Panel Report

of the

Small Business Advocacy Review Panel on

EPA's Planned Proposed Rule Implementing the Formaldehyde Standards for Composite Wood Products Act (TSCA Title VI)

April 4, 2011

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

1. INTRODUCTION

This report is presented to the Small Business Advocacy Review Panel (SBAR Panel or Panel) that convened to review the planned proposed rulemaking to implement the Formaldehyde Standards for Composite Wood Products Act (TSCA Title VI).[1] Implementing regulations are currently being developed by the U.S. Environmental Protection Agency (EPA). Under section 609(b) of the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA),[2] a Panel is required to be convened prior to publication of the initial regulatory flexibility analysis (IRFA) that an agency may be required to prepare under the RFA. In addition to EPA's Small Business Advocacy Chairperson,[3] the Panel will consist of the Assistant Administrator for the Office of Chemical Safety and Pollution prevention,[4] the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget, [5] and the Chief Counsel for Advocacy of the Small Business Administration.[6]

This report includes the following:

- Background information on the proposed rule being developed;
- Information on the types of small entities that would be subject to the proposed rule;
- A description of efforts made to obtain the advice and recommendations of representatives of those small entities; and
- A summary of the comments that have been received to date from those representatives.

Section 609(b) of the RFA directs the Panel to report on the comments of small entity representatives and make findings on issues related to elements of an IRFA under section 603 of the RFA. Those elements of an IRFA are:

- A description of, and where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- Projected reporting, record keeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirements and the type of professional skills necessary for preparation of the report or record;

[1] *Available at* http://www.gpo.gov/fdsys/pkg/PLAW-111publ199/pdf/PLAW-111publ199.pdf
[2] *Available at* http://www.epa.gov/sbrefa/statute/rfasbrefa_act.pdf
[3] *Available a t*http://www.epa.gov/sbrefa/staff.htm
[4] *Available at* http://www.epa.gov/aboutepa/ocspp.html
[5] *Available at* http://www.whitehouse.gov/omb/inforeg_administrator
[6] *Available at* http://www.sba.gov/advocacy/858/3177

- An identification, to the extent practicable, of all other relevant Federal rules which may duplicate, overlap, or conflict with the proposed rule;
- Any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities; and

Once completed, the Panel report is provided to the agency issuing the proposed rule and is included in the rulemaking record. The agency is to consider the Panel's findings when completing the draft of the proposed rule. In light of the Panel report, and where appropriate, the agency is also to consider whether changes are needed to the IRFA for the proposed rule or the decision on whether an IRFA is required.

The Panel's findings and discussion will be based on the information available at the time the final Panel report is drafted. EPA will continue to conduct analyses relevant to the proposed rule, and additional information may be developed or obtained during the remainder of the rule development process.

Any options identified by the Panel for reducing the rule's regulatory impact on small entities may require further analysis and/or data collection to ensure that the options are practicable, enforceable, environmentally sound, and consistent with the Toxic Substances Control Act and its amendments.

2. BACKGROUND

2.1 Regulatory History of the Rulemaking Implementing Formaldehyde Standards for Composite Wood Products Act (TSCA Title VI)

In March 2008, the Sierra Club and numerous other organizations and individuals petitioned EPA under Section 21 of the Toxic Substances Control Act (TSCA). The petitioners requested that EPA use TSCA Section 6 to adopt a newly-promulgated California Air Resources Board (CARB) regulation[7] as a national standard for formaldehyde emissions from hardwood plywood, particleboard, and medium-density fiberboard products. The petitioners expressed particular concern over the levels of formaldehyde found in emergency housing provided for Hurricane Katrina survivors, but noted that there are no federal regulations on formaldehyde emissions from pressed wood products other than those applicable to HUD-regulated manufactured housing. In response to the petition, EPA announced in the *Federal Register* on June 27, 2008 (73 FR 36504)[8] that EPA would initiate a proceeding to investigate whether and what type of regulatory or other action might be appropriate to protect against risks that may be posed by formaldehyde emitted from pressed wood products. In December 2008, EPA published an Advance Notice of Proposed Rulemaking (ANPR) to publicly initiate the investigation and

[7] *Available at* http://www.arb.ca.gov/toxics/compwood/compwood.htm
[8] *Available at* http://www.gpo.gov/fdsys/pkg/FR-2008-06-27/pdf/E8-14618.pdf

obtain stakeholder input (73 FR 73620).[9] In 2009 EPA held six public meetings on the ANPRM and issues related to formaldehyde emissions from pressed wood products. EPA reviewed and evaluated the comments received and continued to work on assessing the risks of exposure to formaldehyde emissions from these products.

Legislation was subsequently introduced in the U.S. Senate late in 2009 and in the U.S. House of Representatives early in 2010. This legislation was designed to establish national emission standards corresponding to the CARB limits for compressed wood products, *i.e.*, hardwood plywood, particleboard, and medium-density fiberboard. This legislation enjoyed broad support from environmental advocacy groups such as the Sierra Club as well as industry trade associations, such as the Composite Panel Association (CPA) and the Hardwood Plywood Veneer Association (HPVA). On July 7, 2010, the Formaldehyde Standards for Composite Wood Products Act was signed into law. This legislation, which adds a Title VI to TSCA, establishes formaldehyde emission standards for hardwood plywood, particleboard, and medium-density fiberboard that are identical to the California standards. EPA is directed to promulgate implementing regulations by January 1, 2013 that address: sell-through dates for products; stockpiling; third-party testing and certification; auditing and reporting of third-party certifiers; recordkeeping; chain of custody; labeling; enforcement; products made with no-added formaldehyde (NAF) and ultra-low emitting formaldehyde (ULEF) resins; laminated products; finished goods; hardboard; and products containing de minimis amounts of composite wood products.

2.2 Description of the Rule and Scope

The national emission standards in TSCA Title VI for formaldehyde emissions from composite wood products are the same as the standards previously established by the California Air Resources Board for products sold, offered for sale, supplied, used or manufactured for sale in California. The CARB regulation established a comprehensive program for composite wood products which includes among other provisions, requirements for third-party testing and certification, labeling, chain-of-custody documentation, and recordkeeping. Title VI does not give EPA the authority to raise or lower the emission standards for composite wood products, but EPA has been given discretion to adapt most of the other provisions of the California regulations for national applicability.

EPA is required by statute to promulgate implementing regulations for TSCA Title VI no later than January 1, 2013. The implementing regulations must address the following topics:

- sell-through provisions (including a prohibition on stockpiling)
- ultra low-emitting formaldehyde resins
- no-added formaldehyde-based resins
- finished goods
- third-party testing and certification
- auditing of and reporting for third-party certifiers
- chain-of-custody requirements

[9] *Available at* http://www.gpo.gov/fdsys/pkg/FR-2008-12-03/pdf/E8-28585.pdf

- recordkeeping
- labeling
- enforcement
- laminated products
- products and components containing de minimis amounts of composite wood products
- hardboard
- other provisions in a manner that ensures compliance with the emission standards

EPA is not given the authority by TSCA Title VI to make any modifications to the formaldehyde emission standards for hardwood plywood, particleboard, or medium-density fiberboard. EPA is likewise not given the authority to modify the statutory definitions of "no-added formaldehyde" and "ultra-low emitting formaldehyde." However, EPA is given discretion in defining the term "hardboard," in determining whether to exempt engineered veneer or any laminated product from the definition of "hardwood plywood," and in fashioning provisions relating to third-party certification, sell-through dates, recordkeeping, enforcement, and the other items listed in TSCA Section 601(d)(2).

2.3 Related Federal Rules

There are no federal regulations on formaldehyde emissions from pressed wood products other than those applicable to the Department of Housing and Urban Development (HUD) regulations for manufactured housing.[10] These regulations are not as stringent as the CARB regulations. The emissions standards established by the Formaldehyde Standards for Composite Wood Products Act apply to regulated composite wood in manufactured housing. The Act also requires HUD to modify its regulations on manufactured housing to ensure that they reflect the emission standards established in TSCA Title VI. HUD must take final action within 180 days of the date that EPA promulgates implementing regulations. The Federal Emergency Management Agency (FEMA) has incorporated HUD's standards for formaldehyde emissions from pressed wood products into its specifications for emergency housing, but FEMA has a large inventory of emergency housing that predates these new specifications. As directed by the Consumer Product Safety Improvement Act of 2008, the Consumer Product Safety Commission (CPSC) will be conducting a study on the use of formaldehyde in the manufacture of textiles and apparel. The Centers for Disease Control and Prevention (CDC), in consultation with various Federal agencies including EPA, has developed guidance on health and environmental best practices for manufactured housing and other manufactured structures.

3. OVERVIEW OF OPTIONS UNDER CONSIDERATION

[10] Particle board and plywood bonded with a resin system or coated with a surface finish containing formaldehyde and used in regulated manufactured housing have the following emissions limits: .3 parts per million (ppm) for particleboard and .2 ppm for plywood. 40 C.F.R. 3280.308

Through Agency review and stakeholder input, a range of program options were identified and presented to the SERs. The following is a listing of regulatory options being considered and evaluated by EPA, and is not final at this time.

3.1 Sell-through Provisions

EPA will, through regulation, establish sell-through provisions for composite wood products and finished goods containing regulated composite wood products. Under TSCA Title VI, the sell-through provisions must be based on a date of manufacture, unlike the CARB Airborne Toxic Control Measure's (ATCM) sell-through provisions which were based on a designated date of sale. EPA is considering designated composite wood product manufacturing dates (manufactured-by dates), including, but not limited to, the following for manufacturers of hardwood plywood, particleboard, and medium-density fiberboard and finished goods containing regulated wood products:

- 180 days after the promulgation of the implementing regulations
- Some period longer than180days after the promulgation of the implementing regulations

Manufacturers, importers, retailers, processors (fabricators of finished goods containing regulated composite wood products), and distributors of regulated composite wood products and finished goods containing regulated composite wood products would be required to purchase, import, distribute and/or offer for sale only products that are compliant with TSCA Title VI and its implementing regulations. Composite wood products that can be shown to be manufactured before the date specified in the forthcoming regulation would not be required to be tested or labeled. Importers, retailers, processors and distributors would be permitted to continue to buy and sell these products because they would be considered compliant with TSCA Title VI and its implementing regulations.

3.2 Stockpiling

TSCA Title VI requires EPA to promulgate regulations prohibiting stockpiling which is defined as:

> manufacturing or purchasing a composite wood product or finished good containing a regulated composite wood product between the date of enactment of the Formaldehyde Standards for Composite Wood Products Act and the date 180 days following the promulgation of the regulations pursuant to this subsection at a rate which is significantly greater (as determined by the Administrator) than the rate at which such product or good was manufactured or purchased during a base period (as determined by the Administrator) ending before the date of enactment of the Formaldehyde Standards for Composite Wood Products Act.

In order to define the base period used to determine whether an entity is stockpiling, EPA is considering options including, but not limited to, the following:

- Annual production volume; or purchases in the case of importers, distributors, and retailers, for 2007
- Average annual production volume; or purchases in the case of importers, distributors, and retailers, for annual years 2005 through 2009
- Annual production volume; or purchases in the case of importers, distributors, and retailers, for 2009
- Defining the base period differently for manufacturers, fabricators, importers, distributors

In order to define what rate of manufacture or purchase is "significantly greater" than the base period rate, EPA is considering options including, but not limited to, the following:

- Define the rate of manufacture or purchasing to be identical to the rate of manufacture or purchasing during the base period
- Allow a 5 percent increase in manufacture or purchasing
- Allow a 10 percent increase in manufacture or purchasing
- Allow a 20 percent increase in manufacture or purchasing

3.3 Ultra Low-emitting Formaldehyde Resins (ULEF) and No-added Formaldehyde-based Resins (NAF)

EPA is considering providing incentives for the use of NAF/ULEF resins to be consistent with the CARB ATCM, including:

- Less frequent primary testing and quality control testing for panels with ULEF resins (if the scheme ensures compliance with the emission standards and complies with TSCA § 601 (a)(10)(C)(i)).
- Exempt ULEF and/or NAF composite wood panels from third-party certification requirements (if the scheme ensures compliance with the emission standards and complies with TSCA § 601(a)(10)(C)(ii)). Sub-options include:
    - Provide ability for manufacturers of NAF and ULEF panels to apply for an exemption from third-party certification (after initial 3-month quality control testing period for NAF and 6 months for ULEF).
- Potential flexibility with provisions related to finished goods made with NAF and/or ULEF.
- Special recognition via a "green seal" placed on products that fall well below the NAF emissions levels for "green-marketing" purposes.

3.4 Finished goods

EPA is considering not requiring finished goods testing as part of the rulemaking. However, we believe it is a valuable tool for enforcement of the regulation and we are carefully following work being conducted within CARB and our own Office of Research and Development on testing finished goods to ensure chain of custody compliance.

3.5 Third-party Testing and Certification (Quality Control and Compliance)

TSCA Title VI specifies that:

> A) Compliance with the emission standards described in paragraph (2) shall be measured by—
> (i) quarterly tests shall be conducted pursuant to test method ASTM E-1333-96 (2002) or, subject to subparagraph (B), ASTM D-6007-02; and
> (ii) quality control tests shall be conducted pursuant to ASTM D-6007-02, ASTM D-5582, or such other test methods as may be established by the Administrator through rulemaking.
> (B) Test results obtained under subparagraph (A)(i) or
> (ii) by any test method other than ASTM E-1333-96 (2002) must include a showing of equivalence by means established by the Administrator through rulemaking.
> (C) Except where otherwise specified, the Administrator shall establish through rulemaking the number and frequency of tests required to demonstrate compliance with the emission standards.

Although TSCA Title VI specifies some testing requirements, EPA has discretion to determine the number and frequency of quality control tests and the number of quarterly tests to require for different products. See section above on NAF and ULEF resins for requirements under TSCA Title VI and options that EPA is considering for composite wood products made with NAF and ULEF approved resins. For all other regulated composite wood products, EPA is considering adopting quality control and product certification requirements identical to the CARB requirements: Appendix 2 of the CARB ATCM describes quality control requirements for manufacturers of composite wood products, including preparation of a quality control manual, establishment of a quality control function at the manufacturing plant (including testing equipment and designated quality control personnel); routine quality control procedures conducted at the plant (including testing frequency); participation in periodic inspections; and product testing by the third party certifier, and recordkeeping. Appendix 3 of the CARB ATCM specifies requirements for third party certifiers for their certification of composite wood products.

3.6 Auditing of and Reporting for Third-party Certifiers

EPA is considering harmonizing its program as much as possible with the current CARB ATCM program to avoid additional requirements for TPCs. EPA's potential options may include, but are not limited to:

Option 1: EPA would adopt and modify as necessary the CARB ATCM. Under this option, EPA will review and approve the applications of the TPCs. EPA will also perform regular audits to ensure that the TPCs continue to be in compliance with the Composite Wood Standard. The TPCs' laboratories would be certified by an accreditation body (AB) that is an International Laboratory Accreditation Cooperation (ILAC) and/or International Accreditation

Forum (IAF) signatory. ILAC and IAF are two widely recognized international organizations that assess and recognize the competency of ABs against an established set of internationally recognized accreditation standards and whose members are accrediting body organizations that perform peer-to-peer reviews to ensure rigorous compliance of accreditation requirements, such as ISO standards.

Under this option the Agency may also establish a quarterly TPC laboratory proficiency testing program that would be administered by EPA or may use an inter-laboratory testing approach similar to that currently used by CARB. Either of these approaches would serve as a mechanism to evaluate the laboratory's competency and ability to use the ASTM E-1333-96 (2002), ASTM D-6007-02 and ASTM D-5582 test methods and generate high-quality results.

Depending on how closely EPA's TPC program resembles CARB's, EPA may provide a provision, with minimal additional paperwork, to recognize TPCs that have been approved by CARB through its program.

Option 2: Under this option, instead of EPA conducting the application, recognition and auditing processes for TPCs, EPA would rely on existing ABs to perform these activities. To accomplish this, EPA would establish a memorandum of understanding (MOU) with each AB that identifies the requirements for being an AB and the criteria against which they will evaluate TPCs for recognition as a product certifying organization. The ABs would be required to be signatories of IAF or ILAC. Additionally, IAF and ILAC would incorporate into their AB signatory agreements EPA's requirements for certification of TPCs. Through their regular peer-to-peer evaluation processes, IAF and ILAC would ensure that AB signatories meet EPA's requirements for being an AB. EPA would also require in the signatory agreement the ability of EPA to audit ILAC, IAF, ABs, and TPCs if necessary. Results of each TPC application and audit review would be provided to EPA for final approval. As with Option 1, the Agency may also establish a quarterly TPC laboratory proficiency testing program or use an inter-laboratory testing approach similar to that currently used by CARB.

Option 3: This approach is similar to Option 2 but EPA would develop MOUs directly with IAF, ILAC, or similar international accreditation standards organizations instead of with the ABs. The requirements, roles, and responsibilities of the ABs are the same as in Option 2. As with option 2, EPA would require in the signatory agreement the ability to audit the international standards organizations, ABs, and TPCs if necessary.

3.7 Chain-of-custody and Recordkeeping Requirements

CARB-like Option: by adopting requirements similar to CARB, EPA will not increase the burden on industry that has already conformed to the California regulations as a general practice by requiring two separate sets of recordkeeping requirements. Requirements may include:

- Manufacturers, for each composite wood product, include a "statement of compliance" on the bill of lading or invoice with:
    - the assigned number of the approved third-party certifier, if applicable; and

    - a statement that the composite wood products comply with the applicable emission standards, and, if applicable;
    - whether the products were made using ultra-low emitting formaldehyde resins or no-added formaldehyde based resins.
- Importers and distributers for each composite wood product or finished good made with composite wood products include a "statement of compliance" on the bill of lading or invoice that the composite wood products comply with the applicable emission standards.
- Manufacturers keep records at their production facilities for two years including:
    - product information, tracking number, purchaser information, transporter, third-party certification identity, records of non-complying lots or batches, and ULEF and NAF related records.
- Importers , Distributors, Fabricators and Retailers keep records for two years that include:
    - Date of purchase, supplier of the composite wood products /finished goods and documentation of the precautions taken to ensure that the composite wood products and composite wood products contained within finished goods comply with the emissions standard.

EPA is also considering longer record retention periods including:

- A three year record retention period; and
- A five year record retention period.

3.8 Labeling

EPA is considering the following options for labeling provisions:

- Require same type of information that is required by the CARB ATCM (e.g., manufacturer name; product lot number or batch produced; a marking to denote that the product complies with the emission standards or was made using approved ULEF resins or NAF resins; number or name of approved third party certifier)
- Require labeling of each individual composite wood panel or finished good
- Only require labeling of boxes containing finished goods or bundles of panels
- Rather than require manufacturer's name on label, allow use of a code for the manufacturer's name instead. That code would be maintained by the third-party certifier and the importer or fabricator.
- Coordinate federal labeling system with California's so that there would be one harmonized labeling program

3.9 Laminated products

TSCA Title VI allows EPA, through rulemaking, to: 1) modify the definition of "laminated product;" and 2) use all available and relevant information to determine whether the definition of hardwood plywood (HWPW) should exempt engineered veneer or any laminated product. TSCA Title VI provides the following definition of laminated product:

Laminated product.--The term `laminated product' means a product—
(I) in which a wood veneer is affixed to-(aa) a particleboard platform; (bb) a medium-density fiberboard platform; or (cc) a veneer-core platform; and
(II) that is- (aa) a component part; (bb) used in the construction or assembly of a finished good; and (cc) produced by the manufacturer or fabricator of the finished good in which the product is incorporated.

EPA is considering options related to laminated products including, but not limited to, the following:

- Adopt the definition of laminated product provided in TSCA Title VI and not exempt any laminated products or engineered veneer from the definition of HWPW
- Adopt definition of laminated product provided in TSCA Title VI and not exempt laminated products or engineered veneer from the definition of HWPW but allow for reduced testing requirements and/or no TPC requirements if laminated product is made only with NAF resins
- Exempt a limited subset of products and engineered veneer (e.g., those made with a NAF or ULEF core and veneer affixed with NAF resins) from the definitions of laminated product and HWPW, if data support this option

3.10 Products and Components Containing De Minimis Amounts of Composite Wood Products

TSCA Title VI specifies that EPA include provisions in the implementing regulations related to exceptions from some of the requirements in the regulations for products and components containing de minimis amounts of composite wood products; however, it also specifies that EPA cannot provide exceptions to the formaldehyde emission standard requirements in subsection (b) of TSCA Title VI.

EPA is considering the following options:

- Establishing a de minimis exception to certain regulatory requirements (e.g., labeling, recordkeeping, or TPC requirements) if the product or component meets specified criteria such as:
  - If product or component contains less than 1% composite wood by volume or weight
  - If product or component contains less than 3% composite wood by volume or weight
  - If product or component contains less than 5% composite wood by volume or weight
  - If the composite wood product or component is less than a certain total weight or volume

3.11 Hardboard

TSCA Title VI specifies that EPA establish a definition of hardboard and also specifies that hardboard is exempt from the formaldehyde emission standards.

EPA is considering the following options:

- Use same definition as the CARB ATCM (i.e., to meet the definition, the product must comply with a specific ANSI standard). Under the CARB ATCM the term "hardboard" means a composite panel composed of cellulosic fibers, made by dry or wet forming and hot pressing of a fiber mat with or without resins, that complies with one of the following ANSI standards: "Basic Hardboard" (ANSI A135.4-2004), "Prefinished Hardboard Paneling" (ANSI A135.5-2004), or "Hardboard Siding" (ANSI A135.6-2006).
- Use one of the definitions from ANSI standards and reference ANSI standards (i.e., does not necessarily need to comply with ANSI standards): e.g., the term 'hardboard' means a homogeneous panel manufactured primarily from inter-felted lignocellulosic (wood) fibers consolidated under heat and pressure with a density of 497 kg/m^3 (31 lb/cu.ft.) or more (as determined under the standards numbered ANSI A135.4-2004, ANSI A135.5-2004, and ANSI A135.6-2006).
- Use a recognized definition such as a definition above but require that hardboard not be made with urea-formaldehyde resin

4. APPLICABLE SMALL ENTITY DEFINITIONS

The Regulatory Flexibility Act (RFA) defines small entities as including "small businesses," "small governments," and "small organizations" (5 USC 601). The regulatory revisions being considered by EPA for this rulemakings are expected to affect a variety of small businesses, but are unlikely to affect any small governments or small organizations. The RFA references the definition of "small business" found in the Small Business Act, which authorizes the Small Business Administration to further define "small business" by regulation. The SBA definitions of small business by size standards using the North American Industry Classification System (NAICS) can be found at 13 CFR 121.201.

The detailed listing of SBA definitions of small business for affected industries or sectors, by NAICS code, is included in Table 1 in Section 5, below.

5. SMALL ENTITIES THAT MAY BE SUBJECT TO THE PROPOSED REGULATION

The following table lists industries/sectors potentially affected by the regulation

Table 1: Industry Sectors, & Number of Small Entities Potentially Affected by EPA's Planned Action

Number of Potentially Regulated Small Firms, by NAICS code		
NAICS code	**NAICS Description**	**Number of Small Firms Potentially Regulated**
Panel Manufacturers		
321211	Hardwood veneer and plywood manufacturing	65
321219	Reconstituted wood product manufacturing	11
Subtotal – Panel Manufacturers		**76**
Fabricators		
321911	Wood window and door manufacturing	3,561
321918	Other millwork including flooring manufacturing	5,203
321991	Manufactured home (mobile home) manufacturing	794
321992	Prefabricated wood building manufacturing	1,923
321999	Other miscellaneous wood product manufacturing	4,812
336213	Motor home manufacturing	108
336214	Travel Trailer and Campers manufacturing	1,195
337110	Wood kitchen cabinets and countertop manufacturing	17,315
337121	Upholstered household furniture manufacturing	2,758
337122	Nonupholstered wood household furniture manufacturing	6,061
337124	Metal household furniture manufacturing	578
337127	Institutional furniture manufacturing	1,367
337129	Wood television, radio, and sewing machine cabinet manufacturing	480
337211	Wood office furniture manufacturing	800
337212	Custom architectural woodwork and millwork manufacturing	3,985
337214	Office furniture (non-wood) manufacturing	479
337215	Showcase, partition, shelving, and locker manufacturing	2,408
339950	Sign manufacturing	25,881
Subtotal – Fabricators		**79,708**
Wholesalers		
423210	Furniture merchant wholesalers	12,229
423220	Home furnishing merchant wholesalers	6,660
423310	Lumber, plywood, & wood panel merchant wholesalers	9,522
423320	Brick, stone, & const material merchant wholesalers	119
423330	Roofing, siding, & insul mat merchant wholesalers	851
423390	Other construction material merchant wholesalers	3,469
423440	Other commercial equipment merchant wholesalers	99
423450	Med, dental, & hosp equip & supp merchant wholesalers	66
423490	Other professional equip & supp merchant wholesalers	92
423510	Metal service centers & other metal merchant wholesalers	556
423610	Elec appar & equip & wiring supp merchant wholesalers	28
423620	Electric appliance, TV & radio merchant wholesalers	37
423710	Hardware merchant wholesalers	667
423720	Plumbing & heating equip & supp merchant wholesalers	479
423730	Warm air heating & AC equip merchant wholesalers	169
423740	Refrigeration equipment & supp merchant wholesalers	31
423830	Industrial machinery & equipment merchant wholesalers	75
423850	Service estab equipment & supp merchant wholesalers	742
423910	Sporting & rec goods & supplies merchant wholesalers	4,912
424610	Plastics materials & basic forms merchant wholesalers	77
424950	Paint, varnish, & supp merchant wholesalers	86
Subtotal – Wholesalers		**40,966**
Retailers		
441210	Recreational vehicle dealers	6,998
442110	Furniture stores	35,900
442210	Floor covering stores	23,978
442291	Window treatment stores	587
442299	All other home furnishings stores	14,033
443111	Household appliance stores	2,438
443112	Radio, television, & other electronics stores	6,352

Number of Potentially Regulated Small Firms, by NAICS code		
NAICS code	**NAICS Description**	**Number of Small Firms Potentially Regulated**
443120	Computer & software stores	83
444110	Home Centers	5,054
444120	Paint and wallpaper stores	649
444130	Hardware stores	14,660
444190	Other building material dealers	44,545
444210	Outdoor power equipment stores	652
444220	Nursery, garden center, & farm supply stores	8,386
445110	Supermarkets & other grocery (except convenience) stores	2,045
448110	Men's clothing stores	271
448120	Women's clothing stores	326
448130	Children's & infants' clothing stores	803
448140	Family clothing stores	5,933
448150	Clothing accessories stores	151
448190	Other clothing stores	2,158
448310	Jewelry stores	72
451110	Sporting goods stores	37,416
451120	Hobby, toy, & game stores	4,938
451130	Sewing, needlework, & piece goods stores	6,611
452111	Department stores (expt discount dept stores)	2,472
452112	Discount department stores	3,601
452910	Warehouse clubs & supercenters	3,065
452990	All other general merchandise stores	19,992
453110	Florists	1,256
453210	Office supplies & stationery stores	7,571
453220	Gift, novelty, & souvenir stores	4,896
453920	Art dealers	665
453930	Manufactured (mobile) home dealers	4,971
453998	All other miscellaneous store retailers (except tobacco stores)	11,098
454113	Mail-order houses	6,367
454390	Other direct selling establishments	94,057
Subtotal - Retailers		**385,050**
Total		**505,800**

6. SUMMARY OF SMALL ENTITY OUTREACH

EPA was actively engaged in talking to trade associations as well as individual entities that would potentially be affected by the upcoming rulemaking well before beginning the formal SBREFA process. Since EPA began its regulatory investigation into formaldehyde emissions from pressed wood products with the ANPR published in 2008, EPA has met on numerous occasions with the composite wood panel and related industries. These meetings have been in the form of presentations at trade shows and industry association conferences, and meetings with the Composite Panel Association (CPA), the Hardwood Plywood and Veneer Association (HPVA), the Kitchen Cabinet Manufacturing Association (KCMA), the American Home Furnishings Alliance (AHFA), the Business and Institutional Furniture Manufacturer's Association (BIFMA), and individual companies.

EPA also conducted an online solicitation to identify other small businesses and trade associations interested in participating in the Small Business Advocacy Review (SBAR) Panel process by serving as Small Entity Representatives (SERs). EPA issued a press release inviting

self-nominations by affected small entities to serve as SERs. The press release directed interested small entities to a web page where they could indicate their interest. EPA launched the website on October 19, 2010, and accepted self-nominations until November 2, 2010.

After identifying a list of potential SERs (shown in Section 7), EPA conducted a meeting/teleconference with potential SERs on January 6, 2011. To help them prepare for the meeting/teleconference, on December 23rd, 2010, EPA sent materials to each of the potential SERs via email. A list of the materials shared with the potential SERs during the pre-panel outreach meeting is contained in Appendix A. For the January 6, 2011 Pre-Panel outreach meeting with the potential SERs, EPA also invited representatives from the Office of Advocacy of the Small Business Administration and the Office of Information and Regulatory Affairs within the Office of Management and Budget. A total of 17 potential SERs participated in the meeting. EPA presented an overview of the SBAR Panel process, an explanation of the planned rulemaking, and technical background

This outreach meeting was held to solicit feedback from the potential SERs on their suggestions for the upcoming rulemaking. EPA asked the potential SERs to provide written comments by January 20th, 2011. Comments made during the January 6, 2011 outreach meeting and written comments submitted by the potential SERS are summarized in section 8 of this document.

After the SBAR Panel was convened, the Panel distributed additional information to the small entity representatives (SERs) on February 3rd and 4th, for their review and comment and in preparation for another outreach meeting. On February 17, 2011, the Panel met with the SERs to hear their comments on the information distributed. The SERs were asked to provide written feedback on ideas under consideration for the proposed rulemaking and responses to questions regarding their experience with the CARB formaldehyde emissions standards. The Panel received written comments from the SERs in response to the discussions at this meeting and the outreach materials. See Section 8 of the Panel Report for a complete discussion of SER comments.

7. LIST OF SMALL ENTITY REPRESENTATIVES

There is no difference between the list of potential SERs identified prior to the SBAR Panel and the following list of SERs.

Table 2: List of Small Entity Representatives

Name	Affiliation	Contact information
Dick Titus	Kitchen Cabinet Manufacturing Association	1899 Preston White Drive, Reston, VA 20191-5435 dtitus@kcma.org (703) 264-1690

Name	Affiliation	Contact information
Bill Perdue	The American Home Furnishings Alliance	bperdue@ahfa.us 336-884-5000 x1017
Tom Julia	Composite Panel Association	19465 Deerfield Ave., Suite 306 Leesburg, VA tjulia@cpamail.org (703) 724-1128
Dennis Dean Carroll	Rutland Plywood Corporation	PO Box 6180 Rutland, VT dcarroll@rutply.com (802) 747-4000 x4334
Stanford Stone	Navy Island, Inc.	275 Marie Ave. E. West St. Paul, MN 55129 stanstone@navyisland.com (651) 451-4454
Robert Gross	Gross Veneer Sales	2040 Brevard Rd. High Point, NC 27263 robgross@grossveneer.com (336) 883-0196
Robert MacMaster	Argo Import and Salvage Inc.	3045 Ridgelake Drive Metairie, LA 70002 argo@argofineimports.com (504) 828-0943
Todd Smith	FormWood Industries, Inc.	1601 Production Dr. Jeffersonville, IN 47130 tasmith@formwood.com (812) 284-3676 x 226
Jason Krings	Architectural Forest Products	2763 18th Street Two Rivers, WI 54241 jason@afpinc.net (920) 793-4404
John Maultsby	Florida Plywoods, Inc	PO Box 458 Greenville, FL 32331 johnandbunny@embarqmail.com (850) 948-2211

Name	Affiliation	Contact information
John Hans	Custom Wood Products LLC	PO Box 4500 Roanoke, VA 24015 jhans@cwpcabinets.com (540) 342-0363 x101
Victor Giaime	Veneer One, Inc.	3415 Hampton Road Oceanside, NY 11572 vic@veneer1.com (516) 536-6480 x102
Doug Carmichael	Drawer Box Specialties	1482 N. Batavia St Orange, CA 92867 dougc@dbsdrawers.com (714) 744-4247 x155
Fred Zoeller	Laminate Technologies Inc	161 Maule Road Tiffin, OH 44883 fzoeller@lamtech.net (419) 448-0812 x116
Matt Wald	Recreation Vehicle Industry Association	1896 Preston White Dr. Reston, VA 20191 mwald@rvia.org (703) 620-6003, x. 313
Kip Howlett	Hardwood Plywood and Veneer Association	1825 Michael Faraday Drive, Reston VA 20190 KHowlett@hpva.org (703) 435-2900
Brigid Shea	International Wood Products Association	4214 King St. Alexandria, VA 22302 brigid@iwpawood.org (703) 820-6696

8. SUMMARY OF COMMENTS FROM SMALL ENTITY REPRESENTATIVES

Below is a summary of written and oral comments received from SERs in response to the pre-panel outreach meeting and the panel outreach meeting. The SERs stated that, where applicable, they were in compliance with CARB's ATCM. Accordingly, the SERs generally

favored harmonizing the regulatory requirements with CARB as much as possible and making improvements for national applicability where necessary.

8.1 Summary of Oral Comments & Pre-Panel Meeting Discussion, January 6, 2011

The following are summaries of issues raised and oral comments provided by the potential SERs during the January 6, 2011, pre-panel outreach meeting.

Sell Through Dates & Stockpiling Provisions

- One SER said that it is important for existing stock to be saleable; the SER lost a considerable amount of money when product he imported prior to CARB had to be sold at a discount.
- SER also said that the sell-through provisions were meant to be based on the date of manufacture, not the date of sale. The SER noted that when the CARB ATCM was implemented, unfortunately, distributors were stuck with non-CARB compliant product.
- One SER noted that the sell-through provisions should be based on the date of manufacture so that inventory would still be legal to sell even if the there was limited market demand for the noncompliant product.

NAF and ULEF Resins

- One SER commented that companies, like his, that use low emission products should not have to pay for testing to determine that, in fact, that is what they are using.
- One SER said that the resin used is the most significant factor and asked that small manufacturers receive some kind of testing relief if they use NAF or ULEF resins.
- One SER commented that there are incentives to use NAF and ULEF resins because of market demand and so businesses can reduce their testing and reporting requirement burdens under CARB.

Quality Control and Compliance Testing

- One SER said that international mills also meet other international standards besides CARB and that should not be neglected. The SER said that importers need to check their materials too, so there is enforcement built into the system. The SER recommended that EPA should avoid creating disincentives for compliance with the rule.

Third Party Certification

- One SER commented that the TPC system should be robust so that the burden for compliance is shifted to the top of the supply chain. That SER suggested that the TPC

system validate the quality assurance testing processes, not the product. Marking/labeling requirements should be considered and EPA should make sure the definitions are correct and fair.

- One SER said the TPC system must be consistent and he suggested round-robin testing. The SER recommended that the labs be generally accredited and also be accredited to do the individual tests. The SER noted that consumers are demanding compliant products. The SER agreed that there is a well-organized community of Internet bloggers, social networks, and organizations that are demanding compliant products.
- One SER suggested that a deconstructive test would not be needed if there is a robust TPC and chain of custody system.

Chain of Custody, Labeling and Record Keeping

- Another SER agreed that the TPC program is robust and said that EPA should take a hard look at the TPC structure in place to ensure a level playing field. That SER also commented that the TPC system is working internationally. The SER commented that some finished goods are made of many types of composite wood and EPA should streamline record keeping and labeling for these products. The SER noted receiving several emails from savvy consumers requesting CARB compliant products and asking to see labels and the chain of custody documentation.
- One SER suggested that there may be HUD labeling requirements in addition to the current CARB labeling requirements.
- One SER stated that shipping component parts and labeling them is an administrative burden.
- One SER commented that International Wood Products Association (IWPA) members do not want to do separate labeling or reporting for CARB and EPA. The SER said that the chain of custody requirements might be difficult and that emission levels were not problematic.
- One SER commented that the labeling requirements should be identical to CARB. The SER used the example of a sofa made of many types of composite wood in a recreational vehicle to reiterate another SER's suggestion that record keeping and labeling be simplified for finished goods made of multiple types of composite wood panels. The SER questioned the amount of money that would need to be invested in record keeping.

Treatment of Laminated Products and Hardboard

- One SER suggested that EPA review the Senate report concerning the regulation of laminated products and possible impacts on small businesses.

- One SER noted that reduction of the burden might be achieved by encouraging use of NAF or ULEF resins. The SER suggested that if laminators are consistently using the same kinds of materials, EPA should test the process, not the products.
- One SER asked if laminators would be included in the rule, and if they are included, whether EPA would test the process or individual products.

De Minimis Exemption

- One SER said the costs of the CARB ATCM are significant; approximately $40,000 for testing for certification. That SER also said many US and Canadian businesses have already made that investment. The SER commented that the CARB rule is not perfect, but they have learned from it, and it can be improved. The SER mentioned the areas of potential flexibility, including a de minimis exception. The SER suggested that de minimis considerations might include glue lines on composite faces, edge banding, and windows.

Other General Comments

- One SER commented that the definition of interior use (if one is necessary) should be in the true spirit of the act, for public health.
- One SER said that they need international vendors and asked EPA not to increase their burden.
- One SER said that an EPA rule regarding windows needed to be simplified because CARB's treatment of windows is overly complicated.

8.2 Summary of Oral Comments & Panel Meeting Discussion, February 17, 2011

The following are summaries of issues raised and oral comments provided by the potential SERs during the February 17, 2011, panel outreach meeting.

NAF and ULEF Resins

- One SER expressed concern about a potential "green seal" program for products with emissions below the NAF limits. That SER pointed out the products with emissions below the NAF limits would have emissions of basically zero. The SER also expressed concern that such a program may interfere with other voluntary programs. Another SER commented that any "green seal" program should be based on a performance standard not a content standard for a specific type of resin.
- One SER introduced the topic of "No Added Urea Formaldehyde" (NAUF).

Quality Control and Compliance Testing

- Several SERs rejected concerns that the established test methods are not repeatable. They stated that the test methods are repeatable if correctly applied. One SER noted that some mills did not have qualified chemists or rooms and equipment clean enough to conduct the tests. One SER pointed out that the emissions levels are so low that they require measurement of a single or several molecules, which is difficult. Another SER concurred that the test methods were working well and that quality control by manufacturers was the real issue.
- One SER commented that TPC testing and decertification of product is a problem. According to this SER, decertification can take a month and by that time the non-complying panels may be in finished goods somewhere down the supply chain. Another SER commented that this can be avoided if production is stopped in time, stating that TPCs should be able to provide their results near real-time. One SER commented that this is more difficult for foreign mills.
- One SER commented that they have tested product that they purchased and found it to be above the emissions levels. They are concerned about accidentally purchasing noncompliant product from abroad and having to eat the costs.

Third Party Certification

- One SER suggested that the Consumer Products Safety Commission could be a good resource for information on product certification systems. Another SER asked if the options presented for structuring a TPC system were cost neutral. The SER noted that if accrediting bodies become involved there may be additional costs to businesses which are then pushed back to consumers.

Chain of Custody, Labeling and Record Keeping

- One SER was pro labeling for liability reasons, but would like the labels harmonized with CARB.

Treatment of Laminated Products and Hardboard

- One SER asked if there was a definition of "engineered veneer." That SER was concerned about how "Compreg" (veneer impregnated with a phenol formaldehyde resin), would be classified under the regulation. That SER also asked about the definition of "hardwood plywood" and "interior products."

Other General Comments

- One SER expressed concerned about the potentially high costs of destructive testing. This SER noted that destructive tests could be particularly costly for makers of certain high value items, such as recreational vehicles.
- One SER commented that importers were concerned that their compliant products could become cross contaminated with formaldehyde from other sources downstream. That SER inquired where his responsibility ends when he delivers certified panels that are incorporated into a product downstream and that does not pass emissions standards.
- Several SERs commented on the "Potential Costs of FSCWPA [TSCA Title VI] to Small Entities" document provided by EPA. One SER commented that document underestimates the number of laminators. Another SER suggested the estimate for veneer costs is low, especially with regards to small manufacturers.
- One SER commented that the term panel usually refers to a 4 foot by 8 foot panel. Another SER commented that it can also refer to a "made to size" or "cut to size" panel.

8.3 Summary of Written Comments Submitted by Potential Small Entity Representatives

The following is a summary of the written comments submitted by the SERs. A copy of each of the comments submitted by the SERs is included in Appendix B.

Sell Through Dates & Stockpiling Provisions

- Multiple SERs commented in support of having a manufacturing pass through date not a sell through date. This would allow panels made before the manufactured date to continue to be sold.
- One SER suggested the manufactured-by date should be 180 days after the promulgation of the regulations.
- One SER suggested that the reference period against which purported stockpiling should be measured be the 12-month period prior to promulgation of the regulations, with annualized rates compared.

NAF and ULEF Resins

- One SER commented that incentives for alternative resins are better left to the marketplace, not regulation.
- One SER supported CARB's reduced testing frequency and exemption from third party certification for products using NAF or ULEF resins and meeting certain emissions standards.
- One SER commented that he is skeptical of a potential "green seal" program. That SER stated that it was not possible to measure emissions well below the NAF emissions levels

because they are already so close to zero. Also, that SER was unsure how a "green seal" program would handle Federal Trade Commission disclosure requirements.

Quality Control and Compliance Testing

- One SER commented that EPA should exercise flexibility on determining the size and duration of test lots. This SER pointed out that those small entities with lower production volumes have a greater percentage of their production tested. This SER also requested simplified procedures for recertification of non-complying lots.
- One SER commented that the test methods identified in TSCA Title VI are appropriate, time-proven, and accepted world-wide.
- One SER commented that the test methods used by CARB worked well and that alternative methods should be viewed with skepticism.
  One SER commented that because the emission standards are so low, the occasional non-complying lot was inevitable. That SER requested that EPA develop a practical solution to this issue, such as allowing a plant one failed test out of fifty.

Third Party Certification

- One SER commented that the tangible benefits to the manufacturer of the TPC program should be clearly identified. This SER suggested that certification should confer liability protection.
- One SER commented that TCPs would be accredited by a nationally or internationally recognized accreditation body in a somewhat more rigorous manner than under CARB.
- One SER commented that it is important that the TPCs themselves are credibly approved, monitored, and audited, in order to be sure they are legitimate entities fulfilling their regulatory responsibilities on a consistent and verifiable basis. That SER commented that both options EPA presented for structuring a TPC system are acceptable, and the SER was in favor of toughening CARB TPC requirements to ensure universality of TPC performance. That SER would oppose permission being given to a more global accreditation body to exercise substantial supervision of the actual certification process, or to have discretionary authority over the design or operation of the certification system, including the criteria by which TPCs are approved. The SER argued that these actions could potentially create new costs and burdens for TPCs and their customers that may or may not be warranted to satisfy the objectives of the Statute. The SER commented that the sole function of a global accreditation body should be limited to oversight and auditing, with regular reports submitted to EPA.

Chain of Custody, Labeling and Record Keeping

- One SER suggested that once one a set of national emissions standards is established, the chain of custody procedures will no longer be necessary.

- One SER commented that once there is one set of national emissions standards labeling will no longer be necessary because consumers will not have the option to purchase noncompliant material.
- One SER commented that stricter record keeping procedures will be more difficult for the limited resources of small manufacturers.
- One SER commented that he did not believe the record keeping and labeling system adopted by CARB presents any concern about the disclosure of confidential information regarding sourcing.
- One SER commented that CARB framework for labeling and record keeping requirements is an appropriate model for EPA. This SER commented that CARB's framework does not require that each component piece of furniture to be specifically tied to a specific panel.
- One SER commented that a transparent chain of custody system must be in place to enable panels to be tracked from the retail level back to the mill producing them, and to the TPC.
- One SER commented that labeling should be consistent with the CARB regulations and that labeling via bundle of composite wood products was more practical and effective than labeling individual panels. That SER noted that panels cannot be labeled without impairing their appearance and functionality. Several SERs commented that the implementing regulations should mirror the CARB ATCM (e.g. in the areas of inventory tracking and labeling programs) in order to avoid two different standards in the industry.

Treatment of Laminated Products and Hardboard

- Several SERs raised concerns about how laminators will be treated under the implementing regulations. Laminators are not regulated by the CARB ATCM, but laminated products are included in TSCA VI's definition of "hardwood plywood," and will be regulated unless EPA exempts them.
- One SER contended that laminators add only about 1/10 the resin a platform manufacturer adds (1.1 pounds per panel v. 9.6 pounds per panel) and are a minor, if not de minimis, usage of urea formaldehyde resin. Furthermore, laminators using NAF adhesives would not add any emissions. Multiple SERs noted that if laminators are regulated, they would be paying for their products to be certified twice: the platform manufacturer would pay for certification and the laminator would again pay for certification. This would put them at a disadvantage to manufacturers who make the entire panel in-house and therefore require only one certification.
- One SER indicated that the laminated products he produces are not intended to be used for interior construction. This SER commented that niche laminated products, such as the ones he manufactures, should be excluded from the definition of "hardwood plywood."

- One SER commented that verifiable compliance with the emissions standards should be the driver for determining whether laminated products are exempted from the definition of hardwood plywood.
- One SER commented that CARB narrowly defined "laminated products" as veneered hardwood plywood. That SER commented that if laminated products were regulated it could be costly and burdensome to thousands of small cabinet makers that veneer on a kitchen-by-kitchen basis. The SER suggested that many "laminators" laminated component parts, not panels. The SER noted that it was more practical time-wise and less costly for cabinetmakers to do their own veneering of exotic and unique veneers.
- One SER commented that a component of kitchen cabinets which consists of a raised panel door constructed with HWPW that varies in depth should not be regulated as a "panel." That SER commented these components don't meet the definition of a paneled product (HP-1) and are quite different from a HWPW panel. This SER commented that the ANSI/HPVA HP-1 definition of HWPW refers to panels that are four feet by six feet; eight feet, etc.; and not smaller components.
- One SER commented that cabinet makers apply finishes to the exterior of the HWPW components they use and that these finishes are regulated by EPA for hazardous air pollutant emissions. The SER commented that these finishes present an additional barrier for formaldehyde emissions.
- One SER commented that hardboard made with urea formaldehyde resin is nearly identical to MDF and should be regulated as MDF.
- One SER commented that a revised ANSI standard for "hardboard" would be approved by the end of 2011, and that EPA should reference that standard in its definition of "hardboard."
- One SER commented that laminators not using urea formaldehyde should be exempted and other laminators should be exempt so long as a certified substrate is used.
- One SER commented that only approximately 8.5 percent of KCMA members surveyed did their own veneering and of that number only about half used urea formaldehyde.
- One SER suggested that cabinetmakers producing less than 10 million square feet of veneered product should be exempted.
- One SER suggested that EPA exempt laminators from testing requirements if they certify that they use a compliant core and NAF resin or otherwise include a statement of compliance under penalty of perjury.

De Minimis Exemption

- One SER suggested that the de minimis exemption be based on the percentage of a product's volume that consists of regulated composite wood products, the cubic measure of regulated wood products in the finished good, or both.

Other General Comments

- One SER commented that particle board and plywood should be held to the same emission standard, along with domestic and import production.
- One SER commented that EPA's estimate that HWPW costs $.45 a square foot is inaccurate and that $2.00 is a more accurate estimate.
- One SER commented that the Kitchen Cabinet Manufacturers Association's voluntary Environmental Stewardship Program (ESP) requires all composite wood products used to make ESP certified products be CARB compliant. The SER commented that this program is actively enforced and has no cost to taxpayers. That SER suggests that if cabinet makers are regulated, the display of the ESP certification should be sufficient proof of compliance with TSCA Title VI.
- One SER recommended EPA consider exempting engineered veneer and products not intended for interior use from third party certification and emissions level requirements. That SER recommends EPA develop practical definitions for "engineered veneer" and "interior use." In particular that SER requested a definition for "Compreg." The SER suggested as an alternative that "Compreg" be included in the definition of "engineered veneer." According to that SER "Compreg" is wood that is compressed and impregnated with phenol formaldehyde resins, and no other resins are currently available for this application.
- One SER commented that he could not find performance competitive and emissions level compliant resin for niche applications such as guitar bodies and gun stocks.
- One SER recommends exempting manufactured products made without cores or platforms per TSCA Title VI definitions.

9. PANEL FINDINGS AND DISCUSSIONS

9.1. Number and Types of Entities Affected

EPA estimates that 505,800 entities may be affected, including panel manufactures, fabricators of goods containing composite wood products, and wholesalers of goods containing composite wood products.

9.2. Recordkeeping, Reporting, and Other Compliance Requirements

In addition to mandating emission standards for composite wood products, TSCA Title VI directs EPA to include in its regulations provisions on labeling, chain of custody requirements, third-party testing and certification, and record keeping. (TSCA § 601(d)(2)). The SERs' comments generally favored record keeping and labeling provisions that closely aligned with those required by CARB and that assisted downstream purchasers of composite wood products in verifying that they were purchasing compliant material. SERs also agreed that a third party certification program would be an integral part of the regulatory scheme. Record keeping as it relates to third party certification and testing will ensure compliance, a level playing field for

domestic manufactures, and allow downstream purchasers to verify that they are purchasing compliant material.

9.3 Related Federal Rules

There are no federal regulations on formaldehyde emissions from pressed wood products other than those of the Department of Housing and Urban Development (HUD) that are applicable to particleboard and plywood used in manufactured housing.

9.4 Regulatory Flexibility Alternatives

EPA is directed to promulgate implementing regulations for TSCA Title VI in a manner that ensures compliance with the emissions standards. In order to mitigate potential burdens, the Panel recommends that EPA consider and seek comments on the flexibility options described below. The Panel believes that the following flexibility options collectively have the potential to reduce the compliance burden and clarify issues of concern for small entities, while ensuring emissions standards and the intent of TSCA Title VI are met.

The Panel first acknowledges that many of the SERs stated that they were in compliance with the CARB ATCM, and that they preferred that EPA adopt regulatory requirements that coincided with CARB's requirements. The Panel recommends that EPA adopt regulatory requirements that are consistent with the CARB ATCM wherever possible.

Manufactured-by Dates and Stockpiling

One SER suggested the manufactured-by date should be 180 days after the promulgation of the regulations. Another SER suggested that the reference period against which purported stockpiling should be measured be the 12-month period prior to promulgation of the regulations, with annualized rates compared.

The Panel generally agrees with these comments and recommends that EPA propose these provisions while requesting comments and data on alternative dates and reference periods. The statute requires a date for compliance relative to the date of manufacture, in part so that regulated entities would not be stuck with non-saleable inventory. By selecting a date relative to the date of manufacture, entities will have time to clear their existing inventory, while any new inventory being generated must be compliant.

NAF and ULEF Resins

EPA sought information on how the SERs would respond to a "green seal" labeling program for products with emissions below the NAF limits. The SERs generally did not support such a program at this time. They commented that it would be extremely difficult to measure emissions that were well below the NAF limits, making it impossible for products to earn a "green seal." They were also unsure how the program could be integrated with other green labeling programs.

The Panel recommends that EPA not pursue a "green seal" program at this time, because it could be difficult for manufacturers to take advantage of such a program. Because emissions levels below the NAF limits are difficult to accurately measure, it would be difficult to fairly implement a "green seal" program. The Panel encourages EPA to explore other options to encourage environmentally preferable alternatives.

Quality Control and Compliance Testing

Several SERs submitted comments on the test methods. They contend that the test methods used by CARB and required by TSCA Title VI are accurate when appropriately applied.

The Panel recognizes that alternative test methods must be specified by regulation and include a showing of equivalence to ASTM E-1333-96(2002) by a method established through regulation. (TSCA § 601(b)(3)). The Panel recommends that that EPA consider CARB's method of establishing equivalency and carefully evaluate any alternative test method.

One SER commented that the lag time between when boards are tested and when failing test results are reported can lead to noncompliant lots being sold to downstream purchasers that are unaware that they are noncompliant.

The Panel recommends that EPA provide clear direction to TPCs on product decertification and recertification procedures and clear direction to producers regarding the recall of noncompliant products.

Third Party Certification

The SERs generally commented that the integrity of the TPC program will be an essential component the regulatory scheme. One SER commented that EPA could mimic the CARB approach to certifications of TPCs or EPA could enter into an MOU with an international accrediting body to perform some of the functions now being managed by CARB. That SER commented that if EPA were to enter into a MOU with an accrediting body, the EPA should not delegate authority over the design and operation of the certification system.

The Panel recommends that EPA continue to explore how it can capitalize on the expertise of international accrediting bodies, while at the same time maintaining control over the design and implementation of its certification system. The Panel believes that additional oversight by accrediting bodies has the potential to strengthen the integrity of the TPC program, particularly with regards to auditing and oversight of TPC operations. This would provide a benefit to downstream purchasers of composite wood goods, by enhancing confidence that the materials they purchase are compliant. Should the EPA choose to enter into a MOU with international accrediting bodies, the Panel recommends that their role be clearly delineated and that EPA not relinquish its role in monitoring the certification system.

Chain of Custody, Labeling and Record Keeping

Several SERs commented that labeling and record keeping provisions should be closely harmonized with CARB's requirements. One SER also suggested that like CARB, the TSCA Title VI labeling requirements should allow labeling panels by the bundle.

The Panel generally agrees with these comments. Subtle difference between the TSCA Title VI implementing regulations and the CARB ATCM may make identical labels impossible; however, the Panel recommends that EPA consider closely aligning the two labeling systems. Like the CARB labeling system, the TSCA Title VI system should be designed to allow downstream purchasers to verify that they are purchasing compliant composite wood products. To the extent feasible, the labels should contain the same information required by CARB and allow for labeling by bundle. Requiring the same labeling information as CARB will reduce the burden on small entities because many small entities are compliant with CARB and familiar with the CARB labeling requirements.

The Panel believes that labeling by the bundle is sufficient to communicate the necessary information. The Panel further believes that allowing labeling by the bundle will reduce the likelihood that composite wood panel finishes will be damaged by labels and that it will reduce the burden on small entities by eliminating costs and delays that fabricators may incur to remove labels on individual panels.

Treatment of Laminated Products and Engineered Veneer

Several SERs commented requesting the EPA exempt certain laminated products and engineered veneer. SERs commented that using alternative resins could hinder performance in certain applications. However, one SER commented that approximately 50 percent of the surveyed KCMA members that did their own laminating indicated that they were not using urea formaldehyde resin.

The Panel recognizes that EPA is required to regulate "in a manner that ensures compliance with the emissions standards." (TSCA § 601(b)(1)). The Panel further recognizes that unlike the CARB ATCM, TSCA Title VI specifically includes laminated products and engineered veneer in the definition of HWPW, which is subject to emissions standards. (TSCA § 601(a)(3)(C)). EPA is directed to "use all available and relevant information from State authorities, industry, and other available sources of such information" to determine at the Administrator's discretion whether laminated products and engineered veneer should be exempt from the definition of HWPW. (TSCA § 601(a)(3)(C)). The Panel recommends that EPA continue to seek available information, and exempt those laminated products that can be exempted consistent with the direction given in TSCA § 601(b)(1).

The Panel recommends that EPA work with small businesses, especially those laminating on a made-to-order basis, to design a testing scheme that is practical for those businesses, and at the same time, is calculated to ensure compliance with the emissions standards. The Panel recommends that EPA consider basing the number and frequency of required quality control testing on production volume, thereby requiring fewer tests for smaller producers. Basing the number and frequency of tests on production volume should reduce the burden associated with testing costs for small entities with lower production volumes.

Fabricators

One SER suggested that fabricators should be regulated the same as they are under CARB. The Panel generally agrees that, where possible, the makers of finished goods (fabricators) should be regulated in harmony with the CARB regulations. This recommendation includes harmonizing the labeling and record keeping requirements for fabricators. The Panel notes that under section 93120(c)(12) of the CARB ATCM the term "fabricator" includes "producers of laminated products." As noted above, the Panel recommends that EPA continue to seek available information on laminated products, and exempt those laminated products that can be exempted consistent with the direction given in TSCA § 601(b)(1).

Hardboard

One SER commented that hardboard made with urea formaldehyde resin is nearly identical to MDF and should be regulated as MDF. Another SER stated that a revised ANSI standard for "hardboard" would be approved by the end of 2011, and suggested that EPA reference that standard in its definition of "hardboard."

The Panel generally agrees with these comments. The Panel notes that "hardboard" is exempted by TSCA section 601(c)(1) from the emissions standards and recommends that EPA develop a definition of "hardboard" that takes the revised ANSI standard into account while ensuring that similar products are similarly regulated under TSCA Title VI.

Definitions

One SER requested that EPA provide a common sense definition of "interior use" as that term is used in the statutory definition of hardwood plywood.

The Panel recognizes that TSCA VI was not intended to apply to structural plywood (TSCA § 601(a)(3)(B)) or composite wood products made for outdoor use because, in part, these products must be made to withstand outdoor weather conditions. The Panel also notes that the statutory definition of "hardwood plywood" includes that it be "intended for interior use." TSCA 601(a)(3)(A)(i). The Panel recommends that EPA develop a clear definition for "interior use" in order to eliminate confusion in the regulated community. 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.

One SER commented that the term "panel" should not include the raised center panels typically included in kitchen cabinets and smaller panels typically used as component parts. Another SER commented that the term "panel" can cover smaller panels that are made-to-size and cut-to-size.

The Panel recommends 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.

Other

One SER commented that EPA's cost estimate of HWPW at $.45 a square foot grossly underestimates the actual cost most cabinetmakers pay for the veneered HWPW panels they purchase. That SER estimated two dollars a square foot is the more appropriate number. EPA disagrees that it should use a cost of two dollars a square foot in the calculations that the SER referenced. The SER appears to be confused, because EPA's analysis is based on the cost of the veneer, while the SER's comments discuss "veneered HWPW panels". EPA estimated the cost per square foot of veneer using U.S. ITC trade data on the value and quantity of imported veneer. To verify this information, EPA contacted companies that sell veneer. They agreed that $0.45 per square foot represents a reasonable value for the cost of veneer, and may be an overestimate of the average cost. According to one company, birch and oak face veneer cost $0.15 per square foot, A grade cherry veneer is $0.35 per square foot (although not all face veneer is A grade), and back veneer might cost $0.10 per square foot. Imports can be more expensive, but they constitute at most 20% of the market. Another veneer company said that 90 percent of sliced face veneer costs less than $0.30 per square foot, and that rotary cut veneer is less expensive than sliced veneer. There are wide variances in veneer costs, depending on the species, cut, and grade of the veneer. While some companies may primarily use veneer that costs one or two dollars per square foot, EPA does not believe that this represents a reasonable average across all companies. EPA believes that the methodology and data it used represent a reasonable estimate of the average cost of veneer used by laminated product manufacturers.

Appendix A: List of Materials EPA shared with Small Entity Representatives

- Fact Sheet: What Small Entities Should Know About the Regulatory Flexibility Act and the Small Business Regulatory Enforcement Fairness Act[11]
- Fact Sheet: What Potential Small Entity Representatives Should Know About the Small Business Advocacy Review Panel Process[12]
- Power Point presentation: Rulemaking Implementing Formaldehyde Standards for Composite Wood Products Act (TSCA Title VI)
- Formaldehyde Standards for Composite Wood Products Act (TSCA Title VI)[13]
- Agenda, Pre-Panel Outreach Meeting, January 6, 2011
- Panel Outreach Meeting Power Point presentation: Rulemaking Implementing Formaldehyde Standards for Composite Wood Products Act (TSCA Title VI)
- Agenda, Panel Outreach Meeting, February 17, 2011
- Economic Analysis: Potential Costs of FSCWPA to Small Entities
- Comparison Chart for the CARB ATCM and FSCWPA

[11] *Available at* http://www.epa.gov/sbrefa/documents/sbrefaftsht2009.pdf
[12] *Available at* http://www.epa.gov/sbrefa/documents/serftsht2009.pdf
[13] *Available at* http://www.gpo.gov/fdsys/pkg/PLAW-111publ199/pdf/PLAW-111publ199.pdf

Appendix B: Written Comments Submitted by Small Entity Representatives

The U.S. Environmental Protection Agency (EPA) conducted a pre-panel outreach meeting with potential Small Entity Representatives (SERs) on January 6, 2011. EPA hosted a panel outreach meeting with SERs on February 17, 2011. The Panel consists of EPA, the Small Business Administration's Office of Advocacy (SBA), and the Office of Management and Budget's Office of Information and Regulation Affairs (OMB). OMB and SBA attended both meetings.

After the January 6th pre-panel meeting, potential SERs submitted eight sets of written comments, which are provided in this appendix. The following people submitted the comments:

- Stanford Stone, Navy Island, Inc.
- Fred Zoeller, Laminate Technologies, Inc.
- Dennis Carroll, Rutland Plywood Corporation
- John Maultsby, Florida Plywoods, Inc.
- C. Richard Titus, Kitchen Cabinet Manufacturers Association
- Rob Gross, Gross Veneer Sales
- Brigid Shea, International Wood Products Association
- Thomas Julia, Composite Panel Association

After the February 17th panel meeting, the following SERs submitted four sets of written comments, which are provided in this appendix:

- Dennis Carroll, Rutland Plywood Corporation
- Thomas Julia, Composite Panel Association
- John Maultsby, Florida Plywoods, Inc.
- C. Richard Titus, Kitchen Cabinet Manufacturers Association

B.1 Written Comments from Potential Small Entity Representatives following 01/06/2011 Outreach Meeting

Written Comments
Dennis Carroll
to:
Tracey Westfield
01/12/2011 11:11 AM
Show Details

History: This message has been replied to.

Hello Tracey,

Attached are Rutland Plywood Corporation's written comments and concerns. When do you think we will receive feedback from the written comments?

Best,

Dennis Dean Carroll
EHS Manager
Rutland Plywood Corporation
PO Box 6180
Rutland, VT 05702
Email: dcarroll@rutply.com
Tel: (802) 747-4000 ext.4334
Cellular: (802) 779-1140
Fax: (802) 770-1921
www.rutply.com

January 10, 2011

Tracey Westfield
Regulatory Management Division
US Environmental Protection Agency
#6440BB Ariel Rios North
1200 Pennsylvania Ave, NW
Washington, DC 20460

Re: Rutland Plywood Corporation – Comments and Concerns Regarding Public law 111-199

Dear Tracey Westfield,

Rutland Plywood Corporation (RPC) is writing to the Environmental Protection Agency (EPA) to voice its concerns regarding the new Public Law 111-199.

RPC believes it has a genuine and legitimate concern, should our small niche market company be forced to comply with Public Law 111-199. The adverse economic effects of the rules and regulations from this legislation will ultimately have a critical effect on our financial strength.

RPC manufactures northern hardwood veneers and laminates, which are not intended to be used for interior construction purposes. We do not manufacture any 4' by 8'plywood. Successful applications have included but are not limited to the following: tool handles, levels, billiard cues, pallets, material handling applications, production boards, gun stocks, knife handles, musical instruments, picture frames, pens, and OSHA safety products. It should be noted that we supply our product to customers who then manufacture our product into their own. We also engineer products that are ecologically friendly. In two applications, our products have replaced wood that was once harvested from the rainforest. We have been able to use wood materials that are not endangered, but have been engineered by RPC to make them look similar and acceptable in appearance to a rainforest wood species. All of our resins used are well below OSHA's Permissible Exposure Limit for formaldehyde.

In comparison to the large commodity plywood manufactures throughout the world, we are a company that is dwarfed in size by their sheer volume. However, RPC has been able to carve out a niche market that offers our customers an alternative to a traditional plywood construction sheet.

Our product overview consists of the following:

A. Engineered Hardwood Components (EHC) are the heart and soul of Rutland Plywood Corporation. Here, thick peel Northern hardwoods are bonded together using our proprietary "Stratabond" process. Originally, these laminates were used for reel stock applications. Over the years, their strength and stability has made them ideal for a variety of industrial and consumer applications. Engineered Hardwood Laminates are sold in Pieces, Blocks and Dowels. They can be custom engineered to allow for greater strength through a parallel laminate process.

B. ColorWood® is made up of colored laminated hardwood veneers that have been compressed into easy to work with sheets, blocks and dowels. ColorWood® is easy to machine, easily accepts finish and makes for beautiful, durable and unique finished products.

This wood laminate made of natural and brightly dyed northern hardwood veneers is used to create a wide range of attractive gifts and novelties, from rolling pins, candle holders and walking sticks, crafts, curios, bow risers, ornaments and unique writing instruments.

C. DymondWood® is sometimes referred to by the generic name of COMPREG. It is a highly engineered wood/plastic composite that has the physical and mechanical properties of high density hardwood, acrylic, polycarbonate plastics and brass. Here, brightly dyed northern hardwood veneers are combined with engineering grade resins, heat and pressure to create a product that has the best characteristics of each. DymondWood® is distinguished by its unique strength, durability, dimensional stability, and weather and moisture resistance as compared to regular wood.

These ply-laminates include, but are not limited to the following: archery stock, pistol grips, crafts, knitting needles, ornaments, pens, brushes, awards, frames, billiard tables, pool cues, and musical instruments.

D. RiggerCore® Industrial Strength Outrigger and Crane pads are the result of 50 years of plywood manufacturing experience and manufactured exclusively by RPC. They are engineered to give users the strength, value, and environmentally responsible pad, which also meet the safety specifications of the exterior work demands of the crane construction industry. All RiggerCore® Outrigger and Crane pads are manufactured in Vermont, USA from local, responsibly harvested wood.

E. PaverCore® Production Boards are manufactured using state of the art lamination process. This product is used in Concrete Paver Production and other concrete forming applications. A variety of coatings are available for these paver boards. The available dimensions and other technical data vary for each. Presently, PaverCore® products are being offered with a HDPE (High Density Polyethylene) or Phenolic Sheet Glue.

F. BevCore® material Handling platforms, Manufactured exclusively by RPC, are designed to strengthen pallet stacks by allowing increased load forces on base pallets. BevCore® is engineered specifically to meet the rigorous demands of the beverage industry.

G. PalletCore® Slave Pallets (a/k/a Captive Pallets or Slave Boards) are designed for heavy loads and long life in Automated Storage and Retrieval Systems (AS/RS) and other material handling applications. The boards offer a superior long term return on investment and promote the safe transport of heavy loads within distribution and manufacturing environments.

H. SportCore™ is a specialized family of laminated wood products specifically designed for the demands of snow and board sports. Through comprehensive product development, SportCore™ offers the impossible; rigidity, and flex at the same time.

I. Stratabond® Laminated Hardwoods manufactured by RPC are designed for top performance while offering flexibility in design. At the heart of Stratabond® laminated hardwoods is a proprietary lamination process that creates an unusually powerful bond; a bond that makes for endurance and beauty in finished products. Firearm manufacturers worldwide have come to recognize the Stratabond® name for quality, consistency and durability. Indeed, it is this technology that has made of Stratabond® the number one brand of laminated gun stock material in the world.

RPC's products are as diverse as they are unique. Based on the information provided in this document, RPC believes that we are excluded from inclusion in Public Law 111-199.

All eight of the above engineered veneer plywood or laminated goods are niche market products. RPC's request for exclusion should be granted under Sec. 601. 15 U.S.C. 2697 Formaldehyde Standards "…(a)(3)(A)(i) intended for interior use and (a)(3)(C)(i) Rulemaking.—(I) In general.—The administrator shall conduct a rulemaking process pursuant to subsection (d) that uses all available and relevant information from State authorities, industry, and other available sources of such information, and analyzes that information to determine, at the discretion of the Administrator, whether the definition of the term 'hardwood panel' should exempt engineered veneer or any laminated product."

RPC thanks the EPA in advance, for its time and careful review of the above information. Please respond to this letter in writing to: Rutland Plywood Corporation, Attn: Dennis D. Carroll, P.O. Box 6180, Rutland, VT 05702

Sincerely,

Dennis D. Carroll

EHS Manager

RE: EPA's Formaldehyde SBAR Panel - Panel Outreach Meeting on 02/17 + a fuller schedule
Rob Gross
to:
Tracey Westfield
01/20/2011 03:03 PM
Cc:
Lucinda Power
Show Details

History: This message has been replied to.

Tracey,
I have attached my Pre-Panel Outreach comments in a Microsoft Word file.

Thanks and regards,
Rob Gross

From: Westfield.Tracey@epamail.epa.gov [mailto:Westfield.Tracey@epamail.epa.gov]
Sent: Wednesday, January 19, 2011 4:37 PM
To: Westfield.Tracey@epamail.epa.gov
Cc: Power.Lucinda@epamail.epa.gov
Subject: EPA's Formaldehyde SBAR Panel - Panel Outreach Meeting on 02/17 + a fuller schedule

Hi Potential SERs,

I'm touching base on the next steps for the Formaldehyde SBAR Panel. Below are three dates to keep in mind, the most important of which is 02/17/2011 (#2).

01/20/2011 - Your optional written comments on the Pre-Panel Outreach Meeting (held on 01/06/2011) are due.

02/17/2011 - Panel Outreach Meeting from 1 - 4 PM. Logistics and materials will be distributed two weeks prior to the meeting. For now, please reserve this time on your calendars and make your travel reservations if you intend to join the meeting in person. The meeting will be located in Washington, DC at EPA Headquarters (1200 Pennsylvania Ave., NW, Washington, DC 20004 --- Same place as the last meeting). You are not required to travel for this meeting; a toll-free conference line will be provided. But if you were to choose to attend any meeting in person, this would be the appropriate meeting. The purpose of this meeting is to solicit your advice and recommendations on the regulatory, economic, technical, and legal information provided to you by the Panel. The Panel also seeks your input on the potential impacts of the proposed rule on the entity you are representing.

03/03/2011 - Your optional written comments on the Panel Outreach Meeting are due.

I'll be in touch with more info as we approach the date of the meeting.

Thanks,
Tracey

Tracey Westfield | Regulatory Management Division, US Environmental Protection Agency
#6440BB Ariel Rios North | 1200 Pennsylvania Ave, NW, Mailcode:1806A |
Washington, DC 20460
P: 202.564.5586 | F: 202.564.0965 | E: Westfield.Tracey@epa.gov

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Gross Veneer Sales

PO Box 5212
High Point, N.C. 27262
Phone: (336) 883-0196
Fax: (336) 883-2912
E-Mail: robgross@grossveneer.com

Date: Thursday, January 20, 2011

To: EPA's Formaldehyde SBAR Panel

Attn: Tracey Westfield

Page: 01 of 01

Ref.: **Pre-Panel Outreach comments**

I would like to repeat some of what I had to say in the meeting we had on January 6, 2011. The most important observation that I have to make is that my company and hundreds of other importers and distributors were severely financially hurt by the CARB regulations when they kicked in on January 1, 2009. The Air Resources Board's plan for sell-through periods were not borne out in the least by what actually happened in the marketplace. It demonstrated to me that government agencies understand very little about business and market forces, and that they should keep their nose out of it.

Under the CARB vision, importers like myself would have had 90 days to sell panels that were not CARB certified in the marketplace. What they did not anticipate was that in the marketplace, my customers started demanding CARB certified panels in August of 2008, over 4 months before the rule took effect. The economy for housing-related products was tanking right about then, so demand was very soft, and my customers did not want to buy anything in August that they might be stuck with in January.

In my case my loss was compounded by another related event and the way my market works. I import plywood cores called platforms. I sell those to U.S. plywood manufacturers who then glue face and back veneers on them and trim them back to a 4x8 piece of plywood. The benefit that they get from that is that in their hot-presses, they don't have to get heat to the center of the plywood, since it is already glued tight. They just have to heat up the surface of the panel and cure the glue right under the thin face and back. It allows them a much higher production rate when they use platforms.

In late June, 2008, I sold seventy-five crates of non-CARB platforms to one customer. That is about five flatbed truckloads, and it was a good order for me. In my business I keep the platforms at the port of entry until they are sold, and then I release them to the customer. It is up to the customer to send in trucks and have the goods hauled to his factory. Well, as I said, demand was softening at that time, and my customer kept putting off shipping the platforms to his factory. And he also did not pay me for those platforms. Then in late November, 2008, about a month before the CARB rule took effect, he cancelled the order and handed the platforms back to me. So the amount of non-compliant platforms in my inventory more than doubled.

After the CARB rule took effect, it was impossible to sell non-certified platforms without giving the buyer a large financial incentive to do so. So instead of making a modest profit of around 10% on each load, I was discounting the material to a level about 20% below my costs. That alone has caused me to lose at least $75,000. On material that was entirely compliant with HUD standards.

And that could just be the tip of the iceberg if the federal standards do not allow for me to sell non-compliant panels after the law takes effect. I still have a LOT of inventory of specialty plywood for the steel-ruled dieboard industry, which cuts up paper and cardboard. None of it is CARB certified or even emissions compliant to my knowledge. What am I supposed to do with that? Export it? Make birdhouses?

I thought the EPA responded correctly and admirably when the Sierra Club and other similar organizations petitioned for the EPA to adopt the California formaldehyde standard as the national standard. The EPA responded that they could not move to effectively ban panels made with formaldehyde unless there was some actual proof that formaldehyde is detrimental to human health. That proof doesn't exist. Yes, it is an irritant, but there have been no studies of morticians, lab technicians, panel plant employees or chemical workers, people whose lifetime exposure to formaldehyde would likely be higher than the general population, to see if they have any health problems that the rest of us don't. The only study that I am aware of concerning formaldehyde was performed on lab rats. They were exposed to levels of formaldehyde that a person would never endure. Rats are also "obligatory nasal breathers", meaning that they cannot breathe through their mouths, only their noses. So the fact that some rats developed nasal tumors has very little bearing to its potential effect on people.

But the U.S. Congress is apparently not held to that standard of proof. They can pass this law without any scientific evidence that panels made using formaldehyde are detrimental to public health. But in your rulemaking for that law, you should bend over backward to ensure that those of us in the plywood industry will be able to sell what we have invested in and to get that investment back.

Gross Veneer Sales is a small company, with under 10 employees. We have an affiliated company, United Finishers, Inc., that uses some of the plywood that we import to make finished wooden bedrails, and they employ another 20 to 25 people. There are lots of other companies in our industry that are the same size as Gross Veneer Sales. With the slow business we have had for the past two and a half years, all of us are holding on as well as we can and hoping for better times. This law could be the kiss of death to many of those companies, if it makes our inventory worthless. So my suggestion is that any panels produced or imported before a certain date, say January 1, 2009, should be unregulated and should be allowed to be used in the normal business operations of the marketplace. Perhaps documentation should be provided by the sellers attesting that it is old stock, or a paper trail be established to keep new production from getting sold as old. But there should be some provision for us to be able to sell our products without losing our shirts.

Submitted by Rob Gross
Vice President, Gross Veneer Sales, Inc.

EPA Formaldehyde SBAR Panel SER Comments
Tom Julia
to:
Tracey Westfield
01/20/2011 05:16 PM
Sent by:
"Jeannie Ervin" <JErvin@cpamail.org>
Cc:
Lucinda Power, david.rostker, Lynn Vendinello
Show Details

History: This message has been replied to.

Tracey,

Please see the attached comments.

Best Regards,

Tom

Thomas A. Julia
President
Composite Panel Association
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Leesburg, VA 20176 USA
703.724.1128 ext. 243 · Fax 703.724.1588 · 703.405.5602 mobile
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COMPOSITE PANEL ASSOCIATION
Advancing the wood-based panel and decorative surfacing industries
19465 Deerfield Avenue, Suite 306, Leesburg, Virginia 20176
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Small Business Advocacy Review Panel
For EPA Rulemaking on
Formaldehyde in Composite Wood Products

Comments of Thomas A. Julia
President, Composite Panel Association
January 20, 2011

The following comments are submitted by Small Entity Representative Thomas A. Julia, President of the Composite Panel Association, Leesburg, VA, in response to questions raised by the U.S. Environmental Protection Agency (EPA) regarding its imminent rulemaking to implement the provisions of the Formaldehyde in Composite Wood Products Act (the "Act" or "Statute") that was signed by President Obama last summer.

As a general premise, CPA supports the coordination of the federal rules with the current California Air Resources Board's ("CARB") Airborne Toxic Control Measure to the greatest extent possible. Although there are some purposeful differences between the Act and the CARB regulation, we submit that the requirements should be congruent wherever possible. Otherwise, duplicative and potentially conflicting burdens and indeed questions of constitutionality could arise. None of these would serve the public interest or the interests of American small business.

I. Chain of Custody Generally

Chain of custody is a critical aspect of compliance and together with labeling and record keeping comprises a triad of assurance to downstream users and customers. In short, there must be some form of readily available assurance that finished goods are made with compliant panels.

CPA does not believe that there should be a concern about disclosure of confidential information regarding sourcing. Under Sections 93120.7(d)(2) (fabricators) and 93120.5(d) (distributors) of the CARB rule, a party in the chain of distribution need only inform its customer on the bill of lading that the product is made with compliant panels. It does not need to identify the supplier to others in the channel. This information would be subject to inspection by the regulator, but would not be transparent to other commercial parties.

The chain of custody requirement is tied inextricably to the labeling and recordkeeping issues described below. In each case, we believe that there must be a balance between effective enforcement protocols and a minimization on the burden imposed on fabricators and distributors. The CARB rule provides a good template for these responsibilities.

II. Labeling and Record Keeping Requirements

Effective documentation is needed to show that finished goods are made solely from compliant composite wood panels, and CPA believes that the existing CARB framework is reasonable and

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appropriate and should be followed by the EPA in its rule-making. The pertinent language is found in Section 93120.7(c):

> "In addition, fabricators must keep records showing the date of purchase and the supplier of the composite wood products and finished goods and document the precautions taken to ensure that the finished goods comply with applicable emission standards. These records must be kept in electronic or hard copy form for a minimum of two years and provided to ARB or local air district personnel upon request…"

Some have suggested that this requires that each component piece of furniture must be specifically tied to a specific panel, from a specific bundle shipped on a specific day from a specific supplier. We instead envision a system in which the fabricator could clearly show its chain of custody and fulfill its record-keeping obligations by more general indices, including purchase information, inventory and usage policies, etc., to show that complying material from one or more suppliers was used.

III. Sell-Through Provisions

CPA supports the concept embodied in the federal legislation of sell-through with reference to date of manufacture rather than date of sale, which is used by CARB. In California there have been a series of "delays" in enforcement because distributors and retailers found themselves during these slow economic times holding inventory of panels or finished goods that had been made prior to the effective date of the emission limitations. These parties had bought what were complying products on the date of purchase, but found themselves holding non-complying products with the passage of time. This could cause severe financial loss.

The date of manufacture approach gives certainty to those at all levels of the distribution chain as to what inventory can be sold. There is a date certain by which panels must be compliant and a date certain for manufacture of goods with compliant panels.

The statute provides that the sell-through reference date should be no less than 180 days after the promulgation of the EPA regulations (Section (d)(3)(A)(i)). At this time, we believe that the 180 day date is an appropriate one to be included in the regulation. As noted above, there would be no financial dislocation from such a date, because there is no problem with stale inventory under the date of manufacture approach (as distinguished from the CARB approach). The effective date is likely to be sometime in early to mid-2013. By that time there should be no problem obtaining compliant panels either domestically or from foreign sources, regardless of the application. Moreover, all the CARB Phase 2 manufacturing deadlines for panels will have been in effect for some time by mid-2013: hardwood plywood composite core – July 1, 2009; hardwood plywood veneer core – January 1, 2010; particleboard and MDF – January 1, 2011; and thin MDF – January 1, 2012. The domestic market is already adjusting to these levels, and another two and one-half years will only make the supply of complaint panels more universal.

IV. Stockpiling

EPA has requested guidance as to the appropriate "reference period for determining whether products are being stockpiled." There are two periods contemplated by the statute. The first is the period of purchases which is defined as between the enactment of Act and 180 days after the promulgation – almost a four year period. Given the cost of carrying inventory there is a natural brake on accumulating non-complying inventories long before the effective date of the regulation. We suggest that EPA focus on "stockpiling" within the 180-day period between promulgation and the effective date of regulations.

The second period is the base against which the purported stockpiling must be measured. We suggest that the previous 12-month period would be appropriate, with annualized rates compared.

There is precedent in EPA regulations for this approach, including the Non-Road Diesel Engine rule.

The CPSC also has authority under 15U.S.C. §2058(g)(2) to prevent stockpiling. One approach used in the Safety Standard for Multi-Purpose Lighters, 16 CFR §1210.20, is "...the base period means at the option of the manufacturer or importer, any 1-year period during the 5-year prior period."

V. Other Resins

CPA members use a variety of no-added formaldehyde ("NAF") and ultra-low emitting formaldehyde ("ULEF") resins in addition to traditional urea-formaldehyde (UF) based and other resin systems. We believe that the reduction of testing frequency and exemption from third party certification for products performing at certain emission limits, as memorialized by CARB, is entirely appropriate. Market incentives are also constructive factor here, incentivizing new technological developments. We are not aware of other incentives that are necessary in this area at this time.

VI. Finished Goods

EPA has inquired whether panel members "… have any concerns about the inclusion of finished goods?" We are not clear about the reason for this question since the statute requires the inclusion of finished goods. Section (b)(4) provides:

> "(4) APPLICABILITY – the formaldehyde emission standard referred to in paragraph (1) shall apply regardless of whether an applicable hardwood plywood, medium-density fiberboard, or particleboard is
>
> (A) in the form of an unfinished panel; or
> (B) incorporated into a finished good."

(emphasis added). This is an important feature of the CARB rule and the Act. Most panel production is incorporated into furniture, fixtures, cabinets and other finished goods. If non-complying panels could be incorporated with impunity into other items, then a purpose of the Act would be lost.

Notwithstanding this point, we believe EPA should embrace a fair and reasonable approach that does not create new burdens on fabricators and distributors to police the actions of panel manufacturers.

VII. ***De Minimis*** **Exemption**

EPA has asked, "Do you think there should be a *de minimus* exemption?" It is our understanding that the statute requires such an exemption, the scope of which should be determined by the Agency. Section (d)(2)(L) provides:

> "(2) INCLUSIONS – The regulations promulgated pursuant to paragraph (1) shall include provisions relating to –
>
> **
>
> (L) exceptions from the requirements of regulations promulgated pursuant to this subsection for products and components containing de minimis amounts of composite wood products."

The *de minimis* exemption was added to the federal legislation late in its consideration, largely at the behest of the Retail Industry Leaders Association, which expressed a concern about the burden involved with items such as small picture frames made with MDF and Easter baskets made with particleboard bases. The Statute does not exempt these finished goods from the emission limitations, but does provide for the development of regulations that would excuse compliance with the ancillary duties found in Subsection (d), such as labeling and record-keeping.

We believe this is appropriate and that there are two approaches (or a combination of the two) that EPA should consider. The first is a percentage limitation – i.e., any finished product with less than a specified per cent of its volume consisting of particleboard, MDF and/or hardwood plywood would be exempt. This is similar to the approach in Section (c)(11)(&(12) of the statute dealing with windows (5%) and certain doors (3%).

The other approach would be to define *de minimis* in terms of a cubic measure of the regulated products in the finished good. The regulation might exempt any finished good that had less than a specified cubic measure of the regulated products, thus addressing the Easter basket and picture frame examples above.

At this time CPA does not have recommendations as to the appropriate percentages or cubic measure that would be appropriate, but we anticipate offering a recommendation at a later date.

EPA also questioned whether products under the *de minimis* provision should be exempt from testing. The *de minimis* provision would apply to finished goods containing small amounts of regulated panels. The CARB regulation has no requirement for finished goods testing, similar to the qualification and quality control tests required for composite wood panels. Finished goods must use compliant panels, but this requirement does not need a specification of the enforcement mechanism.

VIII. Test Methods

CPA, through our CARB-approved Third Party Certification Program, internationally recognized Grademark Certification Program, as well as our International Testing and Certification Center, has worked on many round-robin formaldehyde testing protocols and has expertise in this area. We believe that the tests identified in the Statute are the appropriate and time-proven ones for formaldehyde regulation, and they have been embraced world-wide for purposes of compliance with the CARB rule.

IX. TPC Requirements

The Third Party Certification ("TPC") aspect of the CARB rule is critical to its credibility. No rule can rely on a domestic or foreign manufacturer to simply self-certify compliance with the complexities of the formaldehyde emission requirements, whether established by CARB or EPA. The use of third parties, internationally accredited and demonstrably experienced in certification oversight, adds a critical dimension of surety to consumers, fabricators and regulators that composite panels do in fact meet the emissions requirements of the regulation.

One additional step is needed to complete the circuit. We submit that all TPC's should be accredited by nationally and internationally recognized accreditation bodies in a somewhat more rigorous manner than now provided for by CARB. This will ensure that TPC's are qualified for this responsibility and that the TPC's aegis is not being pirated in any way. CPA will be prepared to offer specific recommendations in this area.

X. Laminated Products

A definition of so called “laminated products” has been one of the most difficult issues faced by impacted industries. On the one hand, the hardwood plywood manufacturer trade association has suggested that materials that have traditionally been considered hardwood plywood should be subject to the same regulations as the products manufactured by their customers. On the other hand, furniture and cabinet manufacturers have urged that component parts made in their factories should not be subject to new regulations. Consensus could not be reached among industry stakeholders prior to introduction of federal legislation, nor by the time it passed. The interested parties are still in discussion at this time to try to develop a consensus recommendation. Although these types of wood veneered, laminated products are not directly within the product jurisdiction of CPA, we encourage the parties to reconcile their positions. We also take the view that verifiable compliance with the underlying panel emission limitation should be the driver for EPA, and that the agency should not be imposing new regulatory burdens on affected downstream businesses as long as such compliance can be assured.

XI. Hardboard Definition

The statute exempts hardboard from coverage of both the emission limitations and other ancillary duties, but leaves the definition of the product to EPA. As with laminated products, above, this reflects an inability of industry stakeholders to come up with a consensus definition during the legislative process. CPA represents most of the hardboard manufacturers in North America, and has a

direct interest in seeking a reasonable and practical definition. We are actively working with the stakeholders to develop a definition at this time and are hopeful of making a specific recommendation to EPA soon.

The central difficulty with this issue is the possibility of confusion between thin medium density fiberboard ("MDF") and "dry process hardboard." These two products can have similar appearances, properties and end uses. Thin MDF is typically made with UF resins (although it can use other binding systems such as MDI or phenol formaldehyde resins). All agree that thin MDF is subject to the emission limitations of the federal statute and the CARB rule.

Hardboard is made in two principal ways – a wet process in which a ligno-cellulosic bond is used, often supplemented by some amount of PF resin and a dry process which is similar to making MDF. All agree that "hardboard" made with UF resin is nearly identical to MDF and should be regulated as MDF.

CPA is in the process of completing a scheduled revision of the American National Standards Institute's ("ANSI") Standard for Basic Hardboard, ANSI A135.4, and is attempting to develop a consensus definition within the ANSI procedures that would be useful for EPA's regulatory purposes as well. CPA will communicate the results of this process too.

Thank you for the opportunity to participate on the Panel to offer these comments.

SER comment
Florida Plywoods, Inc.
to:
Tracey Westfield
01/18/2011 02:49 PM
Show Details

Ms. Westfield - attached please find our comments.

John Maultsby, Jr.
President
Florida Plywoods, Inc.
850.948.2211 ph

Thoughts on EPA Meeting held 1-6-2011:

CPA presented itself as representing a wide constituency. I've been a Director for CPA since 1985. Real decisions are made by the Executive Committee comprised of a small number of large dues payers (dues based on production). Our company has been an associate member of the KCMA since the 1960s. Although they tout a representation of a wide membership, they too tend to represent large dues payers.

Our company makes particleboard for our own use to be covered with wood veneer, vinyl or paper. It is shipped out as cut-to-size components for kitchen cabinets and furniture. Our volume on a weekly basis is probably roughly equal to the one shift production of the large particleboard manufacturers. As a result, we must keep overhead and management costs low. Management and quality control duties are shared among all staff members. In short, in a small company everybody has to wear more than one hat. We support the CARB limits. However, the TPCs can alter their requirements for testing, in particular the size and duration of test lots and the procedures for recertification of non-complying lots. These things take up a lot of management time which could be spent in growing the business and developing new products. For instance, our product is tested each day representing a much higher percentage of tests to production than the large manufacturers. In my opinion all programs, due to the extremely low CARB limits, will eventually have rare random non-complying lots. Due to the time involved in the TPC testing for compliance there can be a large volume of non-complying material in the field before the realization a lot has failed. In determining compliance, the total QC program of each plant as well as prior TPC tests need to be considered. Further, I fear that the audit program of the EPA for the TPCs will result in stricter procedures, record keeping, etc. which will be more difficult for the limited resources of the small manufacturers.

I personally have been involved with the use of urea formaldehyde resins for over 60 years. When I first entered the industry UF resin was a strong irritant. That has been totally eliminated to my knowledge. During my experience with UF I know of no proven illness linked to UF resin. In short, a rare random non-complying lot from a QC program with a good history of compliance needs to be given consideration. To be blunt, nobody is going to die if a rare lot is shipped with emissions just over the CARB limit.

Thank you for your consideration.

John Maultsby, Jr.
President
Florida Plywoods, Inc.
850.948.2211

IWPA Input

Brigid Shea to: Tracey Westfield 01/20/2011 04:32 PM

Thank you for this opportunity to comment on the Pre-Panel Outreach Meeting, January 6, 2011. We offer these comments on behalf of the International Wood Products Association (IWPA).

IWPA is the only organization that represents U.S. businesses that import composite wood products from overseas. Our voting membership is overwhelming composed of U.S. family owned small businesses. The IWPA is an advocacy organization; it does not own or hold a profit center for product testing.

Another important distinction to note is that the products our members import into the United States are unique. Typically they are panels that have no competitive product in the United States (because of thickness of panel, species used in panel construction, etc.). These market niches include but are not limited to the RV industry, kitchen cabinets and manufactured housing.

As an organization representing small businesses, our primary concern is containing compliance costs. Our members have already incurred expenses due to the California formaldehyde regulation and we seek to ensure that those expenses are not duplicated or unnecessarily increased by a federal standard. Our general advisories are:

Double Jeopardy by jurisdiction. IWPA petitioned Congress to include federal pre-emption in its legislation. That did not occur and remains our concern that California may amend its regulation to where small businesses would have to comply with two distinct monitoring, chain of custody, certification and labeling programs. This scenario would cause undue hardship on small companies that have already gone to great expense to establish new inventory, tracking and labeling programs.

Specifically, we ask EPA to:

Maintain the definition of Manufacturer and Fabricator as defined by CARB.

Adopt the same tag and labeling requirements as defined by CARB

Learn from the CARB experience and set sell-through dates as far from the date of manufacture of the finished item as possible.

Seek additional small business input. We applaud the SBA Office of Advocacy for its work on behalf of small businesses. However, we are skeptical that sufficient notification has been done for the small "mom and pop" businesses that will be most affected by this regulation. Most of these type companies do not read the Federal Register, nor do they belong to trade associations that have so far engaged in this process.

Third-Party Certification. If EPA is considering establishing a program where the manufacturer must be certified then the tangible benefits of such a program must clearly be identified. The concern our members have expressed to our association is that while they pay more for a "certified" product but this certification confers no liability protection. Certification without liability protection is the equivalent of paying insurance premiums without receiving protection or compensation in the event

of an accident.

Focus on consumer safety. IWPA's members are committed to product safety. That is where the EPA should focus. We are concerned that elements of the CARB regulation dealing with chain of custody, inventory and labeling are more focused toward enabling litigation rather than improving product safety.
Incentives are best delivered by the marketplace. Tax dollars should not be used to determine "winners and losers." Let the marketplace offer incentives for alternative resin use.

Laminated products should be exempt. Laminators that are using certified panel products are performing a de minimus action when laminating a wood veneer to the product. Requiring testing of laminated products is redundant and would place small U.S. manufacturers at a competitive disadvantage to larger business that can absorb the cost more readily.

Re: please RSVP for Thursday's meeting if you haven't already + a revised list of potential SERs is attached

Stan Stone to: Tracey Westfield 01/07/2011 04:59 PM

History: This message has been replied to.

1 attachment

EPA Discussion 110107.docx

Tracy, thanks for pulling the phone conversation together. While I didn't comment I did listen and I do have some suggestions.
Stan Stone

On Jan 4, 2011, at 5:59 PM, Westfield.Tracey@epamail.epa.gov wrote:

> To potential Small Entity Representatives:
>
> Two things:
>
> 1) This is a friendly reminder: Please RSVP (if you haven't already) and tell me whether you are calling in to or attending in person Thursday's (01/06/2011) Pre-Panel Outreach Meeting for the Formaldehyde Small Business Advocacy Review Panel. (Detailed information about the meeting is provided in the two email message below this one.) So far, I've received RSVPs from Dennis Dean Carroll, Robert Gross, Jason Krings, Stan Stone, Dick Titus, Matt Wald, and Fred Zoeller.
>
> 2) Attached is a revised list of potential Small Entity Representatives (SERs). Three additions have been made: Kip Howlett, Brigid Shea, and Matt Wald.
>
> Thanks,
> Tracey
>
> (See attached file: Potential SERs - Formaldehyde SBAR Panel -01-04-11.xlsx)
>
> ---
>
> Tracey Westfield | Regulatory Management Division, US Environmental Protection Agency
> #6440BB Ariel Rios North | 1200 Pennsylvania Ave, NW, Mailcode:1806A | Washington, DC 20460

Date: 1/7/2011
To: Tracy Westfield, EPA
From: Stanford Stone
Subject: SBAR Panel Meeting

As mentioned in the meeting, the CARB requirement for manufacturers has become the defacto national standard. It's my understanding that you cannot even purchase non-compliant core material currently.

The issue that remains with the EPA is the same issue that CARB was dealing with, the treatment of laminators or fabricators. Some laminators/fabricators have gone to the effort of having a TPC certify their facilities, others consider themselves, under CARB's sometimes confusing rules, to be fabricators and have not certified their facilities, yet they do comply with the emission standards, COC and labeling requirements.

Hardwood plywood manufacturers who make a complete panel in-house are required to have a TPC certify their processes on an on going basis. Manufacturers and fabricators that are TPC certified have made the case that they want a "level playing field." They would like to have all companies supplying the finished product - hardwood plywood - comply with TPC certification.

The first consideration is that a laminator, who was using urea-formaldehyde resin, would add only about 1/10 of the resin that a core manufacturer would. Trying to regulate 100,000 or so laminators would be addressing a minor, if not diminimus, usage. According to industry data a typical 4' x 8' x 11/16" thick MDF or PB core weighs about 80 pounds. The panel is made with about 12% binder or 9.6 pounds of binder per panel. A laminator when making hardwood plywood, will usually coat both sides of a core panel with an adhesive at about 1.1 pounds per panel. So the laminator is dealing with only 11% of the resin of the core manufacturer.

If a laminator uses NAF adhesives, the laminator is not adding any formaldehyde emissions. Since all core is currently certified the panel should meet all the emission requirements that it is certified to meet. Additionally, if an NAF laminator did not meet the emission target there would be nothing they could do to correct it since the certified core itself would be the only source of emissions.

So what makes a level playing field? If a plywood manufacturer who makes the whole panel at one location is paying for certification and a core manufacturer is paying for certification the certification costs are the same. Requiring a laminator to have TPC certification, <u>even if they do not use urea-formaldehyde adhesive</u>, does not make a level playing field. It doubles the certification cost and creates an advantage for the manufacturer who makes the whole panel. That, I feel, would be protectionist.

If the goal is to limit formaldehyde emissions with the least intrusive measures the EPA can do the following.

1. Decide that the costs and efforts to regulate such a small % of formaldehyde emissions do not warrant the inclusion of laminators in the regulation.
2. The EPA, or Congress, could simply outlaw the use of formaldehyde adhesive for panels, such as is done for the insecticide DDT. I don't believe certification is required for pesticide applicators to see if DDT is still being applied.
3. Since PVA adhesive is about 50% more expensive than urea-formaldehyde, the EPA could ask congress to apply a tax to urea-formaldehyde adhesives to make them more expensive than PVA.
4. The EPA could have a TPC or other auditor simply certify that only EPA/CARB compliant core and NAF adhesives are being used. This can be done without any testing simply by matching resin purchasing records against panels produced.
5. The EPA could emulate the IRS and send out a form, yearly, requiring someone in a company to sign a statement such as, "Under penalties of perjury, I declare that I have examined the purchasing records and production policies of (company), and declare that the company has used only EPA/CARB compliant core and NAF adhesives in the production of laminated panels from 1/1/2011 to 12/31/2011 and that is true to the best of my knowledge and belief (Signed QA/Production Manager/etc.)."
6. The EPA could approve a label that was simply a declaration of compliance punishable as perjury such as, "Under penalties of perjury, I declare that we (Name of Company) use only core materials and adhesives in the production of these laminated panels that meet the EPA/CARB requirements for formaldehyde emissions. That is true to the best of my knowledge and belief, signed (QC Manager, Inspector, CEO)."

There may be other alternatives, as well, to restrict urea-formaldehyde resins.

When CARB was introduced it applied only to California. Since manufacturers had access to either CARB compliant material or not, it was necessary for California to be able to regulate panels coming into the state. They could only do that by employing Chain of Custody procedures. Consumer labeling promoting CARB was also considered advantageous since there was an option for the consumer to purchase non-compliant material. Once the laminator issue is dealt with, however,

the Chain of Custody and labeling requirements will no longer be necessary. Those costs would merely be unnecessary expenses ultimately borne by the consumer.

Stanford Stone
Compliance Manager
Navy Island, Inc.

RE: EPA's Formaldehyde SBAR Panel - Panel Outreach Meeting on 02/17 + a fuller schedule

Dick Titus to: Tracey Westfield 01/20/2011 04:11 PM

Thanks Tracey. We still are developing data to respond to Lynn's questions. We will have for February 17 meeting. Appreciate your efforts.

-----Original Message-----
From: Westfield.Tracey@epamail.epa.gov [
mailto:Westfield.Tracey@epamail.epa.gov]
Sent: Wednesday, January 19, 2011 4:37 PM
To: Westfield.Tracey@epamail.epa.gov
Cc: Power.Lucinda@epamail.epa.gov
Subject: EPA's Formaldehyde SBAR Panel - Panel Outreach Meeting on 02/17 + a fuller schedule

Hi Potential SERs,

I'm touching base on the next steps for the Formaldehyde SBAR Panel. Below are three dates to keep in mind, the most important of which is 02/17/2011 (#2).

01/20/2011 - Your optional written comments on the Pre-Panel Outreach Meeting (held on 01/06/2011) are due.

02/17/2011 - Panel Outreach Meeting from 1 - 4 PM. Logistics and materials will be distributed two weeks prior to the meeting. For now, please reserve this time on your calendars and make your travel reservations if you intend to join the meeting in person. The meeting will be located in Washington, DC at EPA Headquarters (1200 Pennsylvania Ave., NW, Washington, DC 20004 --- Same place as the last meeting). You are not required to travel for this meeting; a toll-free conference line will be provided. But if you were to choose to attend any meeting in person, this would be the appropriate meeting. The purpose of this meeting is to solicit your advice and recommendations on the regulatory, economic, technical, and legal information provided to you by the Panel. The Panel also seeks your input on the potential impacts of the proposed rule on the entity you are representing.

03/03/2011 - Your optional written comments on the Panel Outreach Meeting are due.

I'll be in touch with more info as we approach the date of the meeting.

Thanks,
Tracey

Tracey Westfield | Regulatory Management Division, US Environmental Protection Agency
#6440BB Ariel Rios North | 1200 Pennsylvania Ave, NW, Mailcode:1806A | Washington, DC 20460
P: 202.564.5586 | F: 202.564.0965 | E: Westfield.Tracey@epa.gov

FW: CARB letter
Fred Zoeller
to:
Tracey Westfield
01/11/2011 05:35 PM
Show Details

History: This message has been replied to.

Tracey here you go , thanks for your hospitality last week , let me know if I can help further

Fred Zoeller
Laminate Technologies, Inc.
161 Maule Road
Tiffin, OH 44883
419-448-0812

From: Paula Rathburn [mailto:prathburn@lamtech.net]
Sent: Tuesday, January 11, 2011 12:18 PM
To: Fred Zoeller
Subject: CARB letter

Here you go - let me know if you need anything else.

Thanks
Paula ☺

LAMINATE TECHNOLOGIES, INC.

THE TRUSTED SOURCE FOR YOUR LAMINATE AND FABRICATION NEEDS

January 11, 2011

Dear Sirs;

While Laminate Technologies is a relatively small manufacturing firm in the wood product industry (sales of 46 million), and may not be as versed as others in our industry on the current regulations in California and the upcoming federal regulations , but as I heard comments from the room on January 6th, the
things that concern me and I feel need to be evaluated in implementation of the new regulations are listed below;

1) The new regulation needs to have a manufacturing pass thru date and not a sale thru date, with provisions of not stock piling
2) The new regulation should be for the manufacture of the composite panel and components that go into a laminated panel as this is where certification needs to take place and not have additional certification down the supply chain
3) I feel PB and Plywood should be held to the same standards, along with domestic and import production
4) I believe it is extremely important to keep CARB and the Federal Regulations the same so that we do not have two standards in our industry
5) All regulations must take into account as to not add additional cost or burdens on the companies that must conform to these regulations. At times we are already positioning our industry to be non competitive to other types of cabinets and furniture manufacturers, etc.

Again these are just a few of my comments on the existing C.A.R.B regulations. For processors such as Lam Tech, it is relatively easy for a small company as ours to be compliant, as the burden of certification falls on the manufacture of the composite panel as typically these are much larger organizations which have the resources for compliance. Our hope is that the new Federal Regulations will cover the same scope and compliance factors as C,A,R,B.
If you have any questions, or if my contribution on this panel is needed, please do not hesitate to call me.

Sincerely,

Fred Zoeller

Fred Zoeller
Laminate Technologies, Inc.
161 Maule Road
Tiffin, OH 44883
419-448-0812

B.2 Written Comments from Potential Small Entity Representatives following 01/06/2011 Outreach Meeting

2nd panel meeting letter
Dennis Carroll
to:
Tracey Westfield, Tracey Westfield
03/03/2011 03:31 PM
Show Details

Hello Tracey,

Attached are our comments to the 2nd panel meeting.

Best,

Dennis Dean Carroll
EHS Manager
Rutland Plywood Corporation
PO Box 6180
Rutland, VT 05702
Email: dcarroll@rutply.com
Tel: (802) 747-4000 ext.4334
Cellular: (802) 779-1140
Fax: (802) 770-1921
www.rutply.com

March 3, 2011

Tracey Westfield
Regulatory Management Division
US Environmental Protection Agency
#6440BB Ariel Rios North
1200 Pennsylvania Ave, NW
Washington, DC 20460

Re: Rutland Plywood Corporation – Comments and Concerns for the Formaldehyde Small Business Advocacy Review (SBAR) Panel

Dear Tracey Westfield,

As the EPA implements the Formaldehyde Standards for Composite Wood Products Act, Public Law 111-199, Rutland Plywood Corporation (RPC) recommends that you consider exempting engineered veneer and products not intended for interior use, from the third party certification (TPC) and emission level requirements. RPC also requests the EPA to exempt manufactured panels made without cores or platforms per current Public Law 111-199 definitions. In addition we also suggest you to consider exempting other hardwood plywood products; which were not originally involved in the true spirit of this legislation.

RPC also asks the EPA to develop practical definitions of engineered veneer as well as interior use. We would also like to see a specific exemption for Compreg in the final regulations or have it incorporated in the engineered veneer exemption. Compreg is an impregnated and compressed wood. Hardwood veneers are impregnated with a phenol formaldehyde resin (Less than 1% formaldehyde by weight). This process increases density and strength in the wood. Current testing suggests this product is just above the .05 PPM formaldehyde emission level. Currently there are no alternative resins available for this product. If this product is unable to get exempt from the regulation both from the TPC requirements and from the emission level we would no longer be able to manufacture it; therefore RPC would lose approximately $1.8 million in annual revenue. This loss would be detrimental to the company and its future existence would be

significantly jeopardized. RPC is not in the large commodities market and our output of material is dwarfed in size by the companies, who in our opinion were originally the target for this legislation.

RPC products are made for niche markets – including but not limited to, guitar bodies, gun stocks and novelty items. (See attachment A- January 10, 2011 letter regarding Rutland Plywood Corporation – Comments and Concerns Regarding Public law 111-199) These final products pose little if any health risks, based on end usage, making the regulation of the products overly burdensome and costly. In addition to having these products exempt based on end use, RPC has been unable to find a performance competitive .05 PPM formaldehyde emission level compliant resin for these products.

RPC has been unable to find an emission level compliant resin thus far, for some of our unique products. Examples of this would be our gun stock and guitar body blanks. These are made with up to 41 sheets of veneer. This is much thicker than the average plywood panel. (4x8 sheet) It has been extremely difficult to find a resin that can meet both the emission standard and performance standard.

RPC does not believe it fits into any of the definitions in the act, regarding hardwood plywood or laminated products due to us not using any platforms or pre-made cores in their products in question. Incorporating a definition into the exemption section of the final regulation, exempting manufactured panels made without cores or platforms per current Public Law 111-199 definitions, would accurately separate RPC's products from the regulations and allow them to explain to their customers why they are not required to comply with the regulation.

While the EPA moves forward with drafting the regulations, please include our companies concerns and hopeful exemptions to insulate us from what would have a critical effect on our financial strength.

Sincerely,

Dennis D. Carroll

EHS Manager

RE: follow-up from yesterday's meeting for the Formaldehyde Small Business Advocacy Review Panel

Tom Julia to: Tracey Westfield, Tracey Westfield 03/03/2011 04:55 PM
Cc: Lynn Vendinello, "Corey Connors", "Gary Heroux"

Tracey,

Please see my attached SER submission for the Panel's consideration.

Thank you and best regards,

Tom

Thomas A. Julia
President
Composite Panel Association
Leesburg, VA 20176 USA
703.724.1128 ext. 243 · 703.724.1588 fax · 703.405.5602 mobile
tjulia@cpamail.org · http://www.pbmdf.com

-----Original Message-----
From: Westfield.Tracey@epamail.epa.gov [
mailto:Westfield.Tracey@epamail.epa.gov]
Sent: Friday, February 18, 2011 4:20 PM
To: Westfield.Tracey@epa.gov
Subject: follow-up from yesterday's meeting for the Formaldehyde Small Business Advocacy Review Panel

Hi SERs --

Thanks for your enthusiastic participation in yesterday's Panel Outreach Meeting for EPA's rulemaking implementing the Formaldehyde Standards for Composite Wood Products Act. I have two things to share with you:

1) You are invited to submit written comments on the materials and discussion from yesterday's meeting, or on any other thoughts/ideas/questions related to the rulemaking. Comments are due on Thursday, 03/03/2011. Please email them to me (Westfield.Tracey@epa.gov), and I will distribute them to all three Panel agencies: EPA, the Small Business Administration (SBA), and the Office of Management and Budget (OMB).

2) After we receive your comments, the next step in this process is for EPA, SBA, and OMB to work together to develop recommendations for the EPA Administrator. These recommendations are collected in a Panel Report. Generally, a Panel Report becomes available when the proposed rule publishes, at which time the Panel Report is placed in the rule's docket.

The "Formaledhyde Emissions from Pressed Wood Products" rulemaking has a docket number of EPA-HQ-OPPT-2008-0627. You can access that docket on

Regulations.gov at
http://www.regulations.gov/#!docketDetail;D=EPA-HQ-OPPT-2008-0627 You can even click the "Email Alerts" button near the top of that web page to receive automatic alerts when a new document is added to the docket. That way, you don't have to keep checking the docket every day. OCSPP is on schedule to publish this rulemaking in December 2011, so that's when you can expect the Panel Report to appear in the docket.

If OCSPP writes a second, earlier rule related to third-party certification (TPC) -- or any other issue -- then at a minimum, the portion of the Panel Report pertaining to that topic(s) will be placed in the TPC rule's docket. At this time, I don't have more info about the TPC rule or its docket.

Thanks,
Tracey

Tracey Westfield | Regulatory Management Division, US Environmental Protection Agency
#6440BB Ariel Rios North | 1200 Pennsylvania Ave, NW, Mailcode:1806A | Washington, DC 20460
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COMPOSITE PANEL ASSOCIATION
Advancing the wood-based panel and decorative surfacing industries
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Small Business Advocacy Review Panel
For EPA Rulemaking on
Formaldehyde in Composite Wood Products

Supplementary Comments of Thomas A. Julia
President, Composite Panel Association
March 3, 2011

The following comments are submitted by Small Entity Representative Thomas A. Julia, President of the Composite Panel Association (CPA), on behalf of the small business members of the association and regarding EPA's imminent rulemaking to implement the provisions of the Formaldehyde in Composite Wood Products Act (the "Statute"). Some of these comments supplement the previous CPA submission on January 20, 2011; others address topics that were raised during the EPA presentation to the Panel on February 17, 2011.

CPA represents more than 90% of the manufacturing capacity of particleboard, medium density fiberboard ("MDF") and hardboard in the U.S., Canada and Mexico. We also represent all the major adhesive suppliers to the North American composite panel industry, the major manufacturers of decorative surfaces as well as distributors of panel products, and a number of major fabricators of end-use industry products (e.g., furniture).

Collectively, CPA's members will be those most impacted by the Statute and its implementation by EPA. Most CPA members are small businesses and have manufacturing facilities located in rural communities. Composite panel production in the United States serves domestic markets and customers almost exclusively, and CPA is fully committed to sustaining domestic manufacturing jobs and small businesses.

Almost all our members are suffering through a business downturn that is unprecedented in the history of the composite panel industry. It is coupled with substantially higher energy and raw material costs along with aggressive competition from products manufactured offshore. These should be important considerations for the Panel as it weighs the small business implications of what EPA is considering in this rulemaking.

As an underlying premise, CPA again stresses that wherever possible and practical, the EPA regulation and the California Air Resources Board's Airborne Toxic Control Measure on formaldehyde emissions from composite wood products ("CARB" or the "CARB rule") should be fully compatible.

Our members have abided by the CARB rule from its inception and will likewise abide by the Statute that CPA itself proposed. That said, we urge that EPA not use this rulemaking as a

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www.pbmdf.com

means to impose new, unnecessary and/or redundant cost burdens on the industry supply chain. Instead we urge that EPA seek implementation approaches that serve the objectives of the Statute while minimizing the burden of compliance.

I. Third Party Certification; Quality Assurance

Credible third party testing and certification coupled with a robust Third Party Certifier ("TPC") system is essential to the proper and consistent implementation of the Statute. Plainly, this system is what gives the greatest assurance that panels are meeting the formaldehyde emission limitations. Moreover, a transparent chain of custody system must be in place to enable panels to be tracked from the retail level back to the mill producing them, and to the TPC auditing that mill's quality assurance procedures and randomly checking its production. It is equally important that the TPCs themselves are credibly approved, monitored and audited to be sure they are legitimate entities fulfilling their regulatory responsibilities on a consistent and verifiable basis.

EPA has posited two options with respect to management of the TPC system: (1) to generally follow the approach adopted by California in Section 93120.4 of its regulation; or (2) to enter an MOU with an accrediting body that would perform the same functions now being managed by CARB. CPA submits that both options could be viable and might be combined, appreciating that each present management and/or cost concerns to the businesses affected by this rulemaking.

The CARB approach has been generally effective and CPA endorses it. We also recognize that it may be appropriate to require that TPC's be more universally accredited by recognized national and international bodies, attesting to their general capabilities of laboratory testing, process control and integrity. CPA would endorse such further oversight – i.e., toughening the current CARB requirements to ensure the universality of TPC performance.

We would oppose, however, permission being given to a more global accreditation body to exercise substantial supervision of the actual certification process, or to have discretionary authority over the design or operation of the certification system, including the criteria by which TPCs are approved. These actions could potentially create new costs and burdens for TPCs and their customers that may or may not be warranted to satisfy the objectives of the Statute. Such roles should be reserved for EPA itself, with the agency identifying the specific role and scope of the body, as well as any annual compliance procedures and costs that might be imposed on TPCs and, by extension, their customers. The sole function of the global accreditation body should be limited to oversight and auditing, with regular reports submitted to EPA.

By limiting the scope of the body as we've described, efficiencies may be attainable that benefit all interested parties. For example, EPA and CARB may decide to cooperate on an MOU with the accreditation body for its limited auditing functions, thereby retaining their federal and state powers and responsibilities while also precluding redundant costs and functions. TPCs themselves might be able to combine accreditations or substitute a single accreditation by the global body. This would in lieu of a more costly, complex and arguably redundant system that might otherwise result.

During the previous Panel meeting, some concern was expressed that the current TPC system managed by CARB has not been rigorous enough in identifying non-compliance or addressing non-complying lots. Some have termed this a "test method" problem, which it is not. Rather, there are legitimate challenges to consistently meeting the rigorous Phase 2 emission ceilings. While these will be mitigated over time as a result of experience and technology, we believe that they can also be practically addressed in the rulemaking by modifying the TPC requirements, as mentioned above, as well as the quality assurance manual requirements with which each TPC-approved mill must comply. In short, CPA believes that considerations of non-compliance and non-complying lots should be viewed systematically at both the TPC level and the mill level. Elements that might be examined include the frequency and accuracy of quality control testing, the strength of the correlation of small scale production testing, the base qualification tests, and the rigor of notice and remedial actions in the event of repeated test failures.

II. Test Methods

CPA submits that the test methods found in the CARB regulation and referenced in ANSI standards are time-tested, repeatable, accurate and appropriate methodologies. Alternative methods should be examined with much caution and skepticism. As mentioned above, we see no evidence of shortcomings with the current test methods recognized by California and in the Statute, and the global panel industry has increasingly embraced them.

Notwithstanding our support for these approved test methods generally, the Statute has distinct and different requirements for quarterly and quality control testing. Section (b)(3)(A) of the statute provides

> "(A) Compliance with the emission standards described in paragraph (2) shall be measured by –
>
> (i) quarterly tests shall be conducted pursuant to test method ASTM E-1333 (2002) or , subject to subparagraph (B) [dealing with findings of equivalence], ASTM D-6007-02;"

We note that there is no discretion given to the EPA to add test methods for quarterly testing, but there is appropriate discretion granted for EPA to add approved test methods for quality control purposes:

> "(ii) quality control tests shall be conducted pursuant to ASTM D-6007-02, ASTM D-5582, or such other test methods as may be established by the Administrator through rule-making."

CPA further supports ongoing industry efforts to make current standards and test methods more efficient and advanced. It would be highly premature and inappropriate, however, for EPA to contemplate test method changes in this rulemaking given this significant commitment by industry coupled with the technical challenges already presented when measuring exceedingly low levels of formaldehyde emissions.

III. Hardboard Definition

In CPA's earlier submission we pointed out that there was broad industry interest in avoiding the possibility that thin MDF could be categorized as hardboard under the EPA's product definitions, and thereby secure an exclusion from the regulatory scope. We also noted that the definition of hardboard was being re-evaluated by industry in the context of the pending revision to the American National Standard for Basic Hardboard, ANSI A135.4.

As the sponsor of this consensus-based Standard, CPA intends to ballot the final proposed revision with the stakeholder body this month. It will include the following definition of hardboard that has broad industry support and that we recommend to EPA:

> **"Basic Hardboard**.
>
> Hardboard is a panel manufactured primarily from inter-felted lignocellulosic fibers consolidated under heat and pressure in a hot press to a density of 500 kg/m^3 (31 lbs/ft^3) or greater by:
>
> (A) a wet process, or
> (B) a dry process that uses:
> (a) a phenolic resin, or
> (b) a resin system in which there is no added formaldehyde as part of the resin cross-linking structure.

> Other materials may be added to improve certain properties, such as stiffness, hardness, finishing properties, resistance to abrasion and moisture, as well as to increase strength, durability, and utility."

In addition to updating ANSI A135.4 Basic Hardboard, CPA is currently sponsoring updates of ANSI A135.5 Prefinished Hardboard Paneling and ANSI A135.6 Hardboard Siding (to be renamed Engineered Wood Siding). CPA has also initiated the ANSI approval process of a new standard tentatively titled ANSI A135.7 Engineered Wood Trim.

We anticipate receiving final ANSI approval of all four aforementioned standards by the end of 2011 and recommend their reference by EPA as products excluded from regulation based on product definition.

IV. Labeling Individual Panels

During its presentation EPA outlined a variety of labeling options that are under consideration. CPA believes it is essential that labeling under the federal and California regulations is consistent. The prospect of a dual label addressing the same subjects is anathema to manufacturers, distributors, retailers and consumers alike. CPA thus endorses the last option identified in the presentation:

> "Coordinated federal labeling system with California's so that there would be one harmonized labeling program."

We particularly ask that there be no requirement for marking each individual panel, which is impractical, unnecessary and in some instances impossible if there is an expectation that such a label will remain legible for a significant period of time. The California regulation provides an option:

> "Product Labeling Requirements. Each panel or bundle of composite wood products must be clearly labeled to indicate compliance with the emission standards specified in Section 93120.2(a)."

Section 93120.3(e) (emphasis supplied). Some panels cannot be labeled without impairing the appearance and functionality of the product, and finishes may not appear homogenous if there is a stamp on the face. Moreover, secondary manufacturers will incur delays and costs to remove these labels prior to final processing.

Using bundle tags on units of composite wood panels is a long-recognized and effective way of imparting all necessary labeling information to customers. CPA strongly urges EPA to embrace this approach rather than requiring individual panel labels.

V. No-Added Formaldehyde Resins; Green Seals

EPA has suggested that there might be special recognition via a "green seal" placed of products "that fall well below the NAF emission levels for 'green-marketing' purposes" (emphasis added). We submit that this statement misreads the state of emissions capabilities, and that from a practical standpoint no such products exist when considering the scope of this rulemaking.

The NAF levels in the CARB regulation are extraordinarily low – 90% of testing must be below 0.04 parts per million (ppm) and no value can be over 0.05 ppm or 0.06 ppm depending on product type. During the CARB rulemaking proceedings various manufacturers submitted information for the record that many types of virgin wood inherently emit a *de minimus* level of formaldehyde, much as the human body itself produces formaldehyde every day. We submit that the achievement of values below NAF thresholds, as well as the ability to measure these values, would be highly difficult if not impossible, and without purpose.

CPA is also skeptical of a green seal program generally. We believe it may further complicate what will already be a significant labeling challenge for the industry value chain, and will result in distinguishing one exceedingly low emitting product from another.

A related consideration is the Federal Trade Commission's far-reaching "Guides for the Use of Environmental Marketing Claims" proposal. Presumably any green marketing seals proposed by EPA, for whatever purpose and on whatever basis, would have to include extensive disclosures to meet these FTC guidelines, requirements that many companies would find difficult to accommodate.

Thank you again for the opportunity to participate on the Small Business Advocacy Review Panel. I urge that all SER and agency documents as well as the final Panel report be made public in their entirety at the moment the initial EPA Notice of Proposed Rulemaking is announced.

Re: your comments are due on 03/03/2011 to the Formaldehyde Small Business Advocacy Review Panel
Florida Plywoods, Inc.
to:
Tracey Westfield
03/02/2011 12:29 PM
Show Details

History: This message has been replied to and forwarded.

Ms. Westfield,
Please see my attached comments (2 pages).

Thank you.

John Maultsby, Jr.
President
Florida Plywoods, Inc.
850.948.2211 ph

3-1-2011

RE: Comments on meeting of 2-17-2011

I would like to invite your attention to my comments dated 1-6-2011 on the second page of this transmittal. I would also re-emphasize, in my opinion, that all programs (due to extremely low CARB limits) will eventually have rare, random non-complying lots.

Due to the lag time between the production date and the chamber testing at the TPC, the volume of non-complying material in the field will be quite large before the realization that the lot has failed. Understanding that the CARB limits are part of Federal law, the TPC could possibly stretch their criteria for compliance to the overall test results for a particular plant. (For instance: a plant might be allowed one failure out of fifty.) Again, there will be non-complying lots. I don't think the discussion of Feb 17 indicated any practical way to deal with these once they are determined non-complying.

I would like to emphasize again that common sense needs to be a part of this program. As I understand, the CPA and CARB set these limits based on what is achievable without any consideration or production test history. Although these limits are achievable, they are not necessarily 100% reachable the first time, every time. They are much lower than any threshold for health. Again, no-one is going to die if a production lot tests slightly over the CARB limits. The more I listen to discussions, I think that this whole program has the potential to be destructive to the entire industry, and the efforts to regulate are over the top.

Thank you for your consideration.

John Maultsby, Jr.
President
Florida Plywoods, Inc.
850.948.2211 ph

Thoughts on EPA Meeting held 1-6-2011:

CPA presented itself as representing a wide constituency. I've been a Director for CPA since 1985. Real decisions are made by the Executive Committee comprised of a small number of large dues payers (dues based on production). Our company has been an associate member of the KCMA since the 1960s. Although they tout a representation of a wide membership, they too tend to represent large dues payers.

Our company makes particleboard for our own use to be covered with wood veneer, vinyl or paper. It is shipped out as cut-to-size components for kitchen cabinets and furniture. Our volume on a weekly basis is probably roughly equal to the one shift production of the large particleboard manufacturers. As a result, we must keep overhead and management costs low. Management and quality control duties are shared among all staff members. In short, in a small company everybody has to wear more than one hat. We support the CARB limits. However, the TPCs can alter their requirements for testing, in particular the size and duration of test lots and the procedures for recertification of non-complying lots. These things take up a lot of management time which could be spent in growing the business and developing new products. For instance, our product is tested each day representing a much higher percentage of tests to production than the large manufacturers. In my opinion all programs, due to the extremely low CARB limits, will eventually have rare random non-complying lots. Due to the time involved in the TPC testing for compliance there can be a large volume of non-complying material in the field before the realization a lot has failed. In determining compliance, the total QC program of each plant as well as prior TPC tests need to be considered. Further, I fear that the audit program of the EPA for the TPCs will result in stricter procedures, record keeping, etc. which will be more difficult for the limited resources of the small manufacturers.

I personally have been involved with the use of urea formaldehyde resins for over 60 years. When I first entered the industry UF resin was a strong irritant. That has been totally eliminated to my knowledge. During my experience with UF I know of no proven illness linked to UF resin. In short, a rare random non-complying lot from a QC program with a good history of compliance needs to be given consideration. To be blunt, nobody is going to die if a rare lot is shipped with emissions just over the CARB limit.

Thank you for your consideration.

John Maultsby, Jr.
President
Florida Plywoods, Inc.
850.948.2211

Comments to Formaldehyde Small Business Advocacy Review Panel
Dick Titus
to:
Tracey Westfield
03/03/2011 04:45 PM
Show Details

C. Richard Titus
Executive Vice President
Kitchen Cabinet Manufacturers Association
1899 Preston White Drive
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(703) 264-1690/FAX (703) 620-6530

QUALITY. ADVOCACY. LEADERSHIP.

KCMA

KITCHEN CABINET MANUFACTURERS ASSOCIATION

March 3, 2011

Ms. Tracey Westfield
Regulatory Management Division
U.S. Environmental Protection Agency
#6440BB Ariel Rios North
1200 Pennsylvania Avenue, N.W.
Mailcode: 1806A
Washington, DC 20460

To Whom It May Concern:

Re: Comments to Formaldehyde Small Business Advocacy Review Panel

The Kitchen Cabinet Manufacturers Association appreciates the opportunity to submit comments for consideration in developing the SBREFA panel report. KCMA is the major trade association for manufacturers of kitchen cabinets and bath vanities in the U.S. KCMA members account for approximately seventy percent of the U.S. cabinet market. Two hundred cabinet manufacturers belong to the association. In addition, there are thousands of cabinetmakers, typically employing fewer than twenty people, across the U.S. The industry is U.S. based and uses nearly one hundred percent wood products.

Public Law 111-199 (124 Stat.1359), the Formaldehyde Standards for Composite Wood Products Act, amends the Toxic Substances Control Act to reduce the emissions of formaldehyde from composite wood products.

Background

PL111-199 adopts the emissions limits and regulatory scheme promulgated in 2008 by the California Air Resources Board's (CARB) in its Air Toxics Control Measure (ATCM) to regulate formaldehyde emissions from composite wood panels. Because of the size of the California market, the CARB ATCM already has become a de facto national standard. PL 111-199 now extends the ATCM emissions levels to the other 49 states, but with several changes to conform with federal legal requirements, to clarify certain provisions, change some key definitions, and respond to certain interests wanting to erect barriers to imported plywood products.

A key provision in PL 111-199 regarding the regulation of "laminated products" is a prime example. The CARB defined all "laminated products" the same. PL 111-199 includes a far different definition and narrowly defined "laminated products" as veneered hardwood plywood. Wood veneer is but one of many laminates (melamine, vinyl, foil, and treated paper, for example) that use the same substrate and similar/same laminating

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processes. Inclusion of this entire section of the statute could best be thought of as a special interest "earmark." Fortunately, Congress granted EPA the authority to grant an exemption, change the definition, or otherwise address the treatment of "laminated products" so as to not impede traditional supply chains or impose costly and complicated testing, recordkeeping and other paperwork burdens on small businesses.

The Problem

If fabricators (no definition in PL 111-199) such as wood cabinet manufacturers (NAIC 337110) are not exempted, they could be treated the same as a hardwood plywood panel manufacturer and be required to:

1. produce a product that meets the emissions standards
2. be subject to provisions such as those governing sell-through dates, quality control testing, product certification by third-party certifiers, chain-of-custody requirements, and recordkeeping and labeling.

Discussion

Meeting such requirements is possible for large companies producing hundreds of millions square feet (billions in a good economy) of panel products that are a commodity. On the other hand, such requirements would be costly and very burdensome for thousands of small cabinetmakers who veneer on a kitchen-by-kitchen basis. Quantities of such "laminated" products vary from a few hundred square feet per month to a few million square feet per year for a large manufacturer. This is a small fraction of the hundreds of millions or even billions of square feet produced by large panel manufacturers in a good economy. CARB recognized this distinction and regulated accordingly. EPA should do the same.

There are, according to EPA, twenty-six hardwood plywood manufacturing firms (32 mills) subject to the emissions requirements of PL 111-199. These firms are estimated to have produced one billion square feet of plywood in 2010 which was 60 percent of their production in 2006. The largest "laminator" participating in the 2011 KCMA survey of its members veneered slightly over 3 million square feet of component parts in 2010 – not panels—to use in the construction of cabinets. One of the two largest KCMA "laminators" does not use UF adhesive and the other large "laminator" is researching the possibility of converting to a non-UF adhesive. Clearly, the amount of "laminated products" made for their own use by cabinetmakers is very small in comparison to the production of plywood manufacturers. For many cabinetmakers, it is far more practical time wise and less costly for them to do their own veneering of exotic and unique veneer species sought by their customers rather than to pay much higher fees for short runs of these same items produced in a "commodity" based plywood manufacturing site. This relationship has existed for over fifty years. Why now should this process be regulated the same as a plywood panel manufacturer selling a commodity item for a mass market?

The existing market dynamic should be allowed to continue with realistic regulation of laminated products, such as provided in the California ATCM.

A key component of millions of kitchen cabinets is a raised panel door which is constructed with hardwood plywood that varies in depth; and, while not meeting the definition of a paneled product (HP-1), could possibly be considered subject to the current laminated products definition. Such products should not be regulated as HWPW as they are quite different from a typical HWPW panel.

A 2010 survey of 200 KCMA members indicated that only approximately 8.5% (17 companies) do any veneering. And of that number over half do not use urea formaldehyde adhesive by which to veneer. Clearly, anyone not using urea formaldehyde adhesive to veneer should be exempted, and considering the relatively small amount of production involved, any cabinetmaker producing under 10 million square feet of veneered hardwood plywood for their own use to produce a finished product also should be exempt so long as certified substrate is used for which there is proper documentation and the cabinet is labeled as compliant on the box or on the product. Consider that in 2003 NCASI did a study and measured an average of 0.0047 pounds of formaldehyde emitted per MSF of hardwood plywood (3/8" basis). The range was from 0.0013 to 0.0088 pounds of formaldehyde. Using the highest value (0.0088), it would take 45,454 MSF (3/8" basis) to emit 400 pounds of formaldehyde, the limit EPA has proposed for finishes used on cabinets and furniture. Ten million square feet of hardwood plywood would emit is one-fourth of the 400 pound limit level proposed by EPA for finishes in its MACT review. This NCASI study was in 2003, well before the CARB ATCM became effective. Emissions beginning 2012 will be much lower than those in 2003 and should qualify for a de minimis exemption.

PL 111-199 provides several exemptions and for EPA to exempt laminated products produced by cabinetmakers would be quite consistent. Such an approach would be similar to the approach EPA takes as regards the control of hazardous air emissions in establishing MACT standards under the Clean Air Act where emission of under 10 TPY of HAP is not subject to MACT. It is suggested that the same rationale apply for laminated products under PL 111-199.

The marketplace already is moving rapidly to require "CARB compliant" composite wood as designers, architects and other specifiers across the U.S. incorporate the standard into their specifications. The KCMA voluntary Environmental Stewardship Program (ESP) adopted in 2006 now requires that all composite wood products used to make ESP certified cabinets be CARB compliant. Proof of the usage of compliant products is required and actively enforced for each certified company annually at no cost to taxpayers. On the other hand, enforcing the "laminated products" provision of PL 111-199 will cost EPA millions new budget of dollars to regulate thousands of small businesses and implement a whole new section of the Toxics Substances Control Act.

For several decades, including the most recent consensus revision in 2009, the definition of veneered hardwood plywood in ANSI/HPVA HP-1 (same definition as used in PL 111-199) refers to typical panels four feet by six feet; eight feet; etc. Never has a small part or component such as used to make a cabinet been included under the HP-1 definition. But PL 111-199 was used to accomplish a marketing objective to benefit some plywood manufacturers at the expense of their largest group of customers – cabinetmakers. The cabinet industry still is able to compete successfully against foreign imports, barring the imposition of layers of new regulations. Attached is a report that shows the import/export relationship for plywood to be more balanced than generally thought.

It is worthy of note that cabinetmakers apply finish to the exterior surface of the HWPW components they use. Finishes have been regulated by EPA for HAP's emissions since 1995. The finishes provide an additional barrier to formaldehyde emissions from HWPW. This relationship is well documented and provides another reason for justifying a de minimis exemption for laminated products.

Conclusion

The approach used by CARB which requires that all laminated products use compliant substrate is workable and protective while not imposing undue cost and regulatory burdens on small enterprises. It is not an exaggeration that the costs for small cabinetmakers to comply if regulated as plywood would drive many out of business. EPA's own estimates confirm this. In addition, EPA's estimate that HWPW costs $.45 a square foot grossly underestimates the actual cost most cabinetmakers pay for the veneered HWPW panels they purchase. Two dollars a square foot is much closer to the cost reported to KCMA, with wide variances for different species, and all exceeding $.45 a square foot.

This is the worst economy for the cabinet industry ever. The potential economic impact of being regulated the same as a plywood manufacturer (different NAIC and different industry) would be devastating for many cabinetmakers.

Recommendation

In the spirit of the President's Executive Order 13563 on regulation, it is the KCMA recommendation that (1) EPA exempt cabinetmakers and other fabricators from being regulated as a plywood manufacturer; (2) require that fabricators use certified substrate and maintain proof of such usage; (3) labeling requirement be same as CARB; and (4) as much as possible use the CARB regulatory scheme.

To do otherwise would impose an enormously costly and burdensome regulation on thousands of small businesses that would be unacceptably costly and difficult for EPA to enforce. Recent congressional action regarding the EPA budget confirms the validity of this point.

Finally, if cabinetmakers are not exempted, consideration should be given by EPA to recognize that existing voluntary performance standards (ANSI/KCMA A161.1-2000) which requires composite wood components to be edgebanded and sealed, in addition to the KCMA voluntary Environmental Stewardship Program (ESP) certification requirement that all composite wood components be CARB compliant, accomplish the goals of the legislation at little or no added cost to EPA. Display of the ESP certification seal should be sufficient for proof of compliance with PL 111-199 so far as cabinetmakers are concerned.

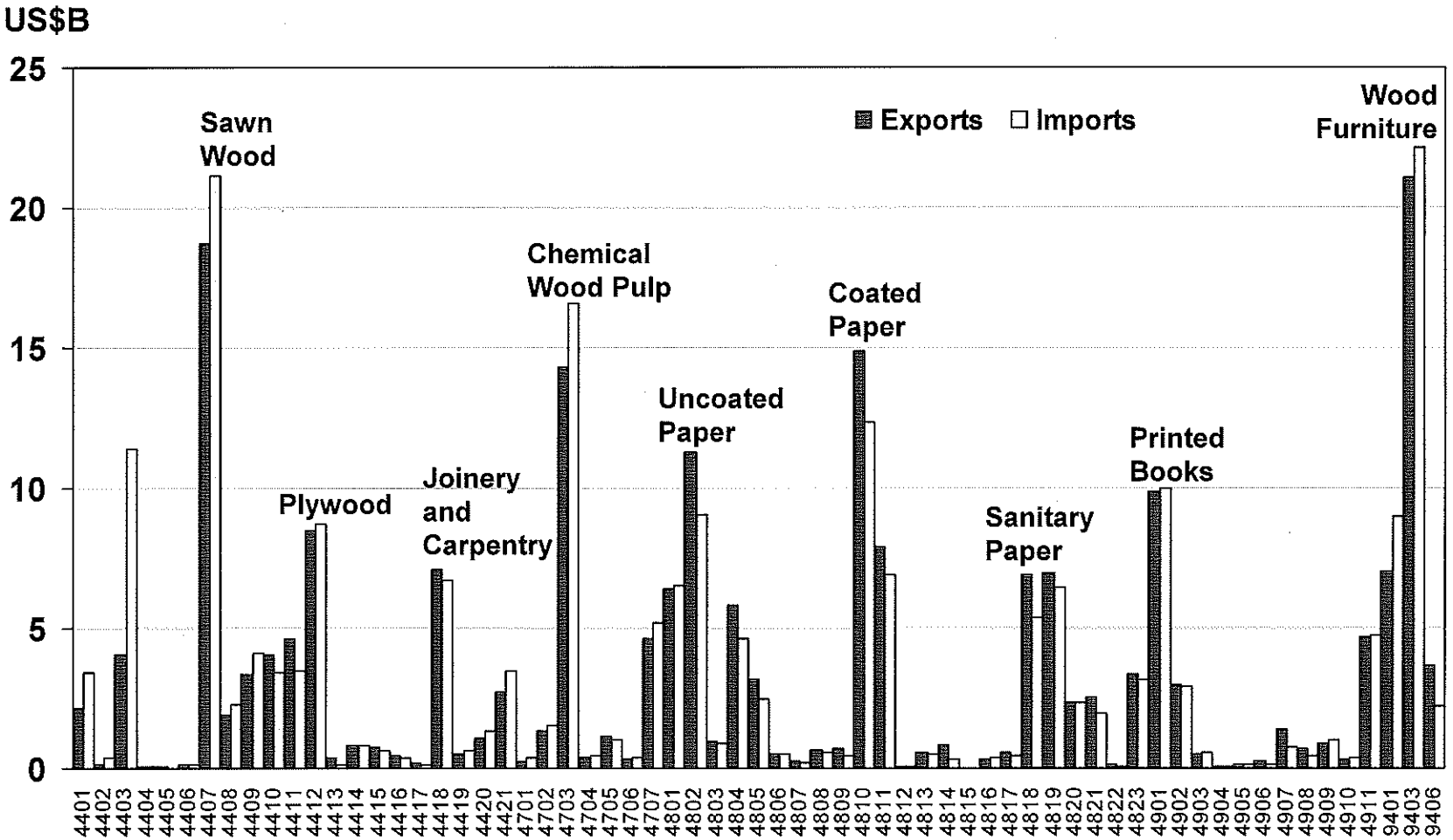
Sincerely,

C. Richard Titus

C. Richard Titus
Executive Vice President

Trade by Products

5 % of NAMA lines (HS 6 digits) representing over $400 billion in trade value



*2005-2007 Average for Major Traders

Source: Global Trade Atlas