. TPCs already approved by CARB and TPCs subsequently approved by CARB during the transition period must apply for EPA recognition in accordance with § 770.8 before they can certify any products under this part. Once recognized by EPA, CARB-approved TPCs become EPA TSCA Title VI TPCs and may certify composite wood products under TSCA Title VI until March 22, 2019 as long as they:

* * * * *

9. In §770.10, paragraph (a) is revised to read as follows:

§ 770.10 Formaldehyde emission standards.

(a) Except as otherwise provided in this part, the emission standards in this section apply to composite wood products sold, supplied, offered for sale, or

manufactured (including imported) beginning March 22, 2018 in the United States. These emission standards apply regardless of whether the composite wood product is in the form of a panel, a component part, or incorporated into a finished good.

* * * * *

10. In §770.12, paragraph (a) is revised to read as follows:

§ 770.12 Stockpiling.

(a) The sale of stockpiled inventory of composite wood products, whether in the form of panels or incorporated into component parts or finished goods, is prohibited beginning March 22, 2018.

* * * * *

11. In §770.15, paragraph (a) is revised to read as follows:

§ 770.15 Composite wood product certification.

(a) Beginning March 22, 2018, only certified composite wood products, whether in the form of panels or incorporated into component parts or finished goods, are permitted to be sold, supplied, offered for sale, or manufactured (including imported) in the United States, unless the product is specifically exempted by this part.

* * * * *

12. In §770.15, paragraph (e) is revised to read as follows:

§ 770.15 Composite wood product certification.

* * * * *

(e) If a product is certified by a CARB-approved TPC that is also recognized by EPA, the product will also be considered certified under TSCA Title VI until March 22, 2019 after which the TPC needs to comply with all the requirements of this part as an

EPA TSCA Title VI TPC under Section 770.7(d) in order for the product to remain certified.

* * * * *

13. In §770.30, paragraph (b) introductory text is revised to read as follows:

§ 770.30 Importers, fabricators, distributors, and retailers.

* * * * *

(b) Importers must demonstrate that they have taken reasonable precautions by maintaining, for three years, bills of lading, invoices, or comparable documents that include a written statement from the supplier that the composite wood products, component parts, or finished goods are TSCA Title VI compliant or were produced before March 22, 2018 and by ensuring the following records are made available to EPA within 30 calendar days of request:

* * * * *

14. In §770.30, paragraph (c) is revised to read as follows:

§ 770.30 Importers, fabricators, distributors, and retailers.

* * * * *

(c) Fabricators, distributors, and retailers must demonstrate that they have taken reasonable precautions by obtaining bills of lading, invoices, or comparable documents that include a written statement from the supplier that the composite wood products, component parts, or finished goods are TSCA Title VI compliant or that the composite wood products were produced before March 22, 2018.

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15. In §770.30, paragraph (d) is revised to read as follows:

§ 770.30 Importers, fabricators, distributors, and retailers.

* * * * *

(d) Beginning March 22, 2019, importers of articles that are regulated composite wood products, or articles that contain regulated composite wood products, must 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.

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