



June 8, 2017

Mr. Erik Winchester
National Program Chemicals Division (NPCD)
Office of Pollution Prevention and Toxics (OPPT)
C/O Document Control Office (7407M)
Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460-0001

RE: Formaldehyde Emission Standards for Composite Wood Products; Compliance Date Extension – Docket No. EPA-HQ-OPPT-2017-0244-0001; FRL-0062-85

Dear Mr. Winchester:

I am writing for the International Wood Products Association (IWPA) to provide comments to the Environmental Protection Agency on the Formaldehyde Emission Standards for Composite Wood Products; Compliance Date Extension, 82 Fed. Reg. 23769 (May 24, 2017).

IWPA represents the importers of wood and wood products, the offshore and domestic manufacturers who utilize these products and the service providers that facilitate trade. Our members are typically small businesses and include Third Party Certifiers (TPCs). The wood products industry is increasingly global in scope. A finished wood product in today's global marketplace will be sourced from multiple locations, domestic and global. Any rule to regulate formaldehyde emissions from composite wood products must take that complexity and global supply chain into account.

IWPA is not a testing organization and will derive no revenue from either the EPA or CARB composite wood regulations. Rather, we seek to ensure that importers of wood products and the domestic manufacturers who incorporate these products into their finished goods can comply with this new complex regulatory regime. We are grateful that the EPA has taken steps to address some of our concerns that have been raised about this rule, which will have far reaching consequences for many of our members.

I. IWPA Supports the Direct Final Rule on Compliance Date Extension

IWPA supports EPA's issuance of a Direct Final Rule (Formaldehyde Emission Standards for Composite Wood Products; Compliance Date Extension, 82 Fed. Reg. 23735 (May 24, 2017)) to extend the Toxic Substances Control Act (TSCA) Title VI final rule compliance dates as well as the

transitional period during which CARB TPCs 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 final rule.

We are pleased that EPA took time to review the Formaldehyde Emission Standards for Composite Wood Products regulation and delayed the effective date of the final rule. However, we are deeply concerned that failure to extend the internal compliance dates as proposed by the Direct Final Rule will have considerable adverse effects on regulated industries. As such, we support this Direct Final Rule.

If the internal compliance dates are not extended, EPA will have considerably reduced the time available for Third-Party Certifiers (TPCs), panel manufacturers, fabricators, importers, distributors and retailers to obtain compliance by the mandated date of December 12, 2017, creating a substantially increased regulatory burden. Importantly, in its March 20, 2017 final rule further delaying the effective date, EPA changed the effective date of the rule but did *not* revise any of the implementation dates for all other provisions of the rule.

Under this rule, EPA must first recognize Product and Laboratory Accreditation Bodies, only then can a Third-Party Certifier apply for and be recognized by EPA. Panel manufacturers must have an EPA-recognized Third-Party Certifier certify its production processes and only when that task is complete can it be approved to manufacture EPA / TSCA compliant wood composite panels. Covered products must be compliant and labeled by December 12, 2017 to be sold in the U.S. In turn, fabricators, importers, distributors and retailers must wait until these steps are complete to be able to supply compliant products to the marketplace.

Also under the regulation, beginning December 12, 2017, one year after the regulation's original effective date, all covered wood products must be labeled as TSCA compliant. While we initially communicated our concerns about this tight one-year timeframe to EPA staff, the two delays have eliminated four months before the process can begin. We are concerned that the shrinking timeframe combined with limited staffing at EPA to process applications, finite TPC capacity, and the large number of composite wood product producers that must be visited will make it nearly impossible for U.S. businesses to bring their supply chains into compliance. This Direct Final Rule will address these concerns.

II. Outstanding Issues that EPA Must Address Through Subsequent Actions to Ease Regulatory Burden

Non-Complying Lots: We were pleased to that on June 7th, EPA updated its series of Frequently Asked Questions on this regulation to address concerns that IWPA and other industry groups have raised about downstream notification of non-complying panel lots (FAQs 16-18). The new FAQs clarify that this section applies only to composite wood panels. Panels that have been incorporated into component parts or finished goods are not subject to the requirements discussed in these questions. While this is helpful and provides additional certainty to fabricators, we are hopeful that this matter can be incorporated into the regulation through a future Direct Final Rule.

Early Compliance with Labeling Requirement: We respectfully request that EPA allow for the voluntary truthful labeling of compliant products prior to the date at which labeling is required. While at first glance it may appear that the final rule will require a rather simple change over to new *TSCA Title VI Compliant* labels, in fact the precipitate change in labeling – prohibited on March 21, 2018 (if the Direct Final Rule takes effect) and required on March 22, 2018 – would cause untold confusion in the marketplace and unnecessary burdens for panel producers, fabricators, distributors and retailers who seek to roll-out new TSCA-compliant SKUs and manage their inventories to address potential seasonal disruptions, while voluntarily and legitimately complying with the new regulation *prior to* the effective date.

There is no statutory requirement for the regulation’s early labeling prohibition. The statute directs EPA to promulgate regulations regarding labeling, but addresses timing of the labeling in the following language:

(B) IMPLEMENTING REGULATIONS – the regulations promulgated under this subsection shall – (II) not require any labeling or testing of composite wood products or finished goods containing regulated composite wood products manufactured before the designated date of manufacturer.

The statutory language is very logical. Regulated entities should not be required to label before the underlying regulations take effect. However, the statutory prohibition on the EPA not requiring such labeling has morphed into a regulatory prohibition on manufacturers from labeling. This was not contemplated by the Congress and is not supported by a close reading of the Statute.

Import Certification: This regulation marks the first time EPA has applied the import certification requirements of TSCA to “articles.”¹ Until now articles containing regulated chemicals have generally been exempt from TSCA. This unprecedented shift results in costly double regulation for composite wood product imports, which are already subject to the formaldehyde emission standards and the associated, labeling, testing, Third Party Certification, chain-of-custody, recordkeeping, and reporting requirements. This additional burden is unnecessary and provides no added public safety benefit.

When this regulation was being developed, EPA’s weak justification was that import certifications are a potential “reminder” to importers. With every single imported shipment already required to meet labeling and documentation requirements, there is *no* justification for the conclusion that importers need such a reminder.

EPA also refers to import certification as a “compliance monitoring tool” -- this negates the fact that typically this tool is only used for bulk chemicals and mixtures of toxic chemicals that are *not* independently subject to other compliance monitoring. In contrast, composite wood products are engaged in significant compliance monitoring, Third Party Certification, labeling and reporting. In addition, EPA has never before applied import certification requirements to articles and should not have made such a major change to this well-established policy without a dedicated review.

Under this regulation, importers (or their authorized agents) must certify either that each shipment is subject to TSCA and complies with all applicable rules and orders thereunder (positive certification), or that the chemical shipment is not subject to TSCA (negative certification). This statement must be on or attached to a commercial invoice or entry document belonging to the

imported shipment. This requires costly coordination with importing agents and brokers, revision of international forms and documents, the submission of additional paperwork, adjustments to internal processes, and training – all on top of the already substantial requirements of the broader Formaldehyde Emission Standards for Composite Wood Products regulation. In addition, CBP is now required to review a flood of new import certifications. For those products exempted under the rule it is not clear if they would also be forced to do a negative certification. That additional requirement could snare scores of companies otherwise exempted from the rule. Such a result will only lead to more confusion, unnecessary paperwork, and costly analysis for each entry.

Laminated Products Exemption: EPA disregarded their legislative mandate to evaluate laminated products by ignoring available and published data suggesting that finished furniture dramatically reduces the emission profile of laminated products used as component parts of finished goods. In the final rule, EPA gave no credit or recognition to the value-added process of finished furniture. It should be noted that EPA has discretion to exempt laminated products based on published, available, and relevant information asserting such an exemption is justified. Industry stakeholders submitted to the docket data that suggest an exemption is warranted and should be included in the final rule.

Thank you for this opportunity to share IWPA's perspective on this matter. Please contact Joe O'Donnell (joe@iwpawood.org) or myself (cindy@iwpawood.org) if you have questions or need additional information.

Respectfully submitted,



Cindy L. Squires, Esq.
Executive Director

ⁱ¹ TSCA defines "article" as "a manufactured item (1) which is formed to a specific shape or design during manufacture, (2) which has end-use function(s) depending in whole or in part upon its shape or design during end use, and (3) which has either no change of chemical composition during its end use or only those changes of composition that have no commercial purpose separate from that of an article, and that results from a chemical reaction that occurs upon end use of other chemical substances, mixtures, or articles." "Articles" that contain chemical substances which are not intended to be removed and have no separate commercial purpose have until now been generally exempt from TSCA.