

APR 04 2011

The Honorable Lisa Jackson
Administrator
U.S. Environmental Protection Agency
Ariel Rios Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Jackson:

Enclosed for your consideration is the Report of the Small Business Advocacy Review Panel (SBAR Panel or Panel) convened for EPA's planned proposed "Rulemaking Implementing the Formaldehyde Standards for Composite Woods Products Act (TSCA Title VI)." This notice of proposed rulemaking is being developed by the U.S. Environmental Protection Agency (EPA) under the Toxic Substances Control Act (TSCA).

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. EPA is directed to promulgate implementing regulations by January 1, 2013.

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 (CARB) 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, 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.

On February 3, 2011, EPA's Small Business Advocacy Chairperson convened this Panel under section 609(b) of the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA). In addition to its chairperson, the Panel consists of the Assistant Administrator of EPA's Office of Chemical Safety and Pollution Prevention, the Administrator of the Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB), and the Chief Counsel for

Advocacy of the Small Business Administration (SBA). It is important to note that the Panel's findings and discussion are based on the information available at the time this report was drafted. EPA is continuing to conduct analyses relevant to the proposed rule, and additional information may be developed or obtained during this process as well as from public comment on the proposed rule. The options the Panel identified for reducing the rule's economic impact on small entities will require further analysis and/or data collection to ensure that the options are practicable, enforceable, protective of public health, environmentally sound and consistent with TSCA.

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. At the invitation of industry, EPA conducted site visits at furniture and cabinet manufacturing factories.

EPA also conducted an online solicitation to identify 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.

Prior to convening the Panel, EPA conducted outreach with small entities that will potentially be affected by these regulations. In January of 2011, EPA invited SBA, OMB, and 17 potentially affected small entity representatives to a conference call and solicited comments from them on the preliminary information sent to them. EPA shared the small entities' written comments with the Panel as part of the Panel convening document.

After the SBAR Panel was convened, the Panel distributed additional information to the small entity representatives (SERs) on February 3 and 4, 2011, 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 in these mailings. The SERs were asked to provide written feedback on ideas under consideration for the proposed rulemaking. 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. Their full written comments are also attached. In light of these comments, the Panel considered the regulatory flexibility issues specified by RFA/SBREFA and developed the findings and discussion summarized below.

PANEL FINDINGS AND DISCUSSION

Under section 609(b) of the RFA, the Panel is to report its findings related to these four items:

- 1) A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply.
- 2) A description of the projected reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.
- 3) Identification, to the extent practicable, of all relevant federal rules which may duplicate, overlap or conflict with the proposed rule.
- 4) A description of any significant alternatives to the planned proposed rule which would minimize any significant economic impact of the proposed rule on small entities consistent with the stated objectives of the authorizing statute.

The Panel's most significant findings and discussion with respect to each of these items are summarized below. To read the full discussion of the Panel findings and recommendations, see Section 9 of the Panel Report.

A. 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.

B. 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 section 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.

C. 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.

D. Regulatory Flexibility Alternatives

The following are some of the regulatory flexibility alternatives recommended by the Panel:

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.

The Panel recommends that the labeling system for composite wood products be designed to be as consistent with the CARB labeling system as possible. 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.

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.

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, 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).

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.

In developing the third party 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.

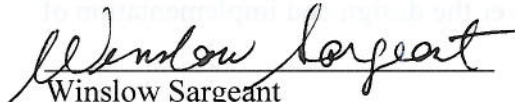
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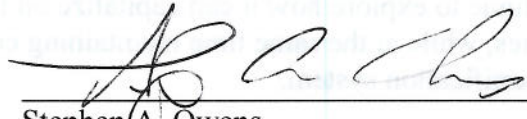
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Enclosure