

PRE-PUBLICATION NOTICE

On Monday, August 5, 2019, Alexandra Dapolito Dunn, the EPA Assistant Administrator for Chemical Safety and Pollution Prevention, signed the following document:

Action: Final Rule.

Title: **Technical Issues; Formaldehyde Emission Standards for Composite Wood Products**

FRL #: 9994-47

Docket ID #: EPA-HQ-OPPT-2018-0174

EPA is submitting this document for publication in the *Federal Register* (FR). EPA is providing this document solely for the convenience of interested parties. It is not the official version of the document for purposes of public notice under the Administrative Procedure Act. This document is not disseminated for purposes of EPA's Information Quality Guidelines and does not represent an Agency determination or policy. While we have taken steps to ensure the accuracy of this Internet version of the document that was signed, the official version will publish in a forthcoming FR publication, which will appear on the Government Printing Office's website (<https://www.govinfo.gov/app/collection/fr>) and on Regulations.gov (<https://www.regulations.gov>) in the docket identified above. Notwithstanding the fact that EPA is posting a pre-publication version, the final rule will not be promulgated until published in the *Federal Register*.

Once the official version of this document is published in the *Federal Register*, this version will be removed from the Internet and replaced with a link to the official version. At that time, you will also be able to access the on-line docket for this *Federal Register* document at <http://www.regulations.gov>.

For further information about the docket and, if applicable, instructions for commenting, please consult the ADDRESSES section in the front of the Federal Register document.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 770

[EPA-HQ-OPPT-2018-0174; FRL-9994-47]

RIN: 2070-AK47

Technical Issues; Formaldehyde Emission Standards for Composite Wood Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: EPA is publishing this final rule to amend the formaldehyde standards for composite wood products regulation. EPA is publishing these amendments to address certain technical issues and to further align the final rule requirements with the California Air Resources Board (CARB) Airborne Toxic Control Measures (ATCM) Phase II program. Addressing these technical issues will add clarity for regulated entities. These revisions to the existing rule will also streamline compliance programs and help to ensure continued smooth transitions for supply chains to comply with the requirements associated with regulated composite wood products.

DATES: This final rule is effective on [INSERT DATE OF PUBLICATION IN THE *Federal Register*]. The incorporation by reference of certain material is approved by the Director of the Federal Register as of [INSERT DATE OF PUBLICATION IN THE *Federal Register*]. The incorporation by reference of other material was approved by the Director of the Federal Register as of February 10, 2017.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2018-0174, is available at <http://www.regulations.gov> or at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center

(EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. Please review the visitor instructions and additional information about the docket available at <http://www.epa.gov/dockets>.

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Todd Coleman, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-1208; email address: coleman.todd@epa.gov.

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be affected by this final rule if you manufacture (including import), sell, supply, offer for sale, test, or work with certification firms that certify hardwood plywood, medium-density fiberboard, particleboard, and/or products containing these composite wood materials in the United States. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Veneer, plywood, and engineered wood product manufacturing (NAICS code 3212).
- Manufactured home (mobile home) manufacturing (NAICS code 321991).

- Prefabricated wood building manufacturing (NAICS code 321992).
- Furniture and related product manufacturing (NAICS code 337).
- Furniture merchant wholesalers (NAICS code 42321).
- Lumber, plywood, millwork, and wood panel merchant wholesalers (NAICS code 42331).
- Other construction material merchant wholesalers (NAICS code 423390), *e.g.*, merchant wholesale distributors of manufactured homes (*i.e.*, mobile homes) and/or prefabricated buildings.
 - Furniture stores (NAICS code 4421).
 - Building material and supplies dealers (NAICS code 4441).
 - Manufactured (mobile) home dealers (NAICS code 45393).
 - Motor home manufacturing (NAICS code 336213).
 - Travel trailer and camper manufacturing (NAICS code 336214).
 - Recreational vehicle (RV) dealers (NAICS code 441210).
 - Recreational vehicle merchant wholesalers (NAICS code 423110).
 - Engineering services (NAICS code 541330).
 - Testing laboratories (NAICS code 541380).
 - Administrative management and general management consulting services (NAICS code 541611).
 - All other professional, scientific, and technical services (NAICS code 541990).
 - All other support services (NAICS code 561990).
 - Business associations (NAICS code 813910).
 - Professional organizations (NAICS code 813920).

If you have any questions regarding the applicability of this action, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. Comments Received on Technical Issues

1. Stakeholder Feedback and the June 28, 2018 Public Meeting. Since the formaldehyde standards for composite wood products final rule (*see* 81 FR 89674) was promulgated on December 12, 2016, EPA received letters, inquiries, and general correspondence from industry stakeholders, including the Composite Panel Association, Hardwood Plywood Veneer Association, Kitchen Cabinet Manufacturers Association, and various EPA-recognized TSCA Title VI Third Party Certifiers (TSCA Title VI TPCs), regarding a number of technical issues with the testing and certification provisions of the rule. Stakeholders requested EPA consider amending certain provisions of the TSCA Title VI regulations to improve regulatory clarity and further align the rule with the California Air Resources Board (CARB) Airborne Toxic Control Measures (ATCM) Phase II program. Correspondence from these industry stakeholders is included in the docket for this action.

Then, on May 24, 2018, the Agency published a notice in the *Federal Register* (*see* 83 FR 24104) announcing a public meeting at the EPA headquarters office in Washington, D.C. on June 28, 2018 to discuss and obtain input on the technical issues that stakeholders have raised since the December 12, 2016 final rule. The publication of this notice also opened a 60-day public comment period to allow the public time to submit any additional data, information, or comments to discuss in the public meeting and for the Agency to consider in developing this proposal. The Agency received 8 comments during the 60-day comment period for the public meeting, and one comment after the closure of the comment period. A transcript of this public

meeting, letters, correspondence, comments, and background materials are also posted in the docket for this action.

2. Notice of Proposed Rulemaking. Based on the comments and attendee feedback from the June 28, 2018 public meeting and the previously submitted letters and correspondence following the December 12, 2016 final rule, the Agency identified 14 technical issues that the Agency discussed in the November 1, 2018, Technical Issues proposed rule (*see* 83 FR 54892) to amend the TSCA Title VI regulation. The Agency received 13 comments on the proposed amendments during the proposed rule public comment period, which closed on December 3, 2018. A copy of the proposed rule, supporting documents, public comments, and background materials are posted in the docket for this action.

B. What Action is the Agency Taking?

1. Experimental resins and mill start-up and restart situations. EPA proposed, and is now finalizing, not making any amendments for mill start-up and restarts, or the use of new or otherwise experimental resins. EPA did not receive any public comments in opposition to the proposal to continue addressing the use of experimental resins and mill start-up guidance in the frequently asked questions section of the formaldehyde webpage instead of amending the final rule. As such, for these issues regulated entities should continue to use the guidance posted in the frequently asked questions of the Agency's formaldehyde homepage here:

<https://www.epa.gov/formaldehyde/frequent-questions-regulated-stakeholders-about-implementing-formaldehyde-standards#newmills> to conduct mill start-up and restart situations, as needed.

2. Annual correlations between the third-party certifier ASTM E1333 or equivalent ASTM D6007 apparatus and any other mill quality control testing method. The Agency proposed

to remove the annual correlation requirement between the ASTM E1333-14 apparatus (or contract laboratory's ASTM E1333-14 apparatus) or equivalent ASTM D6007-14 apparatus and any other approved method for quality control testing for the first three years, and then every two years thereafter or when there is a significant change in the operation at the mill or when there is a reason to believe the correlation is no longer valid. The proposal to remove this requirement received full support from all commenters, except for one who opposed removing the provision but without providing data or other supporting information to justify their position. Because of the broad support from commenters, the Agency is removing the requirement for TSCA Title VI TPCs and mills to show correlation between the TSCA Title VI TPC's ASTM E1333-14 apparatus (or contract laboratory's ASTM E1333-14 apparatus) or equivalent ASTM D6007-14 apparatus and any other mill quality control testing methods at 40 CFR 770.20(b) on an annual basis for the first three years after initial correlation establishment, and every two years thereafter to continue certifying composite wood products. Instead, EPA is only requiring an initial showing of correlation, and an update in the event that there is a significant change in equipment, procedure, the qualifications of testing personnel, or reason to believe that the correlation is no longer valid. This amendment further aligns the EPA testing requirements with the CARB ATCM Phase II program, which does not require annual correlations between the TPC (or contract laboratory) ASTM E1333-14 apparatus or equivalent ASTM D6007-14 apparatus and any other approved method for quality control testing. As such, EPA is finalizing this provision as proposed.

3. Equivalence or correlation on like-size or similar sized apparatuses. The Agency proposed amending 40 CFR 770.20(d) to allow the TSCA Title VI TPC to use their ASTM E1333-14 apparatus (or their contract laboratory's ASTM E1333-14 apparatus) to demonstrate

equivalence to multiple ASTM D6007-14 apparatuses of a similar model or size and construction located in the same TSCA Title VI TPC laboratory, or contract laboratory. Similar model chambers are those that are manufactured by the same manufacturer and bear the same model number or bear a model number that succeeds a previous model number that has been discontinued or otherwise is no longer being manufactured but would be deemed the equivalent by the manufacturer. Similar size and construction chambers must have an identical chamber volume capacity or be constructed in a way that would result in the same sample holding capacity and operational parameters (e.g., airflow speed, time to conduct testing, etc.) as another chamber, but need not be made by the same manufacturer. CARB allows the same approach under the ATCM Phase II program and there has been no negative impact on generation of data to demonstrate valid equivalence between test methods. The Agency received comments supporting this provision and did not receive any comments against finalizing this provision as proposed. EPA is therefore finalizing this provision as proposed.

EPA also proposed updating the correlation requirement at 40 CFR 770.20(d) to allow multiple similar model or size and construction mill quality control test method apparatuses located at any one physical mill quality control testing laboratory to demonstrate correlation to the TSCA Title VI TPC test apparatus as required under 40 CFR 770.20(d). Like the amendment to the equivalence testing requirement, EPA believes this amendment will not negatively impact the quality of the quality control testing data. EPA did not receive any public comment against updating this provision. As such, EPA is finalizing this provision as proposed.

4. Averaging of emission test results during quarterly, non-complying lot, equivalence, and correlation testing. EPA proposed adding subparagraph (iv) to 40 CFR 770.20(c)(2) and amending subparagraph (i) at 40 CFR 770.22(c)(2) to align with the CARB ATCM Phase II

program regarding averaging test results during quarterly testing and non-complying lot retesting. The Agency proposed to add a testing averaging provision to the rule and received predominately positive support for the amendment. Although one commenter did not support the amendment, no data or other supporting information were provided to support their comment. All other commenters were in support of the proposal with minor language adjustments to further align the provision with the CARB ATCM Phase II program which allows averaging of test results using the ASTM D 6007-14 apparatus.

The CARB-approved method for averaging test results in quarterly and non-complying lot testing accounts for formaldehyde emission variability across any one composite wood product panel while ensuring the products still meet the applicable emission standards. This method is outlined in CARB's method at 17 California Code of Regulations section 93120.9(a)(2)(A) and (B)(2) and Appendix 2 (g)(8) of its regulation, to allow nine subsamples from any one panel to be collected and tested in groups of three in three separate ASTM D6007-14 test apparatuses deemed equivalent to the ASTM E1333-14 apparatus (Ref. 1). This results in three data points, which are then averaged to obtain one final value that accounts for emission variability across that one panel (Ref. 1). Under these requirements, the nine subsamples should be evenly distributed and represent similar sizes to one another as they are collected from any one panel. EPA is finalizing a provision to allow nine subsamples from any one panel to be collected and tested in groups of three in three separate ASTM D6007-14 test apparatuses deemed equivalent to the ASTM E1333-14 apparatus at 40 CFR 770.20(c)(2)(iv). EPA will also continue to allow for testing of one sample, in one ASTM D6007-14 apparatus deemed equivalent to the ASTM E1333-14 apparatus, without the use of averaging if the TPC and mill choose to do so. EPA received comments in support of adding subparagraph (iv) to 40

CFR 770.20(c)(2) and amending subparagraph (i) at 40 CFR 770.22(c)(2). As such, EPA is finalizing these amendments. EPA is also finalizing a conforming amendment to subparagraph (ii) at 40 CFR 770.22(c)(2) in order to account for the possibility of averaging.

One commenter noted that averaging of subsamples in the ASTM E1333-14 apparatus would not be permitted under the CARB program. EPA recognizes that only full-sized panels would be tested in the ASTM E1333-14 apparatus and updated the regulatory text at 40 CFR 770.20(c)(2)(iv) from the proposal to reflect this.

Another commenter noted that the method used for averaging is equally important in development of equivalence and correlation testing and noted that this option should be added in the final rule. As such, EPA is finalizing this rule to update regulatory text at 40 CFR 770.20(d) to allow for test sample averaging in the demonstration of equivalence or correlation when using the ASTM D6007-14 apparatus.

5. Equivalence testing emission ranges. EPA proposed amending the provision at 40 CFR 770.20(d) for TSCA Title VI TPCs to demonstrate equivalence under specified emission ranges. This proposal aligned with the CARB ATCM, which specifies that ten comparison tests must be conducted, consisting of at least five comparison tests in two of three specified emission ranges. CARB's ATCM at 17 California Code of Regulations section 93120.9(a)(2)(B)(3) also specifies the three emission test ranges to be: 1) low - for products demonstrating formaldehyde emissions of less than 0.07 parts per million (ppm); 2) intermediate - for products demonstrating formaldehyde emissions from 0.07 ppm to less than 0.15 ppm; and 3) upper - for products demonstrating formaldehyde emissions from 0.15 ppm to 0.25 ppm (Ref. 1).

EPA is finalizing this rule as proposed to align with CARB's ATCM and its requirement for ten comparison tests, consisting of five comparison tests in two of the three specified ranges

with a modification to the emission ranges and a modification to the requirement for demonstration across two ranges based on comments submitted by CARB staff (*see* EPA-HQ-OPPT-2018-0174-0022).

The final rule will assign formaldehyde emissions ranges of less than or equal to 0.05 ppm for the low range, formaldehyde emissions greater than 0.05 ppm up to 0.15 ppm for the intermediate range, and formaldehyde emissions greater than 0.15 ppm for the upper range. The change to the low range deviates from the current guidance under the CARB ATCM Phase II program; however, CARB has informed the Agency that they intend to update their emission ranges to be the same as EPA's in the future. The amended low emission range corresponds to the TSCA Title VI emission standard for hardwood plywood.

EPA proposed to allow TSCA Title VI TPCs who will only certify in the low or intermediate ranges to demonstrate equivalence for those ranges, using at least five comparison tests to demonstrate equivalence in a given range. A CARB comment on this proposal (*see* EPA-HQ-OPPT-2018-0174-0041) stated that this provision should only apply to TSCA Title VI TPCs who are certifying hardwood plywood, as TSCA Title VI TPCs who are certifying medium density fiberboard and particleboard would have to demonstrate equivalence in the intermediate range; if these TSCA Title VI TPCs were to seek no-added formaldehyde or ultra low-emitting formaldehyde limited exemptions for their mills producing these products, then it would be necessary to demonstrate equivalence in the lower range as well. Therefore, demonstrating equivalence in only one range would only apply to TSCA Title VI TPCs who are only certifying products which are required to test at or below the 0.05 ppm threshold for the low range. After further consideration of CARB's comments, EPA agrees that the proposed amendment should be modified to address CARB's comment and is finalizing this provision to only apply to cases

where the TPC is certifying only hardwood plywood in the low range and demonstrating equivalence in the low range. The final rule will allow three equivalence testing ranges with the option to only demonstrate equivalence in the lower range if all of the TPC's certified products will meet the lower emission range.

6. Determination of equivalence only if mill uses TSCA Title VI TPC for all testing. EPA proposed to amend 40 CFR 770.20(d) to clarify that mills that do not perform any testing on-site at the mill and instead use their TSCA Title VI TPC for all quarterly and quality control testing would not be required to establish correlation as they are already using a TSCA Title VI TPC ASTM E1333-14 apparatus, or an ASTM D6007-14 apparatus that has demonstrated equivalence. EPA's posted guidance on this issue in the form of a frequently asked question on the Agency's formaldehyde homepage noted that the ASTM D6007-14 test apparatus that shows equivalence to the TSCA Title VI TPCs ASTM E1333-14 test apparatus according to 40 CFR 770.20(d) would necessarily show correlation to itself under 40 CFR 770.20(d)(2) and could be used as a quality control test method without additional correlation testing (Ref. 2). EPA did not receive any public comments suggesting that finalizing this provision would be an issue for TSCA Title VI TPCs or mills. As such, EPA is finalizing this provision allowing TSCA Title VI TPCs to conduct quality control testing for mills with an ASTM E1333-14 apparatus, or an ASTM D6007-14 apparatus that has demonstrated equivalence, as proposed.

7. Correlation coefficients and "r" values. EPA proposed to amend 40 CFR 770.20(d)(2) to expand the options for TSCA Title VI TPCs and mills in establishing correlation coefficients and "r" values beyond the linear regression model currently required by the TSCA Title VI regulations. The amendment adds the CARB ATCM Phase II-approved cluster approach (also known as the point of origin approach in practice) and threshold approach to give TSCA Title VI

TPCs three different options for demonstrating correlations. To develop this amendment, EPA used CARB's alternative correlation coefficient and "r" value method guidance document (CWP-10-001 [June 8, 2010]), which outlined these two additional approaches for how TSCA Title VI TPCs certifying composite wood products under the CARB ATCM Phase II program may show correlation (Ref. 3). The Agency proposed to expand the options to allow three different methods of demonstrating correlation and received predominately positive support for the amendment of this provision in the final rule. Although one commenter did not support how EPA proposed the amendment to the final rule, no data or supporting information was provided to support their comment and all other commenters were in full support of the proposal. As such, EPA is finalizing the addition of rule provisions for the "cluster approach" and "threshold approach" in 40 CFR 770.20(d)(2)(i) and updating the requirement for certification at 40 CFR 770.15(c)(1)(vii) and 770.15(c)(2)(v).

8. *Notifications of exceedance of quality control limit (QCL)*. EPA proposed an amendment at 40 CFR 770.7(c)(4)(v)(C) to clarify that notification of a non-complying lot through EPA's Central Data Exchange system by a TSCA Title VI TPC is required within 72 hours of the time when the TSCA Title VI TPC is notified of the third consecutive QCL exceedance by a panel producer. EPA received comments in support of addressing the ambiguity in the timing of reporting as written in the original version of this provision. Thus, EPA is finalizing this provision as proposed, adding only that the notification must be given when the TPC is notified of the third "consecutive" QCL exceedance based on commenter feedback (*see* EPA-HQ-OPPT-2018-0174-0041). EPA believes that the use of the term consecutive further promotes clarity and highlights exactly when notification should be given to EPA.

9. *No-added formaldehyde (NAF)-based resin and ultra low-emitting formaldehyde*

(ULEF) resin testing requirements. EPA proposed an amendment to the NAF and ULEF testing requirements to further align with the CARB ATCM Phase II program. The December 12, 2016 TSCA Title VI final rule required that under the NAF requirements at 40 CFR 770.17 a minimum of five tests be conducted pursuant to the NAF two-year limited exemption application, while CARB's TPC Bulletin 1 notes that 13 tests are the minimum permitted for a limited testing exemption (Ref. 4). Additionally, the December 12, 2016 TSCA Title VI final rule required that, under the ULEF requirements at 40 CFR 770.18, a minimum of ten tests be conducted pursuant to the ULEF two-year exemption or reduced testing application requirements, while CARB's TPC Bulletin 1 notes that 26 tests are the minimum permitted for a limited testing exemption (Ref. 4). Stakeholders noted that, although EPA accepts existing CARB executive orders that document that panel producers are in good standing with CARB and have met the requirements for limited testing exemptions for NAF and ULEF products as outlined in 40 CFR 770.17(d) and 770.18(e), the two programs were not equal in the number of samples required and the CARB ATCM Phase II program requires more samples. To align with how TSCA Title VI TPCs currently test to obtain a NAF two-year testing exemption and ULEF two-year testing exemption or reduced testing, and to promote regulatory consistency between the two programs, for TSCA Title VI, EPA is adopting the CARB-required 13 tests for NAF and 26 tests for ULEF limited exemptions. The Agency does not believe this amendment alters in any significant aspect how TSCA Title VI TPCs and panel producers currently conduct testing under the CARB ATCM Phase II or TSCA Title VI program, as EPA allows the use of equal or more stringent testing approaches (i.e., more tests) and it is EPA's understanding that TSCA Title VI TPCs have continued to conduct testing the same way they have done (i.e., using more tests) since the inception of CARB's ATCM Phase II program in 2009. EPA did not receive any

public comments on this proposed amendment. As such, EPA is finalizing this provision as proposed.

10. Voluntary Consensus Standards incorporated by reference at 40 CFR 770.99. EPA proposed to update the references for two International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC) voluntary consensus standards that were incorporated by reference in the December 12, 2016 final rule. Table 1 in this Unit outlines the voluntary consensus standards that will be updated in this final rule and the respective updated versions. All other standards in the formaldehyde standards for composite wood products regulation will continue to be incorporated by reference as they appear in the existing regulation.

Table 1—Voluntary Consensus Standards Comparison

Current standard established by final rule (81 FR 89674)	Status	Update to be promulgated effective [INSERT DATE OF PUBLICATION IN THE <i>FEDERAL REGISTER</i>]
ISO/IEC 17025-2005(E) General requirements for the competence of testing and calibration laboratories	Updated version	ISO/IEC 17025:2017(E) General requirements for the competence of testing and calibration laboratories
ISO/IEC 17011-2004(E) Conformity assessments—General requirements for accreditation bodies accrediting conformity assessments bodies	Updated version	ISO/IEC 17011:2017(E) Conformity assessments—requirements for accreditation bodies accrediting conformity assessments bodies

EPA did not receive any public comments related to updating the references to these standards. As such, EPA is finalizing this update as proposed. Any future versions or updates to withdrawn/superseded standards will be announced by EPA through a separate *Federal Register* document with opportunity for public comment.

11. Clarification in the non-complying lot provisions. EPA proposed to clarify the intent of the non-complying lot provisions at 40 CFR 770.22 and how those provisions apply to fabricators, importers, retailers, and distributors who are notified by panel producers that composite wood products they were supplied are found to be non-compliant after those

composite wood products have been further fabricated into component parts or finished goods. The Agency previously posted guidance on this issue in the form of frequently asked questions on EPA's formaldehyde website homepage. The guidance outlines the regulatory requirements for all entities in the supply chain and makes clear that, if a panel is still in panel form, then the entity in possession of the non-compliant panel, which includes fabricators, is to work with the panel producer to isolate, treat, and retest the panel, as needed. If by the time a fabricator receives notification the panel from the non-complying lot has been incorporated into a component part or finished good, then the remainder of 40 CFR 770.22 does not apply (Ref. 5).

EPA notes that the regulatory intent behind the non-complying lot provisions at 40 CFR 770.22 is to manage those non-compliant composite wood products in their panel form to prevent them from entering the fabrication supply chain, but not to require action after those panels have been used in the fabrication of component parts or finished goods. One commenter (*see* EPA-HQ-OPPT-2018-0174-0037) did not support the proposal as published and noted that once a panel enters a fabricator's custody it can become a logistical challenge to track. The commenter believed that the non-complying lot provisions should not apply to fabricators. EPA understands that in some cases the management of panels once broken from bundles by a fabricator or other downstream entity can be a logistical challenge; however, the December 12, 2016 final rule and accompanying Response to Comments document (*see* EPA-HQ-OPPT-2016-0461-0034) made it clear that the onus is on the fabricator or downstream entity to be able to track all panels in their panel form back to the lot from which they came by some sort of labeling/marketing method as required by 40 CFR 770.45(a). EPA believes that for a non-complying lot event, requiring action by all entities in the supply chain who possess the panels in panel form prevents further distribution of the noncomplying panels in the supply and fabrication

chains. As such, the Agency is finalizing this provision as proposed, which includes clarifying language in 40 CFR 770.22 to make clear the initial regulatory intent of the December 12, 2016 final rule.

12. Labels on regulated composite wood products and finished goods containing composite wood products at point of manufacture, fabrication, and/or import. EPA proposed a provision to clarify in 40 CFR 770.45 that regulated composite wood products and finished goods containing composite wood products must be labeled at the point of manufacture or fabrication, and if imported, the label must be applied to the products as a condition of importation. Under TSCA, the term “manufacture” includes import, meaning that regulated composite wood products or finished goods containing such products imported into the customs territory of the United States must be accompanied at the time of importation by a label as required by 40 CFR 770.45. EPA received public comment supporting this provision. EPA also received public comment asking how this provision will be applied to Foreign Trade Zones (FTZs). Foreign merchandise admitted into an FTZ constitutes “imported merchandise which has not been properly released from Customs custody in the Customs territory.” (*see* 19 CFR 146.1). EPA notes that FTZs are not considered customs territory for purposes of customs laws (including TSCA section 13 import certification) but are considered customs territory for purposes of other federal laws (*see* 19 U.S.C. 81c and general note 2 of the Harmonized Tariff Schedule of the United States). Any composite wood products or finished goods containing composite wood products must, therefore, be labeled upon importation in order to be admitted into an FTZ. Prior to release from CBP custody at a port of entry, a TSCA Section 13 import certification is required for all regulated composite wood products, component parts fabricated using composite wood products, and finished goods fabricated using composite wood products

(see 19 CFR 12.121(a)(3)(i)). EPA is therefore finalizing this provision as proposed.

13. Labels on panels manufactured under NAF limited exemption at 40 CFR 770.17 and ULEF limited exemption at 40 CFR 770.18. EPA proposed a provision to allow for panels manufactured under a limited exemption at 40 CFR 770.17 and 770.18, or NAF and ULEF panels covered by existing CARB executive orders, as outlined in 40 CFR 770.17(d) and 770.18(e), to be labeled as TSCA Title VI “compliant” and not TSCA Title VI “certified.” Several commenters were opposed to this proposal and noted that significant marketplace confusion would result from any changes on panel-level labeling changes. Although some commenters supported the change, ultimately, after further consideration, EPA determined that adding another term into the labeling provisions of the final rule would likely cause more confusion than clarity on the panel labeling provision. EPA will therefore not finalize any provisions to change the regulatory language at 40 CFR 770.45(a) from the required use of the term “certified” on composite wood products. All composite wood products certified under the standard testing paradigm at 40 CFR 770.20, and those composite wood products manufactured through an EPA or CARB limited exemption under 40 CFR 770.17 and 770.18, should continue to be labeled as TSCA Title VI “certified.”

14. TSCA Title VI manufactured-by date. EPA proposed updating the manufactured-by date in the Code of Federal Regulations to correspond to the manufactured-by date of June 1, 2018 resulting from the court order announced by EPA in a Federal Register notice on April 4, 2018 (see 83 FR 14375). Specifically, EPA will replace “December 12, 2018” with “June 1, 2018” in 40 CFR 770.2(e) (introductory text), 770.2(e)(1), 770.2(e)(4), 770.10(a), 770.12(a), 770.15(a), 770.30(b) (introductory text), and 770.30(c). For more information on the litigation and court order, please see 83 FR 14375. EPA did not receive any comments on the proposal to

update these provisions. EPA is finalizing these manufactured-by date text changes, as proposed.

C. What is the Agency's Authority for Taking this Action?

These regulations are established under authority of Section 601 of TSCA, 15 U.S.C. 2697.

III. Effective Date

As discussed in the proposed rule as an option (*see* 83 FR 54894), EPA is making the effective date of this final rule immediate upon publication of this final rule in order to provide regulated stakeholders clarity on the provisions and the ability to immediately begin adjusting their certification programs to as needed to accommodate the Formaldehyde Standards for Composite Wood Products March 22, 2019 end date to the CARB reciprocity provision (*see* 83 FR 14375). EPA believes an immediate effective date provides TSCA Title VI TPCs and panel producers appropriate and prompt relief from maintaining separate certification programs for the CARB ATCM Phase II certified products and TSCA Title VI certified products they manage and manufacture.

IV. Incorporation by Reference

A. Material newly incorporated by reference in this final rule

EPA is finalizing the use of the following voluntary consensus standards issued by International Organization for Standardization/International Electrotechnical Commission:

1. ISO/IEC 17011:2017(E) Conformity assessments—requirements for accreditation bodies accrediting conformity assessments bodies. This standard specifies general requirements for accreditation bodies assessing and accrediting conformity assessment bodies. For the purposes of this standard, conformity assessment bodies are organizations providing the following conformity assessment services: Testing, inspection, management system certification,

personnel certification, product certification and, in the context of this standard, calibration.

2. ISO/IEC 17025:2017(E) General requirements for the competence of testing and calibration laboratories. This standard specifies the general requirements for the competence to carry out tests or calibrations, including sampling. It covers testing and calibration performed using standard methods, non-standard methods, and laboratory-developed methods.

B. Material previously incorporated by reference that is unchanged

ASTM D6007-14 and E13333-14 were previously approved for incorporation by reference on February 10, 2017.

C. Where can I obtain copies of the material incorporated by reference?

Copies of the standards referenced in the final regulatory text at 40 CFR 770.3 and 770.7 have been placed in the docket for this final rule. You may also obtain copies of these standards from the International Organization for Standardization, 1, ch. de la Voie- Creuse, CP 56, CH-1211, Geneve 20, Switzerland, or by calling +41-22-749-01-11, or at <http://www.iso.org>. Additionally, each of these standards is available for inspection at the OPPT Docket in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA, West Bldg., 1301 Constitution Ave. NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number of the EPA/DC Public Reading room is (202) 566-1744, and the telephone number for the OPPT Docket is (202) 566-0280. The use of these voluntary consensus standards was approved by the Director of the Federal Register for the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

V. References

The following is a listing of the documents that are specifically referenced in this

document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under FOR FURTHER INFORMATION CONTACT.

1. California Air Resources Board. Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products. Final Regulation Order. April 2008.

2. U.S. Environmental Protection Agency. Frequent Questions about Starting-up New Composite Wood Mills and the Use of Experimental Products and Resins. 2018.

<https://www.epa.gov/formaldehyde/frequent-questions-regulated-stakeholders-about-implementing-formaldehyde-standards#experimentalproductsresins>.

3. California Air Resources Board. Third Party Certification Guideline: Establishing a Correlation with an Acceptable Correlation Coefficient (“*r*”, Value). June 2010.

<https://www.arb.ca.gov/toxics/compwood/certifiers.htm>.

4. California Air Resources Board. Third Party Certifier Bulletin 1 (revised). August 2012. *<https://www.arb.ca.gov/toxics/compwood/certifiers.htm>*.

5. U.S. Environmental Protection Agency. Frequent Questions for Regulated Stakeholders about Implementing the Formaldehyde Standards for Composite Wood Products Act. 2018. *<https://www.epa.gov/formaldehyde/frequent-questions-regulated-stakeholders-about-implementing-formaldehyde-standards>*.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA because it does not create any new reporting or recordkeeping obligations. OMB has previously approved the information collection activities contained in the existing regulations and has assigned OMB control number 2070-0185.

C. Regulatory Flexibility Act (RFA)

The Agency certifies that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 et seq. In making this determination, the impact of concern is any significant adverse economic impact on small entities. An agency may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, has no net burden or otherwise has a positive economic effect on the small entities subject to the rule. As addressed in Unit II.B., this action would not significantly alter the TSCA Title VI regulations or supporting economic analysis for the December 12, 2016 final rule as published and will provide technical amendments to further align the EPA's TSCA Title VI program with the CARB ATCM Phase II program. This action will relieve or have no net regulatory burden for directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

F. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments

This action does not have tribal implications as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This final rule will not impose substantial direct compliance costs on Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks.

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it does not concern an environmental health risk or safety risk. This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because EPA does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As addressed in Unit II.B., this action would not significantly alter the December 12, 2016 final rule as published and proposes technical amendments to further align the EPA's TSCA Title VI program with the CARB ATCM Phase II program.

H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

This action is not a "significant energy action" as defined in Executive Order 13211 (66 FR 28355, May 22, 2001), because it is not likely to have a significant adverse effect on the

supply, distribution or use of energy.

I. National Technology Transfer and Advancement Act (NTTAA)

This action involves technical standards. EPA is finalizing the use of the following voluntary consensus standards issued by International Organization for Standardization/International Electrotechnical Commission:

1. ISO/IEC 17011:2017(E) Conformity assessments—requirements for accreditation bodies accrediting conformity assessments bodies.
2. ISO/IEC 17025:2017(E) General requirements for the competence of testing and calibration laboratories.

Copies of the standards referenced in the final regulatory text at 40 CFR 770.3 and 770.7 have been placed in the docket for this final rule. See Unit IV. for information on how to obtain copies of these standards from other sources.

J. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations.

EPA has determined that this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income or indigenous populations, as specified in Executive Order 12898 (59 FR 7629, February 16, 1994). The Agency presented the results of an environmental justice analysis in the December 12, 2016 TSCA Title VI final rule economic analysis (*see* EPA-HQ-OPPT-2016-0461-0028) that supports this determination. This action would not significantly alter the final rule or the environmental justice analysis. The environmental justice analysis monetized the benefits from reducing the number of cases of nasopharyngeal cancer and sensory irritation and included an environmental justice analysis that expanded on the primary benefits analysis by analyzing the monetized

impacts specifically for minority and low-income populations. This action will propose technical amendments to further align the EPA's TSCA Title VI program with the CARB ATCM Phase II program.

VI. Congressional Review Act (CRA)

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2). Section 808 of the CRA allows the issuing agency to make a rule effective sooner than otherwise provided by CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary, or contrary to the public interest. As required by 5 U.S.C. 808(2), the determination to make this final rule effective immediately, upon publication in the *Federal Register* is supported by a brief statement in Unit III.

List of Subjects in 40 CFR Part 770

Environmental protection, Formaldehyde, Incorporation by reference, Reporting and recordkeeping requirements, Third-party certification, Toxic substances, Wood, Incorporation by Reference.

Dated: Click or tap to enter eSignature date.

Alexandra Dapolito Dunn,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 770—FORMALDEHYDE STANDARDS FOR COMPOSITE WOOD PRODUCTS

1. The authority citation for part 770 continues to read as follows:

Authority: 15 U.S.C. 2697(d).

2. In § 770.2, revise paragraph (e) introductory text and paragraphs (e)(1) and (4) to read as follows:

§ 770.2 Effective Dates

* * * * *

(e) Beginning June 1, 2018, all manufacturers (including importers), fabricators, suppliers, distributors, and retailers of composite wood products, and component parts or finished goods containing these materials, must comply with this part, subject to the following:

(1) Beginning June 1, 2018, laminated product producers must comply with the requirements of this part that are applicable to fabricators.

* * * * *

(4) Composite wood products manufactured (including imported) before June 1, 2018 may be sold, supplied, offered for sale, or used to fabricate component parts or finished goods at any time.

§ 770.3 [AMENDED]

3. In § 770.3:

a. In the terms “Assessment,” “Reassessment,” “Surveillance On-Site Assessment” remove “17011:2004(E)” and add in its place “17011:2017(E);” and,

b. in the terms “Reassessment” and “Surveillance On-Site Assessment” remove “sections

7.5 to 7.11” and add in its place “sections 7.4 to 7.13;” and,

c. In the terms “EPA TSCA Title VI Laboratory Accreditation Body or EPA TSCA Title VI Laboratory AB” and “TPC Laboratory,” remove “17025:2005(E)” and add in its place “17025:2017(E).”

4. In § 770.7:

a. In paragraphs (a)(1)(ii), (a)(5)(ii), (b)(1)(ii), (b)(5)(ii) remove “ISO/IEC 17011:2004(E)” and add in its place “ISO/IEC 17011:2017(E);” and,

b. In paragraphs (a)(5)(i)(F), (b)(1)(iii), (b)(5)(i), (b)(5)(i)(A), (c)(1)(ii), (c)(2)(iv), remove “ISO/IEC 17025:2005(E)” and add in its place “ISO/IEC 17025:2017(E);” and,

c. in paragraph (a)(5)(ii) and (b)(5)(ii) remove “section 7.11” and add in its place “section 7.9;” and,

d. Revise paragraph (c)(4)(v)(C).

The revisions read as follows:

§ 770.7 Third party certification

* * * * *

(4) * * *

(v) * * *

(C) Notification of a panel producer exceeding its established QCL for three consecutive quality control tests within 72 hours of the time that the TPC becomes aware of the third consecutive exceedance. The notice must include the product type, dates of the quality control tests that exceeded the QCL, quality control test results, ASTM E1333-14 (incorporated by reference, see §770.99) or ASTM D6007-14 method (incorporated by reference, see §770.99) correlative equivalent values in accordance with §770.20(d), the established QCL value(s) and

the quality control method used.

* * * * *

5. Revise § 770.10(a) to read as follows:

§ 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.

* * * * *

6. Revise § 770.12(a) to read as follows:

§ 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.

* * * * *

7. Amend § 770.15 by revising paragraphs (a), (c)(1)(vii), and (c)(2)(v) to read as follows:

§ 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.

* * * * *

(c) * * *

(1) * * *

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

* * * * *

(2) * * *

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

* * * * *

8. Revise § 770.17(a)(4) to read as follows:

§ 770.17 No-added formaldehyde based resin

(a) * * *

(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.

* * * * *

9. Revise § 770.18(a)(4) to read as follows:

§ 770.18 Ultra low-emitting formaldehyde based resins

(a) * * *

(4) Six 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 twenty-six quality control tests.

* * * * *

10. Amend § 770.20 by:

a. Adding paragraph (c)(2)(iv);

- b. Revising paragraph (d) and introductory text of paragraph (d)(1);
- c. Adding paragraph (d)(1)(iv); and
- e. Revising the introductory text of paragraph (d)(2) and paragraph (d)(2)(i).

The revisions and additions read as follows:

§ 770.20 Testing requirements

* * * * *

(c) * * *

(2) * * *

(iv) Test results may represent a single chamber value or, if using the ASTM D6007-14 apparatus, the average value of testing nine specimens representing evenly distributed portions of an entire panel. The nine specimens must be tested in groups of three specimens, resulting in three data points, which must be averaged to represent one test value for the panel those specimens represent.

* * * * *

(d) *Equivalence or correlation.* Equivalence between ASTM E1333-14 (incorporated by reference, see § 770.99) and ASTM D6007-14 (incorporated by reference, see § 770.99) must be demonstrated by EPA TSCA Title VI TPCs at least once each year or whenever there is a significant change in equipment, procedure, or the qualifications of testing personnel, or reason to believe that the equivalence is no longer valid. Equivalence may be demonstrated between several similar model or size and construction ASTM E1333-14 (incorporated by reference, see § 770.99) and ASTM D6007-14 (incorporated by reference, see § 770.99) apparatuses located in the same EPA TSCA Title VI TPC laboratory. Once equivalence has been established for three consecutive years, equivalence must be demonstrated every two years or whenever there is a

significant change in equipment, procedure, or the qualifications of testing personnel. Correlation between ASTM E1333-14 (incorporated by reference, see §770.99) or, upon a showing of equivalence in accordance with paragraph (d) of this section, ASTM D6007-14 (incorporated by reference, see §770.99) and any other test method used for quality control testing must be demonstrated by EPA TSCA Title VI TPCs or panel producers, respectively, before the certification of composite wood products, and then whenever there is a significant change in equipment, procedure, the qualifications of testing personnel, or reason to believe that the correlation is no longer valid. Correlation may be established between several similar model or size and construction mill quality control test methods defined in paragraph (b)(1) of this section located at any one physical mill quality control testing laboratory to the EPA TSCA Title VI TPC's laboratory's ASTM E1333-14 (incorporated by reference, see §770.99) and/or ASTM D6007-14 (incorporated by reference, see § 770.99) apparatus. If the TPC laboratory's ASTM E1333-14 or equivalent ASTM D6007-14 test chamber is used for panel producer quality control testing, no correlation as determined in paragraph (d)(2) of this section would be required. Equivalence and correlation sample selection should be conducted in accordance with paragraph (c)(2)(iv) of this section.

(1) *Equivalence between ASTM E1333-14 and ASTM D6007-14 when used by the TPC for quarterly testing.* Equivalence must be demonstrated for at least five comparison sample sets in each range tested by the TPC, which compare the results of the two methods. Equivalence must be demonstrated for any ranges listed in paragraph (d)(1)(iv) of this section that represent the formaldehyde emissions of composite wood products tested by the TPC.

* * * * *

(iv) *Equivalence Ranges.* EPA TSCA Title VI TPCs must demonstrate equivalence in at

least two of the three formaldehyde emission ranges listed in paragraphs (d)(1)(iv)(A) through (C) of this section unless the EPA TSCA Title VI TPC will only certify hardwood plywood products in the low range. If the EPA TSCA Title VI TPC will only certify hardwood plywood products in the low range, the EPA TSCA Title VI TPC may demonstrate equivalence in only that range and would then be restricted to only certifying those composite wood products in that range. Equivalence in one range must be demonstrated for at least five comparison sample sets in that range which compare the two methods.

(A) Lower Range: less than, or equal to 0.05 ppm.

(B) Intermediate Range: greater than 0.05 ppm to less than or equal to 0.15 ppm.

(C) Upper Range: Greater than 0.15 ppm.

(2) *Correlation between ASTM E-1333-14 (incorporated by reference, see § 770.99), or equivalent ASTM D6007-14 (incorporated by reference, see § 770.99), and any quality control test method.* Correlation must be demonstrated by establishing an acceptable correlation coefficient (“r” value) or following the threshold approach at paragraph (d)(2)(i)(B) of this section.

(i) *Correlation.* The correlation must be based on a minimum sample size of five data pairs and a simple linear regression (unless the threshold approach at paragraph (d)(2)(i)(B) of this section is used) where the dependent variable (Y-axis) is the quality control test value and the independent variable (X-axis) is the ASTM E1333-14 (incorporated by reference, see §770.99) test value or, upon a showing of equivalence in accordance with paragraph (d) of this section, the equivalent ASTM D6007-14 (incorporated by reference, see §770.99) test value. Either composite wood products or formaldehyde emissions reference materials can be used to establish the correlation.

(A) *Cluster Approach.* A panel producer may work with its EPA TSCA Title VI TPC to develop a correlation and linear regression between the TPC's ASTM E1333-14 (incorporated by reference, see § 770.99) or equivalent ASTM D6007-14 (incorporated by reference, see § 770.99) test method and the panel producer's quality control method under paragraph (b) of this section. In the event of clustered test results, a panel producer may fit a line through a point near the origin (the intersection of the X and Y axes) and the average value of the clustered data pairs. The point near the origin should represent the value for the EPA TSCA Title VI TPC's ASTM E1333-14 (incorporated by reference, see § 770.99) or equivalent ASTM D6007-14 (incorporated by reference, see § 770.99) test method and the panel producer's quality control method under § 770.20(b) when each testing apparatus is empty or when a very low emitting sample is tested. The average value of the clustered data pairs represents the average of a minimum of five data pairs that compare the test results of the EPA TSCA Title VI TPC's ASTM E1333-14 (incorporated by reference, see § 770.99) or equivalent ASTM D6007-14 (incorporated by reference, see § 770.99) test method with the panel producer's quality control method under paragraph (b) of this section. The line between the point near the origin and the average value of the cluster provides the linear regression. This line may be used by the panel producer and TPC to develop a quality control limit for the product.

(B) *Threshold Approach.* As an alternative to the linear regression and cluster approaches, a panel producer may use the average value of the clustered data pairs from the EPA TSCA Title VI TPC's ASTM E1333-14 (incorporated by reference, see § 770.99) or equivalent ASTM D6007-14 (incorporated by reference, see § 770.99) test method and the panel producer's quality control method under paragraph (b) of this section as the quality control limit for the product. In this approach, no linear regression line is established. The average value would be

assigned as the upper quality control limit for production of the subject composite wood product and must be below the applicable emission standard.

* * * * *

11. Amend § 770.22 by revising paragraphs (c)(2)(i) and (ii), adding paragraph (f)(1), and adding and reserving paragraph (f)(2) to read as follows:

§ 770.22 Non-complying lots

* * * * *

(c) * * *

(2) * * *

(i) At least one test panel must be randomly selected so that it is representative of the entire non-complying lot and is not the top or bottom panel of a bundle. Panel sampling shall be conducted according to the quarterly testing procedure at § 770.20(c)(2)(iv). The panel may be selected from properly stored samples set aside by the panel producer for retest in the event of a failure.

(ii) The average of the three samples or the single chamber value (as described in § 770.20(c)(2)(iv) must test at or below the level that indicates that the product is in compliance with the applicable emission standards in § 770.10.

* * * * *

(f) * * *

(1) If a fabricator, importer, distributor, or retailer is notified that they have been supplied a non-complying lot after those composite wood products have been fabricated into component parts or finished goods, the notification requirement at paragraph (d)(1) of this section does not apply.

(2) [Reserved]

12. Amend § 770.30 by revising paragraphs (b) and (c) to read as follows:

§ 770.30 Importers, fabricators, distributors, and retailers

* * * * *

(b) Importers must demonstrate that they have taken reasonable precautions by maintaining, for three years, bills of lading, invoices, or comparable documents that include a written statement from the supplier that the composite wood products, component parts, or finished goods are TSCA Title VI compliant or were produced before June 1, 2018 and by ensuring the following records are made available to EPA within 30 calendar days of request:

* * * * *

(c) Fabricators, distributors, and retailers must demonstrate that they have taken reasonable precautions by obtaining bills of lading, invoices, or comparable documents that include a written statement from the supplier that the composite wood products, component parts, or finished goods are TSCA Title VI compliant or that the composite wood products were produced before June 1, 2018.

* * * * *

13. Amend § 770.45 by revising paragraph (a) introductory text and adding paragraph (f) to read as follows:

§ 770.45 Labeling

(a) Panels or bundles of panels that are imported, sold, supplied, or offered for sale in the United States must be labeled with the panel producer's name, the lot number, the number of the EPA TSCA Title VI TPC, and a statement that the products are TSCA Title VI certified. If a composite wood panel is not individually labeled, the panel producer, importer, distributor,

fabricator, or retailer must have a method (*e.g.*, color-coded edge marking) sufficient to identify the supplier of the panel and linking the information on the label to the products. This information must be made available to potential customers upon request. The label may be applied as a stamp, tag, or sticker.

* * * * *

(f) All panels (or bundles of panels) and finished goods (or boxes or bundles containing finished goods) must be properly labeled pursuant to paragraphs (a), (b), and (c) before being imported into the United States, except as provided in subsection (e).

14. Amend § 770.99 by revising paragraphs (e)(1) and (3) to read as follows:

§ 770.99 Incorporation by reference.

* * * * *

(e) * * *

(1) ISO/IEC 17011:2017(E) Conformity assessments—requirements for accreditation bodies accrediting conformity assessments bodies (Second Edition), November 2017.

* * * * *

(3) ISO/IEC 17025:2017(E) General requirements for the competence of testing and calibration laboratories (Third Edition), November 2017.

* * * * *