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(i) My company has taken measures to protect the confidentiality of the information.

(ii) I have determined that the information is not required to be disclosed or otherwise made available to the public under any other Federal law.

(iii) I have a reasonable basis to conclude that disclosure of the information is likely to cause substantial harm to the competitive position of the person.

(iv) I have a reasonable basis to believe that the information is not readily discoverable through reverse engineering.

(b) To determine whether stockpiling has occurred, the rate of manufacture or purchase is measured as follows:

(1) For composite wood products in the form of panels, the rate is measured in terms of square footage of panels produced.

(2) For composite wood products incorporated into component parts or finished goods, the rate is measured in terms of the square footage of composite wood product panels purchased for the purpose of incorporating them into component parts or finished goods.

(c) Manufacturers or purchasers who have, in an annual year, a greater than 20% increase in manufacturing or purchasing composite wood products relative to annual year 2009 for some reason other than circumventing the emission standards would not be in violation of this section. Such reasons may include, but are not limited to:

(1) A quantifiable immediate increase in customer demand or sales.

(2) A documented and planned business expansion.

(3) The manufacturer or purchaser was not in business at the beginning of calendar year 2009.

(4) An increase in production to meet increased demand resulting from an emergency event or natural disaster.

(d) In order to be found to be stockpiling an entity must be increasing the rate of manufacturing or purchasing for the purpose of circumventing the emission standards.

[81 FR 89724, Dec. 12, 2016, as amended at 84 FR 43524, Aug. 21, 2019]

Subpart C—Composite Wood Products

§ 770.10 Formaldehyde emission standards.

(a) Except as otherwise provided in this part, the emission standards in this section apply to composite wood products sold, supplied, offered for sale, or manufactured (including imported) on or after June 1, 2018 in the United States. These emission standards apply regardless of whether the composite wood product is in the form of a panel, a component part, or incorporated into a finished good.

(b) The emission standards are based on test method ASTM E1333-14 (incorporated by reference, see § 770.99), and are as follows:

(1) For hardwood plywood made with a veneer core or a composite core, 0.05 parts per million (ppm) of formaldehyde.

(2) For medium-density fiberboard, 0.11 ppm of formaldehyde.

(3) For thin medium-density fiberboard, 0.13 ppm of formaldehyde.

(4) For particleboard, 0.09 ppm of formaldehyde.

[81 FR 89724, Dec. 12, 2016, as amended at 83 FR 5347, Feb. 7, 2018; 84 FR 43524, Aug. 21, 2019]

§ 770.12 Stockpiling.

(a) The sale of stockpiled inventory of composite wood products, whether in the form of panels or incorporated into component parts or finished goods, is prohibited after June 1, 2018.

§ 770.15 Composite wood product certification.

(a) Beginning June 1, 2018, only certified composite wood products, whether in the form of panels or incorporated into component parts or finished goods, are permitted to be sold, supplied, offered for sale, or manufactured (including imported) in the United States, unless the product is specifically exempted by this part.

(b) Certified composite wood products are those that are produced or fabricated in accordance with all of the provisions of this part.

(c) To obtain product certification, a panel producer must apply to an EPA TSCA Title VI TPC.

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(1) For panel producers that do not have any previous product certifications from a CARB-approved TPC or an EPA TSCA Title VI TPC, the application must contain the following:

(i) The panel producer's name, address, telephone number, and other contact information;

(ii) A copy of the panel producer's quality control manual as required by § 770.21(a);

(iii) Name and contact information for the panel producer's quality control manager;

(iv) An identification of the specific products for which certification is requested, and the resin system used in panel production;

(v) At least five tests conducted under the supervision of an EPA TSCA Title VI TPC pursuant to test method ASTM E1333-14 or ASTM D6007-14 (incorporated by reference, see § 770.99). Test results obtained by ASTM D6007-14 must include a showing of equivalence in accordance with § 770.20(d)(1);

(vi) At least five quality control tests conducted in accordance with § 770.20(b)(1);

(vii) Correlation data and linear regression equation (or, under the threshold approach, the correlation data and the upper limit); and

(viii) Results of an initial, on-site inspection by the TPC of the panel producer. In the event a government entity has identified the existence of unsafe conditions as outlined in § 770.7(c)(4)(i)(G) and in order to conduct the required initial, on-site inspection associated with new certification activities, the TPC may conduct a virtual inspection via on-site video/teleconference technology (operating as directed by the TPC) and that aligns with the standard operating procedure the TPC would normally employ during an in-person inspection to satisfy the requirements of this paragraph (c)(1)(viii).

(2) For panel producers applying for certification of a new product type but that have previous product certifications from a CARB-approved TPC or an EPA TSCA Title VI TPC, the application must contain the following:

(i) The panel producer's name, address, and telephone number;

(ii) An identification of the specific products for which certification is requested, and the resin system used in panel production;

(iii) At least five tests conducted under the supervision of an EPA TSCA Title VI TPC pursuant to test method ASTM E1333-14 or ASTM D6007-14 (incorporated by reference, see § 770.99). Test results obtained by ASTM D6007-14 must include a showing of equivalence in accordance with § 770.20(d)(1);

(iv) At least five quality control tests conducted in accordance with § 770.20(b)(1);

(v) Correlation data and linear regression equation (or, under the threshold approach, the correlation data and the upper limit); and

(vi) Description of any changes in the panel producer's quality control manual and a copy of those changes.

(d) The EPA TSCA Title VI TPC must act on a panel producer's complete application within 90 calendar days of receipt by reviewing all of the components of the application.

(1) If the application indicates that the candidate product achieves the applicable emission standards described in § 770.10, adequate correlation as described in § 770.20(d)(2), and that the panel producer is meeting the requirements in § 770.21, the EPA TSCA Title VI TPC will approve the application.

(2) If the application is from a panel producer that did not previously have products certified by a CARB-approved TPC or an EPA TSCA Title VI TPC, the EPA TSCA Title VI TPC will review the quality control manual and results of the on-site initial inspection and approve or disapprove the quality control manual.

(3) If the application does not demonstrate that the candidate product achieves the applicable emission standards described in § 770.10, the EPA TSCA Title VI TPC will disapprove the application. A new application may be submitted for the candidate product at any time.

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

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

(f) To maintain certification, the panel producer making the certified product must get inspected by its EPA TSCA Title VI TPC quarterly as well as meet the testing requirements under § 770.20.

(g) If the certified product fails a quarterly test, certification for any product types represented by the sample is suspended until a compliant quarterly test result is obtained in accordance with § 770.22.

[81 FR 89724, Dec. 12, 2016, as amended at 82 FR 44537, Sept. 25, 2017; 83 FR 5347, Feb. 7, 2018; 84 FR 43524, Aug. 21, 2019; 88 FR 10477, Feb. 21, 2023]

§ 770.17 No-added formaldehyde-based resins.

(a) Producers of composite wood product panels made with no-added formaldehyde-based resins may apply to an EPA TSCA Title VI TPC or to CARB for a two-year exemption from the testing requirements in § 770.20 and certification requirements in §§ 770.15 and 770.40(b). The application must contain the following:

(1) The panel producer's name, address, and telephone number;

(2) An identification of the specific product and the resin system;

(3) At least one test conducted under the supervision of an EPA TSCA Title VI TPC pursuant to test method ASTM E1333-14 or ASTM D6007-14 (incorporated by reference, see § 770.99). Test results obtained by ASTM D6007-14 must include a showing of equivalence in accordance with § 770.20(d)(1); and

(4) Three months of routine quality control tests under § 770.20, including a showing of correlation in accordance with § 770.20(d)(2), totaling not less than thirteen quality control tests.

(b) The EPA TSCA Title VI TPC will approve a panel producer's application within 90 calendar days of receipt if the application is complete and demonstrates that the candidate product achieves the emission standards described in paragraph (c) of this section.

(c) As measured according to paragraphs (a)(3) and (4) of this section, the emission standards for composite wood

products made with no-added formaldehyde-based resins are as follows:

(1) No test result higher than 0.05 parts per million (ppm) of formaldehyde for hardwood plywood and 0.06 ppm for particleboard, medium-density fiberboard, and thin medium-density fiberboard.

(2) Ninety percent of the three months of routine quality control testing data and the results of the one primary or secondary method test (required under paragraphs (a)(3) and (4) of this section) must be shown to be no higher than 0.04 ppm.

(d) Products that meet the requirements specified under § 770.17(c)(1) and (2) and have obtained exemption from the California Air Resources Board will also be exempt from the requirements in §§ 770.15, 770.20, and 770.40(b), as long as the requirements of the California Air Resources Board remain as stringent as EPA's requirements.

(e) After the two-year period of the initial exemption, and every two years thereafter, in order to continue to qualify for the exemption from the testing and certification requirements, the panel producer must reapply to an EPA TSCA Title VI TPC or to CARB and obtain at least one test result in accordance with paragraph (a)(3) of this section that complies with the emission standards in paragraph (c)(1) of this section.

(f) Any time there is an operational or process change that is likely to affect formaldehyde emissions, such as a change in resin formulation, press cycle duration, temperature, or amount of resin used per panel, at least one quality control test under § 770.20 and at least one test result in accordance with paragraph (a)(3) of this section that indicate compliance with the emission standards in paragraph (c)(1) of this section are required.

(g) A change in the resin system invalidates the exemption for any product produced with the different resin after such a change.

[81 FR 89724, Dec. 12, 2016, as amended at 83 FR 5347, Feb. 7, 2018; 84 FR 43524, Aug. 21, 2019; 88 FR 10477, Feb. 21, 2023]