



Regarding: Docket ID number EPA-HQ-OPPT-2012-0018

October 4, 2013

Ms. Lynn Vendinello
Chief, Fibers and Organics Branch
National Program Chemicals Division (NPCD)
Office of Pollution Prevention and Toxics (OPPT)
C/O Document Control Office (7407M)
Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460-0001

Regarding: Docket ID number EPA-HQ-OPPT-2012-0018

Dear Ms. Vendinello,

We thank the EPA for seeking industry commentary.

The following comments on the proposed formaldehyde regulations (docket EPA-HQ-OPPT-2012-0018) are provided by the National Wood Flooring Association (NWFA).

Please note this is the **FIRST of FOUR** documents provided by the NWFA regarding the proposed regulations. These documents are:

- 1) **Docket ID number EPA-HQ-OPPT-2012-0018: Comments on the entire primary regulation**
- 2) Docket ID number EPA-HQ-OPPT-2012-0018: Comments specific to the Inclusion of Bamboo Flooring
- 3) Docket ID number EPA-HQ-OPPT-2012-0018: Comments specific to the Inclusion of Lumber Core Flooring
- 4) Docket ID number EPA-HQ-OPPT-2011-0380-0001: Comments on the regulations specific to Third Party Certifiers

Background

The National Wood Flooring Association (NWFA) is a not-for-profit trade association representing all segments of the hardwood flooring industry, including manufacturers, distributors, retailers, installers, inspectors, importers, exporters, service providers, and consultants. The NWFA represents more than 2600 small, medium and large businesses in the US and overseas, spanning the entire hardwood flooring supply



chain. Members include manufacturers (both what the new regulation would define as a manufacturer as well as fabricators and laminators), as well as importers, distributors, and retailers, all of whom will face increased costs as a result of these proposed regulations as well as installers, inspectors and members of associated industries who will be affected if fewer floors are sold.

The NWFA is not a testing or certification organization and will not derive any revenue from the industry as a result of these regulations. The NWFA would be pleased to work with the EPA in industry outreach to help educate our membership regarding their final responsibilities under the new regulations.

The US hardwood industry employs millions of families throughout the country, representing tens of thousands of jobs in every state. Because many flooring companies are small family operations or identify themselves in several categories of the market it is difficult to estimate exact numbers of companies in each market segment who will be impacted. However we estimate there are 10,000-11,000 installers and contractors, nearly 10,000 retailers, and several hundred manufacturers of all sizes from billion dollar companies to tiny custom shops. All of these companies will face increased production costs, increased record keeping burdens, reduced market opportunities both at home and for export, and potentially increased liability from both nuisance lawsuits and market confusion. All of these costs, of course, must be passed along to consumers in a highly competitive flooring market where engineered and laminate flooring competes with tile, solid wood, vinyl and carpet.

Concerns in Brief—the Significant Expansions and Deviations from the current CARB Program

We are very concerned that this proposed regulation means that engineered wood flooring could be labeled a “toxic product.” Wood is one of the most environmentally positive building products available to the American consumer and is prized for its healthy contributions to our homes and offices. It is naturally produced, lasts for centuries unlike other surface materials such as carpeting which is often chemically produced, not biodegradable and must be frequently replaced, clogging landfills. The idea that wood products should be in anyway considered toxic is distressing and painful for us to consider. The end impact of this regulation is likely to be a significant decrease in the marketability of both engineered wood flooring and laminate flooring with an HDF core and a further “commoditization” of the market.

The NWFA appreciates the EPA’s desire to protect the public health, but hopes regulations can be structured in such a way as to prevent unnecessary burdens on an industry still recovering economically.

The NWFA feels very strongly that any expansion over what the California Air Reform Bill (CARB) currently covers must be investigated further. We urge an adoption of regulations that closely mirror the current CARB program.

In short, the three most significant areas of concern to the NWFA membership are:

1. The extremely short time period in which all companies must become certified. We propose, at a minimum, a three year phased-in schedule.



2. The lack of any protection of confidential business information. Since the EPA has determine that a compliant product is safe, the fact that a product is compliant (or produced with compliant material) is the ONLY data that needs to be publicly accessible. We oppose any release of confidential business information regarding supply chains, production conditions/data, testing results, etc., to any one other than the company's own TPC, or as appropriate, to the proper government agencies under confidential conditions. We encourage the use of a simplified label to reduce market/consumer confusion and to help ensure business confidentiality.

3. The inclusion of downstream fabricators who would now face a double certification burden and the need to comply with a certification program designed for large plywood, MDF and particleboard facilities rather than smaller complicated and customized production. We oppose the expansion of the certification program from CARB's current coverage. However, **if and only if**, in the EPA's judgment, the program **must** to be expanded, we ask that it be done as a separate regulation to avoid shoe-horning very distinct production conditions into a program designed for large volume commodity manufacturing. It is necessary that the EPA customize procedures for the downstream production which varies so widely from industry to industry and mostly consists of small businesses. We further ask for time to provide evidence regarding the appropriate exclusion of certain types of production which, by their very nature, would not permit emissions above what has been mandated by legislation.

We have expanded on these concerns in detail below.

Additionally, we have multiple comments which we have also provided below. As with all of our comment documents, we have done our best to provide comments at every point the EPA has requested. We reference each concern/comment with the page number of the regulations as listed in the Federal Register / Vol. 78, No. 111 / Monday, June 10, 2013.

Please note that the following comments are listed in numerical order (based on page number) rather than priority. Black font is reference text and NWFA Comments are in blue font.

Note that for the original reference, some text has been truncated slightly (such edits are indicated) for space and ease of reading.

We appreciate the EPA seeking industry commentary and stand ready to provide further information as required. Thank you,

Submitted on behalf of the NWFA Government Relations Committee and its Taskforce on the EPA's Formaldehyde Standards for Composite Wood Products by:

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p. 34825

Issue: Raised Panel Question

ORIGINAL REFERENCE: EPA is proposing to define panel as a flat or raised piece of composite wood. Raised panels (e.g., raised panel cabinet doors) are specifically included in this proposed definition because they can be produced using a similar manufacturing procedure as flat panels, and have a similar potential to emit formaldehyde. ...EPA requests comment on test method limitations and the extent to which they should affect the definition of the term “panel.”

NWFA COMMENT: The NWFA membership does not have many members who produce or sell a raised panel product. The logic would be that yes, a raised panel utilizing MDF or plywood or other glued cores/platforms would be the same as if it was an absolutely flat panel. Therefore inclusion is logical on that basis.

However the NWFA does not understand the logic of including raised panels and flat panels of plywood but not including curved plywood pieces.

That said, **the NWFA generally opposes the expansion of the program beyond CARB and feels that all downstream manufacturers (fabricators and laminators), regardless of the flat/curved/raised shape of their final product should NOT be included in the certification process**, rather they should simply be required to use a certified core.

If the final ruling does include downstream manufacturing, as we hope it will not, we feel that raised panel producers, as well as flat panel producers should have extended phased-in period (see our comments in Timeline) to achieve independent certification.



p. 34826: HIGH PRIORITY ISSUE Issue: Fabricator/Laminator Inclusion

ORIGINAL REFERENCE: A 2003 Composite Panel Association (CPA) technical bulletin presents information on formaldehyde emission reductions resulting from the application of different types of laminates (e.g., vinyl, paper, melamine, polyethylene) and coatings (e.g., acrylate, acrylic, polyurethane) (Ref. 16). According to the bulletin, documented emission reductions ranged from approximately 50% to 95% compared with unlaminated or uncoated products. However, the technical bulletin does not present emission reduction data for wood veneer laminates. The bulletin notes that wood veneer laminates have been shown to be effective barriers for some volatile organic compounds (VOCs) but have only low to moderate effectiveness as a barrier for formaldehyde, depending on the type of wood veneer used. This may be related to the porosity of the wood veneer, since according to the technical bulletin, the effectiveness of an emission barrier is determined by its basic permeability or porosity, as well as the integrity of the laminate or coating.

Some woods are more porous than others. In addition, the technical bulletin points out that wood veneers are frequently applied to particleboard and MDF using ureaformaldehyde adhesives, and these adhesives create the potential for another source of formaldehyde emissions. EPA requests comments, information, and data on the formaldehyde emissions of wood veneered laminated products, particularly relative to the emissions of comparable hardwood plywood products that are not considered laminated products under the CARB ATCM.

NWFA COMMENT: The NWFA STRONGLY objects to the expansion of this program beyond the current CARB system and opposes the inclusion of downstream secondary manufacturers (fabricators and laminators) already utilizing certified cores or appropriate lumber/special cores into the certification program.

Although the NWFA feels that including downstream production is inappropriate for companies of all sizes, we further note that it most certainly unduly penalizes small and medium sized manufacturers. This inclusion far exceeds the CARB regulations, is not specifically mandated by the legislation, and the NWFA believe significant further study by the EPA, OMB, and SBA must be done before so broadly expanding the regulatory reach.

We note that in the dissenting view (<http://www.gpo.gov/fdsys/pkg/CRPT-111hrpt509/html/CRPT-111hrpt509-pt1.htm>) on the proposed statute, members of Congress stated:

The bill would also require EPA to issue the mandated emission standards regardless of whether they ultimately prove technically feasible and affordable. Congress lacks experience regarding the workability of these standards in the real world...the bill requires EPA to promulgate the standards without making a determination that they are technically feasible and that compliance is not prohibitively expensive.It does not make sense to impose a standard which has not been "road tested" and that industry potentially cannot meet. Nor does it make sense to set a standard that, while technically feasible to meet, imposes costs high enough to drive manufacturers out of business. This is especially true here because, as explained above, the standards rest on a shaky, overly conservative, scientific foundation.



We concur with this view and note that if the inclusion of an entire industry segment is not specifically mandated, and it is NOT, then they should not be pulled into this program without extensive additional research on both the express need for that production to be certified and the economic impact on that industry. The EPA's own comments state that although it is inclined to include laminators, it has found no research to justify its inclusion. Therefore, at an absolute minimum, any such expansion should be done as a separate regulation to customize the procedures as appropriate for secondary manufacturing.

Mandating the use of certified core and the accompanying record keeping burden is going to be sufficiently expensive and difficult for these newcomers to the regulation to endure. Further there is still insufficient overall testing capacity and oversight options. The more production requiring certification all at once, the worse the process is going to be for all involved. Also many companies who might want to take advantage of an NAF exemption (if they would otherwise be forced into permanent and expensive TPC oversight) will need time to study options and convert their production. For all these reasons and more, since the EPA is not mandated to immediately (if ever) specifically include secondary manufacturers, the NWFA urges their exemption from this specific regulation.

In detail, the NWFA notes:

1. Our base position is that all secondary manufacturers/downstream fabricators/laminators should be excluded from this current regulation.

The inclusion of downstream producers goes beyond the proven existing CARB standard nor is it specifically mandated by the legislation. The NWFA believes significant further study by the EPA, OMB, and SBA must be done before so broadly expanding the regulatory reach. Therefore the NWFA objects to the inclusion into the certification process of any/all secondary manufacturers (downstream fabricators and laminators) of engineered flooring who utilize an appropriate core (the NWFA considers an appropriate core either a properly certified plywood, particleboard or HDF core, or a lumber/special core) as this radically goes beyond CARB and the true impact has not been fully considered.

The goal of this regulation is to reduce formaldehyde emissions from composite wood products—not place unnecessary regulatory burdens on thousands of US companies or provide benefits to a select few. Nor should these regulations provide undue favor to other industries or hurt the American export market.

The NWFA believes this regulation, if enacted as proposed, will lead to a decrease in the use of composite wood products, by the end consumer because of the increase costs of such products. This in turn would lead to the reduction or elimination of a great deal of domestic manufacturing. As put on record at the International Trade Commission in a recent dumping case, engineered flooring competes against many other types of flooring surfaces, including non-wood industries such as carpet, vinyl, tile and stone. By placing new costs and regulations on the wood flooring industry, the government is providing (unintended) benefits to those non wood industries. The market for surface coverings is very finely balanced and this new burden could potentially tip the scales in favor of non wood products. We believe the medium, even short term result of this new regulation will be the closure of many small and medium sized facilities and the resulting loss of jobs.



We also note that if the company is not vertically integrated to the degree that it manufactures its own cores, it must purchase certified cores, and then pay for a second testing process for the lamination; unfairly penalizing those who are not vertically integrated and giving the larger vertically integrated companies a marked financial advantage. This double testing is cost prohibitive and unduly burdensome. Additionally, this double testing will discourage new entrants into the market place because of the high cost of doing business.

As noted, this regulation will put the greatest burden on small manufacturers. A company that produces 1000ft² of custom flooring will be forced to consider that production a “lot” volume, and it will face the same fixed testing costs as a company producing a 100,000 ft² run.

We also note again that this regulation will greatly impact not just the small manufacturer, but also the small specialty store. Many small independent retailers make their reputation on being “different from the big guys.” If they cannot afford custom production, or if their record keeping burden becomes too great, they will also become extinct.

The EPA has stated that they are required by Congress to cover downstream production unless it can be shown that such products would not exceed the emission level. The industry asks for time to do studies to show that downstream flooring production should be exempted and if they cannot do so, to help design regulations that are appropriate for our distinct production conditions.

2. If the EPA believes secondary manufacturers/fabricators/laminators should be included in a certification program, then such manufacturers should be covered under a separate program.

At a minimum, the NWFA believes that the EPA’s initial program should NOT exceed the program established by CARB. If the EPA wishes to expand the certification system, it should be through an additional completely distinct regulation, appropriately developed and customized for the downstream manufacturing industry. Such a program could include options for self-certification, cover NAF exemptions, establish appropriate lot size definitions for small manufacturers, solve certain labeling concerns, etc. Trying to create a “one size fits all” program is both inappropriate and unnecessary.

The CARB program is working and forcefully expanding it beyond its current coverage will result in disastrous unintended consequences. If it is necessary to put government oversight on downstream manufacturers, let us do so under a system that is properly designed for maximum benefits with minimum costs and confusion.

We appreciate the efforts of the EPA and the statute to protect consumers. We understand that the EPA has been charged by Congress a Federal formaldehyde regulation using the limits that are published in the CARB ATCM. However we do not believe sufficient study on the real impact of downstream products that contain composite wood has been done to justify the effort to stretch this regulation down to the smallest product.



Consider first that the level of formaldehyde in the air from composite wood products is a function of three factors:

1. The site conditions (size of the space, circulation of air and temperature),
2. The amount of product utilized; and
3. The level of formaldehyde emitting from the product.

Government cannot regulate the first factor, the site conditions and regarding the second factor, it would be impossible to set applicable limits for the consumer and enforce them.

So logically, the only method available to regulate is the third. However, regulating the third factor in order to protect air quality when the regulations cannot take into account the other two factors can easily result in either an overly inclusive or overly exclusive law. The EPA should therefore err on the side of less immediate new regulation while further studies are done regarding the need to expand beyond the current CARB program.

We are all aware of the issue of the FEMA mobile homes, which were compact self-contained spaces with little air circulation built extensively of non regulated composite wood products without significant surface barriers (such as veneer or finishes), i.e. a perfect storm of all three factors which drastically affect air quality. We would suggest that they are not the appropriate example to justify imposing new regulations on multiple industries of secondary manufacturers.

Creating a separate standard could help resolve concerns that are outlined in greater detail later in this document such as the problems with “lot” definitions, volume testing requirements, the grouping of products, and many more. This current regulation is designed for primary manufacturers doing large volume production of similar products. If it is necessary to cover secondary manufacturers, they should be done under regulations designed to cover their purchase and downstream processing of primary panels, not under regulations designed for the production of a primary panel itself.

For example, one option the NWFA requests that the EPA consider is developing a process by which a secondary manufacturer could self-certify. Such a process would be designed to be compliant with EPA standards and subject to its approval. In some situations, it could possibly be done with specific and limited TPC oversight. This would circumvent the anticipated high burden that the double certification will create by allowing a company who has a demonstrable capacity to handle certification itself to do so. This would lessen the burden that these regulations are placing on producers.

We also encourage a separate regulation so the NAF exemption option can be more fully developed. We also encourage a separate regulation so the EPA can establish for small manufacturers appropriate lot size definitions and testing schedules.

Finally, as noted, the EPA should allow time for industry to provide data and studies that show certain production conditions should be rightly exempted from further oversight and/or help design an appropriate certification system.



3. If some secondary manufacturers/fabricators/laminators are immediately included in the current regulation, then all factory finished material should be excluded.

If the EPA insists upon the immediate inclusion of downstream manufacturers, the NWFA would request the clear exclusion of those companies providing prefinished (factory finished) engineered flooring. All testing results support the fact that the top finishes virtually eliminate core emissions.

Among other studies, the EPA analyzed information from a 2003 Composite Panel Association (“CPA”) technical bulletin. That study revealed that the application of a paper laminate **or coatings** (i.e., acrylate, acrylic, polyurethane) reduced emissions 50-95% compared with uncoated or unlaminated products.

In the current market, retailers and manufacturers are seeking to increase scratch resistance and warranty lengths to be more competitive. As a result, factory finish coatings are often multi-component (such as a scratch resistant coating to protect the wood and clear polyurethane for shine) and all involve the application of multiple layers. Factory finishing is cured immediately (most commonly under a UV light), sealing the surface.

The EPA’s research states that while the application of some wood veneers may only show a low to moderate reduction of formaldehyde emissions from the core (but still a reduction, we note), a review of the CPA bulletin demonstrates that studies found that the application of a two component polyurethane coating or a UV cured acrylate uniformly reduces emissions by 80-95%. The CPA technical publication cited by the EPA states

“the importance of finishes and laminates in acting as barriers to limit formaldehyde emissions from unfinished products is widely recognized. For example, in the German E1 guidelines, uncoated wood panels must not exceed a specific formaldehyde limit when the product is evaluated in a Large Test Chamber. However, when unfinished composite wood panels are destined to be finished with a very specific list of coatings or laminates, the substrate can meet a substantially higher emission limit.”
Emphasis added.

We also offer this citation to support the specific exemption of factory finished flooring:

Emission levels are always highest immediately after manufacturing of the board and quickly drop as the board ages. Average emission levels from unfinished boards can drop by about 25% after the first month, and are usually half the initial amount in about six months or less. Within a year levels have decayed to approximate equilibrium with background ambient levels.

Effective barriers can reduce emission levels by 95% or more. *Scientific Equipment and Furniture Association (SEFA)*

<http://www.sefalabs.com/i4a/pages/index.cfm?pageID=3394>



We believe that a factory finished floor, by its very production methods, offers no risk of excessive emissions to the general public. In fact, we compare the conditions in a home using such a product to common work place facilities.

Hair salons, nail salons, mortuaries, factories which use formaldehyde based glue, etc. are well known users of formaldehyde based products. According to OSHA (<https://www.osha.gov/SLTC/hairsalons/>), work places are permitted air quality containing formaldehyde emissions of 0.75ppm per 8 hour shift. Each day, new products are glued, new bodies embalmed, etc. so the air quality is not improving and emissions are not reducing in quantity or dissipating over time.

On the other hand, a couch or wood floor must contain composite wood products that test initially with less than 0.05 ppm emissions (that is the amount emitting from the product, not the resultant effect on the air quality) emitting from the core (0.05ppm is 15 times less than the air quality permitted by OSHA). The core forming the couch or wood floor is then further encased in fabrics, veneer and/or a factory finish, all of which the EPA's source states has been proven to seal in the emissions. The glue in the couch or wood floor is initially used in the manufacture of the composite core and possibly in the finishing process but is not used thereafter. The purchaser of the couch or wood floor is not continually exposed to new sources of formaldehyde in its liquid or dried form as are workers who use formaldehyde in their every day business.

We all recognize that formaldehyde emissions dissipate, if they are not constantly renewed by new input as they would be at a nail salon. Pursuant to the testing cited by the EPA, the formaldehyde emissions from a composite wood product dissipate with a half life of seven months (plus or minus based on the site conditions). The possible actual effect on the air quality in the actual home from the floor or couch under discussion that was emitting a 0.05ppm at the time the core is manufactured are not even remotely near the 0.75ppm air quality deemed safe by OSHA for workers who are exposed to fresh sources of formaldehyde on a daily basis. Yet the EPA is seeking to treat a couch or a wood floor, as a toxic chemical requiring expensive and burdensome independent certification and tracking.

As an alternative, if the EPA still wishes to consider distinct regulations on secondary production that includes factory finished material, the EPA should establish guidelines for minimum required amounts for finishing and acceptable coatings which when applied to an appropriate composite core wood products will exempt them from the certification requirements, including but not limited to factory finished composite wood flooring. We request time for industry to provide data and studies demonstrating factory finished flooring should be rightly exempted from further oversight. We discourage the immediate expansion from CARB's coverage to factory finished flooring without hard data to support the absolute need to do so, particularly since there is acknowledged studies supporting the value factory finishing has in blocking emissions.

Finally, under any and all conditions, the NWFA requests an expanded timeline to allow for companies newly covered to comply with such regulations.



4. If some secondary manufacturers/fabricators/laminators are immediately included in the current regulation, production with thicker veneer should be excluded.

The NWFA notes that the EPA's research indicates that only thin veneers of wood or only veneers of certain species are potentially of a concern. Therefore engineered flooring produced a face veneer of 2mm or thicker would provide a sufficient barrier to any harmful emission level, and without question, such a floor with a factory finished coating on the surface should be exempt, based on the EPA's own studies.

If the EPA feels that these studies are insufficient, we ask that the EPA allow time for industry to provide data and studies that show certain production species of veneers or certain thicknesses of veneers should be rightly exempted from further oversight. We discourage the immediate expansion from CARB's coverage to secondary manufacturers without hard data to support the absolute need to do so (rather than moving forward based on the lack of sufficient data discouraging it.)

Engineered flooring comes in many species, some possibly more porous than others, some certainly containing more naturally occurring formaldehyde than others, and certainly in a wide range of thicknesses and production types. The NWFA would argue that the EPA cannot rely exclusively on the CPA report to require thousands of downstream manufacturers to go through expensive certification. If further research shows that certain species, thicknesses, production conditions, or prefinishing methods reduce equal formaldehyde emissions differently, then shouldn't there be exclusions for species, thicknesses, production conditions, or prefinishing methods that reduce emissions?

All stakeholders recognize that the goal is to reduce formaldehyde emissions from composite wood products—not place unnecessary regulatory burdens on thousands of US companies. The science that leads for the inclusion of all these items should be outlined so companies/associations have a chance to respond.

We would ask that any inclusion of fabricators/laminators in the certification process be, at a minimum, developed as a separate regulation which would allow the industry time to provide studies that would increase the exemptions and develop any necessary logical procedures. We also again encourage that any immediate expansion over CARB come through a phased-in timeline for newly covered companies.

5. If some secondary manufacturers/fabricators/laminators are immediately included in the current regulation, the EPA must consider the impact on small businesses.

The NWFA would like to point out that the majority of small custom shops produce specialty or even unique items. This regulation strongly favors the large companies running large volumes of the same product. The more variety you have, the higher your testing costs. This program is going to lead to a significant reduction in the variety available to the consumer and the loss of thousands and thousands of American manufacturing jobs. Some products with thick sawn faces, custom finishes, specialty sizes, special cuts, unusual species and textures, etc., will no longer even be available to the consumer because the small shops that produce them will be gone. The market will grow ever more standardized as the big producers which make mass volumes of production will survive. Small to medium businesses will be eliminated creating oligopolies.



This is not a benefit to the consumer nor supportive of thousands of small and medium sized businesses. Further (especially when coupled with the multiple barriers to new business as explained below) this can even have Anti-Trust implications.

The NWFA further notes that the vast majority of fabricators and laminators have no experience in CARB and to suppose that they could comply with these regulations within the proposed one year time line is, frankly, inconceivable. To comply, these companies may be required to hire new staff, invest in testing infrastructure (including in-house laboratory equipment costing approximately 35,000-50,000 per company), train all staff, develop record keeping systems, and then must go through a minimum of a full 3 months of preliminary testing before they can be certified. To have companies completely new to such regulations undertake such a burden in less than a year can only be called cruel and unachievable, and likely will result in wiping out large swathes of the US small and medium manufacturing base. CARB allowed an extended phase in period and if the EPA insists on including downstream producers in the certification program, then the timeline must be adjusted to give them a sufficient period to establish a compliance program.

If secondary manufacturers are included, the NWFA strongly encourages some form of de minimis exemptions be established for both the size of companies impacted and the volume of composite wood material utilized in a product.

The NWFA believes that any consideration of secondary manufacturers in the certification system must be done as a distinct regulation after appropriate studies of all factors and possible impacts.

6. If some secondary manufacturers/fabricators/laminators are immediately included in the current regulation, the EPA must specifically and clearly exempt certain specific structures of bamboo flooring.

The NWFA notes that the EPA indicated that they intend to add bamboo grass to its definition of veneers. As stated in a separate document submitted by the NWFA, there are multiple types of bamboo flooring structures and the final regulation should specifically exempt strand and solid production styles. (See separate document for full comments). With regard to bamboo veneers over a composite core, as with all species, testing should be conducted as to the properties of bamboo to retain emissions from the composite core in order to justify its inclusion.

7. If some secondary manufacturers/fabricators/laminators are immediately included in the current regulation, the EPA must specifically and clearly exempt laminate flooring.

It is the NWFA's understanding of the regulation that laminate floorings are already exempt, but the NWFA requests that to be specifically stated that producers of flooring with paper veneer (aka laminates in industry parlance) are exempted from this regulation. This is based on the data provided by the EPA that such paper veneers act as a barrier to emissions from the composite core so it would be superfluous to subject such materials to additional testing because they already comport with the intent of the statute.



Including them in the certification program would not result in any additional formaldehyde sequestration, but it would contribute to an overly burdensome administrative cost, both for the retailers of it and the government entity tasked with the additional, unnecessary regulation. It also further taxes an already overburdened testing and certification industry.

It should be noted that the EPA's exclusion of laminate is based upon its reliance on the CPA's study demonstrating that both paper laminates or wood veneers when used in combination with coatings can achieve at least an 80% VOC barrier. This study also clearly supports the exclusion of factory finished wood veneer products and we encourage the EPA to follow both its recommendations—the exclusion of both paper coated flooring and factory finished wood flooring.

8. If some secondary manufacturers/fabricators/laminators are immediately included in the current regulation, the EPA must specifically and clearly exempt the producers of lumber core flooring construction.

The inclusion of lumber core flooring is an expansion of the CARB program which should only be done reluctantly and based on proven need. The great majority of lumber core flooring uses no glue in the assembly of the core. (*Please see separate document for more details.*) It is inappropriate to include this product in the program given the fact that core structure either contains no glue or falls under the specifically exempted Finger-Joint structure. The NWFA requests that all lumber core flooring be specifically exempted.

9. If some secondary manufacturers/fabricators/laminators are immediately included in the current regulation, the EPA must provide an extended phase-in timeline to allow these companies new to such regulations to adapt.

The NWFA again notes that the vast majority of secondary manufacturers, fabricators and laminators have no experience in CARB and to suppose that they could comply with these regulations within the proposed one year time line is inconceivable.

To become certified, these companies may be required to:

- hire new staff
- invest in testing infrastructure (including in-house laboratory equipment costing approximately US\$35,000-50,000 per company) or locate available contract laboratories.
- train all staff and develop appropriate documentation
- develop record keeping systems
- contract with a TPC and go through the preliminary audit of procedures
- and then, under the current proposal, must go through a minimum of a full 3 months of preliminary testing before they can be certified.



- or as an option for some companies, investigate and potentially convert to an NAF system.

In addition, there will be labeling issues to resolve, changes to inventory tracking, invoicing, and much more.

To have companies completely new to such regulations undertake such a burden in less than a year can only be called cruel and unachievable, and likely will result in wiping out large swathes of the US small and medium manufacturing base.

CARB allowed an extended phase in period and if the EPA insists on including downstream secondary producers in the certification program, then the timeline must be adjusted to give them a sufficient period to establish a compliance program. Further, as almost all downstream producers will be dependent first on purchasing certified cores, it is necessary that those primary panel producers achieve “clean” certifications under the EPA so that no downstream company faces a sudden supply problem if either their core/platform provider loses certification or worst, either that panel producers or the downstream manufacturer’s own TPC lose accreditation.

We also note that an extended phased-in timeline would also allow manufacturers to investigate options for going NAF which they would be unlikely to be able to do if they were forced to certify their current production in less than a year.

Further, and as noted in more detail below, there are a limited number of TPC’s currently certified by CARB to do testing and who must now become certified by the EPA. Inability to obtain certification due to the lack of authorized TPCs will lead to an inability to manufacture and a shortage of product in the market. Accordingly, the NWFA recommends an extended time frame for phase in to permit existing laboratories and new start up laboratories to become certified by the EPA in order to meet demand.

10. If some secondary manufacturers/fabricators/laminators are immediately included in the current regulation, the EPA must protect the business confidential information of secondary manufacturers’ supply chain. The NWFA STRONGLY objects to any records beyond “this product is TSCA Title VI compliant” being made a matter of public record.

The NWFA objects to any records being made public record for both primary panel and secondary manufacturers. However, specifically regarding the issue of downstream producers, we would like to note that most secondary manufacturers are small and medium sized companies and the impact of opening up their entire production condition to public scrutiny would lead to chaos. Most secondary manufacturers purchase their platforms (plywood, HDF, etc.) from multiple manufacturers. That supply chain should not be up for public exposure nor should they be liable for keeping testing results for their upstream suppliers, which is the unfortunate likely end requirement in this litigious economy.

As discussed in many locations elsewhere in this document, public release of production conditions, testing results, supply chains, etc., is 1) a dangerous exposure of proprietary business information, 2) an



impossible record keeping burden for the downstream market, 3) leads to confusing label requirements and record keeping burdens, 4) is discriminatory against brand names and OEM production, and 5) and most importantly, provides no benefit to the consumer.

For all production, the bottom line is that if the product is compliant, then it is compliant and that is all the consumer needs to know. The fact that it was made of NAF, NAUF, ULEF is not directly relevant to the consumer. The fact that it was pressed for 10 minutes or 100 minutes is not directly relevant. The details of the testing schedule for the manufacturer (or the multiple primary panel manufacturers feeding a secondary manufacturer) are not relevant. The fact that it might have been originally non-complying but now meets emissions standards is not directly relevant.

The EPA has set the established safe limit and system for compliance. The fact that the material is compliant is the ONLY information the public is required to have. This issue has been expanded in some detail later in this document, however it is important to note here as well, that the final form of these EPA regulations must respect the need of all businesses in the chain to protect their confidential information and that the bottom line for the consumer is based on a single fact: “is this product compliant?”

11. If some secondary manufacturers/fabricators/laminators are immediately included in the current regulation, the EPA must simplify the label program to avoid market confusion, particularly if some downstream production is eligible from TPC oversight.

The NWFA encourages a simplified label program for both primary panel and secondary manufacturers. However, specifically regarding the issue of downstream producers, we note that the EPA is proposing to reduce the burden on both secondary manufacturers and the testing industry by exempting downstream manufacturers who combine the use of a certified core with NAF resins from TPC oversight. (While the NWFA encourages any/all possible exemptions to the program, there are a number of questions on this issue which are outlined in a later section.) However the NWFA is concerned about both consumer confusion and unintended marketing bias towards certain types of production based on the labels.

Currently, there are multiple potential labels: “TSCA VI Compliant,” “ULEF Exempt” (who are not actually exempt, but are eligible for reduced testing under TPC oversight), “NAF Exempt” (which has two possible versions—primary panel producers with reduced testing under TPC oversight and secondary manufacturers exempted based on their use of NAF glues and a certified core.) There is also debate regarding what information may be necessary or appropriate to put on the label and the method by which the information is presented. There is also significant concern in the industry regarding the idea that any business confidential information should be made public, both because it damages the business supply chain and reveals private production conditions and also because it can give an inappropriate market bias to specific production lots. (This includes between lots produced by the same manufacturer, not just competing production.)

As a solution to the above issues, the NWFA encourages the use of a simplified label requirement stating only that a product is “TSCA VI Compliant.” Other information such as lot, production date, and manufacturer and the reason it is compliant (NAF exempt/NAF oversight exempt, etc.) could be coded into the



label but the basic information to be presented would be “TSCA VI Compliant.” Such a basic label would resolve all possible consumer confusion and potential market bias by different types of labels indicating the different routes to compliance. There would be no need to explain the differences between a product being compliant because it is certified with regular or reduced testing, or being compliant because it is NAF or ULEF or because it is exempted from the certification program completely. Under all those conditions, the bottom line is the same: the product is COMPLIANT.

Such a simplified label is particularly necessary when you consider many downstream products can contain multiple inputs of different types of composite wood products or how many secondary manufacturers might have different sources of their certified platforms. Imagine the confusion and complexity when a downstream producer sometimes buys certified platforms from a “ULEF exempt” supplier and sometimes from an “NAF exempt” supplier and sometimes just “ordinary” certified panels. A simplified label would remove confusion not just for the consumer, but for the distributors, retailers and all secondary manufacturers juggling different sources of certified material.

A simplified label would also help early in the program, if downstream producers are included in this program. Some of them may use older uncertified production from primary panel producers in their production. If a pre-certified panel is used in a finished product, the product has a production date based on the later process. In that case, how would the product be labeled to reflect uncertified components? With a simplified label, that question is moot. With an extended timeline for certification, the chances of the issue even happening is reduced.

Further such a label would respect the business confidential information of an extended supply chain. We of course recognize that an authorized organization such as the TPC or the EPA or CARB should be able to utilize a label and track the production back to the actual manufacturer(s) and lot on a confidential basis, but that information does not need to be made public, just be available to those who understand how to read the label.

Certainly companies that are producing with ULEF or NAF system can independently advertise such features on their packaging or in their advertising material, but the EPA label system should not suggest that a product produced such a way is better or different than material produced another way as long as all products are compliant under the standard. There should be no implied bias in official labels regarding the ROUTE to compliance.

There is more than sufficient precedent for such a standardized label. The product safety implications of a UL listing are very similar to TSCA Title VI compliance, yet just the UL logo is enough to prove compliance with no extraneous explanations that might confuse the consumer. Even food products that we ingest daily, directly into our bodies, do not require labeling as confusing or onerous as the proposed TSCA Title VI labels. Beef is sold with a "USDA inspected" label, and that is all the consumer needs to know to be confident that the meat is safe to eat. We would argue that both the UL listing and USDA labels have much greater health and safety implications to consumers than any TSCA Title VI compliance labeling of flooring will ever have—particularly given the majority of flooring is sold factory finished with the extremely low emissions that such production provides. However the bottom line remains simple: the route to compliance is not the important



feature and does not need to be advertised—particularly since the routes can change or be confusing or lead to inappropriate and unintentional bias in the marketplace. Compliance is the only thing the consumer needs to know. Labels should be simple: “TSCA VI Compliant.”

Further, having a simplified label system will address the EPA’s very appropriate concern about keeping financial impacts at minimum levels for non-producing downstream companies such as retailers and distributors. It eliminates the confusion evident elsewhere in the proposed regulations regarding those buyers’ responsibilities for label keeping, label creation and relabeling.

Finally, we noted that the EPA has noted that they expect to see only a minimal number of companies to have increased record keeping burden due to the nation’s general familiarity and participation in the CARB system. The estimate of companies completely new to CARB may well be correct (we believe it low), but we note that if there is a dual chain of custody required including a dual label requirement, then there is no reduction in costs. Certainly if downstream industries are faced with dual record keeping, tracking both CARB and EPA material purchased/processed/sold, they will see costs well beyond any estimated figures.



p. 34827: HIGH PRIORITY ISSUE Issue: NAF Exemption and the Fabricator/Laminator Inclusion

ORIGINAL REFERENCE: Accordingly, EPA is proposing to exempt laminated products in which a wood veneer is attached to a compliant and certified platform using a NAF resin... EPA interprets its statutory authority with respect to laminated products to give EPA the discretion to exempt laminated products from the definition of hardwood plywood if EPA has reasonable assurance that the exempted products would comply with the emission standards in TSCA section 601(b)(2) for the relevant platform. EPA believes that the proposed exemption is responsive to comments from SERs and other affected entities and that it is a reasonable approach to addressing policy inequities between entities making similar products. EPA also believes that the proposed exemption is protective of public health, because most laminated products made by attaching veneers with NAF resins to compliant platforms would meet the emission standards for hardwood plywood, and all would comply with the standards for MDF or particleboard. EPA specifically requests comments, information, and data relating to the proposed exemption.

NWFA COMMENT: First, as noted in detail above, the NWFA STRONGLY objects to the inclusion of downstream fabricators and laminators already utilizing appropriate cores into the certification program. Such expansion beyond CARB will impact all downstream companies of any sizes but most certainly unduly penalizes small and medium sized manufacturers.

The NWFA notes that the EPA has the discretion to exempt laminated products if the EPA has reasonable assurances that the products would comply. If the EPA feels that fabricators utilizing NAF resin should be exempt, the NWFA would suggest that the EPA's own research suggests that it would be appropriate to also exempt:

- Factory finished wood products
- Flooring products with thicker veneer faces (2mm up)
- Flooring products with faces of specific veneer species
- Both solid and strand bamboo flooring
- Laminate flooring
- Flooring produced with lumber and special cores
- Products for export

At a minimum, the NWFA believes that the EPA's initial program should NOT exceed the program established by CARB. If the EPA wishes to expand the certification system, it should be through an additional distinct regulation, appropriately developed and customized for the downstream manufacturing industry. Further the EPA should allow time for industry to provide data and studies that show certain production conditions should be rightly exempted from further oversight.

With the above acknowledged, if the EPA insists on including downstream manufacturers, the NWFA supports in principle the exclusion of downstream manufacturers using NAF resins if for no other reason than reducing the burden on the certification industry.



However, the NWFA seeks greater clarity on many issues regarding this proposed exemption for manufacturers utilizing NAF resins. For example:

- How would manufacturers claim this exemption? The EPA figures suggest it could be up to 14,000 domestic companies utilizing this (the NWFA would not be surprised if that figure was higher) plus an unknown number of foreign companies. How do they go about registering their exemption/labeling their product? The NWFA foresees tremendous confusion between “NAF Exempt laminators/fabricators” who do not have to undergo any testing and “NAF Exempt panel producers” who have to undergo 3 months of testing under TPC oversight and then have that exemption renewed every two years.
- Would the companies be monitored?
- Would the companies undergo some form of periodic testing or review?
- The regulations notes that if a certified company changes any aspect of the production, they must report this and potentially get re-certified. If the NAF-exempt company changed conditions but still utilized NAF resins, do they have to report this? According to the proposed regulations, if a company under TPC oversight but NAF exempt makes a change, they must notify the TPC. However what does a company NAF exempt without TPC oversight do?
- How do businesses protect their production if they are required to supply confidential information? (This is a problem throughout these regulations.)
- How to reduce record keeping burdens, particularly for small and medium sized manufacturers?
- The NWFA is also concerned about an inappropriate market bias given to products specifically marked as NAF rather than simply as “compliant.” All products covered by this program will become compliant, just through different routes. A consumer may assume that NAF is a “safer” product than a certified product that is not labeled that way (which could possibly even be NAF, but not yet certified as exempt from TPC oversight.) There should be no implied bias when the bottom line is that compliance through any route means the product is compliant.

As noted, the NWFA foresees tremendous confusion among both consumers and within the industry itself between “NAF Exempt laminators/fabricators” who do not have to undergo any testing and “NAF Exempt panel producers” who have to undergo 3 months of testing under TPC oversight and then have that exemption renewed every two years. **At an absolute minimum, if the regulations go forward with two variants on NAF exemptions, the NWFA requests different terms be used for the two different conditions and ideally, different labeling requirements.**

In addition to these immediately practical concerns of implementation, the NWFA is very concerned about how the NAF exemption provides for a competitive advantage for certain larger companies that have already made significant financial investments in NAF systems over the smaller companies that do not have sufficient resources to convert to NAF. Generally NAF systems are more expensive than others and even if the costs were the same, the regulation is placing companies between a rock and a hard place: either assume expensive certification costs or invest in new equipment, training, business relationships, etc., to convert all manufacturing. Again, the NWFA strongly encourages the exemption of all downstream manufacturers from the certification process who utilize an appropriate cores.



Also, as noted elsewhere, if such an exemption program is put into place, the NWFA encourages the use of a simplified label requirement stating only that a product is “TSCA VI Compliant.” Other information such as lot, production date, and manufacturer and the reason it is compliant (NAF exempt/NAF oversight exempt, etc.) could be coded into the label but the basic information to be presented would be “TSCA VI Compliant.” Such a basic label would resolve all possible consumer confusion and potential market bias by different types of labels indicating the different routes to compliance. There would be no need to explain the differences between a product being compliant because it is certified with regular or reduced testing, or being compliant because it is NAF or ULEF or because it is exempted from the certification program completely. Under all those conditions, the bottom line is the same: the product is COMPLIANT.

Another concern in requiring the switch to NAF resins is the performance concern of such resins. Flooring can be considered both a decorative feature and a structural product. (Cabinets, doors, and other interior building products could make similar arguments.) Not only do these products represent significant investments for homeowners, their continued performance in the home is a matter of safety and security. NAF resins generally have a shorter lifetime of use than other resin products. If a floor must be replaced three times over the home’s lifetime use, how does that provide a healthier or better condition for the homeowner or the greater environment? Further, as the long-term performance of NAF resins in these products is not established, this could negatively affect the performance warranty that flooring companies have to provide with these products.

The NWFA believes that an entity who switches to NAF resins should be exempted from all oversight regarding this regulation. The purpose of the statute is to reduce the amount of formaldehyde emissions and using NAF resins achieves this without additional certification. Conversion to NAF resins require capital expenditures to convert equipment and NAF resins are more costly than urea formaldehyde. If an entity must submit to additional certification procedures, record keeping burden, loss of confidentiality, etc., beyond those already articulated by the statute, it destroys any motivation for an entity to employ NAF resins, something that undermines the statutory intent of lowering total formaldehyde emissions. The grossly increased costs and soaring administrative burden that an additional level of certification will discourage entities from using the more expensive NAF resins, which strikes at the purpose of the statute.

The NWFA also encourages appropriate consideration be given to any resin system that can provide a suitable result, be it defined as NAF or other. The goal of these regulations is a reduction of formaldehyde emissions and the industry should be encouraged to innovate—both improving the performance of NAF systems, but also exploring other options. The regulation should have a specified process by which suitably performing systems can seek similar benefits as NAF receives.

As with many aspects of this proposed regulation, the NWFA is extremely concerned about the lack of protection for business confidential information. NAF exempt producers still have a huge record keeping burden which this regulation also proposes to open to public scrutiny. For example, the ambiguous explanation of “reasonable precautions” by any downstream buyer is of tremendous concern. It is easy to foresee a situation where an ‘exempt’ NAF laminator is required to provide copies of their glue purchasing records to a home builder or an architect or a retailer. What is to stop a competing glue supplier for asking for such records? Or a competing manufacturer to demand the same and also the press times? We understand the need for record



keeping and do not dispute that, but believe that it should be protected information, available only to the government upon a legitimate request and subject to confidentiality.

Again, the NWFA objects to the inclusion into the certification process of any/all downstream fabricators and laminators of engineered flooring who utilize an appropriate core. As noted before, if the EPA insists upon their inclusion, the NWFA would request the clear exclusion of those companies providing factory finished engineered flooring since the testing results support that the top finishes virtually eliminate emissions, as well as the specific exclusion of any engineered floor with a surface veneer of over 2mm in thickness. Further, under any and all conditions, the NWFA requests an expand timeline to allow for companies to comply without added cost and risk that comes with an accelerated timeline—and have sufficient time to evaluate NAF options. Finally, again the NWFA requests significantly greater clarity on how the NAF exemption will be applied and how it will be distinguished from the NAF exemption under TPC oversight so that switching to NAF can be a truly economically viable alternative.



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Issue: Bamboo Inclusion

ORIGINAL REFERENCE: EPA is proposing to include a definition of veneer that is based on the ANSI/HPVA HP-1 standard, but also refers to woody grasses and their specific structure. EPA is proposing to define veneer as a thin sheet of wood or woody grass that is rotary cut, sliced, or sawed from a log, bolt, flitch, block, or culm. EPA is also proposing to define woody grass as a plant of the family Poaceae (formerly Gramineae) with hard lignified tissues or woody parts. EPA requests comment on these definitions and whether they are consistent with industry usage.

NWFA COMMENT: See Separate Document. In summary, the NWFA believes that

- 1) adding bamboo goes beyond CARB and should be studied further before it's inclusion in the regulations. Bamboo is used in many products, not just flooring, and the impact on the houseware industry in particular has not been studied.
- 2) "Solid" flooring and "Strand" bamboo flooring should be specifically excluded, and
- 3) like all downstream secondary manufacturers, the producers of "Engineered bamboo" flooring that utilize appropriate cores should not be included in the program.
- 4) as with all "newly covered" products/manufacturers, any expansion over CARB should come with under an extended Phased-in timeline.



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Issue: Company Size/Identification for Inclusion

ORIGINAL REFERENCE: EPA does not believe that the application of the third-party certification and testing requirements...should differ depending on the identity of the product manufacturer.EPA has no reason to believe that the formaldehyde emissions from the cabinet doors would differ depending on who makes the door. It may be that entities that produce the entire finished good in-house are smaller than entities that only produce part of the good, such as cabinet doors, and thus it would be significantly more burdensome for them to have to comply with the certification and testing provisions of this proposal. ...EPA’s proposed definition of laminated product does not include a provision limiting applicability to the manufacturer or fabricator of the finished good in which the product is incorporated. EPA specifically requests comments, information, and data on this aspect of the proposed definition of laminated product.

NWFA COMMENT: The NWFA opposes the inclusion of all downstream fabricators and laminators, no matter what the size is of this secondary manufacturer. Such a step goes radically beyond the CARB program and the economic impact, particularly on small companies, has not been fully investigated. Again, the NWFA recommends that any required inclusion of secondary manufacturers be done as a distinct appropriately customized regulation.

Including downstream/secondary manufacturers into these current regulations place an immediately and excessive unfair burden on small and medium sized companies that makes them much less competitive. Many of these costs of certification are fixed costs. If there is, for example, a minimum QC testing requirement of once a week, a larger company might distribute that fixed testing cost over 100,000ft² while the smaller company has to take the same fixed cost and distribute it over 10,000ft².

In fact, smaller custom shops can be disproportionately disadvantaged as they tend to have many more production runs of different products, which the regulation will define as different lots. A small custom shop might create a kitchen cabinet and have their doors, their frames, and their walls—which could be three ‘production lots’ to test for one cabinet unit. A small flooring company that makes center medallions might have dozens of different production runs to create a single design. A custom flooring manufacturer might be contracted to do a single large house and be forced to do lot tests on a per room basis as the production runs would be different for each.

Although the EPA is rightly focused on the issue of public health, we ask that a way be found to allow small custom shops to survive. The long term result of this regulation could be the further commoditization of the industry as large mass production becomes the only economical production condition. As products become more standardized and commoditized, the only way they compete is on price. Price wars always result in the death of small businesses—not just manufacturers but also the small specialty store that tries to offer something different from chain distribution or big box sales. Many small independent retailers make their reputation on being “different from the big guys.” If they cannot afford custom production, or if their record keeping burden becomes too great, they will also become extinct. The NWFA supports a healthy and diverse industry where material from both big and small manufacturers are available to the consumer through their choice of sales outlets.



The NWFA STRONGLY objects to the inclusion of downstream fabricators and laminators already utilizing appropriate cores into the certification program. However if the EPA insists on such inclusions, the NWFA would suggest excluding small companies that produce less than 100,000ft² per year. Many large companies produce more than that in a week. Is it fair that a small company has the same testing burden for a small annual production than a large company's weekly run?

And what of the additional requirements of certification? The EPA should consider the extreme financial burden placed upon small volume manufacturers by essentially requiring they hire a dedicated full-time employee or build their own QC laboratory.

The EPA's proposed definition of laminated products is strongly biased in favor of the larger vertically integrated companies, who, having a vertically integrated operation, can choose to go through only a single certification process, while other companies lacking such a capacity must subject themselves to two certifications. Any company that glues wood together falls under the EPA's standard and, for many, this could prove unduly burdensome and financially impossible.

Of course, even if a small company utilizes NAF resins (or can afford to make the switch to NAF resins without a significant reduction in the quality performance of their product), they still face an unknown record keeping burden and exposure of their confidential information.

As an alternative to full exclusion (recommended), the EPA should consider a self-certification option for smaller companies. Other options include flexible definitions of lots, overall reduced testing requirements when production has been standardized, and of course, the previously outlined exemption for producers who use certain veneer sizes, species or factory finish their final consumer product.

Clearly, if secondary manufacturers are to be included, regulations should be tailored for such conditions. Superimposing a regulation designed for massive plywood and particleboard mills on small custom shops is inappropriate.



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Issue: Garage/Exterior Doors

ORIGINAL REFERENCE: With respect to exterior and garage doors made with NAF-based or ULEF based resins....in order to be eligible for this exemption, exterior and garage doors must comply with the emission standards contained in the statutory definitions of NAF-based resins and ULEF-based resins, as measured by the testing described in the statutory definitions. However, EPA is not proposing to require that manufacturers, fabricators, distributors, or retailers of these doors comply with the third-party certification, recordkeeping, or labeling provisions of the TSCA Title VI implementing regulations. ...EPA requests comments on whether any additional clarifications are needed, or whether manufacturers, fabricators, distributors, or retailers of such doors should be required to comply with any of the provisions of the TSCA Title VI implementing regulations.

NWFA COMMENT: The NWFA membership does not have many members who produce/market garage/exterior doors. The NWFA would also suggest that they would largely fall outside the definition of interior products. Most significantly, the NWFA is generally pleased to have garage and exterior doors entirely excluded, no matter what glues are used to produce them, simply to reduce the already excessive burden on the limited testing capacity available to NWFA members.

On principle, the NWFA resists any expansion of the regulations beyond the primary panel producers already covered by CARB.



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Issue: Hardboard Issues

ORIGINAL REFERENCE: EPA is concerned that, because hardboard and thin medium-density fiberboard share similar appearances and end uses, a broad definition of hardboard could lead to thin medium density fiberboard being erroneously categorized as hardboard and exempted from the emission standards. This is contrary to the clear intent ... Accordingly...EPA’s proposal defines hardboard as 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 phenolformaldehyde 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). ...EPA requests comment on the proposed hardboard definition and whether any changes should be made to the definition in light of the recent ANSI standard revision.

NWFA COMMENT: While the NWFA is generally pleased to have any products excluded simply to reduce the already excessive burden on the limited testing capacity available to NWFA members, we are concerned about the apparent conflict in these regulations. First the EPA proposes to specifically exempt hardboard:

*(3. Statutory exemptions. TSCA section 601(c) exempts a number of products from the formaldehyde emission standards for composite wood products. **These exemptions include, but are not limited to, hardboard...**)*

Yet the EPA proposes to include hardboard cores within the definition of “hardwood plywood.”

*(Hardwood plywood means a hardwood or decorative panel that is intended for interior use and composed of (as determined under ANSI/HPVA HP-1-2009) an assembly of layers or plies of veneer, joined by an adhesive with a lumber core, a particleboard core, a medium-density fiberboard core, **a hardboard core**, a veneer core, or any other special core or special back material....)*

The NWFA is confused about hardboard’s exclusion on one hand and inclusion on another. The NWFA membership does not use much hardboard in flooring, so we do not have a specific proposal on the resolution of this issue, but wish to indicate our general concern. Many members do produce a flooring with an HDF core, so it is important to understand the distinction and requirements.



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Issue: Phenol Resin as ULEF

ORIGINAL REFERENCE: In general, EPA believes that composite wood products made with phenol-formaldehyde resins have lower formaldehyde emission rates than do products made with urea-formaldehyde resins. In fact, phenol-formaldehyde resin is mentioned in TSCA Title VI as a resin that may qualify for ULEF resin status. EPA has some data on formaldehyde emissions from hardboard made with phenol-formaldehyde resins (Refs. 26 and 27). The data appear to support the idea that products made with phenol formaldehyde resins have lower formaldehyde emission rates. ...EPA requests comment, information, and data on hardboard made with phenol-formaldehyde resins and whether such products should be included within the definition of the term hardboard, thereby exempting such products from the statutory emission standards.

NWFA COMMENT: According to the question as to what defines “hardboard” the NWFA agrees with the earlier definition of the product based on the use of a “wet production process.” The inclusion of a resin based system in the production definition of hardboard is likely to confuse the issue as to what is hardboard.

That said, again as hardboard is not used for engineered flooring, the NWFA takes no direct position on the need to have it certified, but is generally pleased to have hardboard excluded simply to reduce the already excessive burden on the limited testing capacity available to NWFA members.



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Issue: Industry Definitions

ORIGINAL REFERENCE: EPA is proposing to define “distributor” as an entity that supplies composite wood products, component parts, or finished goods to others.

NWFA COMMENT: The NWFA objects to this definition in that based on this description, a retailer also qualifies as a distributor. We fear that the definition will lead to confusion regarding responsibilities. The definition of distributor should either indicate that it applies only to those who make sales intended for resale and/or specifically exempt retailers from distributor-related responsibilities.

We note that the California Air Resources Board defines a distributor as “any person to whom a composite wood product or finished good is sold or supplied **for the purpose of resale** or distribution in commerce, **except** that manufacturers and **retailers are not ‘distributors.’**”

A distributor might also be at times a manufacturer, an importer, retailer, a builder or identify themselves as another type of company. The NWFA encourages not locking companies into single roles, but rather clarifying overall responsibilities of primary manufacturers, secondary manufacturers, and buyers and sellers.

A particular concern of the NWFA is regarding the fact that many distributors have developed their own brand names in the market, but do not directly manufacture the product themselves. Some of these may be importers, but others utilize domestic production as well. Many have multiple suppliers offering production under the distributor’s single brand name.

The EPA is proposing a variety of public databases listing certified mills. Many distributors (as well as many importers) utilize other manufacturers to create production which is marketed under their own brand names. By having all information established as open for public scrutiny, their suppliers are now open to all. Because only certified manufacturers are listed in the EPA database, a brand name is not identified as properly certified. This concern is elaborated on further in this document, but it does relate to the definitions of companies and the fact that many companies sell products under their own names which may not be produced by them. The EPA is proposing to place a “double whammy” on them by stripping away their protected confidential supply chains and also giving them no way to advertise themselves as compliant.

As outlined below, the NWFA recommends that the definitions be simplified to “primary panel producer” (those that make plywood and the assorted particleboards) and “purchaser.” Producers must be certified and purchasers, regardless of where they are in the supply chain, have a record keeping burden.



The term “importer” would be defined, consistent with the definition of the term “manufacturer” in TSCA section 3 and the definition of “importer” in 40 CFR 710.3, as an entity that imports composite wood products, component parts that contain composite wood products, or finished goods that contain composite wood products into the customs territory of the United States ...

NWFA COMMENT: The NWFA objects to the identification of an importer as equivalent to a manufacturer.

First, elsewhere in the proposed regulations, because of this definition, the “manufactured-by” date was identified as equivalent to the “imported-by” date. This means that imported products have an accelerated certification schedule under the proposed timeline. The NWFA has elaborated on this concern in another part of the document.

The second concern that the NWFA has is that an importer cannot be directly certified. The EPA is proposing a variety of public databases listing certified mills. Many importers (as well as domestic distributors) utilize other manufacturers to create production which is marketed under their own brand names. By having all information established as open for public scrutiny, their suppliers are now open to all. Because only certified manufacturers are listed in the EPA database, a brand name is not identified as properly certified. This concern has been elaborated on further, but it does relate to the definitions of companies and the fact that many companies sell products under their own names which may not be produced by them. The EPA is proposing to place a “double whammy” on them by stripping away their protected confidential supply chains and also giving them no way to advertise themselves as compliant. The importer has a third “whammy” placed on them since the EPA places them as fully liable for production by considering them to be the manufacturer. This is true for all private-labeled production, no matter what the source.

It should be noted that many times the information regarding production is not information to which any buyer, importer or other, would be privy. Asking an importer to assume the identification of the manufacturer assumes a relationship which does not exist in the real world.

Few if any buyers two or three steps away from their purchase would know about a production factor done earlier in the chain. For example, if a primary panel producer makes a change and that product goes to a secondary manufacturer, the buyer of that secondary product is not usually going to be aware of the original change—nor should they be concerned about it as long the product means all performance conditions, including emission standards.

NWFA members are generally involved with only with the final flooring. Generally, a primary panel manufacturer makes the core and sells it to a flooring manufacturer. The flooring manufacturer takes the certified core, applies a veneer, and cuts to size, mills the tongue and groove, adds a factory finish and then sells it to a distributor, retailer, or importer. The flooring manufacturer may purchase cores from multiple producers. The supply chain can be extended even further by brokers, distributors, and division of the steps among manufacturers. Vertical integration is the exception rather than the rule. If the core is produced outside the US, it may be sold as a core to a US manufacturer or it may be turned into finished goods prior to coming to the US. In considering treating importers as a manufacturer, the EPA is failing to consider that the importer is usually at



least two steps (if not more) removed from the manufacture of the core and sometimes even a step or two from the secondary manufacturer. Often the importer is purchasing flooring manufactured with certified cores but is not in communication with or familiar with the manufacturer(s) of the core.

We agree that importers, just like any buyer—including those purchasing OEM material from domestic producers (many who use imported cores)—should be familiar with their product and work to ensure that it has been properly produced according to the regulations. That said, there cannot be a direct one-to-one correlation of importer as manufacturer.

We request that the EPA further articulate their position on the definitions of “importer” and “manufacturer” and the possible liabilities and responsibilities for the importer. And as outlined below, the NWFA recommends that the definitions be simplified to “primary panel producer” (those that make plywood and the assorted particleboards) and “purchaser.” Producers must be certified and purchasers which include importers, have a record keeping burden.

The term “purchaser” would be defined as an entity that acquires composite wood products in exchange for money or its equivalent.

NWFA COMMENT: The NWFA has no objection to this definition and in fact, would encourage it’s expanded use in the regulations over market defined positions such as importer, distributor, retailer and others.



Finally, “retailer” would be defined as an entity that generally sells smaller quantities of composite wood products directly to consumers.

NWFA COMMENT: The NWFA seeks clarification if this would include a builder or installer. In our industry (as well as in with other finished building products industries such as kitchen cabinets or doors), it is common for a builder or an installer to purchase goods and resell to the end consumer. (It might be a “materials & labor” contract or a more formalized system with a builder displaying available products in a model home or showroom.) Would these companies have the same record keeping burdens and liabilities as a company commonly identifying themselves as a retailer? If so, we believe the EPA/OMB have severely underestimated the number of companies impacted by this proposed regulation. We also note that we have raised concerns throughout this document regarding business proprietary information and responsibilities of “reasonable precautions,” and these companies would also have these concerns.

The NWFA suggests there are additional concerns about the liability for an architect who specifies products in a large project. Is s/he part of the supply chain? What “reasonable precautions” is s/he required to take?

For any downstream buyer, do they need to research emissions for the material being considered? How are they supposed to be educated to interpret test results? Will this not create a general bias for NAF or ULEF or against material that was initially non-complying, but has been aged or treated to meet emission standards? The more information that is open to the customer, the more liability they assume for being sure they’ve gathered absolutely all of it.

And as noted above, how are long-term brand names to be protected? If the database lists manufacturers and an architect (or any other purchaser) does a quick check of the database for the product s/he hopes to buy, and does not see the brand name listed, isn’t that an immediate implied bias against that product? To be “safe” from liability for failure to take “reasonable precautions,” shouldn’t the purchaser go and select something which has been branded only with a mill name?

As outlined below, the NWFA recommends that the definitions be implied to “primary panel producer” (those that make plywood and the assorted particleboards) and “purchaser.” Producers must be certified and purchasers, regardless of where they are in the supply chain, have a record keeping burden.



EPA requests comment on the utility of these definitions, whether these definitions comport with typical industry usage, and whether any other general terms should be defined in EPA's regulation.

NWFA COMMENT: It is the NWFA's position that almost all such definitions should be removed on the basis that they create a static business environment. By creating artificial divisions in the supply chain via regulatory terminology, it will increase the cost of doing business to such a degree that it will discourage new entrants. This runs against the intent of the statute, which is to benefit the American consumer, as well as the notion of a free market economy.

The NWFA would encourage a simplification of terms and procedures. The NWFA believes that primary panel producers should be certified. These are producers of plywood, HDF, MDF, and particleboard. Secondary manufacturers, those users of these products should be required to utilize certified cores and/or lumber or special core materials that have no requirement to be certified. They, as with all purchasers of an included product have the responsibility of ensuring that the primary producer is certified and that they have received certified material. A simple distinction between "primary panel producer" and "purchaser" would clarify many conflicts and eliminate much of the confusion currently within this document. Producers are certified, purchasers track the purchases. It does not matter if the purchaser is a "retailer" "distributor" "end-user" "builder" "architect" "importer" or otherwise defines itself within any other position in the market. They are a purchaser and have a basic record keeping burden.

The NWFA also believes that the manufactured-by date means just that, no matter where in the world it is from. To establish a program where the "imported-by date" is equal to the "manufactured-by date" only increases confusion. It would lead to apparent label inaccuracies and confusions or potentially extensive and expensive relabeling burdens at the port. If testing is to be done immediately upon manufacturing, and manufacturing equals importing, it would imply the need for testing at entry into the United States which would not just be an expensive creation of bottlenecks, it would lead to inaccurate information since the imported product would be artificially aged during transit. It further means that foreign producers have less time to gain certification. Manufactured-by date should be simple and clear: the date of manufacture although the EPA should certainly establish an ultimate "imported-by date" by which time all production entering the US must be certified (regardless of date of manufacture).

Again the NWFA emphasizes that a great deal of the industry is based on "brand names" rather than manufacturer identification. The EPA must establish a way that "virtual manufacturers" are protected. Many mills, domestic and international both, do not produce and market under their own names. Development of a brand and servicing a brand is a very expensive proposition. Some mills may sell to just one or two customers, while others may sell to dozens. Protecting their customers protects the mill.

There should be no bias provided in the regulations against source of material, against privately branded production, against smaller or larger companies' production, against route to compliance, nor against companies at different positions in the chain. The NWFA recommends that the definitions be simplified to "primary panel producer" (those that make plywood and the assorted particleboards) and "purchaser." Producers must be certified and purchasers, regardless of where they are in the supply chain, have a record keeping burden.



p. 34829 HIGH PRIORITY ISSUE Issue: Lumber and Special Cores

ORIGINAL REFERENCE: EPA notes that the statutory definition of hardwood plywood includes a number of different types of cores that may not appear to expressly fit under the statutory emission standards for veneer core and composite core. Yet, EPA does not believe that Congress intended to exempt hardwood plywood made with a lumber core, for example, from the emission standards of TSCA Title VI in part because the statute says that “the emission standards . . . shall apply to hardwood plywood.” EPA requests comment on whether and how this revision would affect entities making laminated products with lumber cores or any other special core material.

NWFA COMMENT: This issue impacts the flooring industry in particular.

Engineered Flooring has three primary construction types: a plywood base/core, an HDF core, and a “lumber core.” A lumber core is more commonly strips of solid lumber sandwiched between two veneers. Generally there is no glue between the strips and the only glue being used on the top and bottom of the strips to attach the veneers. This construction type was developed in Europe and has been considered for years to be a construction gluing method if the desire was to reduce the amount of glues used. It is generally a formaldehyde glue for strength reasons, however the amount of glue used in this construction is a fraction of that used in plywood and HDF core materials.

There are a number of manufacturers currently experimenting with different construction methods for engineered flooring utilizing different core types, including products made of rice husks and the stalks of other grains, stone composites, plastic composites, other materials.

The NWFA has provided a separate document specifically on lumber/other core construction concerns. However, as part of the primary comments, we would like to note again that the **NWFA STRONGLY objects to the expansion of this program beyond CARB to include all downstream fabricators and laminators already utilizing certified cores into the certification program. The NWFA further recommends specifically against the inclusion of lumber core flooring producers.**

The NWFA is concerned that this regulation could significantly discourage innovation into new production development. Why should a company invest their time and money into a new resin process, a new pressing system, a new production technique if all their production suddenly becomes instantly available to all their competitors? In the last five years, there has been a huge surge in the use of HDF cores by the engineered flooring industry. It has revitalized much of the industry—including significant expansion of US manufacturing facilities to respond to this demand. This development might not have been possible under the EPA proposed rules which appear to unintentionally discourage product innovation.

The NWFA further notes that the EPA’s own research shows that sealed wood products, such as prefinished flooring, emit significantly less formaldehyde than unsealed products. The NWFA would further argue that prefinished engineered flooring, of all construction types, should be specifically exempt from the certification requirements.



Finally, the NWFA seeks clarification on alternative cores such as WPC (Wood Plastic Composite) and other composite materials that have some percentage of wood, but are not primarily wood based (as HDF would be.) Should there be some form of de minimis wood content for a core to be included in this program?

The NWFA asks reviewers to see the separate document on this issue for more details.



p. 34829 HIGH PRIORITY ISSUE Issue: Timeline

ORIGINAL REFERENCE: ...makers of composite wood product panels to apply to an accredited TPC for product certification, and to design and establish a quality control program, including testing, that is both approved by the accredited TPC and specific to the panel producer. For each product type to be certified, the panel producer would have to have at least one quarterly test result and 3 months of quality control testing data...Uncertified product produced after the manufactured-by date...would not be permitted to be sold, supplied, or offered for sale....Under this proposal, products currently certified by approved TPCs under the CARB ATCM would be considered certified ... a panel producer whose TPC does not become accredited under TSCA Title VI in a timely manner would have to apply to an accredited TPC to be able to continue to make certified product after the manufactured-by date. EPA requests comment on this approach for CARB certified products and whether a different approach or additional requirements should be imposed for these products.

NWFA COMMENT: The NWFA proposes a three year minimum phased-in implementation (if secondary producers are included.)

First the EPA should allow an initial period in which TPC are able to become fully accredited before companies begin their own certification process. Otherwise companies who are currently CARB certified and who have a good faith belief that they can transition seamlessly to the TSCA VI certification may suddenly discover that their products are not certified through no fault of their own when their TPC fails to achieve certification.

We find the following statement to be ambiguous and potentially causing good actors to be punished by the most extreme conditions through the failure of a third party. “...*(A) panel producer whose TPC does not become accredited under TSCA Title VI in a timely manner would have to apply to an accredited TPC to be able to continue to make certified product after the manufactured-by date.*” If there is no initial period for TPC to become accredited then the NWFA would state that the EPA provide a specified grace period of at least one year for CARB certified companies whose current TPC fails to become TSCA VI accredited to find and achieve certification with a new TPC.

We note that there are currently a total of 43 CARB-approved third party certifiers and contract laboratories. We do not believe that there will be 43 EPA approved TPC’s available to the industry in one year. The EPA is proposing an increase in the number/type of accreditations required by the TPC's as well as defining their experience level and not all the current CARB TPC's can meet these higher standards.

Furthermore, we do not believe that even if all current labs/TPC's continue under the EPA, that the existing laboratories are sufficient to handle the requirements of the EPA, particularly with the proposed inclusion of downstream production. We definitely feel that it is inappropriate to try, in a single year, to consecutively certify under new regulations, TPC’s, primary panel producers and new downstream producers many of whom have no experience whatsoever with the CARB protocols.

There are 10 certifiers and contract labs in North America, 16 in Asia (including China, southeast Asia, New Zealand, and Australia), and 17 in Europe. The EPA is proposing to require that all TPC’s have a US office. As approximately 75% of the current CARB TPC Laboratories are located overseas, there can be no



guarantee that any of that capacity will eventually be available to the industry. Many foreign companies will not want to go to the expense of setting up a US corporation and hiring US employees simply to satisfy this one requirement. That means that up to 75% of the existing CARB TPC capacity could disappear within the year.

Further, as noted, there are a total of 43 CARB-approved third party certifiers and contract laboratories. Some labs do not provide the certification, only testing services. On the other hand, many of these TPC's only perform inspections but don't have their own labs. These "virtual" TPC's outsourcing their actual laboratory work to the 25 or so actual labs servicing the industry. We feel that even if 100% of these laboratories continue to provide EPA testing services, they will be insufficient to cover the increased demand.

To consider CARB's current condition as the starting point (numbers provided by CARB for mills they have in their program), assuming an average of two product types per mill (many would have significantly more):

Mills Specifically Exempted: 150 mills x 2 Product types/mill = 300 tests/year

Mills Certified CARB P2: 800 mill x 2 Product types/mill x 4 quarters/year = 6,400 tests/year.

That's an estimated 6700 total tests per year, but to be conservative, we'll round down to 6,500 tests per year. With an optimistic number of approximately 20 labs eventually approved by the EPA. That means over 300 large chamber tests per year or over 900 small chamber tests per year per lab -- just for the required production testing. This does not include working capacity spent on interlaboratory comparisons, equivalence demonstration, maintenance, holidays/vacations, power outages, accreditation activities, calibration, etc. Also, many of these labs provide outsourced QC testing for their clients, taking up an additional amount of capacity.

Of course these labs do other testing as well, including for certifications like Green Guard/Floorscore and various other programs. And we also note that CARB continues in existence and is also considering changes/expansion in the future that may or may not mirror the EPA. That means that companies doing business in California may require double certification—CARB and TSCA certification and a downstream secondary manufacturer could be forced into tracking and meeting triple or quadruple certification/record keeping burdens. And to the point, all of this means overtaxing the available testing capacity.

We believe that the EPA estimate that only a few hundred additional secondary manufacturers (in the US alone) would need testing/certification is completely unrealistic and it certainly ignores the global cumulative impact. It is more likely that several THOUSAND businesses would need testing/certification globally, and even if all of CARB's authorized TPCs/labs were at full working capacity, they would be completely insufficient.

It therefore vital that the EPA allow sufficient time for the TPC accreditation situation be clarified before requiring manufacturers to achieve certification.

Of course there is a certain expectation that new TPC's might be developed to take advantage of this new market. However it would take a brand new TPC an estimated investment of a million dollars in



equipment and staff and over a year to become established and appropriately accredited by the AB's, much less by the EPA. And based on the proposed requirements of this regulation, if they have no wood experience (which naturally they would not, being new), they might not be allowed to be accredited by the EPA for another year or more. Therefore it will be at least two or three years before any additional TPC's can come on line. There are currently perhaps 2-3 qualified TPCs now who are not doing CARB who could enter, but that would not replace the potential loss of a dozen overseas laboratories.

The bottom line is that the NWFA believes that the one year period proposed is totally unfeasible. Given the burden mandated by this regulation and the steps required to conform to its provisions, it will be virtually impossible for newly covered producers to satisfy such steps in one year. The time needed to establish the third party certifiers and then to have all pertinent products pass the certification crucible, more than one year will elapse. For these reasons, the one year period is unreasonable and certainly should not be done concurrently with the TPC's, primary and secondary manufacturers all trying to learn and comply with the regulations at once..



p. 34831 HIGH PRIORITY ISSUE Issue: Fabricator/Laminator Inclusion

ORIGINAL REFERENCE: EPA is proposing to use the term “panel producer” to refer to those facilities that actually make composite wood products or laminated products, excluding importers that do not also make the products. Because TSCA section 3 defines the term “manufacture” to include import, EPA believes that using another term would clarify the regulation by referring to facilities that actually make the products....EPA is proposing to define “panel producer” as a manufacturing plant or other facility that manufactures (excluding facilities that solely import products) composite wood products on the premises. EPA is also proposing to incorporate within this definition a statement that this includes laminated products not excluded...

NWFA COMMENT: The NWFA believes that primary panel producers should be certified. These are producers of plywood, HDF, MDF, particleboard. Secondary producers who use those materials should be required to utilize certified cores. They and all purchasers have the responsibility of ensuring that the primary producer is certified and that they have received certified material. A simple distinction between “primary panel producer” and “purchaser” would clarify many conflicts and eliminate the confusion within this document. Producers are certified, purchasers track the purchases.

As outlined in detail earlier in this document (see comments referencing p. 34826), the NWFA strongly opposes expansion over CARB to require certification of secondary manufacturers.

Additionally, this provision seems to state that every individual manufacturing facility owned by a producer must be subject to certification and would be publicly identified as an independent entity. This means that a company with multiple manufacturing sites would have to educate the consumer on a per mill production branding. This is too burdensome and commercially impractical.

We also note that this definition means that production destined for export would be included and that imposes a heavy burden on such producers, reducing their international competitiveness. We also note that eliminates a potential market outlet for non-complying lots. We believe there should be a stated exemption for production for export.

We note that this definition of a manufacturer is so broad, that it could be reasonably seen to cover a school wood shop or an artist’s studio. We would encourage a clear exemption for educational institutions as well as material being produced specifically for research purposes (not for sale).

Further, as outlined in detail elsewhere in this document, we are concerned about the how importers might be defined as manufacturers when they cannot themselves be certified. If the EPA develops a list of “Certified Manufacturers” and an importer bringing in product as “Joe’s Oak” is not listed, how does he demonstrate that “Joe’s Oak” brand is properly certified? The EPA’s proposal is to open up the entire supply chain so that everyone knows that Joe’s Oak is produced by Sam.

The problem of confidentiality and brand name identification is the same for a domestic distributor—Joe’s Oak is what being sold, but now everyone can trace it back to the original mill. This destroys the value that Joe has created in his brand name as any other business can go to Joe’s supplier and purchase his materials.



And Joe can't be identified as a certified manufacturer himself. A customer who simply looks on Joe's website and then searches for Joe on the EPA website won't find him—they won't know that Joe imports from a valid certified source and buys domestically from a valid certified source. This regulation will kill Joe by both destroying his proprietary information, i.e. his supply chain, and implying that his product is not certified.

If the labels contains manufacturer's names but are sold under different brand names, it will result in a direct competitive bias. Suppose manufacturer X sold to both Y and Z. Are we to have labels saying "Flooring by X" on both labels? There could be multiple actual differences in what Y and Z buy, but the consumer may not appreciate those technical differences. Is this fair to any of the companies: X, Y or Z?



p. 34831 HIGH PRIORITY ISSUE Issue: Fabricator/Laminator Inclusion

ORIGINAL REFERENCE: EPA requests comment on whether the term “panel producer” should apply separately to each specific facility owned or operated by an entity that produces composite wood products for the purposes of the testing, certification and record keeping requirements, or whether the term “panel producer” should apply to the entire business entity that produces the composite wood products. For example, should panel producers be required to have a quality control manual for each separate facility?

NWFA COMMENT: The NWFA agrees that each facility should have a QC manual for that specific facility, as well as independent record keeping for each specific manufacturing facility. Staffing can be consolidated, with the same QC manager potentially supervising multiple sites, but each site is responsible for independent record keeping.

We feel that appropriate QC needs to be site based, but as noted above, we do not want to see every individual manufacturing facility owned by a producer be publicly identified as an independent entity. This means that a company with multiple manufacturing sites would have to educate the consumer on a per mill production branding. This is too burdensome and commercially impractical.

All such information should be considered confidential and there should be no public release of such information.

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Issue: Definition of Lot/Line

ORIGINAL REFERENCE: EPA is also proposing to define “lot” to mean a particular lot or batch of a product type made during a single production run. EPA believes that this is common industry usage of the term. Likewise, EPA is proposing to define “production line” as a set of operations and physical industrial or mechanical equipment used to produce a composite wood product. EPA requests comment on the utility of these definitions, and whether other terms should also be defined, such as “production run.”

NWFA COMMENT: The NWFA agrees with the definition of “production line.”

The NWFA would like to ask for qualification in the use of the word “lot.” It is possible that in one gluing period, the factory would make stock of unfinished Oak flooring that will be eventually colored in multiple different stains. It would also be possible to take unfinished Oak, Ash and Maple flooring and run them at one time with the same top coat of stain. Either consideration could be called a “lot” by the factory.

Therefore, without improving the definition, in the case of wood flooring, a "lot" could be all the production made in a day, or it could be just the Oak made in a light brown finish or it could be all the flooring finished in the same color. We would want to encourage and specify the use of the word "lot" to apply to the gluing part of production, not the final volume of a color or species. Perhaps it should be based on what is produced during a single gluing production shift without a reset or change of the gluing production conditions.

A possible requirement for flooring would be if there is no additional bond line added to a lumber core, special core or certified platforms, or if using a NAF glue bond line, the product itself shall be considered compliant after one (1) verification test has satisfactorily completed ASTM E1333 or equivalent ASTM D6007 test and meet the applicable emission standard for hardwood plywood; for other adhesives over these platforms, the product itself shall be considered compliant after verification tests on 3 production lots have satisfactorily completed ASTM E1333 or equivalent ASTM D6007 test and meet the applicable emission standard for hardwood plywood. Continuous testing would not be required.

We would like to note the potential and significant discrimination against small companies doing limited custom production runs. For many companies, a “lot,” might be just 1,000ft². Since the testing costs would be the same for a factory who makes production lots of 100,000ft², the small companies are going to face extreme disadvantages. We also have no idea how a “lot” will be defined for other industries such as cabinetry and furniture where a “lot” can be a single item.

The difficulties in defining “lot” for small and custom production, as well as very limited production products such as cabinetry or furniture, is another argument for 1) the total exclusion of secondary manufacturing or 2) if they are to be covered, covering them under a separate regulation that can be structured appropriately for the differing conditions of downstream industries.

Finally, the NWFA objects to the downstream use of lot management as a mechanism for certification and labeling. While material shipped out of the primary panel producer’s mill should be marked with the lot, that information should not be mandated as the primary tracking method for downstream purchasers. Many retailers have inventory control systems that are not presently designed to track product based on lot number



and re-tasking them to do this would come at a tremendous expense, thereby rendering this requirement overly burdensome to the point that the cost incurred is disproportionately divergent from any potential benefit. The existing invoice system already tracks products and certification will be more easily tracked via this system, as the system already exists and the personnel tasked with this are already proficient in it. It is of more benefit to consumers and will prevent a massive cost increase (which will prevent new entrants) to using the existing inventory system to track certifications.



p. 34831 Issue: Grouping Products

ORIGINAL REFERENCE: As under the CARB ATCM, this proposal would allow product types to be grouped for quarterly testing. EPA is proposing to allow accredited TPCs to approve the grouping of products with similar characteristics, particularly those characteristics that are most likely to affect emissions, such as the type of wood or the resin system(s) used to make the composite wood product. For hardwood plywood, other factors that are likely to influence formaldehyde emissions are core type, press time, veneer type (i.e., species), and whether or not the core is certified. ...EPA requests comment on the appropriate criteria for grouping product types for quality control testing, given the statutory directive to promulgate implementing regulations in a manner that ensures compliance with the emission standards. For example, one possibility could be to allow panel producers and accredited TPCs to identify the products that are likely to have the highest emissions and to test those products.

NWFA COMMENT: First, once again, the NWFA STRONGLY objects to the inclusion of downstream fabricators and laminators already utilizing appropriate cores into the certification program. This goes far beyond CARB and the economic impacts need to be studied further, particularly for small and medium sized businesses. The NWFA further notes that the EPA’s own research shows that sealed wood products, such as factory finished flooring, emit significantly less formaldehyde than unsealed products.

In the event the EPA does not completely exempt **all** secondary products, the NWFA believes that the TPC and the primary panel manufacturer should be given complete freedom to determine the best grouping conditions for that specific mill’s conditions. Absolutely the mill and the TPC should be the ones to determine appropriate groupings for the specific production.

The NWFA would like to demonstrate some of the difficulties for a downstream producer in both becoming certified completely in one year and determining appropriate product groupings. The chart represents the actual production groupings for three different manufacturers. (All three purchase CARB compliant material for their plywood or HDF cores.) They could be grouped by construction type, total thicknesses, face species, or finish colors...

MILL	Construction Type	How Many Thicknesses (total thickness / face veneer)	Number of Face Species	Number of Colors
1	Plywood	13.5mm (11.5 / 2)	8	24
		12mm (10.5 / 1.5)	3	14
2	Plywood	20mm (20 / 5)	2	4
	HDF	12mm (10 / 2)	4	17
	Lumber Core	14mm (11 / 3)	1	12
3	Plywood	12mm (10 / 2)	5	11
		14mm (11 / 3)	4	16

Mill One produces engineered flooring with a plywood core in two different thicknesses and 8 different top species. Their plywood cores are all CARB certified at this point in time and their production is entirely NAUF. They are in the process of being certified ULEF. They might group their products by plywood



thickness, or by top species layer. They might be able to group all products together. They might need to group based on top layer thickness (2mm or 1.5mm).

Mill Three faces the same challenge in determining best appropriate groupings—two different plywood thicknesses, 2 different surface veneer thicknesses, and 5 different species. All CARB certified and NAUF, of course.

On the other hand, Mill Two produces engineered flooring with three different construction methods. Their HDF and plywood cores are all CARB certified. They have fewer top species, but a wider range of top veneer thicknesses. They would probably have a minimum product grouping of 3 based on the construction type. Their plywood production is NAUF. Their lumber core production has traces of UF in the glue. Their HDF core production uses a CARB certified MUF core, and can be produced with an NAF glue for the top layer although it would require a change of equipment.

As the three mills determine the groupings, they need to be aware that larger groupings may be cheaper—the more individual but similar products grouped together the less their testing costs will be. However, if there is a single item that errs slightly “hot,” more products that are almost certainly completely compliant will be tainted by that one off QC test.

So the grouping options are (assuming no groupings for different finish colors) for Mill 1, range somewhere between 1 and 11 different groupings. For Mill 2, it is likely to be a minimum of 3 and possibly as many as 7, while Mill 3 faces between 1 and 9. It is very important that the company and the TPC together have the freedom to define the proper groupings.

In comparison, we’d like to look at one large, vertically integrated wood flooring producer. They make a combination of 10 different engineered flooring products, including plywood core and solid wood lumber core (3 layer) in various combinations of core thicknesses and wear layer thicknesses, such as 10mm plywood with 2mm face (12mm overall), 11mm solid core with 3mm wear layer (14mm overall), topping out at 16mm solid core with 6mm face (22mm overall). However the production volume for each construction method differs greatly.

Based on their experience with CARB certification, the upfront cost to certify one type of plywood core is \$4000. The annual fee to keep the certification is \$3000. Testing throughout the year which consists of small scale testing for every 200,000 ft² produced (they qualify for reduced testing because of their ULEF condition) and quarterly testing at their TPC, costs roughly another \$10,000. This totals to \$17,000 per annum for one CARB certificate.

Under CARB rules, they have one certificate for 8 to 12mm thick hardwood plywood core, and another for 13mm to 18mm thick plywood core. No certification is required for their solid core (3 layer) products. This totals \$17,000 x 2 certificates = \$34,000 per year.

Under the proposed EPA rules, they might need to have up to 10 different certification programs meaning costs up to \$170,000/year. Some structures they produce in large volumes - millions of square feet



per year resulting in very low certification cost per square foot. Some structures are for small, custom orders, as little as 30,000 square feet per year in average production runs of 10,000ft² per order. Not only would the cost to certify such a structure be very high per square foot, 3 small production lots would require 3 separate tests compared to one test per 200,000 for large volume structures. If required to separately certify such structures, certification costs could add as much as 30% of the cost to produce such flooring, effectively precluding them from producing anything but large volume products.

It is vital that the EPA consider the costs on small custom production.

It is vital that the TPC's be given flexibility in setting testing schedules and groupings.

The difficulties in establishing groupings for secondary manufacturers doing small and custom production is another argument for 1) the total exclusion of secondary manufacturing or 2) if they are to be covered, covering them under a separate regulation that can be structured appropriately for the differing conditions of downstream industries.

As with all such company/production specific records, confidentiality must be maintained and none of this information should be considered publicly available.



p. 34831

Issue: Sampling Requirements

ORIGINAL REFERENCE: As under the CARB ATCM, this proposal would allow product types to be grouped for quarterly testing. EPA is proposing to allow accredited TPCs to approve the grouping of products with similar characteristics, particularly those characteristics that are most likely to affect emissions, such as the type of wood or the resin system(s) used to make the composite wood product. For hardwood plywood, other factors that are likely to influence formaldehyde emissions are core type, press time, veneer type (i.e., species), and whether or not the core is certified. EPA requests comment on the appropriate criteria for grouping product types for quality control testing, given the statutory directive to promulgate implementing regulations in a manner that ensures compliance with the emission standards. ...EPA requests comment on all aspects of these sampling requirements, including whether the 30-day requirement is appropriate.

NWFA COMMENT: As noted above, the NWFA feels it is vital that the TPC's be given flexibility in setting testing schedules and groupings. Further it is vital that the EPA consider the costs on small custom production. We again urge 1) the total exclusion of secondary manufacturers or 2) if they are to be covered, covering them under a separate regulation that can be structured appropriately for the differing conditions of downstream industries.

Regarding the 30-day requirement, the NWFA has no objection.

As with all such company/production specific records, confidentiality must be maintained and none of this information should be considered publicly available.



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Issue: Testing Methods

ORIGINAL REFERENCE: EPA is proposing that in addition to ASTM D-6007-02 and ASTM D-5582, the following methods would also be allowed for quality control testing (with a showing of equivalence as described in this Unit): EN 717-2 (gas analysis method) (Ref. 32), DMC (Dynamic Micro Chamber) (Ref. 33), EN 120 (Perforator Method) (Ref. 34), and JIS A 1460 (24-hr Desiccator Method) (Ref. 35). EPA believes that these are appropriate methods for quality control testing based on CARB's evaluation and approval of these methods as alternative small-scale test methods, and test results using these methods have been demonstrated to have adequate correlations with test results using ASTM E-1333-10. ...as a general matter, EPA does not endorse any particular method over others. ...EPA requests comment on whether these methods should also be allowed for quality control testing.

NWFA COMMENT: We would recommend the removal of perforator method as that measures content not emissions.



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Issue: Reduced Testing Options

ORIGINAL REFERENCE: EPA is proposing to allow reduced quality control testing requirements similar to CARB's for particleboard and medium-density fiberboard when the panel producer demonstrates consistent operations and low variability of test values. ...quality control testing would still have to occur at least once per 48-hour production period.EPA will provide a list of panel producers and products types that are allowed reduced testing under this provision on the EPA Web site. EPA requests comment on whether there should be a finite time period for reduced testing, after which a new application and demonstration would be required, or whether reduced testing should continue to be allowed as long as the quality control test data demonstrate continued eligibility for reduced testing.

NWFA COMMENT: The continuation of reduced testing exemptions should be based on regular QC testing and quarterly results. The TPC should have the final say regarding any additional or reduced testing requirements.

No matter what is decided, the NWFA STRONGLY objects to those records being made a matter of public record.

Allowing public review of reports creates an artificial demand for specific testing results that go beyond Pass/Fail. If a lot passes, then it has passed.

This is not just a matter of comparing one manufacturer to another. It could get to the point of comparing one lot to another. A buyer could say to the distributor, "I want 1000ft² of Light Brown Oak, how much do you have in stock?" "We have plenty, we have over 30,000ft² in stock." "Great, show me the test results for each pallet and I'll specify which 1000ft² I want."

Or perhaps a consumer seeing that company X has to test daily while company Y is testing less might make a judgment of the quality of production based on this public info. They might assume that company X is better because of more testing, or conversely they might assume that X is worse because they have to test more often. In either case, they are wrong: Company X and Y are EQUAL: they both are compliant. Placing any form of testing data or production details into the public arena leads to confusion, not clarity.

The EPA has set the established safe limit and system for compliance. The fact that the material is compliant is the ONLY information the public is required to have.



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Issue: Testing Requirements

ORIGINAL REFERENCE: ...hardwood plywood panel producers would be required to conduct routine quality control tests on each production line of each product type based on total hardwood plywood production by the panel producer.....if weekly production of hardwood plywood at the panel producer is less than 100,000 square feet, EPA is proposing to require one quality control test per 100,000 square feet of each lot produced of each product type produced. If the panel producer never produces 100,000 square feet of a particular product type at one time, EPA is proposing to require just one quality control test of that product type per production run or lot produced.For laminated product producers that do not have to test under the CARB ATCM requirements, this proposed testing would be a new requirement; however, because the requirements are based on production volume, EPA believes that they would not be overly burdensome. EPA requests comment on whether these proposed requirements are sufficient to ensure compliance with the standards.

NWFA COMMENT: Once again, we strongly urge the exclusion of secondary manufacturers who utilize an appropriate core. (Again, the NWFA considers an appropriate core either a properly certified plywood, particleboard or HDF core, or a lumber/special core.)

We would like to note the significant discrimination against small companies doing limited custom production runs. For many companies, a “lot,” might be just 1,000ft². Since the testing costs would be the same for a factory who makes production lots of 100,000ft², the small companies are going to face extreme disadvantages.

We also note that many small companies make customized “one of a kind” items. These companies could be forced to make “two of a kind” simply so one item could be tested.

Setting arbitrary volumes with required testing does not work for all types of production or company sizes. If fabricators and laminators are still required to become independently certified, we recommend that if a company makes less than 100,000ft²/year, they be required to have an approved production process but only go through general testing once a year. They could be required to maintain samples of “cuttings” of production (such as the trimming of mouldings and doors) but not be required to produce double material just to have something available for testing.

As discussed in more detail earlier, the NWFA would like to further discussion regarding the use of the word “lot.” It is possible that in one gluing period, the factory would make stock of unfinished Oak flooring that will be eventually colored in multiple different stains. It would also be possible to take unfinished Oak, Ash and Maple flooring and run them at one time with the same top coat of stain. Either consideration could be called a “lot” by the factory.

Therefore, without improving the definition, in the case of wood flooring, a "lot" could be all the production made in a day, or it could be just the Oak made in a light brown finish or it could be all the flooring finished in the same color. We would want to encourage and specify the use of the word "lot" to apply to the gluing part of production, not the final volume of a color or species. Perhaps it should be based on what is produced during a single gluing production shift without a reset or change of the gluing production conditions.



The difficulties in establishing sensible volume based testing conditions for secondary manufacturers doing small and custom production is another argument for 1) the total exclusion of secondary manufacturing or 2) if they are to be included, covering them under a separate regulation that can be structured appropriately for the differing conditions of downstream industries.

As with all such company/production specific records, confidentiality must be maintained and none of this information should be considered publicly available.

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Issue: Testing Requirements

ORIGINAL REFERENCE: Under the CARB ATCM, only particleboard and medium-density fiberboard producers are required to conduct quality control testing when product type production ends, changes are made to the resin formulation or the amount of resin used, or there is a significant decrease in press time. There is no similar provision applicable to hardwood plywood. EPA's proposal is consistent with the CARB ATCM, but EPA requests comment on whether quality control testing should be required for hardwood plywood production in these situations, or in any other situations, such as when the quality control manager or quality control employee has reason to believe that the panels in production may not meet the emission standard. EPA is also requesting comment on whether the proposed reduced quality control testing for consistent particleboard and medium-density fiberboard manufacturing operations should also be applicable to hardwood plywood.

NWFA COMMENT: We would believe that if there is a significant production change (resin formulation, press time, etc.), then a new QC test should be conducted and the TPC should be notified, but no requirement for an advancement of scheduled quarterly testing as long as the new tests show emissions to be within limits. The TPC should have responsibility for determining proper testing schedules.

Further, reduced testing requirements for all producers, regardless of panel type (particleboard/fiberboard/plywood) should be made available. Significantly reduced testing options, if not actual exemptions, should be made for very small producers.

As with all such company/production specific records, confidentiality must be maintained and none of this information should be considered publicly available.



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Issue: Correlation/Equivalence Factors

ORIGINAL REFERENCE: EPA is proposing that equivalence between ASTM E-1333-10 and any other test method used would be demonstrated by the TPC for each laboratory used by the TPC or panel producer that is using the alternative method at least once each year or whenever there is a significant change in equipment, procedures, or the qualifications of testing personnel.EPA requests comment on whether the proposed means of showing equivalence is appropriate.

NWFA COMMENT: Developing a valid correlation between the TPC laboratory and mill QC laboratory independent of method used has been demonstrated as adequate—equivalence is not necessary. Regarding the issue of small chambers (D6007-02 (revised 1998)) correlation with the facility TPC has been shown to be a more than adequate system through ongoing CARB certification. It is not necessary to require equivalence.

It is appropriate for TPCs and their contract labs to demonstrate equivalence between E1333 and D6007 testing, since these are being used to validate emissions for quarterly testing as well as be the standards for developing correlations for mill QC testing.

EPA specifically requests comment on whether 5 comparison sample sets are sufficient or whether 10 should be required.

NWFA COMMENT: The NWFA recommends that if the laboratory is already CARB certified, they can continue under TSCA VI with 5 comparison samples and further, have their ongoing annual proof done with 5. If a laboratory is new to either CARB or TSCA VI, then the initial equivalence demonstration should be done with 10 samples, and then ongoing annual proof can be done with 5.

In addition, EPA requests comment on whether testing products in two different ranges of formaldehyde concentrations should be required, as is required under the CARB ATCM, and what ranges would be appropriate (e.g., lower range less than 0.05 ppm and upper range 0.05 ppm-0.13 ppm as measured by ASTM E-1333-10).

NWFA COMMENT: The NWFA believes that the TPC's should have the option to qualify under a single range equivalence demonstration, with the Equivalence Factor requirement for the low range, or if they choose, they can test with two ranges, the first at 0.05ppm or less and the second at 0.0051-0.13pmm.

The concern for the NWFA regarding the number of samples required and the number of testing ranges is related to the occupation of testing capacity (which both reduces available capacity for industry and also increasing costs since the more mandated tests there are, the greater the overhead for the TPC and eventually for the manufacturer and thus the consumer.) Per CARB, equivalence in 2 ranges with 10 sample sets per range requires a total of 20 large chamber tests and 60 small chamber tests - all reducing the testing capacity available to industry for each and every laboratory. Even though EPA is proposing to allow one-for-one testing of small to large chamber for equivalence, this would still require 20 larges + 20 smalls per lab per year for two different ranges.



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Issue: Sampling Procedures

ORIGINAL REFERENCE: EPA also requests comment on whether sampling should be left to the TPCs and manufacturers, or whether EPA should require testing of nine specimens (representing evenly distributed portions of an entire panel) tested in groups of three specimens, resulting in three test results, which would be averaged to represent one comparison sample for the ASTM D-6007-02 method, or whether some other sampling protocol should be required.

NWFA COMMENT: As studies and the past years of CARB testing have proven, the requirement of 3 chamber testing averaged together is both unnecessary to prove emission conditions and expensive for the manufacturer. One single chamber test is representative and reduces on-going costs. Further, given the limited testing capacity available, it is necessary to keep required testing to a minimum unless there is a vital reason for it and studies have proven there is no benefit to a 3 chamber testing average.

Further, we feel it would also be appropriate to allow one ASTM D-6007 test on up to 3 panels samples as long as the results demonstrate equivalency with ASTM E1333.

EPA also requests comment on whether the proposed criteria for demonstrating equivalence are appropriate, or whether other criteria would be more appropriate, such as establishing equivalence criteria based on the TOST method.

NWFA COMMENT: The NWFA feels strongly **that equivalence for mill QC testing is not necessary**. Developing a valid correlation between the TPC laboratory and mill QC laboratory independent of method of used has been demonstrated as adequate.

For TPC equivalency, the mathematical criteria is appropriate and aligned with CARB's position. Therefore again, we feel the sampling protocol can allow one ASTM D-6007 test on up to 3 panels samples as long as the results demonstrate equivalency with ASTM E1333.



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Issue: Correlation/Equivalence Factors

ORIGINAL REFERENCE: In addition to the requirement of establishing a new correlation annually or whenever there is a significant change in equipment, procedures, or the qualifications of testing personnel, EPA is proposing that a new correlation would need to be established by the TPC for the panel producer whenever a TPC's quarterly test results compared with the panel producer's quality control test results do not fit the previously established correlation. In addition, if a panel producer fails two quarterly tests in a row, a new correlation curve would have to be established.

...EPA requests comment on the proposed correlation method for demonstrating equivalence and whether the proposed acceptable correlation coefficients are reasonable.

NWFA COMMENT: The NWFA feels strongly that the relationship between the mill's lab and the TPC's lab should be based on CORRELATION ONLY. Equivalence should not be required. The TPC has the responsibility to demonstrate equivalence.

Developing a valid correlation between the TPC laboratory and mill QC laboratory independent of method used has been demonstrated as adequate—equivalence is not necessary.

EPA also requests comment on whether the term "equivalency" needs to be defined more clearly and whether additional statistical parameters are needed to make a determination of "equivalency" for the quality control methods.

NWFA COMMENT: The NWFA feels strongly that equivalence for mill QC testing is not necessary. Developing a valid correlation between the TPC laboratory and mill QC laboratory independent of method used has been demonstrated as adequate.

Only the TPC and their accredited contract laboratory have responsibility to demonstrate equivalence.



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Issue: Definition of Scavenger

ORIGINAL REFERENCE: EPA is proposing to define the term “scavenger” as a chemical or chemicals that can be applied to resins or composite wood products to reduce the amount of formaldehyde that can be emitted from composite wood products. EPA requests comment on whether this definition is appropriate.

NWFA COMMENT: The NWFA agrees fully with this definition.



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Issue: Holding Lots Undergoing Sample Testing

ORIGINAL REFERENCE: Non-complying lots, by definition, do not meet the applicable emission standards and may not be sold, supplied, or offered for sale in the United States. In order to ensure that this does not occur, EPA is proposing to require that panel producers retain lots of composite wood products from which quality control or quarterly samples have been selected until the samples have been tested and the results received. With respect to quarterly samples, this includes lots that are grouped for purposes of quarterly testing. EPA believes that this approach may be less burdensome overall and offer better protection to importers, distributors, wholesalers, retailers, and consumers than an approach relying on after-the-fact enforcement actions and customer notifications.

NWFA COMMENT: The NWFA strongly objects to the idea that lots sent for testing should be held until testing is complete. By far the majority of production is done JIT (Just In Time) and waiting for testing of material puts an undue financial burden on manufacturers. It also can create a storage capacity problem for some companies with large volume production. Depending on available testing capacity, some testing could be backlogged for several weeks. There can also be delivery delays as material is shipped to contract laboratories. These delays can cause anything from cash flow difficulties to actual loss of customers.

“Recall” has long been established option for manufacturers and that is a system which could be utilized here Further if the EPA accepts the NWFA proposal (outlined below) regarding permitting the continued presence (but not sale) in the market place of non-complying lots while they age before retesting, then “after-the fact enforcement actions” should be absolutely minimal. We encourage notification of buyers and the presentation of options for them to consider that includes aging and testing or return.

The NWFA fully agrees that the mill should keep samples of tested lots as part of the record keeping system, but the full lots should not be held back pending test results.

As with all such company/production specific records, confidentiality must be maintained and none of this information should be considered publicly available.



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Issue: Aging and Other Options (Non Complying Lots)

ORIGINAL REFERENCE: EPA also requests comment on processes other than aging that could be used to reduce formaldehyde emissions from non-complying lots. Under this proposal, panel producers would be required to keep records of the disposition of non-complying lots, including the specific treatment used and the subsequent test results demonstrating compliance.

NWFA COMMENT: The NWFA feels that the use of scavengers in production is appropriate and that it has been well established as a valid production method to reduce formaldehyde emissions. The NWFA believes the use of surface scavengers on non-complying lots should also be allowed as well as aging. If a company wishes to attempt a heat application to burn off excess formaldehyde that should also be permitted. (We note that it is likely to succeed in reducing formaldehyde emissions, but potentially at the same time degrading the quality of the product.) The NWFA also recommends that the manufacturer have only a single additional test period to prove compliance.

The NWFA also feels that if the process of aging takes less than 4 weeks and the lot is shown to be compliant after that period, no additional measures need to be taken regarding material already sold. We reference again the SEFA report:

Emission levels are always highest immediately after manufacturing of the board and quickly drop as the board ages. **Average emission levels from unfinished boards can drop by about 25% after the first month**, and are usually half the initial amount in about six months or less. Within a year levels have decayed to approximate equilibrium with background ambient levels.

Scientific Equipment and Furniture Association (SEFA)

<http://www.sefalabs.com/i4a/pages/index.cfm?pageID=3394>

Given the length of the supply chain, very few manufactured products will be utilized within a home environment in under four weeks. In fact, four months or more might be a more likely period between production of a primary panel and use of a finished good by a consumer.

A downstream customer receiving non-compliant material should have the option of holding stock pending new testing, or having it treated (if appropriate) at the manufacturer's cost, or returning to the manufacturer. If the material fails a second test, then it must be returned to the manufacturer or sold to a non-US market.

The NWFA agrees that records should be kept regarding non-complying lots and that such records should be provided to the TPC and to the EPA upon demand. However the NWFA STRONGLY objects to those records being made a matter of public record.

If a lot passes, then it has passed. The fact that it was originally non-complying is prejudicial in the marketplace. If a product is now within the emission standards, then that is all that anyone must know. A mill should not be punished in the public eye for a one-off "hot panel" production.



The EPA has set the established safe limit and system for compliance. The fact that the material is compliant is the ONLY information the public is required to have.

In the case of a failure of a one-off lot in routine QC testing, the mill should notify the TPC and begin an investigation known as an RCA (Root Cause Analysis). The mill and the TPC determine what went wrong.

- If it was an accident, they will prove it as such through increased QC testing and production monitoring for a 4 week period show resumed compliance.
- If it was a production flaw, they will develop the solution, and through increased QC testing and production monitoring for a 4 week period show resumed compliance.
- If the issue is not resolve within a 4 week period, the TPC can choose to suspend/revoke certification.

Failure of a QC test (and implementation of the appropriate corrective action) followed up by subsequent passing of QC testing would indicate that the QC testing system is adequately controlling the panel quality. TPCs are in the best position to determine if more oversight is warranted.

Frequent QC test failures are an indication that the issue(s) has not been resolved/corrected and would warrant increased TPC oversight. However, TPCs are in the best position to determine the root causes and therefore the best position to determine the extent and type of increased oversight.

Failure of a quarterly test would indicate the inability of the QC testing to adequately control the panel quality, and therefore would require more stringent TPC oversight until the QC testing system can demonstrate the ability to control the products' quality.

In the case of failure of a quarterly test, the TPC has the right to suspend/revoke certification or apply another corrective action protocol including suspension of reduced testing approvals. However all such actions remain between the mill and the TPC, with the EPA able to request such information. These cases should not be a matter of public record.

The EPA has set the established safe limit and system for compliance. The fact that the material is compliant is the ONLY information the public is required to have.



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Issue: Quality Control Manual

ORIGINAL REFERENCE: ..required to have a written quality control manual containing at a minimum: (1) Organizational structure of the quality control department; (2) sampling procedures; (3) method of handling samples, including a specific maximum time period for analyzing quality control samples; (4) frequency of quality control testing; (5) procedures to identify changes in formaldehyde emissions resulting from production changes (e.g., increase in the percentage of resin, increase in formaldehyde/urea molar ratio in the resin, or decrease in press time); (6) provisions for additional testing; (7) recordkeeping requirements; (8) average percentage of resin and press time for each product type; (9) product grouping, if applicable, and (10) procedures for reduced quality control testing, if applicable. ...EPA requests comment on what should be included in the quality control manual.

NWFA COMMENT: The NWFA has no complaint with the list of topics for the QC Manual. The NWFA recommends that the QC Manual also contain specifics for labeling as unless changes are made, there is likely to be considerable confusion in the marketplace for some time to come, particularly between NAF exempt with TPC oversight and NAF exempt and ULEF exempt with oversight and so forth.

The NWFA believes that under the extraordinarily open record keeping the EPA has proposed, that the QC manual could be considered publicly accessible. The NWFA strongly objects to such a condition. A company will invest considerable time and money into developing such a manual and it should be absolutely protected as business proprietary information. The NWFA opposes any requirement mandating such a disclosure on the basis that it is an unduly burdensome requirement that could severely damage the discloser's business model and confidential business operations.

Further, this manual should be confidential as it is tailored to a specific mill and their production conditions and products. A purchaser might demand to see the QC manuals from two different mills. One has an established testing program of QC testing twice a week and the other, because of product grouping, volume, or any other legitimate and approved reasons, only test once a week. It could be assumed that "oh, since manufacturer one tests twice a week, their product might be safer." OR conversely it could be implied that "oh since manufacturer one tests twice a week, their production is higher risk. The second company is safer because of their reduced testing burden." As with ALL information beyond the basic "pass/fail" condition of the product, the QC manual should be considered confidential information.



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Issue: Employee Training/Qualifications

ORIGINAL REFERENCE: EPA is also proposing to require each panel producer to designate a person as quality control manager with adequate experience and/or training to be responsible for formaldehyde emission quality control.... EPA is requesting comment on criteria for determining whether an individual's experience and/or training are appropriate for this position. For example, should the quality control manager have a certain number of years of experience in the wood products industry, or a degree in chemistry or a related field?

NWFA COMMENT: The NWFA believes that imposing extensive criteria on every company for their employee hiring practices would impose a huge burden on small businesses. Some small fabricator shops may have less than a half dozen employees. Requiring them to hire a new employee to meet specified criteria may be well beyond their means.

The TPC should determine if a company's staff and QC practices are sufficient and appropriate for their condition. A TPC has been entrusted and accredited by the EPA to make these decisions and imposing yet additional mandatory requirements on the TPC and the companies suddenly forced to comply with these regulations will increase costs and surely impose unfair and undue burden on small and medium sized companies in particular. If the TPC is doing their job, they will ensure that the company's staff is doing theirs.

As with all such company/production specific records, confidentiality must be maintained and none of this information should be considered publicly available.



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Issue: Testing Requirements

ORIGINAL REFERENCE: EPA is proposing to require panel producers to submit monthly product data reports for each panel producer, production line and product type, to their TPC. The content requirements for the product data reports would be similar to the CARB requirements and include a data sheet for each specific product with test and production information, and a quality control graph containing the established quality control limit (QCL) and shipping QCL, if applicable, the results of quality control tests, and retest values... EPA requests comment on whether other useful information, or a different format, should be required.

NWFA COMMENT: The NWFA believes that imposing additional mandatory record keeping and reporting requirements on every company will impose a huge burden on all involved, particularly on the TPC's to review, and on small/medium businesses to submit.

The TPC should determine the appropriate reporting schedule for their clients based on the client's size, production volume, and production conditions.

A TPC has been entrusted and accredited by the EPA to make these decisions and imposing yet additional mandatory reporting requirements will increase costs with no corresponding benefits. If the TPC is doing their job, they will ensure that the company is doing theirs and the TPC should determine the appropriate reporting schedule and required information.

The NWFA believes that mandated monthly reporting is unnecessary and will only serve to increase the cost of doing business via overly burdensome administration costs and in no way furthers the intent of the statute, which is to decrease formaldehyde emissions.

Further the NWFA believes that under the extraordinarily open record keeping the EPA has proposed, these records could be considered publicly accessible. The NWFA strongly objects to such a condition. As with ALL information beyond the basic "pass/fail" condition of the product, a mill's test results should be considered confidential information.

Finally, we would also note that the cost burden to affected businesses already appears to be well beyond the EPA's estimate of \$250/year. Adding to it only adds to the costs.



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Issue: Employee Training/Qualifications

ORIGINAL REFERENCE: EPA is also proposing to require that each quality control facility have quality control employees with adequate experience and/or training to conduct accurate and precise chemical quantitative analytical tests. EPA requests comment on the criteria for determining whether an individual's experience and/or training are appropriate for this position. The quality control manager would identify each person conducting formaldehyde quality control testing in the quality control manual and to the accredited TPC.

NWFA COMMENT: The NWFA believes that imposing extensive criteria on every company for their employee hiring practices would impose a huge burden on small businesses. Some small fabricator shops may have less than a half dozen employees. Requiring them to hire a new employee to meet specified criteria may be well beyond their means.

The TPC should determine if a company's staff and QC practices are sufficient and appropriate for their condition. A TPC has been entrusted and accredited by the EPA to make these decisions and imposing yet additional mandatory requirements on the TPC and the companies suddenly forced to comply with these regulations will increase costs and surely impose unfair and undue burden on small and medium sized companies in particular. If the TPC is doing their job, they will ensure that the company's staff is doing theirs.

As with all such company/production specific records, confidentiality must be maintained and none of this information should be considered publicly available.



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Issue: Testing Records

ORIGINAL REFERENCE: Testing records and other records demonstrating eligibility for a TPC exemption or reduced testing, such as records showing the chemical composition of the resins used to manufacture the eligible products, would have to be maintained for a minimum of 3 years from the date that the record was created. EPA requests comment on whether the test records from the initial testing period should be kept for as long as a panel producer claims a TPC exemption.

NWFA COMMENT: The NWFA believes that keeping initial records for as long as the exemption is claimed is unlikely to prove an excessive burden as it is a single collection of test data, but also does not object to mandating a minimum 3 year period.

However, the NWFA believes that under the extraordinarily open record keeping the EPA has proposed, these records could be considered publicly accessible. The NWFA strongly objects to such a condition. As with ALL information beyond the basic “pass/fail” condition of the product, a mill’s test results should be considered confidential information.

Further the NWFA is concerned about confusion regarding record keeping burdens on companies claiming NAF exemptions that are not under TPC oversight. Again, distinguishing between the two types of companies is not easy and responsibilities of each are not clear. The NWFA encourages both the development of a program specific to secondary manufacturers if it is deemed necessary to regulate them and a simplified label program to reduce confusion in the market about the different types of possible exemptions.



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Issue: Production Changes

ORIGINAL REFERENCE: Under this proposal, any change in the resin formulation, the core material, or any other part of the manufacturing process that may affect formaldehyde emission rates would render the product ineligible for the reduced testing approval or TPC exemption. EPA requests comment on whether other events, such as failed quarterly or routine quality control tests, should invalidate a reduced testing approval.

NWFA COMMENT: The QC Manual should specify how the changes are handled through TPC notification, testing and review. Changes made without consultation with the TPC can result in the TPC choosing to suspend/revoke certification. No increased/renewed testing cycle should be mandated by the regulations, rather they should be determined by the TPC as appropriate based on what change is being made.

As with all such company/production specific records, confidentiality must be maintained and none of this information should be considered publicly available.

EPA also requests comment on whether, in the event of such a change, the panel producer should be required to begin the TPC exemption process again with a 3 or 6 month testing period overseen by an accredited TPC, or whether a single TPC test of the modified product would be sufficient.

NWFA COMMENT: At the TPC's discretion, based on the sample results and the review of the change, the exemption can be pulled and the mill would be required to restart the exemption process. However we would assume that:

Generally, if the resin is NAF, the manufacturer must notify the TPC, but their certification continues without change. The TPC can require additional testing at their discretion.

If a ULEF system is modified, the TPC should require a review of the process change and conduct a "requalification test" which would allow the immediate continuation of the exemption.

The TPC would determine appropriate labeling requirements under such a situation.

Further, given that a manufacturer and TPC have already invested significant time in establishing testing correlations and quality control limits, it would seem reasonable to allow the mill and TPC to investigate innovations through QC and TPC validation testing without interrupting the reduced testing frequency or exempt status for everyday production. Additionally, there are provisions elsewhere that would address any failed lots that might result. Requiring mills and TPCs to start all over again would be unduly burdensome, expensive, and stifle investigation of potential innovations.

The NWFA does request clarification on how mills should be labeling products during various testing periods. Is a product "certified compliant" while undergoing reduced testing review and then "ULEF exempt" afterwards and then, if they change processes, then revert to labeling "certified compliant" until they are return to "ULEF exempt" labels again?



The NWFA is also concerned about an inappropriate market bias given to products specifically marked as ULEF/NAF rather than simply “compliant.” All products are compliant, just through different routes. A consumer may assume that NAF is a “safer” product than a certified product that is not labeled that way (which could possibly even be NAF, but not yet certified as exempt from TPC oversight.) There should be no implied bias when the bottom line is that compliance through any route means the product is compliant.

As a solution to the above, the NWFA encourages the use of a simplified label requirement stating only that a product is “TSCA VI Compliant.” Other information such as lot, production date, and manufacturer could be coded into the label but the basic information to be presented would be “TSCA VI Compliant.” Such a basic label would resolve all possible consumer confusion—there would be no need to explain the differences between a product being compliant because it is certified with regular or reduced testing, or being compliant because it is NAF or ULEF or because it is exempted from the certification program completely. Under all those conditions, the bottom line is the same: the product is COMPLIANT. And that is all the consumer needs to know. Additional information can only lead to confusion or inappropriate market bias. More details on this proposal below.

As with all such company/production specific records, confidentiality must be maintained and none of this information should be considered publicly available.

EPA further requests comment on whether a distinction can be made between changes that are unlikely to result in changes in product emissions, which may not need extensive testing to confirm continued eligibility for the exemption, and more significant changes. EPA is particularly interested in specific examples of both types of changes.

NWFA COMMENT: The NWFA notes that changes that may impact will vary with the glue system and production conditions—a change of spread rate might not have an impact with some NAF or phenol formaldehyde productions, but the same change could have an impact with an MUF production. Press time, glue volumes, mixtures, temperature, pressure, moisture—all of these are potential factors. All deliberate changes should be discussed with the TPC and responded to on a mill by mill basis. The NWFA encourages having the TPC establish appropriate parameters for certification and changes to certification status rather than having certain conditions made mandatory without regard to the specifics on the ground.

Given that a manufacturer and TPC have already invested significant time in establishing testing correlations and quality control limits, it would seem reasonable to allow the mill and TPC to investigate innovations through QC and TPC validation testing without interrupting the reduced testing frequency or exempt status for everyday production. Additionally, there are provisions elsewhere that would address any failed lots that might result. Requiring mills and TPCs to start all over again would be unduly burdensome, expensive, and stifle investigation of potential innovations.

As with all such company/production specific records, confidentiality must be maintained and none of this information should be considered publicly available.



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Issue: ULEF Resins

ORIGINAL REFERENCE: Although this proposal contains a ULEF reduced testing provision, EPA requests comment on the utility of this option. It is EPA's understanding that very few manufacturers have sought the ULEF reduced testing provision under the CARB ATCM in lieu of the total exemption from TPC oversight and formaldehyde emissions testing requirements after the initial testing period. As such, EPA anticipates that the vast majority of ULEF resin-based composite wood product manufacturers will apply for the full exemption from TPC oversight and formaldehyde emissions testing after the initial testing period.

NWFA COMMENT: In principle, the NWFA welcomes any and all forms of exemptions and reduced testing burdens.

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Issue: ULEF Resins

ORIGINAL REFERENCE: EPA is also requesting comments, information, and data on the broader question of giving composite wood products made with ULEF resins preferential treatment under TSCA. EPA is particularly concerned with products made with urea-formaldehyde-based resins. EPA believes that it is more difficult to ensure that formaldehyde emissions from products made with these resins remain low over time, regardless of environmental conditions..... Given this information, EPA requests comment on whether there should be a reduced testing option or a TPC exemption available to products made with ULEF resins.

NWFA COMMENT: The NWFA encourages the development of any and all possible reduced testing options as we remain very concerned about available testing capacity. The NWFA strongly encourages providing options to any type of manufacturer using ULEF resins options for exemptions and/or reduced testing.

At issue is not ‘preferential’ treatment for composite wood products made with ULEF resins, but rather EQUAL treatment under a performance-based, technology-encouraging regulation. The phrase “...regardless of environmental conditions...” is without merit in consideration of this regulation, in that the performance-based results are measured under ASTM D1333 – which has very specific environmental conditions.

EPA also requests comment on whether the ULEF provisions should be limited to products made with a subset of ULEF resins that do not contain urea-formaldehyde polymer—in other words, limited to no-added urea formaldehyde-based (NAUF) resins.

NWFA COMMENT: The NWFA opposes limiting ULEF definitions to NAUF resins. While many Soy and ISO glues are suitable with no special qualifications, many phenol formaldehyde and other glues can easily work as ULEF. To define ULEF as only NAUF is to impose both an unfair commercial advantage on certain production conditions and materials, it also implies a market bias against perfectly acceptable products that meet the scientific, performance-based requirements.

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Issue: PRODUCT De Minimis

ORIGINAL REFERENCE: After due consideration, EPA has decided not to propose an exception 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 of such products, nor does EPA know of any information that suggests that such products would not have formaldehyde emissions that exceed the statutory emission standards. In addition, EPA has not identified any apparent dividing line between products that contain de minimis amounts of composite wood products and other products. EPA requests comment, information and data on whether there should be such an exception, how the exception should be delineated, and what regulatory provisions should apply or not apply to such products. EPA notes that any decision on this particular exception would not affect the statutory exemption from the emission standards for windows, exterior doors, and garage doors made with small amounts of composite wood products.

NWFA COMMENT: The NWFA is concerned about the potentially extreme expansion of companies that would be forced to comply with this standard. For example, to name just a few, this could cover manufacturers of:

- picture frames
- housewares
- wood handles on kitchen knives
- cutting boards
- stocks on guns
- school chalkboards
- many tool handles
- coasters
- TV sets and appliances and stereo speakers
- clothes hangers
- guitars and other musical instruments
- door handles
- skis, skateboards, snowboards, etc.

Without any de minimis exclusions, almost any product could be covered. Companies use laminated wood to produce custom covers for iPads and Smartphones and decorative computer cases. Laminated wood can be used for light switch cases, for lamp shades, for customized refrigerator doors. As fashions change from metal to wood, wood will no longer be fashionable simply for economic reasons. And what of the small startup companies who create clever new fashions—wooden glass frames, wooden bicycles? These companies may close and never reopen because their small specialized production will need to be regulated the same as a huge plywood mill.

The NWFA is concerned about the economic impact these regulations have on our country. If that small company that makes customized glass frames closes, those employees may not be able to afford a new wood floor—certified or not.



Further as noted, the available testing capacity is extremely limited and the NWFA is concerned that members will not have sufficient access with every possible product from a kitchen cutting board to a new RV requiring weekly testing.

Further, the EPA is proposing a specific exemption on windows with limited composite wood products. *(These exemptions include, but are not limited to, hardboard, structural plywood, structural panels, oriented strandboard, glued laminated lumber, prefabricated wood I-joists, finger-jointed lumber, wood packaging, composite wood products used inside new vehicles other than recreational vehicles, **windows that contain less than 5% by volume of composite wood products**).* The NWFA asks the rationale for including other products of such small size or with extremely limited quantities of composite wood products if something as significant as windows would be uncertified. The NWFA does not propose including windows, rather properly excluding all downstream production, particularly material that has additional barriers to emissions such as paper, wood, or chemical finishes on the appropriate cores.

Finally, when you consider the huge range of downstream production covered by this program (either in record keeping or actual certification), this highlights the argument for 1) the total exclusion of secondary manufacturing or 2) if they are to be covered, covering them under a separate regulation that can be structured appropriately for the differing conditions of downstream industries.



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Issue: Record Keeping – all downstream

ORIGINAL REFERENCE: In general, this means that the importer, fabricator, or producer would be required to obtain from the supplier records identifying the panel producer(s) that produced the composite wood products and the dates that the products were manufactured and purchased from the panel producer(s), and bills of lading or invoices that include a written affirmation from the supplier that the composite wood products are compliant with this subpart. EPA requests comment on what documentation ought to be required of distributors and retailers in this regard.

NWFA COMMENT: The NWFA does not feel that any certification information should be placed on the Bill of Lading as that is often made available in publicly searchable databases. (Such information appearing on an invoice or other confidential documents is accepted.)

The NWFA believes that only a marked invoice should be required in this instance. The reason is that it is standard procedure to maintain a record of invoices while bills of lading reside in the province of the carrier. Mandating that bills of lading also contain tracking information would increase the administrative burden on retailers and be totally redundant considering invoices already contain this information.

The NWFA requests more information regarding what a “statement of compliance” would look like, who would provide it, the information it should include, and who would be required to keep the record of having it. The NWFA would also like clarity regarding how small a volume such a certificate would cover—if it is possible to receive one on an annual basis (much like a CARB certificate now covering all production, or if this is necessary on a per purchase basis.)

Generally, the NWFA believes that any form of written affirmation from the supplier is an unnecessary step, as invoices stand as the better conduit for this information. Invoices are part of an established system and using them will keep the administrative burden increase to a minimum. Written affirmations require the creation of an additional system, which will necessitate more training and more time spent on a process that could have been implemented far more easily via invoices. Written affirmations do not offer any enhanced benefit over invoices and will result in a dramatically increased administrative burden that in no way furthers the intent of the statute.



For example, should distributors and retailers be required to obtain bills of lading or invoices from their suppliers that include a written affirmation that the composite wood products are compliant with this subpart? Or should distributors and retailers be required to obtain the same records that EPA is proposing to require for importers, fabricators, and laminators?

NWFA COMMENT: The NWFA believes that only an invoice should be required in this instance. The reason is that it is standard procedure to maintain a record of invoices while bills of lading reside in the province of the carrier. Mandating that bills of lading also contain tracking information would increase the administrative burden on retailers and be totally redundant considering invoices already contain this information.

Generally, the NWFA believes that any form of written affirmation from the supplier is an unnecessary step, as invoices stand as the better conduit for this information. Invoices are part of an established system and using them will keep the administrative burden increase to a minimum. Written affirmations require the creation of an additional system, which will necessitate more training and more time spent on a process that could have been implemented far more easily via invoices. Written affirmations do not offer any enhanced benefit over invoices and will result in a dramatically increased administrative burden that in no way furthers the intent of the statute.

The NWFA strongly opposes any information beyond a list of certified primary panel mills (as with CARB) be made public. If the EPA develops a list of “Certified Manufacturers” and a buyer (distributor/importer) considering a product branded as “Joe’s Oak” finds that is not listed, how does he determine that “Joe’s Oak” brand is properly certified? The EPA’s proposal is to open up the entire supply change so that everyone knows that Joe’s Oak is produced by Sam. This is not acceptable.

The problem of confidentiality and brand name identification is the same for a domestic distributor—Joe’s Oak is what being sold, but now everyone can trace it back to the original mill. This destroys the value that Joe has created in his brand name. And Joe can’t be identified as a certified manufacturer himself. A customer who simply looks on Joe’s website and then searches for Joe on the EPA website won’t find him—they won’t know that Joe imports from a valid certified source and buys domestically from a valid certified source. This regulation will kill Joe by both destroying his supply chain and implying that his product is not certified. Revealing the entirety of the supply chain could compromise a competitive advantage for every company involved. It is unreasonable to demand that an importer divulge its business model to the general public as it places an overly burdensome requirement on it.

Retailers are rarely importers or direct factory buyers. They work based on brand names and rely on distributors (of either domestic or imported production) to provide a well developed product and brand. Their expertise is in sales and distribution, not in importation or the chemical compositions used by their suppliers. Compelling retailers to become experts in these fields places an inappropriate burden on them and forces them to change their focus, which will harm their existing business.

As outlined earlier, the NWFA recommends that the definitions be simplified to “primary panel producer” (those that make plywood and the assorted particleboards) and “purchaser.” Producers must be



certified and purchasers, regardless of where they are in the supply chain, have a record keeping burden. It should not be overly complicated by having different standards for companies at different positions in the market—particularly since so many companies will regularly occupy multiple positions in the market.

Finally, this specific requirement is clearly biased towards exclusively domestic manufacturers, particularly those who sell under their own name (and we note that many domestic manufacturers either import components/raw material from overseas or supplement their production with finished foreign goods). The burden for importers would be vastly greater than that of domestic manufacturers. Importers of finished goods would be unable to privately label any of their material.



p. 34839 HIGH PRIORITY ISSUE Issue: Definition/Inclusion of Fabricator

ORIGINAL REFERENCE: EPA requests comment on how the definition of “fabricator” and the record keeping requirements for fabricators would affect manufactured home producers.

NWFA COMMENT: The NWFA STRONGLY objects the inclusion of downstream fabricators and laminators already utilizing appropriate cores into the certification program. This far exceeds the CARB regulations, is not mandated by the legislation, and the NWFA believe significant further study by the EPA, OMB, and SBA must be done before so broadly expanding the regulatory reach. We feel that such an inclusion is going to be highly confusing to manufactured home producers—at any given moment they could be a fabricator, a laminator or a distributor. We wonder how they would provide a label for a factory-produced home.

As noted earlier, the NWFA would also recommend consideration be given to a simplification of terms and procedures. There is a great deal of confusion between a manufacturer, laminator and fabricator. We note that there is no specified definition of “laminator” provided at the end of the regulation, although there is a “laminated product producer.” We would request consistency of phrase to reduce confusion.

The NWFA believes that primary panel producers should be certified. These are producers of hardwood veneer core plywood, HDF, MDF, and particleboard. Secondary manufacturers, such as a manufactured home producer, should be required to utilize certified cores and/or lumber or special core materials that have no requirement to be certified. They, as with all purchasers of an included product have the responsibility of ensuring that the primary producer is certified and that they have received certified material.



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Issue: Record Keeping - Importers

ORIGINAL REFERENCE: In order for this record keeping system to function effectively, allowing EPA to determine the source of the composite wood products that make up an imported finished good, the records required to be kept by the importer would have to be accessible to EPA. EPA requests comment on alternative ways to ensure that this is the case. For example, EPA could require importer records to be maintained in the United States, either at the importer's place of business or at a registered agent's. Or EPA could require an electronic copy of the importer records to be available in the United States at the importer's place of business or with the importer's registered agent.

NWFA COMMENT: The NWFA believes that all purchasers, be they importers, secondary manufacturers, distributors or retailers should have a record keeping burden to track their certified purchases. There should be no special singling out of record keeping just for importers.

Certainly purchasing records should be made available to the EPA upon an appropriate request. However, the NWFA is concerned that this information is likely to be deemed as “public right to know” to be made available to anyone upon request. The NWFA opposes such disclosure requirements as they may present an overly burdensome requirement, both in terms of resources required and potential damage such disclosures can cause by the exposure of a company’s supply chain.

This is highly prejudicial to importers and amounts to a tax on imports, contrary to the EPA’s statement that it seeks for the regulation to be neutral on country of manufacture.

Many companies have agreements with their vendors that information be available on request. Rather than subject the entity and the EPA to a pointless amount of paperwork, it would make more sense to require the importer to produce records upon request. If asked to produce the records and the importer is unable to obtain them from the vendor, the importer could be subject to a fine. It would greatly reduce the amount of paper and the costly burden of collecting and storing such documents while achieving the EPA’s goal that the records be available if needed.

It should be noted that many times, information regarding all details of production is not information to which any buyer, importer or other, would be privy. Asking an importer to assume the burden of identifying the entire supply chain for finished goods is inappropriate.

Few if any buyers two or three steps away from their purchase would know about a production factor done earlier in the chain. For example, if a primary panel producer makes a change and that product goes to a secondary manufacturer, the buyer of that secondary product is not usually going to be aware of the original change—nor should they be concerned about it as long the product means all performance conditions, including emission standards.

NWFA members are generally involved with only with the final flooring. Generally, a primary panel manufacturer makes the core and sells it to a flooring manufacturer. The flooring manufacturer takes the certified core, applies a veneer, and cuts to size, mills the tongue and groove, adds a factory finish and then sells it to a distributor, retailer, or importer. The flooring manufacturer may purchase cores from multiple producers.



The supply chain can be extended even further by brokers, distributors, and division of the steps among manufacturers. Vertical integration is the exception rather than the rule. If the core is produced outside the US, it may be sold as a core to a US manufacturer or it may be turned into finished goods prior to coming to the US. In considering treating importers as a manufacturer, the EPA is failing to consider that the importer is usually at least two steps (if not more) removed from the manufacture of the core and sometimes even a step or two from the secondary manufacturer. Often the importer is purchasing flooring manufactured with certified cores but is not in communication with or familiar with the manufacturer(s) of the core.

We agree that importers, just like any buyer including those purchasing OEM material from domestic producers (many who use imported cores), should be familiar with their product and work to ensure that it has been properly produced according to the regulations but there cannot be a direct one-to-one correlation of importer as manufacturer.

Any production of records should be marked confidential and not be available to the public, including immediate buyers, beyond the fact that the product meets the standards.



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Issue: Definition Bundles

ORIGINAL REFERENCE: Distributors and wholesalers who receive labeled bundles of regulated composite wood products and then divide and repackage them, whether in bundles or separately, would be required to label each separate bundle or item with the same information as required on the original label. EPA is proposing to define the term “bundle” as more than one composite wood product panel, component part, or finished good fastened together for transportation or sale. EPA requests comment on the utility of this definition and whether it represents common industry usage.

NWFA COMMENT: The NWFA has no objection to the definition of bundle here. For the majority of the NWFA membership, the expectation is that individual boxes/bundles of flooring will eventually be marked as certified through a pre-printing process, so it is unlikely that many of our retailers/distributors will face a significant relabeling burden. That said, we can certainly imagine many other industries will face greater challenges in requiring downstream labeling and we encourage minimal burdens being placed on them. We also foresee the problem of liability that could come from a small typo in a recopied label—it is best that things are kept simple with the basic “TSCA VI Compliant” standard for consumer material.

We do note that with regards to the proposal to make the import date the same as the manufacture date, the relabeling effort this would require would prove virtually impossible. If a label must have a proper manufacturing date on it, then each individual box would have to be marked with an entry date. A company could not “prelabel” production with the imported entry date as it would not be known until arrival. Certainly US ports are not set up to re-label every individual item that enters it; nor are distributors. There is insufficient physical space to unload containers and relabel and then reload for delivery. Absolutely the “manufactured-by” date should be the governing date, no matter where the production occurred. This eliminates the question of relabeling imports.

The NWFA does request clarification, among other things, on how labels will 1) reflect reduced oversight conditions vs. complete exemptions and 2) how mills should be labeling products during various testing periods. Is a product “certified compliant” while undergoing reduced testing review and then “ULEF exempt” afterwards and then, if they change processes, then revert to labeling “certified compliant” until they are return to “ULEF exempt” labels again?

As a solution the above, the NWFA encourages the use of a simplified label requirement stating only that a product is “TSCA VI Compliant.” Other information such as lot, production date, and manufacturer could be coded into the label but the basic information to be presented would be “TSCA VI Compliant.” Such a basic label would resolve all possible consumer confusion—there would be no need to explain the differences between a product being compliant because it is certified with regular or reduced testing, or being compliant because it is NAF or ULEF or because it is exempted from the certification program completely. Under all those conditions, the bottom line is the same: the product is COMPLIANT. And that is all the consumer needs to know. Additional information can only lead to confusion or inappropriate market bias.

Certainly companies that are producing with ULEF or NAF system can independently advertise such features on their packaging or in their advertising material, but the EPA label system should not suggest that a product produced such a way is better or different than material produced another way as long as all products



are compliant under the standard. There should be no implied bias in official labels regarding the ROUTE to compliance.

There is more than sufficient precedent for such a standardized label. The product safety implications of a UL listing are very similar to TSCA Title VI compliance, yet just the UL logo is enough to prove compliance with no extraneous explanations that might confuse the consumer. Even food products that we ingest daily, directly into our bodies, do not require labeling as confusing or onerous as the proposed TSCA Title VI labels. Beef is sold with a "USDA inspected" label, and that is all the consumer needs to know to be confident that the meat is safe to eat. We would argue that both the UL listing and USDA labels have much greater health and safety implications to consumers than any TSCA Title VI compliance labeling of flooring will ever have—particularly given the majority of flooring is sold factory finished with the extremely low emissions that such production provides. However the bottom line remains simple: the route to compliance is not the important feature and does not need to be advertised—particularly since the routes can change or be confusing or lead to inappropriate and unintentional bias in the marketplace. Compliance is the only thing the consumer needs to know. Labels should be simple: “TSCA VI Compliant.”

Such a label would respect the business confidential information of an extended supply chain. We of course recognize that an authorized organization such as the TPC or the EPA or CARB should be able to utilize a label and track the production back to the actual manufacturer(s) and lot on a confidential basis, but that information does not need to be made public, just be available to those who understand how to read the label.

Having a simplified label system will address the EPA’s very appropriate concern about keeping financial impacts at minimum levels for non-producing downstream companies such as retailers and distributors. It eliminates the confusion evident elsewhere in the proposed regulations regarding those buyers’ responsibilities for label keeping, label creation and relabeling.

Finally, we noted that the EPA has noted that they expect to see only a minimal number of companies to have increased record keeping burden due to the nation’s general familiarity and participation in the CARB system. The estimate of companies completely new to CARB maybe correct (we believe it low), but we note that if there is a dual chain of custody required including a dual label requirement, then there is no reduction in costs. Certainly if downstream industries are faced with dual record keeping, tracking both CARB and EPA material purchased/processed/sold, they will see costs well beyond any estimated figures.



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Issue: Labels (Bundles/Repackaging)

ORIGINAL REFERENCE: EPA is interested in any information or data available on how often retailers receive bundles of regulated composite wood products and then divide and repackage them.

NWFA COMMENT: It is common enough for large manufacturers or importers or distributors to divide lots and often provide mixed loads to smaller distributors and retailers. However, for the majority of the NWFA membership, the expectation is that individual bundles of flooring will eventually be marked through preprinted descriptions on the box, so it is unlikely that many of our retailers/distributors will face a relabeling burden. However we can certainly imagine many other industries will face greater challenges in requiring downstream labeling and we encourage minimal burdens being placed on them.

Certainly many of our smaller manufacturers will often buy less than full container loads of certified cores. However, they will not be retailing the material in that form. If they are assured that the material is properly certified, individual marking would not be necessary for them, and they will be reprocessing the material into another form rather than retailing as sold to them.

In addition, EPA requests comment on whether these retailers should then be required to label each separate bundle or item with the same information as required on the original label.

NWFA COMMENT: The majority of the NWFA membership, the expectation is that individual bundles of flooring will eventually be marked, so it is unlikely that many of our retailers/distributors will face a relabeling burden. We would certainly oppose a “per item” labeling requirement of any type. The logistical nightmare of marking every piece of flooring is terrifying.

However we can imagine the challenges faced by others. For example, a small cabinet shop making kitchen packages. They might be mixing doors from one source, cabinet walls from another and framing material from a third. For them to relabel every piece and track three sets of sourcing information seems excessive.

The NWFA does object to the downstream use of lot management as a mechanism for certification and labeling. While material shipped out of the primary panel producer’s mill should be marked with the lot, that information should not be mandated as the primary tracking method for downstream purchasers. Many retailers have inventory control systems that are not presently designed to track product based on lot number and re-tasking them to do this would come at a tremendous expense, thereby rendering this requirement overly burdensome to the point that the cost incurred is disproportionately divergent from any potential benefit. The existing invoice system already tracks products and certification will be more easily tracked via this system, as the system already exists and the personnel tasked with this are already proficient in it. Using the existing inventory system to track certifications is of more benefit to consumers and will prevent massive cost increases while preserving the ability of new system to develop in the future.



EPA would also be interested in comments on other approaches that could be used to convey the information; for example, allowing retailers to use signage in the retail display area, which contains the information on the label, to meet this requirement in lieu of separate labels on each product once debundled.

NWFA COMMENT: The NWFA has no objection to allowing retailers or other companies to choose to utilize other advertising material or methods of displaying information, however we feel that no information needs to be displayed or provided other than “TSCA Title VI Compliant.” The EPA has set the established safe limit and system for compliance. The fact that the material is compliant is the ONLY information the public is required to have. No other markings are needed--the customer has no reason to worry because it’s been DONE.

Alternatively EPA requests comment on requiring fabricators and manufacturers to label every regulated product separately prior to bundling and also requiring wholesalers, distributors, and retailers to maintain those labels at all times.

NWFA COMMENT: The NWFA does not believe it is necessary to require downstream purchasers, not matter how they define themselves, to keep label copies.

The NWFA believes it is logical to allow some flexibility based on an industry/product basis. For the flooring industry, the expectation would be that for the majority of producers, the boxes would be pre-printed with a certification mark. That would remain unchanged through the distribution chain and be viewed by the final end consumer. However a flooring manufacturer buying certified core for conversion to flooring does not require their core to be marked, as long as other documentation is provided. If there is a cost increase from the manufacturer because of the individual labeling requirements, that’s a cost with no benefit.

The NWFA does request clarification, among other things, on how labels will 1) reflect reduced oversight conditions vs. complete exemptions and 2) how mills should be labeling products during various testing periods. Is a product “certified compliant” while undergoing reduced testing review and then “ULEF exempt” afterwards and then, if they change processes, then revert to labeling “certified compliant” until they are return to “ULEF exempt” labels again?

As a solution to the above, the NWFA encourages the use of a simplified label requirement stating only that a product is “TSCA VI Compliant.” Other information such as lot, production date, and manufacturer could be coded into the label but the basic information to be presented would be “TSCA VI Compliant.” Such a basic label would resolve all possible consumer confusion—there would be no need to explain the differences between a product being compliant because it is certified with regular or reduced testing, or being compliant because it is NAF or ULEF or because it is exempted from the certification program completely. Under all those conditions, the bottom line is the same: the product is COMPLIANT. And that is all the consumer needs to know. Additional information can only lead to confusion or inappropriate market bias.

As noted elsewhere, the NWFA is concerned about the requirement making the import date the same as the manufacture date, as the relabeling effort this would require would prove virtually impossible. A company could not “prelabel” production with the imported date as it would not be known until arrival. Certainly US



ports are not set up to re-label every individual item that enters it; nor are distributors. There is insufficient physical space to unload containers and relabel and then reload for delivery. Any possible benefit stemming from requiring relabeling at the port of entry would be vastly outstripped by the massive cost increase that it would necessitate. This would create an overly burdensome requirement for importers that would severely harm their business. Absolutely the “manufactured-by” date should be the governing date, no matter where the production occurred.



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Issue: Labels (Barcode)

ORIGINAL REFERENCE: EPA is proposing to allow the label to be applied as a stamp, tag, sticker, or bar code. It would have to include, at a minimum, the fabricator's name, the date the finished good was produced and a marking to denote that the product was made in compliance with TSCA Title VI. EPA requests comment on whether a label applied as a bar code should be permitted, given that consumers of finished goods may not be able to read bar codes. EPA believes that many consumers of finished goods will be aware of the labeling requirements, either under the CARB ATCM or TSCA Title VI, and will be looking for a label that indicates compliance with the emission standards.

NWFA COMMENT: The NWFA strongly supports the use of bar coding and all similar and future such codings such as the "QR" codes. These type of codes are increasingly familiar and commonplace with many consumers preferring them—a quick tap of a smart phone application and detailed information can be made available.

The NWFA would recommend that above or below a barcode/QR/similar, a basic title appear such as "TSCA Title VI Compliant" but any other information required can be encoded into the code or otherwise coded by the seller. After all, the ONLY information a consumer needs to know is that the product is compliant.

It is important that the label be simple and clear for ease of understanding. A label should be PRODUCT focused, not company focused or route to certification focused. The basic information the consumer should seek is only that the product is "TSCA VI Compliant."

The NWFA deems the requirement of "fabricator's name" to be overly burdensome on the basis that it is both confidential and proprietary. Divulging a fabricator's name could severely damage a business' operations and also lead to consumer confusion when they are used to seeking a brand name. The NWFA supports allowing companies to code production as long as such coding is open to the TPC. A company branding another company's production does not want their manufacturing source to be identified on the label. Therefore the company should be allowed to either place their own name on the packaging (while tracking production sources) or placing a mill code on the packaging.

The question at hand again is very simple: is the product is certified or not? As long as the product has 1) met the standard and 2) can be traced back to the original manufacturer (or possibly combination of manufacturers since the EPA is proposing to require the certification of secondary manufacturers utilizing a certified core), then the information does not have to be exposed to the public. The question for the public is "does this product meet the standard" and exposing supply chain information is not necessary to answer that question.

The NWFA does request clarification, among other things, on how labels will 1) reflect reduced oversight conditions vs. complete exemptions and 2) how mills should be labeling products during various testing periods. Is a product "certified compliant" while undergoing reduced testing review and then "ULEF exempt" afterwards and then, if they change processes, then revert to labeling "certified compliant" until they are return to "ULEF exempt" labels again?



If labels are overly complicated and contain extensive specific information, we ask: what would happen if a company name is changed? What if a company changes status from certified to ULEF to something else—if a label is marked one way and a company is listed in a public database as another, what will that do to consumer confidence? What if some production by the same manufacturer is labeled exempt and others simply as ‘certified;’ wouldn’t that create market bias between pallets otherwise identical in production?

If the labels contains manufacturer’s names but are sold under different brand names, that is a direct competitive bias. Suppose manufacturer X sold to both Y and Z. Are we to have labels saying “Flooring by X” on both labels? There could be multiple actual differences in what Y and Z buy, but the consumer may not appreciate those technical differences.

As a solution the above, the NWFA encourages the use of a simplified label requirement stating only that a product is “TSCA VI Compliant.” Other information such as lot, production date, and manufacturer could be coded into the label but the basic information to be presented would be “TSCA VI Compliant.” Such a basic label would resolve all possible consumer confusion—there would be no need to explain the differences between a product being compliant because it is certified with regular or reduced testing, or being compliant because it is NAF or ULEF or because it is exempted from the certification program completely. Nor would there be the possibility of any confusion with a manufacturer who has under gone some form of perfectly logical change in conditions (either corporate or production based). Under all those conditions, the bottom line is the same: the product is COMPLIANT. And that is all the consumer needs to know. Additional information can only lead to confusion or inappropriate market bias.

Certainly companies that are producing with ULEF or NAF system can independently advertise such features on their packaging or in their advertising material, but the EPA label system should not suggest that a product produced such a way is better or different than material produced another way as long as all products are compliant under the standard. There should be no implied bias in official labels regarding the ROUTE to compliance.

There is more than sufficient precedent for such a standardized label. The product safety implications of a UL listing are very similar to TSCA Title VI compliance, yet just the UL logo is enough to prove compliance with no extraneous explanations that might confuse the consumer. Even food products that we ingest daily, directly into our bodies, do not require labeling as confusing or onerous as the proposed TSCA Title VI labels. Beef is sold with a "USDA inspected" label, and that is all the consumer needs to know to be confident that the meat is safe to eat. We would argue that both the UL listing and USDA labels have much greater health and safety implications to consumers than any TSCA Title VI compliance labeling of flooring will ever have—particularly given the majority of flooring is sold factory finished with the extremely low emissions that such production provides. However the bottom line remains simple: the route to compliance is not the important feature and does not need to be advertised—particularly since the routes can change or be confusing or lead to inappropriate and unintentional bias in the marketplace. Compliance is the only thing the consumer needs to know. Labels should be simple: “TSCA VI Compliant.”



A simplified label would also help early in the program, if downstream producers are included in this program. Some of them may use older uncertified production from primary panel producers in their production. If a pre-certified panel is used in a finished product, the product has a production date based on the later process. In that case, how would the product be labeled to reflect uncertified components? With a simplified label, that question is moot. With an extended timeline for certification, the chances of the issue even happening is reduced.

Further such a label would respect the business confidential information of an extended supply chain. We of course recognize that an authorized organization such as the TPC or the EPA or CARB should be able to utilize a label and track the production back to the actual manufacturer(s) and lot on a confidential basis, but that information does not need to be made public, just be available to those who understand how to read the label.

Further, having a simplified label system will address the EPA's very appropriate concern about keeping financial impacts at minimum levels for non-producing downstream companies such as retailers and distributors. It eliminates the confusion evident elsewhere in the proposed regulations regarding those buyers' responsibilities for label keeping, label creation and relabeling.

Finally, we noted that the EPA has noted that they expect to see only a minimal number of companies to have increased record keeping burden due to the nation's general familiarity and participation in the CARB system. The estimate of companies completely new to CARB maybe correct (we believe it low), but we note that if there is a dual chain of custody required including a dual label requirement, then there is no reduction in costs. Certainly if downstream industries are faced with dual record keeping, tracking both CARB and EPA material purchased/processed/sold, they will see costs well beyond any estimated figures.



p. 34841 HIGH PRIORITY ISSUE Issue: Timeline/Manufactured-by Date

ORIGINAL REFERENCE: EPA proposes to set the manufactured-by date at 1 year after publication of the final rule in the Federal Register. ...The manufactured-by date would apply to both regulated composite wood panels and finished goods containing regulated composite wood panels....

Composite wood products that can be shown to be manufactured before the established manufactured-by date would not be subject ... Composite wood products manufactured before the manufactured by date could be incorporated into finished goods at any time.

...Under TSCA, the term “manufacture” includes import, so the “manufactured-by” date would effectively be an “imported-by” date for imported goods.

NWFA COMMENT: First, this provides a specific initial bias against imported goods which we are sure the EPA did not intend. There is a very limited amount of time proposed for manufacturers to achieve certification. Establishing the manufactured-by date as the date of entry means that imported goods would effectively have to achieve certification anywhere from 3 to 8 weeks prior to domestic production, depending on the shipping schedules.

Since the EPA has stated that this is intended to be fair to all production, the “manufactured-by date” should be the governing date, no matter where the production occurs. In the event the EPA decides to use the “imported-by date” (despite the NWFA’s strenuous objection) in terms of starting the required certification, then they should allow an additional two or three month grace period for imported goods to compensate for shipping concerns.

And as noted above, in the discussion of relabeling concerns, with regards to the requirement making the import date the same as the manufacture date, the relabeling effort this would require would prove virtually impossible. A company could not “prelabel” production with the imported date as it would not be known until arrival. Certainly US ports are not set up to re-label every individual item that enters it; nor are distributors. There is insufficient physical space to unload containers and relabel and then reload for delivery. Any possible benefit stemming from requiring relabeling at the port of entry would be vastly outstripped by the massive cost increase that it would necessitate. This would create an overly burdensome requirement for importers that would severely harm their business. Absolutely the “manufactured-by” date should be the governing date, no matter where the production occurred.

The NWFA therefore suggests that for the initial period for achieving certification, the EPA use the imported-by date only for the final cutoff date, i.e., “all imported goods must be compliant by X date” but that date be two or three months after the same date is set for domestic production to allow for shipping time and factors outside the exporter/importer’s control. However, after that date, all product entering the US marketplace must be compliant without exception regardless of the original manufactured-by date. For all other purposes, including labeling, testing, and tracking, the “manufactured-by” date is used as the governing date for reviewing production.



p. 34841

Issue: Timeline/Stockpiling

ORIGINAL REFERENCE: Selling stockpiled regulated composite wood panels and finished goods containing regulated composite wood products would be prohibited. EPA proposes to define stockpiling as manufacturing or purchasing composite wood products between July 7, 2010, ...and the established manufactured-by date ...at an average annual rate 20% greater than the amount manufactured or purchased during the 2009 calendar year.

NWFA COMMENT: The NWFA appreciates the fact that the EPA is approaching this issue from a “manufactured-by date” rather than proposing a restricted “sell-by” time period.

However the regulation is not clear if “amount” is a value or volume figure. We would recommend a volume figure be used. (“Volume” would be specified in the form that is usually used for that item, be it m3, ft2, piece, or other unit description.)

The EPA must consider the terrible condition of the housing market in 2009. Rather than pick a specific year as a baseline, the NWFA would recommend establishing a minimum 25% increase over the previous calendar year, the timing being based on final publication in the Federal Registrar. This would provide for a regular growth based on actual and immediate economic and business conditions.

The NWFA quickly questioned various members regarding growth from 2009 and received the following answers as examples:

Company 1 (distributor and manufacturer):

2012 sales of engineered flooring are 120% greater than 2009.

Company 2 (manufacturer):

2012 sales of engineered flooring are 92% greater than 2009.

Company 3 (importer and distributor):

2012 sales of engineered flooring are 73% greater than 2009.

Company 4 (importer, distributor, manufacturer all):

2012 sales of engineered flooring are 67 % greater than 2009.

Further, new innovations in laminates (better quality, greater selection, increased options such as handscraped) have increased laminate sales drastically. As an example:

Company 5 (retailer, importer)

2012 sales of engineered flooring are 69% greater than 2009.

2012 sales of laminate flooring are 82% greater than 2009.

It is clear that 2009 is an inappropriate base year.

Most importantly again the EPA must consider that 2009 proved the bottom of a deep economic recession. Using it as the benchmark distorts the true scope of expected demand as well as provides an



incomplete picture of the industry. In fact, the U.S. Department of Commerce reported (*see next page*) that the estimated 2012 sales for hardwood flooring would increase 24.4% over the 2009 sales. Under the EPA's proposed 20% growth figure, all affected entities would be guilty of stockpiling simply by purchasing in accordance with the industry trends.

Further, this proposal also does not take into account increases in a company's size from year to year as a retailer opens new stores, increases a store's square footage, increases marketing budget, increases sales staff, etc. or flooring specific market trends such as the continued decline of solid flooring sales as a percentage of the market versus increase in composite wood core products sales such as bamboo, laminates and engineered flooring.

We also note that this proposed regulation does not take into account high growth businesses. Businesses anticipating high year-over-year increases in volume sold will order more supplies in order to address their growth. Under this regulation, they would be deemed stockpiling, despite the fact that they are clearly not engaging in such action. This needs to be changed to allow for high growth businesses to operate and order in accordance with their demand and plans.

Finally, it should be noted that for downstream distributors and retailers of any finished goods, the majority of their product will not be even available for purchase as certified until the very end of the certification period. Therefore they are likely to be carrying up to 80-100% of their inventory as uncertified up to the end of the year as their suppliers get certified. A manufacturer might be working more JIT (Just In Time) and be likely to clear out old material faster, but distributors and retailers need to hold stock for longer periods. For one company, what could be called "stockpiling" may actually just be "holding stock."

Wood Flooring

Table 1-1

Value Of U.S. Wood Flooring Sales, 1987-2017

(in millions of dollars)

	<u>Wood Flooring Sales¹</u>	<u>Percent Change</u>
1987	\$500.3	—
1992	640.9	5.1% ²
1993	799.0	24.7
1994	918.2	14.9
1995	958.3	4.4
1996	908.1	-5.2
1997	1,233.1	35.8
1998	1,423.7	15.5
1999	1,614.6	13.4
2000	1,719.1	6.5
2001	1,824.7	6.1
2002	1,961.5	7.5
2003	2,150.6	9.6
2004	2,612.1	21.5
2005	2,697.6	3.3
2006	2,583.4	-4.2
2007	2,180.0	-15.6
2008	2,090.0	-4.1
2009	1,495.4	-28.6
2010 P	1,731.1	15.8
2011 E	1,807.3	4.4
2012 E	1,889.6	4.6
2017 F	2,308.5	4.1 ²
CAGR:		
1992-1997	14.0%	—
1997-2002	9.7	—
2002-2007	2.1	—
2007-2012	-2.8	—
2012-2017	4.1	—

**2009 was the worst
year for hardwood
flooring since 1997.**

Notes: In manufacturers' dollars
P = Preliminary
E = Estimate
F = Forecast
CAGR = Compound annual growth rate

1 Shipments minus exports plus imports. Includes hardwood and softwood flooring, solid and engineered, and unfinished and finished products. Calculated from data in Tables 2-1, 3-1, and 4-16
2 5-year CAGR

Source: U.S. Department of Commerce
Compiled, calculated, estimated, and forecasted by
CATALINA RESEARCH, INC.





EPA requests comment on whether the stockpiling provisions should apply to entities that were not in existence at the beginning of calendar year 2009.

NWFA COMMENT: For all companies, old and new, we would recommend a minimum 25% increase over the previous calendar year, the timing being based on final publication in the Federal Registrar. If the company did not exist in any form the previous calendar year, there should be no stockpiling provision held against them. (By “any form” we mean a completely new company. A new name, a new ownership, or a branch of an existing company would be governed by the conditions of its previous year’s conditions, no matter what name/ownership it previously operated under. New branches would be held to an average of the conditions represented by other branches operated by the same owner.)



EPA specifically requests comment on whether it is appropriate to set the proposed manufactured-by date at the date 1 year after the final implementing regulations are promulgated.

NWFA COMMENT: One year is absolutely not sufficient. This is one of the top concerns of the NWFA membership. There is insufficient testing capacity, an unknown number of (to be) accredited TPC's, and thousands of companies "starting from scratch" with no CARB experience. One year is completely insufficient and inappropriate. The arguments have been presented in detail elsewhere and below, but in short, we recommend

1. Initial 1 year TPC accreditation period.
2. Followed by a 1 year primary manufacturer certification period.
3. Followed by a 1 year newly covered manufacturers period. (This is for those companies that are not currently covered by CARB but are now being added to the EPA program--and the NWFA hopes to see a minimal expansion from the current regulation.)

EPA requests comment on alternate dates, and the rationale, including any available information and data, for selecting another date.

NWFA COMMENT: The NWFA strongly urges the EPA to adopt a phased in approach for certification based on the position of the company within the manufacturing chain. Details below.

EPA is also interested in how different manufactured-by dates would affect panel producers and fabricators of products that are not regulated under the CARB ATCM, but would be regulated under TSCA Title VI. EPA recognizes that increased production during the period after the statute was enacted may very well be due to the economic recovery and not to a desire on the part of panel producers, importers, and fabricators to circumvent the emission standards.

NWFA COMMENT: By the EPA's own estimates, thousands of new companies may require certification. Many are small companies who may not even be aware of these new regulations despite the associations' best efforts to alert their respective industries. Testing companies are already being overwhelmed by requests by large companies trying to reserve testing space. By having an extended phased in period, the impact of different manufactured dates would be minimized since downstream producers could be ensured that by the time their certification began, their upstream primary panel suppliers would all be certified.



EPA requests comment on the proposed stockpiling definition, including information and data for alternate baseline periods, rates, and measurements.

NWFA COMMENT: As noted, the NWFA recommends stockpiling be defined by volume and be based at a minimum 25% over the previous calendar year from when the final regulations are published.

As noted above, this proposed regulation does not take into account high growth businesses. Businesses anticipating high year-over-year increases in volume sold will order more supplies in order to address their growth. Under this regulation, they would be deemed stockpiling, despite the fact that they are clearly not engaging in such action. This needs to be changed to allow for high growth businesses to operate and order in accordance with their demand and plans.

EPA also requests comment on any data that might be available from which to derive an appropriate rate for determining potential stockpiling.

NWFA COMMENT: As noted, 2009 was during some of the worst of the housing industry collapse and to use that as a baseline for stockpiling is inappropriate. We would recommend a 25% increase over the calendar previous year, the timing being based on final publication in the Federal Registrar.

Further, particularly for downstream distributors and retailers of any finished goods, the majority of their product will not be available as certified until the very end of the certification period. Therefore they are likely to be carrying up to 80-100% of their inventory as uncertified up to the end of the year as their suppliers get certified. A manufacturer might be working more JIT (Just In Time) and be likely to clear out old material faster, but distributors and retailers need to hold stock for longer periods.

NWFA COMMENT: Summary of the requested Timeline

1. INITIAL 1 YEAR TPC ACCREDITATION PERIOD. TPC's must be accredited by the EPA prior to offering TSCA VI certification. TPC's may begin offering TSCA VI certification immediately after receiving such accreditation. It is assumed this will take an absolute minimum of 3-6 months for major TPC's to be confirmed. It is not appropriate to ask companies to contract with a TPC and begin or even complete a certification process only to have that TPC be blacklisted. As there are many questions regarding the TPC portion of these new regulations, it would be suggested that one year be allowed for TPC accreditation. Many of these TPC's are also going to need to greatly expand their testing capacity to service the potentially thousands of new clients around the world, and they need the time to get those physical operations in place.

2. FOLLOWED BY 1 YEAR PRIMARY MANUFACTURER CERTIFICATION PERIOD. There are many reasons to allow these companies time to achieve accreditation before moving on. First, while many of these mills are already CARB certified and have the testing protocols established, there are still differences in the TSCA system. These differences need to be worked out and both the TPC and the mills needs time to



ensure proper compliance. If experienced mills “work out the kinks” first, it will be much easier for new companies who have no experience at all to enter the system with experienced TPC’s guiding them.

Second, there is limited testing capacity. It is important that the TPC’s have time to expand their capacity, that the primary mills reserve their testing space (and expand their own in-house labs) and new labs be developed so that the system doesn’t crash under the weight of tens of thousands of companies seeking certification all at once.

Third, this would largely eliminate the concern about secondary manufacturers having excessive stock of uncertified material or mixing certified with uncertified production since all their upstream suppliers would be producing certified material prior to their own period starting.

3. FOLLOWED BY 1 YEAR NEWLY COVERED PRODUCTS CERTIFICATION PERIOD. This would be for those companies that are not currently covered by CARB but are now being added to the EPA program--and the NWFA hopes to see a minimal expansion from the current regulation. Among the specific exclusions we hope to see listed (laminated floor, solid/strand bamboo floor, etc.), we hope the EPA will exempt secondary manufacturers, or, at a minimum, separate them out into an independent regulation which should include the exemption for factory finished consumer goods. However, any secondary manufacturers/fabricators/laminators who will be brought into this new regulation must be given time to prepare.

First and foremost, if available and necessary, they must be required to purchase certified cores. If the actual acceptable certification of these cores is at question—either because the TPC fails to achieve accreditation or because the primary panel manufacturers fail certification, this unfairly punishes companies entering the system.

Furthermore, downstream fabricators need time to clear their stock of uncertified cores and build up stock from their newly certified suppliers. If everything is done simultaneously, many of these companies will not have access to certified cores until halfway or more into the certification period or may be forced to change suppliers halfway through or even at the very end of the process as a TPC fails or a panel producer fails. It is vital that their upstream supply and their certification system is “rock solid” before they begin their own certification process. After they are able to establish a stable upstream supply, they need to obtain a TPC and establish an in-house lab for testing.

Additionally, by extending the period, many of these manufacturers will have time to explore NAF options.

Again, the NWFA states that companies already purchasing a certified core should not be forced into a double certification system, but if they are, then these companies should be allowed sufficient time to develop the necessary additional protocols and they should absolutely be ensured that the cores they purchase have been properly certified by a properly accredited TPC. Attempting to do all three actions simultaneously is a recipe for disaster.



Consider the possible results of attempting to do it all at once. You will have manufacturers relying on TPC's to become accredited and fabricators relying on manufacturers to become certified. A failure by any company one step above another company in the chain will cause undue and unfair cascading hardship down on all of those below who are proceeding in good faith in their own practices. Companies will be left holding uncertified stock, in desperate need of new supply sources or a new TPC, or be required to redo their own certification process based on a new core supplier. The costs downstream companies will incur, through no fault of their own, could be astronomical. In the worst case scenario, we're looking at companies closing because of either the excess costs or because they will be unable to conduct any business for any number of months while the mess is sorted out.

Consider further the amount of wastage in our valuable raw materials. Entire lots, many that likely are complying with the emission levels, but are simply not properly documented under the new system, might have to be destroyed, depending on the final regulations' policy on non conforming lots.

Once again, everything is first dependent upon the EPA's ability to certify TPCs and then by allowing the TPC's time to gear up for the demand. As noted, the testing capacity at this time is insufficient, and the EPA is not the only one putting demand on that capacity. We again encourage an extremely limited, if any, expansion of CARB with more newly covered products, and if they are to be included, they be done so under a separate regulation with rules and procedures appropriate for secondary manufacturing.



p. 34841

Issue: EPA Report to Congress

ORIGINAL REFERENCE: EPA to report to Congress on an annual basis ...describe the status of the measures carried out or planned to be carried out pursuant to TSCA Title VI and the extent to which relevant industries have achieved compliance with the requirements of TSCA Title VI.EPA requests comment on how data on industry compliance could or should be obtained, and whether a reporting requirement would best accomplish this goal.

NWFA COMMENT: An Annual Reporting Requirement would increase again the record keeping burdens on the nearly 1 million companies the EPA's own figures suggest would be impacted by this regulation. It would be extremely costly for the government. The NWFA would encourage seeking input by the associations representing the impacted industries—the NWFA, KMCA, WDMA, IWPA, HPVA, CPA, AHFA, etc.

The NWFA would also encourage reporting on any enforcement actions (or lack thereof) rather than collecting compliance confirmations that simply add to the 'red tape' requirements of all companies impacted. While it is good to report positive information, it is more meaningful to discuss problems and solutions.



p. 34842

Issue: HUD Standards

ORIGINAL REFERENCE: HUD standards for manufactured housing include specific formaldehyde emission limits for plywood and particleboard materials installed in manufactured housing. ...The HUD emission limits apply to any plywood or particleboard that is bonded with a resin system...(and) also apply to plywood or particleboard that is coated with a surface finish containing formaldehyde. EPA is requesting comment on how best to harmonize EPA's regulatory program under TSCA Title VI with HUD's manufactured homes program. In particular, the focus of TSCA Title VI, with its emphasis on composite wood product panel producers and product certification, is somewhat different from the focus of the National Manufactured Housing Construction and Safety Standards Act of 1974 on manufactured home producers and consumer protection. In view of the differences in statutory authorities provided to EPA and HUD, are there additional provisions that EPA should consider or other actions that EPA and HUD should take to ensure that their respective programs are complementary?

NWFA COMMENT: The NWFA takes no position on HUD Standards.



p. 34845 HIGH PRIORITY ISSUE Issue: Timeline (Stockpiling)

ORIGINAL REFERENCE: EPA is proposing to establish the stockpiling reference period, or base period, as the calendar year 2009 because, under TSCA Title VI, the base period must end before the statute was enacted. EPA requests comments and data on both the proposed manufactured-by date and the proposed base period for determining whether stockpiling has occurred.

NWFA COMMENT: As noted, the NWFA appreciates the fact that the EPA is approaching this issue from a “manufactured-by date” rather than proposing a restricted “sell-by” time period. However the NWFA recommends stockpiling be defined by volume and be based a minimum of 25% over the previous calendar year from when the final regulations are published. The date of 2009 is completely unsuitable as it references some of the worst economic conditions in recent history. If it is required that the year 2009 be utilized, then it would be more appropriate to consider 50% or even 100% over the figures of that year.

The NWFA questioned several large members regarding growth from 2009 and received the following answers as examples:

Company 1 (distributor and manufacturer):

2012 sales of engineered flooring are 120% greater than 2009.

Company 2 (manufacturer):

2012 sales of engineered flooring are 92% greater than 2009.

Company 3 (importer and distributor):

2012 sales of engineered flooring are 73% greater than 2009.

Company 4 (importer, distributor, manufacturer all):

2012 sales of engineered flooring are 67 % greater than 2009.

Further, new innovations in laminates (better quality, greater selection, increased options such as handscraped) have increased laminate sales drastically. As an example:

Company 5 (retailer, importer)

2012 sales of engineered flooring are 69% greater than 2009.

2012 sales of laminate flooring are 82% greater than 2009.

It is clear that 2009 is an inappropriate base year.

Most importantly again the EPA must consider that 2009 proved the bottom of a deep economic recession. Using it as the benchmark distorts the true scope of expected demand as well as provides an incomplete picture of the industry. We reference again the U.S. Department of Commerce figures that estimate that 2012 sales for hardwood flooring will show an increase of 24.4% over the 2009 sales. Under the EPA’s proposed 20% growth figure, all affected entities would be guilty of stockpiling simply by purchasing in accordance with the industry trends.

Further, this proposal also does not take into account increases in a company’s size from year to year as a retailer opens new stores, increases a store’s square footage, increases marketing budget, increases sales staff,



etc. or flooring specific market trends such as the continued decline of solid flooring sales as a percentage of the market versus increase in composite wood core products sales such as bamboo, laminates and engineered flooring.

We also note that this proposed regulation does not take into account high growth businesses. Businesses anticipating high year-over-year increases in volume sold will order more supplies in order to address their growth. Under this regulation, they would be deemed stockpiling, despite the fact that they are clearly not engaging in such action. This needs to be changed to allow for high growth businesses to operate and order in accordance with their demand and plans.

Further, particularly for downstream distributors and retailers of any finished goods, the majority of their product will not be available for purchase as certified until the very end of the certification period. Therefore they are likely to be carrying up to 80-100% of their inventory as uncertified up to the end of the year as their suppliers slowly become certified. A manufacturer might be working more JIT (Just In Time) and be likely to clear out old material faster, but distributors and retailers need to hold stock for longer periods.

p. 34845

Issue: Interior Use Definition

ORIGINAL REFERENCE: ...not intended to apply to structural plywood, the Panel also recommended that EPA develop a clear definition for “interior use” in order to eliminate confusion in the regulated community. According to the Panel, the definition should be based on the intent of the statute and consider how the hardwood plywood is likely to be used and stored once incorporated into a finished good. EPA has proposed a definition of “intended for interior use” that includes these considerations and requests comments on the appropriateness of this definition.

NWFA COMMENT: The NWFA is concerned about the potentially extreme expansion of companies that would be forced to comply with this standard. “Stored” in a home leads to having this regulation cover items such as:

- picture frames
- housewares
- wood handles on kitchen knives
- cutting boards
- stocks on guns
- school chalkboards
- many tool handles
- coasters
- TV sets and appliances and stereo speakers
- clothes hangers
- guitars and other musical instruments
- door handles
- skis, skateboards, snowboards, etc.
- etc.

Without any de minimis exclusions, almost any product could be covered. Companies use laminated wood to produce custom covers for iPads and Smartphones and decorative computer cases. Laminated wood can be used for light switch cases, for lamp shades, for customized refrigerator doors. As fashions change from metal to wood, wood will no longer be fashionable simply for economic reasons. And what of the small start up companies who create clever new fashions—wooden glass frames, wooden bicycles? These companies may close and never reopen because their small specialized production will need to be regulated the same as a huge plywood mill.

The NWFA is concerned about the economic impact these regulations have on our country. If that small company that makes customized glass frames closes, those employees may not be able to afford a new wood floor—certified or not.

Further as noted, the available testing capacity is extremely limited and the NWFA is concerned that members will not have sufficient access with every possible product from a kitchen cutting board to a new RV requiring weekly testing.



Further, the EPA is proposing a specific exemption on windows with limited composite wood products. *(These exemptions include, but are not limited to, hardboard, structural plywood, structural panels, oriented strandboard, glued laminated lumber, prefabricated wood I-joists, finger-jointed lumber, wood packaging, composite wood products used inside new vehicles other than recreational vehicles, **windows that contain less than 5% by volume of composite wood products**).* The NWFA asks the rationale for including other products of such small size or with extremely limited quantities of composite wood products if something as significant as windows would be uncertified. The NWFA does not propose including windows, rather properly excluding all downstream production, particularly material that has additional barriers to emissions such as paper, wood, or chemical finishes on the appropriate cores.

Finally, when you consider the huge range of downstream production covered by this program (either in record keeping or actual certification), this highlights the argument for 1) the total exclusion of secondary manufacturing or 2) if they are to be covered, covering them under a separate regulation that can be structured appropriately for the differing conditions of downstream industries.



p. 34845

Issue: Panel Definition

ORIGINAL REFERENCE: the SBAR Panel recommended that EPA reduce uncertainty in the regulated community by including in its regulation a clear definition of “panel” that is based on the intent of the statute, and considers trade usage and the limitations of current test methods. Again, EPA is proposing a definition that takes these factors into account, and EPA requests comment on all aspects of the proposed definition.

From the end of the document, we find the definition:

“Panel means a flat or raised piece of composite wood product.”

NWFA COMMENT: The NWFA does not have a problem with the definition of a panel, however, we seek clarification regarding the exclusion of curved plywood from the definition of Hardwood Plywood as it is identical to the flat panel described here, except it is bent or shaved into a curved pattern. The NWFA is generally pleased to have products exempted given the limited testing capacity, but would like to understand the logic in choosing which products to exempt. The NWFA believes that a flat engineered floor, produced with an appropriate core, with a wood veneer on the surface and factory chemical finish sealer is likely to emit at a significantly lower rate than a raw curved piece of plywood.



p. 34839

Issue: Definition of Bundle/Labels

ORIGINAL REFERENCE: Under this proposal, panels or bundles of panels that are sold, supplied, or offered for sale in the United States would have to be labeled with the name of the panel producer, the lot or batch number, the number of the 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 exemptions discussed in Unit III.F. would also have to include the designation “no-added formaldehyde” or “ultra low-emitting formaldehyde.” There would also have to be a statement of compliance on the bill of lading or invoice. Distributors and wholesalers who receive labeled bundles of regulated composite wood products and then divide and repackage them, whether in bundles or separately, would be required to label each separate bundle or item with the same information as required on the original label. EPA is proposing to define the term “bundle” as more than one composite wood product panel, component part, or finished good fastened together for transportation or sale.

NWFA COMMENT: The NWFA feels the definition of the “bundle” is appropriate, however as stated elsewhere does not feel that any certification information should be placed on a Bill of Lading as that is available in publicly searchable databases. (Such information appearing on an invoice or other confidential documents is accepted.)

The NWFA encourages equal treatment of all certified companies. If foreign manufacturers are required to provide any particular evidence of certification, then domestic companies should provide the same evidence.

The NWFA does request clarification, among other things, on how labels will 1) reflect reduced oversight conditions vs. complete exemptions and 2) how mills should be labeling products during various testing periods. Is a product “certified compliant” while undergoing reduced testing review and then “ULEF exempt” afterwards and then, if they change processes, then revert to labeling “certified compliant” until they are return to “ULEF exempt” labels again?

The NWFA is also concerned about an inappropriate market bias given to products specifically marked as ULEF/NAF rather than simply “compliant.” All products are compliant, just through different routes. A consumer may assume that NAF is a “safer” product than a certified product that is not labeled that way (which could possibly even be NAF, but not yet certified as exempt from TPC oversight.) There should be no implied biased when the bottom line is that compliance through any route means the product is compliant.

As a solution the above, the NWFA encourages the use of a simplified label requirement stating only that a product is “TSCA VI Compliant.” Other information such as lot, production date, and manufacturer could be coded into the label but the basic information to be presented would be “TSCA VI Compliant.” Such a basic label would resolve all possible consumer confusion—there would be no need to explain the differences between a product being compliant because it is certified with regular or reduced testing, or being compliant because it is NAF or ULEF or because it is exempted from the certification program completely. Under all those conditions, the bottom line is the same: the product is COMPLIANT. And that is all the consumer needs to know. Additional information can only lead to confusion or inappropriate market bias.



A simplified label will also reduce costs to the downstream market and as discussed before, if there is a dual chain of custody required for the same product which is both EPA and CARB certified, both for the TPC's and the industry, there is no reduction in costs—only an increase. Certainly if downstream industries are faced with dual record keeping, tracking both CARB and EPA material purchased/processed/sold, they will see costs well beyond any estimated figures.

p. 34387 HIGH PRIORITY

Issue: Confidentiality

ORIGINAL REFERENCE: to assist customers ...in determining whether they are purchasing compliant composite wood products, EPA would require that all records pertaining to the compliance status of a particular lot, batch, or shipment of composite wood products be provided to purchasers upon request. EPA realizes that some of the information contained in these records is information that manufactures might claim as Confidential Business Information (CBI) in other contexts. ...TSCA provides that health and safety studies and data derived from health and safety studies, are not entitled to confidential treatment...unless the data derived from such studies disclose confidential processes used in the manufacturing or processing of a chemical substance or mixture or, in the case of a mixture, the release of data disclosing confidential portion of mixture information.

TSCA defines a “health and safety study” as any study of any effect of a chemical substance or mixture on health or the environment or on both, including underlying data and epidemiological studies, studies of occupational exposure to a chemical or mixture, toxicological, clinical, and ecological studies of a chemical or mixture, and any test performed pursuant to TSCA ...Because the testing required by TSCA Title VI and the implementing regulations would be “any test performed pursuant to the Act,” such tests would be health and safety studies. Therefore, under TSCA, the formaldehyde emission test results of specific products are not entitled to confidential treatment. The names of the producers of panels for which formaldehyde emission data are generated similarly are not entitled to confidential treatment...The same principle applies to producer names.

The requirement to test formaldehyde emissions from specific composite wood products produced by specific panel producers, and an obligation to make those results available to downstream purchasers so that purchasers can determine whether they are purchasing compliant products, is integral to TSCA Title VI and these implementing regulations. In order to have context, the raw emission numbers must be linked to the products tested. For this reason, the product name and the producer of the product constitute part of, or are underlying data to, a health and safety study. Therefore under TSCA, the product and panel producer name are not entitled to confidential treatment. Producers of hardwood plywood, particleboard and medium-density fiberboard panels using NAF-based resins or ULEF resins who qualify for the reduced testing and third-party certification requirements discussed in Unit III.F. would have to maintain records demonstrating initial eligibility for the reduced testing. In addition, the panel producer would have to keep records....

NWFA COMMENT: The NWFA STRONGLY objects to any records beyond “this product is TSCA Title VI compliant” being made a matter of public record.

If production passes, then it has passed. The fact that it was made of NAF, NAUF, ULEF is not directly relevant. The fact that it was pressed for 10 minutes or 100 minutes is not directly relevant. The details of the testing schedule for the manufacturer are not relevant. The fact that it might have been originally non-complying but now meets emissions standards is not directly relevant. The bottom line for the buyer is that it was produced according to regulations, be that under TPC oversight or not.

The EPA has set the established safe limit and system for compliance. The fact that the material is compliant is the ONLY information the public is required to have.

The EPA has set up the regulation such that:



- manufacturers must test their product
- a third party must supervise production and independently test the product
- that third party must meet certain standards themselves and be certified by approved accreditation bodies
- companies are obligated to both purchase and sell only compliant products

The public is therefore fully protected and does not require additional information beyond knowing that their material meets these extremely rigorous standards. They are fully protected-- their wood flooring (or other composite wood product) emits far less formaldehyde than their own body produces on a daily basis. Their wood flooring emits far less formaldehyde than they inhale in cigarette smoke or from walking past an idling car. They do not need to know if this lot was 0.04 parts per million or 0.03 parts per million. They only need to know that it is certified.

The purported purpose of the statute is to reduce formaldehyde emissions. The purpose of the statute is served by requiring limits and testing to ensure products remain within limits. The label on the product demonstrates that the product was manufactured and tested in compliance with the regulation and in the case of TPC oversight, certified to meet that standard by an entity certified by the EPA itself. A customer can determine whether they are purchasing compliant product by reading the label. **The testing procedure and third party certification are integral parts of the regulation; providing the details of such records to the consumer to demonstrate that the proof has proof is not integral.**

This is not just a matter of supply chain confidentiality (which is a major issue for all companies) nor even a matter of a customer comparing one manufacturer to another. As discussed before, it could get to the point of comparing one lot to another. A buyer could say to the distributor, “I want 1000ft² of Light Brown Oak, how much do you have in stock?” “We have plenty, we have over 30,000ft³ in stock.” “Great, show me the test results for each pallet and I’ll specify which 1000ft² I want.”

Or perhaps a consumer seeing that company X has to test daily while company Y is testing less might make a judgment of the quality of production based on this public info. They might assume that company X is better because of more testing, or conversely they might assume that X is worse because they have to test more often. In either case, they are wrong: Company X and Y are EQUAL: they both are compliant. Placing any form of testing data or production details into the public arena leads to confusion, not clarity.

Also, if all companies are listed in a public database as proposed, and a company is closed, then they would be removed from the database—what about downstream customers holding their stock? They might find themselves unable to sell such their production if a consumer doesn’t believe it to be certified. What would happen if a company name is changed? What if a company changes status from certified to ULEF to something else—if a label is marked one way and they are listed in the database as another, what will that do to consumer confidence?

Many retailers do not have the ability to immediately track lots in their inventory control system and thus would not be able to identify the appropriate documents if a customer requests information for X product. Many retailers have multiple locations, so the onerous burden of maintaining records is multiplied—not to



mention the possible need to shift desired stock from one warehouse to another if a customer is checking testing results and selects based on those differences.

A 40' container of engineered flooring contains around 20-25000 ft² of product. If the container is broken up to fill orders of 1000ft² each for delivery to 20 different stores, that is at least 20 trails of paperwork. That is also a situation where a customer is going to want to pick and choose between skus testing at 0.03 versus 0.04 parts per million in testing results?

Most major product lines have several HUNDRED sku's, representing different sizes, species, colors and grades. It is a logistical nightmare to sort records at a downstream location for so many product lines. **The question is simple: Is it compliant? If yes, that's ALL the customer needs to know.**

The NWFA fully agrees that accurate and adequate record keeping is an appropriate requirement and that those records should be made available to the TPC and to the EPA as required on a confidential basis. However business proprietary information must be respected.

The proposed regulations seeks to keep a list of all certified mills and to allow tracking through the entire supply chain. We ask the EPA to remember that very often middlemen refuse to share supplier information with their customers for fear that the customer will go straight to the supplier and cut out the middleman. Moreover, the hardwood flooring market is a competitive market for which retailers' and distributors' suppliers are trade secret information.

To expose proprietary information would give others an unfair competitive advantage. The right to protect trade secrets is a recognized right under common law (See Restatement of Torts Section 757 comment b and Restatement of Unfair Competition Section 39) and has been codified as the Uniform Trade Secrets Act (UTSA) adopted to date by 47 states. The theft of trade secrets is a crime under Federal law (Economic Espionage Act of 1996). To reveal the supply chain to customers (or competitors posing as customers) would be the release of trade secret information which could put the company out of business and amount to a "taking" in violation of the Constitution.

The argument that these records are part of a health and safety study is unconvincing. While numerous scientific studies over the past fifty years regarding formaldehyde and its health and safety effects have been conducted and epidemiologically evaluated, and may well have bearing on EPA's contested current IRIS assessment (which is an important, but separate issue), the specificity of Public Law 111-199 ("Formaldehyde Standards for Composite Wood Products Act") clearly preempts the exercise of EPA administrative discretion with regard to any additional burdensome requirements under the health and safety umbrella.

Therefore, there are no questions that the public needs to have answered beyond "this product has passed and meets or is lower than the established EPA limits." Making a retailer's supply chain public will not "further the stated goal of promoting public health in such a way as to counterbalance the tremendous private loss involved." (This quote is from Philip Morris, Incorporated v. Reilly, 312 F.3d 24 (1st Cir. 2002) in which the Court held that protecting health by disclosing ingredients in cigarettes (including known carcinogens which smokers intentionally and directly absorb into their own bodies) was outweighed by the right to protect the trade



secrets of the cigarette manufacturer. In the case of the TSCA VI formaldehyde regulations, compliant composite wood products pose NO public health risk and there is therefore no need or reason to make public further information beyond “this product has passed and meets or is lower than the established EPA limits.”).

Further, the public law issued by Congress provides that the regulations shall include provisions relating to various enumerated items. Providing customers with testing data relating to each product goes beyond the scope of the authority given to the EPA by the enabling statute. It goes beyond what CARB has done—CARB has allowed the coding of mills and the use of brand names on the packages. As long as the TPC can identify the production source and lot if required, that is sufficient.

The EPA proposes to keep a list of certified companies. What about companies who are NAF exempt without TPC oversight? Are they listed somewhere? What competitive disadvantage do they face by not being “proven” and listed as “safe?”

What happens if a company loses a contract based on the fact that the database was not properly and promptly updated? Who has liability for that loss?

Further, we feel such total exposure of information could significantly discourage innovation. Why should a company invest their time and money into a new resin process, a new pressing system, a new production technique if all their production suddenly becomes instantly available to all their competitors?

Finally, the NWFA believes that chain of custody record keeping should be limited to three years or no more than 6 months after a product has cleared inventory, if it is to be required at all, but deleting the requirement completely would be better. Creating the infrastructure to do this will prove overly burdensome and will result in the same end: a product that conforms to EPA mandates regarding formaldehyde emissions. This additional record keeping only serves as an unnecessary burden that will drive up costs and ultimately harm the consumer. If the product is TSCA compliant at the time of sale, then it is TSCA compliant and articulating the chain of custody will not further or hinder that reality. This requirement will not help protect consumers, but it will create increased administrative costs and artificial barriers to entry, two results that can be avoided without undermining the purpose of the statute.



Issue: TSCA Section 13 for Imports

p. 34841 ORIGINAL REFERENCE: TSCA section 13 regulations, promulgated by CBP, require importers to certify that shipments of chemical substances and mixtures are in compliance with TSCA or not subject to TSCA. EPA believes that most, if not all, products subject to TSCA Title VI would be considered articles....**Articles are generally exempt from the TSCA section 13 certification requirements, but the ...EPA is proposing to specifically require TSCA section 13 import certification for composite wood products that are articles.** TSCA section 13 import certification is a compliance monitoring tool and import certification for articles subject to TSCA Title VI would also serve as an important reminder of the TSCA Title VI requirements to the importer....EPA generally believes that the existing import certification regulations, along with the specific labeling and recordkeeping requirements for composite wood products discussed in Unit III.H., are sufficient to ensure compliance with TSCA Title VI. However, EPA has begun consultations with CBP on the TSCA section 13 import regulations to determine whether revisions are warranted.

p 34864 ORIGINAL REFERENCE: (c) Importers of articles that are composite wood products, or articles that contain 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 or as later promulgated.

NWFA COMMENT: The NWFA strongly opposes such a change of TSCA Section 13. The impact will be felt not just on imports, but on all composite wood products. In short, the EPA is proposing to label engineered wood flooring a “toxic product.” Wood is one of the most environmentally positive building products available to the American consumer to label it “toxic” does the material and the industry both a grave disservice.

Special certification is specifically not required for the importation of this type of product because it has been determined to be NOT hazardous. There is no reason, benefit or mandate to request a special extra rule change leading to additional paperwork and/or certification at the point of entry simply as a “reminder” to importers. This creates an unduly burdensome administrative requirement for the duplication of information already available to the EPA through the regular regulatory process. It also could lead to significant negative downstream impacts in the marketing, shipping, and handling of composite wood products and lead to documentation burdens in other areas or by other agencies or industries. It also emphasizes a clear bias against imported product and the NWFA encourages equal treatment of all member companies.

After all, composite wood products are not highly combustible nor are they lethal chemicals which can blow up a shipping vessel or cause a chemical spill that would endanger everyone in a three mile radius. Common sense must recognize that this is clearly a generally inert “Article” which is one reason why under 40 CFR 721.45(f) importers and manufacturers of “Articles” which contain chemicals or mixtures are exempt from the reporting requirements of the chemical or mixture.

It should also be noted that OSHA has specifically excluded wood flooring from the need for an MSDS/SDS through two regulatory clauses:



1. OSHA does not consider wood to be a hazardous chemical and does not require an MSDS when “*the only hazard they pose to employees is the potential for flammability or combustibility.*”
2. A piece of flooring is provided in a final finished form. OSHA notes that “*materials which are formed to a specific shape and design during their manufacture and have end uses based on that shape and design are not defined as chemicals under the Act.*” Since flooring is milled and all glues/finishes are cured before it is shipped to the customer, and is ready for immediate installation without further processing, an MSDS is not required.

We are concerned that if the EPA labels wood flooring as a toxic product, companies would be required to begin providing some form of MSDS/SDS with their floors—a new burden and cost and one that will only lead to market confusion rather than market clarity.

(The NWFA requests that the EPA clarify its definition of “article” as it is difficult to determine the exact products governed by the provisions of these regulations.)

Certainly imposing these additional import certification requirements on the tens or hundreds of thousands of companies that would be subject to the formaldehyde emission standards and the associated testing, third-party certification, quality control, chain-of-custody, record keeping, and reporting requirements would be unnecessary and excessively burdensome for little benefit. The EPA acknowledges that they believe the existing regulations to be sufficient and if so, there is no reason to expand upon them when not mandated to do so by the statute.

The enabling statute requires that regulations promulgated regarding TSCA Section 13 be “necessary to ensure compliance.” Section 13 import certification is clearly not necessary for compliance as all entities along the supply chain are already required under other sections of the regulation to comply with the emissions standards, testing results and reporting. Requiring any form of additional and specific import certification in addition to the other documentation and processes is superfluous.

The EPA has never before applied Section 13 import certifications to any “Articles”. In fact, the EPA even decided not to eliminate the exemption for importers (and exporters) of PBDEs. The EPA cited to the existence of only six parent companies in the US who manufacture PBDE and the expectation that the import of PBDEs will cease in 2013. Even so, the EPA felt “that the potential burdens associated with administration and compliance with import certification requirements could be significant.”

On the other hand, the EPA cites nearly one million companies handling composite wood products in the United States. It is completely illogical that the EPA would consider the administrative burden to a few companies to be so significant as to outweigh any benefits from tracking PBDE imports but completely disregard the same burden to the tens of thousands of importers of composite wood products. (The figure of nearly one million companies facing impact is based on the EPA’s listing of: 7,000-14,000 laminators and 80,000 fabricators, (many of whom use imported components), 86,000 distributors (where 24,000 are listed as specifically as importers and many of the others handle imported material), and 759,000 retailers (who often sell imported material or material with imported content.))



Such a definition by the EPA could lead to increased cost of shipping (not just internationally, but domestically) with the idea that composite wood products, like active chemicals, would need to be registered for transport. Shipping companies could demand surcharges or special documentation. Trucks could require placards indicating the presence of composite wood.

The proposed TSCA 13 amendment would do little to increase the overall effectiveness of the proposed rule. However the potential burdens associated with administration and compliance will be highly significant to the tens of thousands of importers who must complete the certifications, their import brokers and CBP charged with collecting such documentation as well as fines and detention of shipments due to errors and changes of processes.

Yet the only benefit cited to by the EPA is that it would be a “reminder” to the importer.

Clearly, the administrative and compliance burden to file forms which contain information that is already accessible to the EPA through other venues for the sole purpose of reminding importers of the statute is in no way necessary to ensure compliance and outweighs any benefit. Further, beyond the costs associated with such filings, there is a clearly negative market impact and potentially additional unintended consequences in other areas.

Again, the bottom line is that the product meets the standard and can NOT be considered a hazardous or toxic item. No additional paperwork should be required.



p. 34821 Issue: Imposing the Regulations on Production Destined for Export

ORIGINAL REFERENCE: This proposed rule would implement the emission standards established by TSCA Title VI for composite wood products sold, supplied, offered for sale, or manufactured in the United States (including imported products).

NWFA COMMENT: The current language indicates that any and all material MANUFACTURED in the United States, regardless of purpose, is covered by this regulation. We note that this would therefore cover material produced specifically for export which makes such material less competitive on the international market place.

The EPA must therefore specifically and clearly exempt production destined for export, be it a primary panel product or a secondary downstream product.

The emission levels adapted by CARB/EPA exceed those set in both Japan and Europe (currently the other most “sensitive” markets to the issue of formaldehyde emissions) and such an extended certification scheme is not required by any other country. Enforcing a certification program on production designated for export increases the burden on many companies, particularly on secondary manufacturers competing for high value, customized projects. Further, while most manufacturers would have the same production across the board, they shouldn't have to have any export material added to their production tallies that would impact on any volume-based certification fees or lot testing requirements. Since the material is not intended for sale or consumption within the United States, such production should be specifically exempted.

We also note that this would then provide an alternative market, if needed, for non-complying lots which would be a significant improvement over mandated destruction.

We also note that if this is not allowed, foreign producers will have an advantage over US producers --- all innovation and profits will accrue to foreign producers as they can sell all new, innovative products outside the US until such time as they are EPA certified. This is a major stifling of American innovation.

As a note for when the EPA looks at redefining this section, the NWFA would also encourage further specific exemption for material produced for educational/research/sampling/product development purposes and those produced by educational/artistic institutions. It may also be appropriate to exclude glue companies or similar organizations who need to manufacture test lots to study resin performance. Clearly the intent of this regulation is to focus on production produced for sale to the American consumer and we do not want to see the burden expanded outside industrial production.



Issue: Language Conflict on Distributor/Retailer Responsibilities

HIGH PRIORITY ISSUE

p. 34838 and 34864 and 34865

ORIGINAL REFERENCES:

from p. 34838: "However, for distributors and retailers who are not manufacturers under TSCA, EPA is proposing that they only be required to keep invoices and bills of lading."

from p. 34864: "...distributors, and retailers must take reasonable precautions to ensure that they are purchasing composite wood products, whether in the form of panels, component parts, or finished goods, that comply with the emission standards and other requirements of this subpart."

from p. 34865: "Distributors and retailers must retain invoices and bills of lading and copies of labels used."

NWFA COMMENT: There are conflicting statements regarding distributor/retailer responsibilities. First statement is that the only obligation is to keep invoices and BL's, the second adds a due care responsibility and the third adds a label tracking responsibility.

Most importantly, the EPA has not defined "reasonable precautions" nor have they defined what happens to an innocent owner of product which later was determined to be non-complying. As many members of the NWFA are retailers, distributors, builders, and installers, it is a tremendous concern what might happen if they purchase material in good faith which is later determined to be non-compliant. Are they out the cost of material? Are they legally liable (to the government or to their customers?) Is this providing an opportunity for lawsuits against a builder who purchased and installed material that the EPA decides after the fact is non-compliant?

This confusion goes towards the NWFA's position that an extended timeline to allow TPC's to become accredited, then primary manufacturers, and finally new companies being added to the program, to reduce the risk that an innocent distributor/retailer/customer might purchase non-compliant material. By going more slowly, the quality assurances not just for emissions control but also document control are significantly increased.

This confusion also goes towards the NWFA's position that business proprietary information must be respected. Assume that the EPA's position that any and ALL information including test results and production conditions must be public information. Due care would possibly obligate a distributor or a retailer or an installer or a builder to request and record all such information for every lot purchased. Tracking the supply chain is appropriate, but BPI must be respected and any/all information cannot be considered open at every level or it will be therefore required at every level.

This also goes towards the NWFA's position that a simplified label is more appropriate, as a retailer/distributor/architect/installer may not be in the position to evaluate additional information and take the



easy route: is buying ULEF a better reasonable precaution than NAF or certified?" They must look for the statement "TSCA VI Compliant" on the product.

We ask the EPA to remember that very often middlemen refuse to share supplier information with their customers for fear that the customer will go straight to the supplier and cut out the middleman. Moreover, the hardwood flooring market is a competitive market for which retailers' and distributors' suppliers are trade secret information. To expose such proprietary information would give others an unfair competitive advantage. The right to protect trade secrets is a recognized right under common law (See Restatement of Torts Section 757 comment b and Restatement of Unfair Competition Section 39) and has been codified as the Uniform Trade Secrets Act (UTSA) adopted to date by 47 states. The theft of trade secrets is a crime under Federal law (Economic Espionage Act of 1996).

We ask for appropriate protection of all proprietary business information and a clear limitation and delineation of responsibilities for purchasers in the downstream supply chain.



HIGH PRIORITY ISSUE

Issue: “Reasonable Means” and Record Keeping combined with BPI and liability

p. 34864 ORIGINAL REFERENCE: 770.30 Importers, fabricators, laminated product producers, distributors, and retailers.

(a) Importers, fabricators, laminated product producers whose products are exempt from the definition of hardwood plywood, distributors, and retailers must take reasonable precautions to ensure that they are purchasing composite wood products, whether in the form of panels, component parts, or finished goods, that comply with the emission standards and other requirements of this subpart.

(b) For importers, fabricators, and laminated product producers, taking reasonable precautions means specifying TSCA Title VI compliant products when ordering or purchasing from suppliers and obtaining the following records:

(1) Records identifying the panel producer and the date the composite wood products were produced.

(2) Records identifying the date the composite wood products were purchased.

(3) Bills of lading or invoices that include a written affirmation from the supplier that the composite wood products are compliant with this subpart.

(c) Importers of articles that are composite wood products, or articles that contain 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 or as later promulgated.

NWFA COMMENT: The EPA has not defined “reasonable precautions” nor have they defined what happens to an innocent owner of product which later was determined to be non-complying. Are they out the cost of material? Are they legally liable (to the government or to their customers?) Is this opening up an opportunity for lawsuits against a builder who purchased and installed material that the consumer decides is somehow flawed (true or not)? As many members of the NWFA are retailers, distributors, builders, and installers, it is a tremendous concern what might happen if they purchase material in good faith which is later determined to be non-compliant—or worse, just faced a nuisance lawsuit since formaldehyde is an easy target these days.

The more information that is open to the customer, the more liability they assume for being sure they’ve gathered absolutely all of it. Isn’t their best protection simply understanding that a product is “TSCA VI Compliant?”

While we understand that the EPA is proposing a sharing of data so that buyers can make an “informed” choice, this is based on the concept that the downstream buyer is capable of interpreting the information properly. Not only would the average consumer be bewildered by testing results and unduly concerned by the idea that something was once non-complying, the majority of industry professionals would have trouble

following much of this information. What liability is being placed on these buyers by actually opening up this type of information?

For any downstream buyer, be it the professional or the final consumer, do “reasonable precautions” mean they need to research emissions for all the material being considered? How are they supposed to be educated to interpret test results? Collecting documentation shouldn’t be considered sufficient, but certainly many buyers will look at that as part of their due diligence, even if they can’t understand the results. We have all experienced the idea that “burying them in paper” is a successful way to “demonstrate” some form of due care.

Will this not create a general bias for NAF or ULEF as opposed to ‘regularly’ certified material, or create a bias against material that was initially non-complying, but has been aged or treated to meet emission standards? Won’t consumers, who don’t really understand the science simply take what appears to be the ‘safest’ path? Again, this is not just the homeowner, but the secondary manufacturer or distributor or retailer:

- “I don’t know what all this means, so just give me something without formaldehyde.”
- “I don’t care if it passes now, it was non-complying when you made it and I just don’t want to risk it.”
- “I don’t understand all these reports, just show me which pallet had the lowest emissions, and give me that one.”
- “This company says they use hot presses and this company uses cold and this one had 0.01ppm more, so that means the other way is safer, right?”
- “NAF must be better than just compliant stuff, right? It’s like extra good?”
- “This company tests more often, so it’s safer, right?”
- “This company gets to test less, so it’s better, right?”
- “Why is this pallet marked ULEF and this one marked Compliant if they are from the same company?”
- “I can’t find this company in the database so I’m not going to buy from them.”
- “Just give me everything and I’ll give it to the designer and they can figure it out what it means. If I have more documents than the other guy, it will show my product’s better, right?”
- “I don’t know what all this means, but if this stuff needs to be regulated as hazardous, I think I’ll just buy carpet.”

The supervisor in a plywood facility should be able to interpret glue testing results, review pressure settings, and understand the impact of changing temperatures. However does that mean that every salesman in



that company should also have the same in-depth knowledge? Should their buyers and all the downstream market also be responsible for interpreting such data? It is implied by these regulations that they should. Consider the EPA's idea that this will impact nearly one million US companies at all levels of the market—even if all those company just employed a single person, that would suggest that one million people would need to become experts in interpreting test results and production conditions.

Ironically, the only people to benefit from any type of release of confidential information will be the very specific industry professionals—those who can study their competitor's conditions. Competitors will be able to identify supply chains, study resin mixes, compare press times, and much more. None of these actions will do anything to protect the public health and do a tremendous disservice to the companies forced to release such information.

This is one of many reasons for the NWFA's position that a simplified label is more appropriate, as a retailer/distributor/architect/installer may not be in the position to evaluate additional information. They may decide that "buying ULEF is a better reasonable precaution than either NAF or certified." Instead, they should be able to look for the statement "TSCA VI Compliant" on the product. That is the bottom line for the public health.

This confusion also goes towards the NWFA's position that an extended timeline to allow TPC's to become accredited, then primary manufacturers, and finally new companies being added to the program, to reduce the risk that an innocent distributor/retailer/customer might purchase non-compliant material. By going more slowly, the quality assurances for not just emissions control but also document control is significantly increased.

This confusion supports the NWFA's position that TSCA Section 13 should not be applied to composite wood panels.

Again, the only information any purchaser requires, no matter what their position in the market is clear and simple: "is this product compliant?" The route through which compliance has been achieved and the details of the testing and production that allowed the company to be certified (or the fact that they were exempted from such oversight) should not be a factor.

Finally and most importantly, this section illustrates the need to pull downstream manufacturers from this program. This clause is trying to cover a wide variety of purchasers and their responsibilities, where it would be more appropriate to develop customized policies for each type of buyer and their uses for such products.



HIGH PRIORITY ISSUE

Issue: Inability for new manufacturers to enter the marketplace.

ORIGINAL REFERENCE: The regulations state that: “To obtain product certification, a panel producer must apply to a TSCA Title VI Accredited TPC. The application must contain the following:

... (5) At least one test conducted in accordance with § 770.20(c).

(6) Three months of routine quality control tests conducted in accordance with § 770.20(b). ...

NWFA COMMENT: The NWFA points out that this means a new US manufacturer cannot enter the market. A new company cannot produce the three months worth of material required to develop the preliminary testing data because the rule states that... “...*statutory formaldehyde emission standards for hardwood plywood, medium-density fiberboard, and particleboard sold, supplied, offered for sale, or **manufactured** (including imported) in the United States.*” After the phase-in period is completed, it becomes illegal to manufacture uncertified product. A new company cannot produce exclusively for export (not that they would be able to start and instantly develop production for export without a certain start up period) since it is illegal to manufacture anything uncertified.

What about new facilities being opened by a company that currently exists? They might move to a bigger factory. They might open a new production plant. How should this be handled since certification is (properly) on a per facility basis?

In addition, specific allowances need to be made regarding the transfer or change of ownership of a company. A factory that changes hands cannot lose certification instantly. While we do not want companies simply re-incorporating to avoid certification under whatever “new company clause” is developed, in the course of normal business practices, companies will be sold, will merge, will operate under forms of bankruptcy, etc. Companies need to be able to have some buffer so that the production can continue while a company’s financial or ownership structure is sorted out.

This could also severely restrict the development of new production even by established manufacturers. What is permitted to be produced for testing and market development? If it is illegal to manufacture uncertified product, how can new products be developed? The regulations state that “*Uncertified product produced after the manufactured-by date, discussed in Unit III.I., would not be permitted to be sold, supplied, or offered for sale in the United States.*” Can you produce samples to supply to customers for testing and review? What is the limitation on such production—in some cases, it can be quite extensive.

We note that many of these issues also impact on the issues regarding confidentiality previously discussed. Companies under going changes of any type might have their information exposed in ways that would hurt their competitiveness.

Also, if all companies are listed in a public database as proposed, and a company is closed, then they would be removed from the database—what about downstream customers holding their stock? They might find themselves unable to sell such their production if a consumer doesn’t believe it to be certified.



As proposed earlier by the NWFA, the regulation needs to have a specific exemption for production for export. Additionally there needs to be an exemption of products manufactured for development/sampling purposes as long as they are not sold to the consumer within the United States. Finally, a provision needs to be added that allows new manufacturing companies or facilities to be created and to handle the expansion of a company, movement of facilities, and changes of ownership.



Issue: Contract Laboratory

ORIGINAL REFERENCE: Throughout the document there are references to “quality control testing performed by the maker of the composite wood product, an accredited TPC, or a contract laboratory.”

NWFA COMMENT: The NWFA seeks clarity on the use of “contract laboratories.” Our understanding and recommendation would be that a manufacturer (of any product requiring independent certification) is required to perform regular testing (at specified times/volumes). They have an option of creating a lab in-house, or outsourcing the testing to a “contract laboratory.”

A TPC may also outsource testing to a “contract laboratory.”

Our understanding and recommendation would be that any contract laboratory used by a manufacturer for their internal quality control testing does NOT have to be accredited but DOES have to be approved by their TPC as providing acceptable level of testing.

Our understanding and recommendation would be that the contract laboratory used by a TPC for outsourced testing for **certification purposes** (as opposed to general QC testing) DOES have to be accredited and also must participate in the inter-laboratory comparison program.

Additional (not to be considered comprehensive) examples of References to “Contract Laboratory” in EPA-HQ-OPPT-2012-0018:

Ensuring the TPC has a process in place to verify the accuracy of the formaldehyde emission tests conducted by the TPC laboratory (including any contract laboratory that the TPC would use for formaldehyde testing under TSCA Title VI) and the formaldehyde quality control tests conducted by the producers of regulated composite wood products.

...quality control tests that must be conducted at the composite wood product manufacturing facility, a contract laboratory, or a laboratory operated by an approved TPC.

...The quality control facility must be a laboratory owned and operated by the panel producer, a TPC, or a contract laboratory.

...panel producers have the option of hiring an accredited TPC or a contract laboratory to fulfill these requirements.



References to “Contract Laboratory” in the companion regulations, EPA-HQ-OPPT-2011-0380-0001 include (again, not to be considered comprehensive list):

p. 34805

b. That its laboratory or contract laboratory has been accredited by an EPA recognized Laboratory AB in conformance with ISO/IEC 17025:2005(E).

c. The TPC laboratory’s or contract laboratory’s experience with test method ASTM E 1333–96 (Reapproved 2002) (Ref. 20) or successor standards and experience evaluating correlation between test methods.

Therefore, EPA is proposing that a TPC laboratory or contract laboratory must have experience with formaldehyde testing using ASTM E1333–96 (Reapproved 2002) or its successor standards as well as experience evaluating correlations between different test methods.

p. 34801 By requiring a TPC’s emissions testing laboratory, or its contract laboratory, to be accredited by an AB that is a signatory to the ILAC MRA or equivalent oversight body,

NWFA COMMENT: To avoid confusion, we would therefore propose that a definition and distinction be made between “contract laboratory” and “accredited contract laboratory” (ACL) in the two documents. We further recommend that the requirements for an ACL be outlined specifically within the EPA-HQ-OPPT-2011-0380-0001 document.

If necessary, in this document, EPA-HQ-OPPT-2012-0018, the EPA can state that the name/contact information for the “contract laboratory” must be 1) specified in the quality control manual of the manufacturer, 2) approved by the TPC, and 3) that any change in either the selection of a specific outsourced contract laboratory or within that laboratory’s procedures must be approved by the TPC. If there is a change of laboratories or conditions in the previously approved laboratory, any new testing or additional requirements based on the change of laboratory are to be required solely at the discretion of the accredited TPC for that particular manufacturer, product, and/or contract laboratory.



Issue: Disposition of non-complying lots

ORIGINAL REFERENCE: Throughout the document there are references to "...the disposition of non-complying lots, including product type and amount of composite wood products affected, lot or batch numbers, mitigation measures used, results of retesting, and final disposition."

NWFA COMMENT: The NWFA requests further information on disposition options/requirements. It is noted that options to mitigate high emissions (aging/use of a scavenger/other) are available and which are likely to ensure the majority of production pass a future test.

The NWFA feels that if the process of aging takes less than 4 weeks and the lot is shown to be compliant in that period, no additional measures need to be taken regarding material already sold. Given the length of the supply chain, very few manufactured products will be utilized within a home environment in under 4 weeks. In fact, four months might be a more likely period between production and use. Therefore if the production tests out properly at four weeks, the lot should be allowed to remain in the market.

The NWFA agrees that records should be kept regarding non-complying lots and that such records should be provided to the TPC and to the EPA upon demand. However the NWFA STRONGLY objects to those records being made a matter of public record.

If a lot passes, then it has passed. The fact that it was originally non-complying is prejudicial in the marketplace. If a product is now within the emission standards, then that is all that anyone must know.

This is not just a matter of comparing one manufacturer to another. It could get to the point of comparing one lot to another. A buyer could say to the distributor, "I want 1000ft² of Light Brown Oak, how much do you have in stock?" "We have plenty, we have over 30,000ft³ in stock." "Great, show me the test results for each pallet and I'll specify which 1000ft² I want."

The EPA has set the established safe limit and system for compliance. The fact that the material is compliant is the ONLY information the public is required to have.

The NWFA seeks clarification regarding protection for innocent owners of non-complying lots, if they are willing to accept the material while agreeing not to resale or if they agree to take action such as the application of scavengers or aging to ensure future compliance.

The NWFA seeks clarification regarding proper disposition of non complying lots within the US. Are these to be added to the landfill? Burned? How does the EPA require these materials to be handled? Such disposition options should be specified by the regulations.

Again, the NWFA encourages among other solutions, an exemption for exported product as one potential solution for some non-complying material.



Issue: Confusion regarding required Statements, Affirmations and Certifications to Purchasers throughout the regulations

p. 34824

Manufacturers must also include a **statement of compliance** on the bill of lading or invoice for the composite wood product.

Like manufacturers, distributors and importers must also provide a **statement of compliance** on the composite wood or finished good product bill of lading or invoice.

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... a **statement of compliance** on the bill of lading or invoice.

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(2) The label must include, at a minimum, the fabricator's name, the date the finished good was produced, and a **statement that the finished goods are TSCA Title VI compliant**.

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In general, this means that the importer, fabricator, or producer would be required to obtain from the supplier records identifying the panel producer(s) that produced the composite wood products and the dates that the products were manufactured and purchased from the panel producer(s), **and bills of lading or invoices that include a written affirmation from the supplier** that the composite wood products are compliant with this subpart.

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(3) Bills of lading or invoices **that include a written affirmation** from the supplier that the composite wood products are compliant with this subpart.

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- For foreign finished goods that the distributor imports, records identifying the panel producer(s) that produced the composite wood products and the dates that the products were manufactured and purchased from the panel producer(s) as well as bills of lading or invoices **that include a written affirmation from the supplier that the composite wood products are compliant with this subpart**.

- For domestic finished goods, only invoices and bills of lading, which **need not contain a written compliance affirmation** from the supplier.

NWFA COMMENT: The NWFA requests consistency of language in the final regulations regarding statements, certifications and affirmations for all types of companies at all points in the market.

The NWFA also requests more information regarding what a "statement of compliance" or other appropriate paperwork would look like, who would provide it, the information it should include, and who would be required to keep the record of having it. The NWFA would also like clarity regarding how small a volume such a certificate would cover—if it is possible to receive one on an annual basis (much like a CARB certificate now covering all production, or if this is necessary on a per purchase basis.)



Generally, the NWFA believes that any form of written affirmation from the supplier is an unnecessary step, as invoices stand as the better conduit for this information. Invoices are part of an established system and using them will keep the administrative burden increase to a minimum. Written affirmations require the creation of an additional system, which will necessitate more training and more time spent on a process that could have been implemented far more easily via invoices. Written affirmations do not offer any enhanced benefit over invoices and will result in a dramatically increased administrative burden that in no way furthers the intent of the statute.



ALL PROPOSED DEFINITIONS:

Bundle means more than one composite wood product panel, component part, or finished good fastened together for transportation or sale.

--The NWFA has no objection.

Component part means a part that contains one or more composite wood products and is used in the assembly of finished goods.

--The NWFA has no objection.

Distributor means an entity that supplies composite wood products, component parts, or finished goods to others.

--**NWFA COMMENT:** The NWFA objects to this definition as too general. Even a retailer or a home builder could meet this definition, which is surely not the intention. The California Air Resources Board defines a distributor as “any person to whom a composite wood product or finished good is sold or supplied for the purpose of resale or distribution in commerce, except that manufacturers and retailers are not ‘distributors’”. The definition of distributor should either indicate that it applies only to those who make sales intended for resale and/or specifically exempt retailers from distributor-related responsibilities.

--A distributor might also be at times a manufacturer, an importer, retailer, a builder or identify themselves as another type of company. The NWFA encourages not locking companies into single roles, but rather clarifying overall responsibilities of primary manufacturers, secondary manufacturers, and buyers and sellers.

Fabricator means an entity that incorporates composite wood products into component parts or into finished goods.

--The NWFA has no specific objection to this definition however requests further information as to how this differs from a laminator. The NWFA would recommend a simplification of terms and procedures. There is a great deal of confusion between a manufacturer, laminator and fabricator. We note that there is no specified definition of “laminator” provided at the end of the regulation, although there is a “laminated product producer.” We would request consistency of phrase to reduce confusion.

--The NWFA believes that primary panel producers should be certified. These are producers of plywood, HDF, MDF, and particleboard. Secondary manufacturers should be required to utilize certified cores and/or lumber or special core materials that have no requirement to be certified. They, as with all purchasers of an included product, have the responsibility of ensuring that the primary producer is certified and that they have received certified material.

--the NWFA does wish to note that such a definition can include other organizations such as educational institutions (high school shop classes, vocational colleges, wood colleges), art studios, and modeling clubs and



other organizations. We are sure the EPA did not intend for such a wide reach and would encourage 1) the simplification of definitions, 2) the specification that this is more of an industrial focused regulation, and 3) the specific exclusion of non industrial organizations such as educational institutions and artistic organizations or material produced for research (including material being produced for sampling/testing by companies that must be specified as not for sale).

Finished good means any good or product, other than a panel, that contains hardwood plywood, particleboard, or medium-density fiberboard and that is not a component part or other part used in the assembly of a finished good.

--The NWFA notes that our industry usually uses “finished floor” to mean one which has a factory finish applied to it. It might be more appropriate to use “consumer product” or “completed good” or “final good” to indicate something that will not be further processed in an industrial setting.

--The NWFA recommends a further distinction be made between “factory finished” and “unfinished” production. Certainly within the flooring industry “unfinished flooring” can be a completed product ready for consumer use. “Unfinished furniture” and “Finished Furniture” for example can both contain equal amounts of composite wood products, but the “finished” chair will have a factory finish sealing in any emissions. Again, the NWFA would encourage this current regulation cover only primary panel production and allow both the EPA and industry more time to explore the greatly more complicated “finished good” production issues (and vocabulary.)

Hardboard means 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).

--The NWFA has no position but requests that the confusion in the regulation regarding the use of hardboard as a core be resolved.



Hardwood plywood means a hardwood or decorative panel that is intended for interior use and composed of (as determined under ANSI/HPVA HP-1-2009) an assembly of layers or plies of veneer, joined by an adhesive with a lumber core, a particleboard core, a medium-density fiberboard core, a hardboard core, a veneer core, or any other special core or special back material. Hardwood plywood does not include military-specified plywood, curved plywood, or any plywood specified in PS-1-07, Voluntary Product Standard—Structural Plywood, or PS-2-04, Voluntary Product Standard—Performance Standard for Wood-Based Structural-Use Panels. In addition, hardwood plywood does not include laminated products that are made by attaching a wood or woody grass veneer with a no-added formaldehyde-based resin to a core that has been manufactured in compliance with this subpart and that is either certified in accordance with § 770.15, manufactured with no-added formaldehyde-based resins under § 770.17, or manufactured with ultra low-emitting formaldehyde-based resins under § 770.18(d).

--The NWFA requests the following:

1. Clarification on the rationale for the exclusion of curved plywood.
2. Clarification on the fact that hardboard is excluded, but hardboard cored material is included. It seems inappropriate to adopt a definition of hardboard that exempts hardboard products (including those made with phenolformaldehyde resin) from the statutory emission standards and the testing and certification requirements, but then to include it as a core in products requiring certification.
3. Removal of lumber core production from the required certification list, as it is a product with minimal glue usage and would significantly expand the number of flooring products and manufacturers seeking certification.
4. Specific exemptions for all factory finished engineered flooring produced with an appropriate core, as well as solid and strand bamboo flooring, cork faced flooring, and laminate flooring.
5. Removal of “special core” production from the required certification list as it is undefined and discourages necessary innovation.

Importer means an entity that imports composite wood products, component parts that contain composite wood products, or finished goods that contain composite wood products into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedules of the United States). Importer includes:

- (1) The entity primarily liable for the payment of any duties on the products, or
- (2) An authorized agent acting on the entity’s behalf.

--The NWFA has no objection. The NWFA notes that this definition does not in any way link the importer to serving in any role as the manufacturer and this is appropriate. The NWFA resists any effort to define the importer as the manufacturer or to link the manufactured-by date to the imported-by date.

Intended for interior use means intended for use or storage inside a building or recreational vehicle, or constructed in such a way that it is not suitable for long term use in a location exposed to the elements.

--The NWFA has no objection with the definition but is concerned about the expansion of the program into a huge range of products that the EPA/OMB/SBA has not yet considered covered ranging from kitchen cutting boards to gun stocks and skis.



Laminated product means a product in which a wood or woody grass veneer is affixed to a particleboard platform, a medium-density fiberboard platform, or a veneer core platform. A laminated product is a component part used in the construction or assembly of a finished good.

--The NWFA requests further information as to how this differs from a panel. The NWFA notes that the definition of the hardwood plywood includes lumber core products, but they are not specified here. The NWFA recommends all lumber core and special core products be specifically exempted.

--The NWFA also requests a specific definition for laminator as well to clarify how they differ from a fabricator and a panel producer.

Laminated product producer means a manufacturing plant or other facility that manufactures (excluding facilities that solely import products) laminated products on the premises.

--The NWFA requests further information as to how this differs from a fabricator or a primary panel manufacturer.

Lot means the particular batch of a product type made during a single production run.

--The NWFA has no objection to the definition but references previous concerns as to what this will mean to small and customized production.

Medium-density fiberboard means a panel composed of cellulosic fibers made by dry forming and pressing a resinated fiber mat (as determined under ANSI A208.2–2009).

--The NWFA has no objection.

No-added formaldehyde-based resin 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 in § 770.17(c).

--The NWFA has no objection.

Non-complying lot means any lot or batch of composite wood product represented by a quarterly or quality control test value that exceeds the applicable standard for the particular composite wood product. In the case of a quarterly test value, only the particular lot or batch from which the sample was taken would be considered a non-complying lot. However, future production of the product type(s) represented by a failed quarterly test are not considered certified and must be treated as a non-complying lot until the product type(s) are re-qualified through a successful quarterly test.

--The NWFA has no objection, but insists that such information remain privately held between the manufacturer and the TPC and the EPA on a confidential basis upon an appropriate request.

Panel means a flat or raised piece of composite wood product.



--The NWFA does not have a problem with the definition of a panel, however, we seek clarification regarding the exclusion of curved plywood from the definition of Hardwood Plywood as it is identical to the flat panel described here, except it is bent or shaved into a curved pattern. The NWFA is generally pleased to have products exempted given the limited testing capacity, but would like to understand the logic in choosing which products to exempt. The NWFA believes that a flat engineered floor, produced with an appropriate core, with a wood veneer on the surface and factory chemical finish sealer is likely to emit at a significantly lower rate than a raw curved piece of plywood.

Panel producer means a manufacturing plant or other facility that manufactures (excluding facilities that solely import products) composite wood products on the premises. This includes laminated products not excluded from the definition of hardwood plywood.

--The NWFA would recommend the distinction between primary panel producers (those making plywood, particleboard and the material currently covered by CARB) and secondary manufacturers who utilize these products. The NWFA recommends that primary panel producers be covered by the TSCA regulations, and secondary manufacturers be required to purchase certified panels, but the requirement to have them independently certified needs to be investigated further.

Particleboard means a panel composed of cellulosic material in the form of discrete particles (as distinguished from fibers, flakes, or strands) that are pressed together with resin (as determined under ANSI A208.1-2009). Particleboard does not include any product specified in PS-2-04, Performance Standard for Wood-Based Structural-Use Panels.

--The NWFA has no objection.

Product type means a type of composite wood product that differs from another, made by the same panel producer, based on wood type, composition, thickness, number of plies (if hardwood plywood), or resin used. Products with similar emissions made with the same resin system may be considered to be the same product type. Factors to consider in determining whether products belong to the same product type include those factors likely to affect emissions, such as wood type, resin type, core type, veneer type, and press time.

-- There is no specific objection to this definition, only in how it may be applied.

The NWFA is extremely concerned about the issue of product grouping in terms of how it unduly penalizes small producers or discourages the production of customized small volume material.

Production line means a set of operations and physical industrial or mechanical equipment used to produce a composite wood product.

--The NWFA has no objection.



Purchaser means an entity that acquires composite wood products in exchange for money or its equivalent. Quality control limit means the quality control method test formaldehyde value that is the correlative equivalent to the applicable emission standard based on the ASTM E1333–10 method.

--The NWFA has no objection and would in fact, recommend the elimination of other market-segment based definitions such as “retailer,” “distributor,” and “importer,” to simplify the program to “primary panel producer” and “purchaser.”

Recreational vehicle means a vehicle which is:

- (1) Built on a single chassis.
- (2) Four hundred square feet or less when measured at the largest horizontal projections.
- (3) Self-propelled or permanently towable by a light duty truck.
- (4) Designed primarily not for use as a permanent dwelling but as temporary living quarters for recreational, camping, travel, or seasonal use.

--The NWFA has no objection.

Retailer means an entity that generally sells smaller quantities of composite wood products directly to consumers.

--The NWFA has no objection however notes that the same description will include installers, builders, construction companies, and a wide range of companies that do not traditionally identify themselves as a “retailer.” The NWFA encourages a simplification of terms.

Scavenger means a chemical or chemicals that can be applied to resins or composite wood products to reduce the amount of formaldehyde that can be emitted from composite wood products.

--The NWFA has no objection.

Stockpiling means manufacturing or purchasing composite wood products, whether in the form of panels or incorporated into finished goods, between July 7, 2010 and [date 180 days after publication of the final rule in the Federal Register] at an average rate at least 20% greater than the average rate of manufacture or purchase during the 2009 calendar year for the purpose of circumventing the emission standards and other requirements of this subpart.

--The NWFA objects. The NWFA feels that 1) 20% is too low, 2) 2009 should not be used as a base year, and 3) is concerned that the definition does not clarify if stockpiling is based on a value or volume measurement (the NWFA recommends volume in the appropriate unit regularly used by the industry.)

Thin medium-density fiberboard means medium-density fiberboard that has a thickness less than or equal to 8 millimeters or 0.315 inches.

--The NWFA has no objection.



Ultra low-emitting formaldehyde resin means a resin in a composite wood product that meets the emission standards in § 770.18(c).

--The NWFA has no objection.

Veneer means a thin sheet of wood or woody grass that is rotary cut, sliced, or sawed from a log, bolt, flitch, block, or culm.

--The NWFA has no objection provided that there is clarification in the final regulation that producers of paper and cork laminates are exempt if they utilize an appropriate core. The NWFA has provided separate comments specific to bamboo flooring which we request be reviewed.

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

--The NWFA has no objection.



**Conclusion regarding Docket ID number EPA-HQ-OPPT-2012-0018
Primary Comments on Entire Regulation**

We thank the reviewers for providing us the opportunity to comment on these regulations. We hope to see a smooth transition for the industry from CARB to CARB/EPA and encourage minimal expansion over the current CARB program, and as much mutual recognition as possible. Again, we emphasize our three key points:

- The protection of confidential business information and a simplified label.
- The use of a phased-in timeline, allowing a minimum of one year for TPC's to become accredited, followed by a year for primary panel manufacturers, followed by a year for those industries or producers new to the CARB certification program.
- The specific exemption of secondary manufacturers/fabricators/laminators, and barring that, the exemption of factory finished material, and barring that, including them only through the development of a second regulation that would be tailored for these downstream industries.

In addition, regarding all the regulations, we again encourage:

- **If the EPA believes it necessary to cover within THIS regulation any/all of flooring products that were not previously covered by CARB (rather than either exempting them or developing an appropriately secondary regulation designed for downstream producers), we ask that they be added in at the end of a phased-in timeline to allow these manufacturers time to prepare since these regulations/procedures will be new to them.**
- **A simplified label system with “TSCA VI Compliant” being the only base information which must be displayed. While other info may be openly displayed, the EPA should also allow the use of bar coding and other “new” information transmission systems to encode other data such as manufacturer and lot details. Further, the EPA should allow the coding of mill sources as is done with CARB. Further, this means no label bias based on the manufacturer’s production as ULEF, NAF exempt with/without oversight, etc.—a product is compliant or not, with the ROUTE to compliance not being a requirement of labeling.**
- **Protection of brand names and the OEM manufacturing system.**
- **A bottom-line product-based focus to the regulation: the product is compliant or not. The route to compliance, the manufacturer(s), the production method, etc. are all confidential.**
- **The EPA rework the definition of “lot” and testing schedules either generally or in a specific subset of the regulations to accommodate the conditions of small custom manufacturers and/or**

production.

- A simplified vocabulary and record keeping system that defines companies and responsibilities simply as “primary panel manufacturer,” “secondary manufacturer” and “purchaser.”
- Regulations be designed so they are not a barrier to the entry or expansion of domestic manufacturing.
- No specific or implied bias against imported products or importers. Specifically not expanding TSCA 13 to include articles, and specifically making “manufactured-by” date the governing date for tracking production, no matter where it is produced (while setting an exact “imported-by date” by which time all imports must be compliant, regardless of their manufactured-by date.)
- “Stockpiling” be volume based against the previous year’s condition, rather than the year 2009, as well as be significantly greater than 20% and take into account other factors which may increase purchases.
- Specifically stated exemption of production for export and research purposes.
- Specifically stated exemptions for “solid” and “strand” bamboo flooring construction.
- Specifically stated exemptions for laminate flooring (paper on MDF/HDF).
- Specifically stated exemptions for lumber core and special core flooring.
- Specifically stated exemptions for cork faced flooring.
- Production should not be held in storage pending testing results. All industries rely too much on “Just in Time” for this to be economical or practical.
- Performance based standards and openings in the regulations that will permit new production styles and resin systems to be developed, as well as a respect of confidential information to encourage innovation.
- All options available to convert non-complying lots to complying material should be permitted, with the open option to include new technology as developing.
- Reduction wherever possible of additional burdens on the TPC’s that reduce the available capacity to the industry and increase overhead costs.
- Flexibility for the TPC’s to determine the appropriate testing and supervision for individual clients, based on those client’s individual conditions, including, but not limited to, determining



groupings, staffing requirements, and supplemental testing requirements.

- **Equivalence for mill QC testing is not required.**
- **No mandated staff requirements—the TPC’s should be allowed to determine if a specific company’s staff is sufficiently experienced and trained.**
- **Clarification of all issues and conflicts of language and responsibilities as outlined in our commentary, including the definition of “reasonable precautions” and possible requirements of certificates/affirmations/ statements.**

Finally, we reminder readers that this is the FIRST of FOUR documents provided by the NWFA.

- 1) **Docket ID number EPA-HQ-OPPT-2012-0018: Comments on the entire primary regulation**
- 2) Docket ID number EPA-HQ-OPPT-2012-0018: Comments specific to the Inclusion of Bamboo Flooring
- 3) Docket ID number EPA-HQ-OPPT-2012-0018: Comments specific to the Inclusion of Lumber Core Flooring
- 4) Docket ID number EPA-HQ-OPPT-2011-0380-0001: Comments on the regulations specific to Third Party Certifiers

Thank you.