

EPA Issues Final Rule on Formaldehyde Emission Standards for Composite Wood Products

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On Wednesday, July 27, 2016, the **Environmental Protection Agency (“EPA”)** released a prepublication version of its final rule on Formaldehyde Emission Standards for Composite Wood Products. The authority for the rule comes from the **Toxic Substance Control Act (“TSCA”)**. The EPA’s rule relies heavily on the formaldehyde emissions rules set by the **California Air Resources Board (“CARB”)** as part of California’s Phase 2 formaldehyde emissions standards, and the EPA’s emissions standards are identical to those set by CARB.

Who will be affected by the new rule?

This rule will affect manufacturers, importers, distributors, and retailers of products containing composite wood, which is defined as hardwood plywood, medium-density fiberboard, and particleboard.

What is required under the new rule?

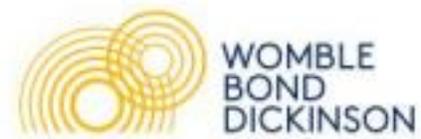
The EPA’s final rule sets out detailed record-keeping, labeling, and testing requirements for composite wood and products containing composite wood. Below are three major areas of concern that manufacturers, importers, distributors, and retailers of finished goods containing composite wood should be aware of as they prepare to comply with the national formaldehyde emissions standards.

Record-keeping and labeling: One year after publication of the final rule in the Federal Register, manufacturers of finished goods containing composite wood (called “fabricators” under the CARB and EPA rules), importers, distributors, and retailers will have to comply with new record keeping and labeling requirements.

With regard to record keeping, manufacturers, importers, distributors, and retailers will be required to “take reasonable precautions” to ensure the products they sell comply with the emissions standards. As part of taking “reasonable precautions,” a company must obtain documentation, such as bills of lading or invoices, from suppliers of composite wood products that includes a written statement that the products are either compliant with formaldehyde emissions standards or were produced prior to the rule taking effect. Companies must keep this documentation for three years – a year longer than required by CARB.

Importers face an additional record keeping requirement. If requested to do so by the EPA, importers must provide records identifying either (1) the composite wood panel producer and the date the composite wood products were produced or (2) the supplier of the composite wood products (if different than the producer), component parts, or finished goods and the date of purchase. Importers will have to provide this information to the EPA within 30 days of a request, and documentation must be kept for three years.

Finally, manufacturers of finished goods containing composite wood products must label each finished good or box or bundle containing finished goods with the manufacturer’s name, the date the good was produced, and a statement that the finished goods are compliant with the TSCA. If a manufacturer chooses to label the box or bundle of goods, importers, distributors, and retailers of those goods must keep the label from the box or bundle



Article By [Michael J. Sullivan](#)
[Whitney Passmore](#)
[Womble Bond Dickinson \(US\) LLP](#)
[Furniture Law Blog](#)
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and keep track of which products are identified with the label. Importers, distributors, and retailers must make the label information available to potential customers if requested.

Importer Certification: Two years after the final rule is published in the Federal Register, importers will be required to certify that imported composite wood or products containing composite wood comply with the TSCA.

Testing requirements: Beginning seven years after the publication of the final rule in the Federal Register, manufacturers of laminated products will have to comply with third-party testing and certification requirements that apply to manufacturers of hardwood plywood panels. The EPA defines “laminated product” to include only those products with a wood or woody grass veneer, so the testing requirements will not apply to synthetic laminates such as plastic or vinyl. The EPA’s decision to require third party testing and certification by manufacturers of laminated products is a significant departure from the CARB rules.

Fortunately, there are a number of ways companies can lessen or avoid the burdens of a costly testing program. First, the EPA exempts two types of laminated products from the definition of “hardwood plywood”: (1) Laminated products made by attaching a wood or woody grass veneer with a phenol-formaldehyde resin to a compliant platform; and (2) laminated products made by attaching a wood or woody grass veneer with a resin formulated with no-added formaldehyde (“NAF”) as part of the resin cross-linking structure to a compliant platform. Accordingly, a manufacturer using NAF or phenol-formaldehyde resins will not be subject to the testing and certification requirements. Instead, these manufacturers must keep records showing their products are made with the appropriate resins and a compliant platform. Notably, the EPA has left the door open for interested parties to petition for additional exemptions.

Second, manufacturers of laminated products can apply for an exemption from the testing and certification requirements based on use of ultra low-emitting formaldehyde (“ULEF”) resins. To qualify for a ULEF exemption from the testing and certification requirements, a company must undergo a limited (6 months) testing program to show its product complies with emissions limits. Additional limited testing is required to renew the exemption every two years.

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