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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 770

[EPA-HQ-OPPT-2017-0243, FRL-9963-05]

RIN 2070-AK30

Labeling Relief; Formaldehyde Emission Standards for Composite Wood Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to amend a final rule that published in the **Federal Register** on December 12, 2016 concerning formaldehyde emission standards for composite wood products. The amendment will allow compliant composite wood products and finished goods that contain compliant composite wood products that were manufactured prior to December 12, 2017 to be labeled as Toxic Substances Control Act (TSCA) Title VI compliant. This means that regulated composite wood products and finished goods that meet the required formaldehyde emissions standards could be voluntarily labeled as compliant as soon as compliance can be achieved. This will enhance regulatory flexibility and facilitate a smoother supply chain transition to compliance with the rule's broader requirements, as well as promote lower formaldehyde emitting products entering commerce earlier than under the rule as originally published. EPA believes that the amendment is non-controversial and does not expect to receive any adverse comments. However, in addition to this direct final rulemaking, elsewhere in this issue of the **Federal Register**, EPA is promulgating the amendment as a notice of proposed rulemaking that will be used in the event of adverse comment on the

amendments within this direct final action.

DATES: This final rule is effective on [*insert date 45 days after date of publication in the **Federal Register***] without further notice, unless EPA receives adverse comment by [*insert date 15 days after date of publication in the **Federal Register***]. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA-HQ-OPPT-2017-0243, 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:* Erik Winchester, National Program Chemicals Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001; telephone number: (202) 564-6450; email address: winchester.erik@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 direct final rule if you manufacture (including import), sell, supply, or offer for sale 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).

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. What Action is the Agency Taking?

Following promulgation of EPA's final rule addressing formaldehyde emission standards for composite wood products (81 FR 89674, December 12, 2016) (FRL-9949-90), industry stakeholders raised concerns to the Agency that the final rule's prohibition on labeling composite wood products and finished goods containing composite wood products as TSCA Title VI compliant before the December 12, 2017 compliance date would risk a substantial supply chain disruption for these products. These stakeholders requested that EPA allow labeling of compliant composite wood products and finished goods containing composite wood products as TSCA Title VI compliant before December 12, 2017. EPA shares the concerns of industry stakeholders regarding the prohibition on labeling composite wood products and finished goods containing composite wood products as TSCA Title VI compliant before December 12, 2017. EPA believes that the risk of unintentional supply chain disruption is substantial, though through prompt regulatory action, avoidable. As such, EPA will eliminate the prohibition at §770.45(f) of the December 12, 2016 final rule (*see* 81 FR 89741) on labeling composite wood products and finished goods containing composite wood products as

TSCA Title VI compliant before December 12, 2017.

The agency believes that removal of the labeling prohibition will have no impact on the ability of stakeholders to comply with the TSCA Title VI formaldehyde emission standards insofar as stakeholders are already working with their California Air Resources Board (CARB) approved Third Party Certifier (TPC) to ensure compliance with CARB's Airborne Toxic Control Measures (ATCM) to reduce formaldehyde emissions from composite wood products, and as the stakeholders suggest, they are currently labeling composite wood products and finished goods containing composite wood products as CARB-compliant, and thus are also meeting the TSCA Title VI formaldehyde emission standards.

In addition, EPA generally expects that the transition will be smooth for stakeholders already receiving certifications of product compliance by a CARB-approved TPC to also begin receiving product compliance certifications by EPA TSCA Title VI TPCs under §770.15 of the December 12, 2016 final rule (*see* 81 FR 89735) because §770.7(d) of the December 12, 2016 final rule provided reciprocity provisions under which a CARB-approved TPC may be recognized by the Agency as an EPA TSCA Title VI TPC (*see* 81 FR 89733). Producers of composite wood products and TPCs should note that TPCs, including CARB-approved TPCs working under the TSCA Title VI reciprocity provisions, must be recognized by EPA prior to certifying any composite wood products as TSCA Title VI compliant. TPCs can begin to apply for EPA recognition after the May 22, 2017 rule effective date by following the procedures outlined in §770.7(c)(2) and §770.8.

Although EPA is eliminating §770.45(f) of the December 12, 2016 final rule that

prohibits labeling composite wood products and finished goods containing composite wood products as TSCA Title VI compliant before December 12, 2017, the other labeling requirements at §770.45 will still apply. Notably, anyone that would label composite wood products as TSCA Title VI compliant will still be required to include the CARB or EPA provided identification number of the EPA TSCA Title VI TPC and a statement that products are certified by that TPC as TSCA Title VI compliant. For this reason, this direct final rule is not expected to result in any reduction of environmental or public health protection. However, this action is expected to provide greater certainty to entities throughout the supply chain that composite wood products and finished goods containing composite wood product are compliant with TSCA Title VI and enhance consumer confidence earlier than currently provided for in the December 12, 2016 final rule. EPA acknowledges that the delay of the effective date of the December 12, 2016 final rule (*see* 82 FR 8499 and 82 FR 14324) may have given rise to additional stakeholder concerns about that rule's respective implementation compliance dates. As a result, EPA has determined that those compliance dates should be extended and has initiated a separate action to extend them.

EPA is therefore publishing this direct final rule, and a notice of proposed rulemaking elsewhere in this issue of the **Federal Register** to address the elimination of the early labeling provision, as described in Units II.A.1 and II.A.2.

1. *Direct Final Rule.* EPA agrees with the stakeholders' requests and will eliminate the prohibition at §770.45(f) of the December 12, 2016 final rule (*see* 81 FR 89741) on labeling composite wood products and finished goods containing composite wood products as TSCA Title VI compliant before December 12, 2017.

2. *Proposed rule.* EPA believes that the amendment is non-controversial and does not expect to receive any adverse comments. However, in addition to this direct final rule, elsewhere in this issue of the **Federal Register**, EPA is promulgating the amendment as a notice of proposed rulemaking (See FRL-9963-05). If EPA receives no adverse comment, the Agency will not take further action on the proposed rule and the direct final rule will become effective as provided in this action. If EPA receives relevant adverse comment, the Agency will publish a timely withdrawal in the **Federal Register** informing the public that this direct final action will not take effect. EPA would then address all adverse public comments in a response to comments document in a subsequent final rule, based on the proposed rule.

B. 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. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at <http://www2.epa.gov/laws-regulations/laws-and-executive-orders>.

A. Executive Order 12866: Regulatory Planning and Review; Executive Order 13563: Improving Regulation and Regulatory Review; and Executive Order 13777: Reducing Regulation and Controlling Regulatory Costs

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review for review for review under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). In addition, since this action does not contain a new requirement or

impose any new burden or costs, the action qualifies as a burden reduction action under Executive Order 13771 (82 FR 9339, February 3, 2017). Although the change reduces burden, EPA did not attempt to determine the extent of that burden reduction. As such, this action can only be used for the 2 for 1 off-sets described in Executive Order 13771.

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under the PRA, 44 U.S.C. 3501 *et seq.*, 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 (EPA ICR No. 2446.02).

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. This direct final rule will allow regulated entities to voluntarily label compliant products prior December 12, 2017. The direct final rule will ease the transition of panel producers, fabricators, importers, distributors, and retailers from CARB labeling to TSCA labeling, since under the December 12, 2016 final rule, it would be difficult for some of them to time their production and inventory so that products that are labeled as TSCA compliant are available starting on but not before the compliance date. Since early

labeling is voluntary, any firms that do not find this activity to be beneficial can wait until December 12, 2017 to begin offering labeled products for sale. EPA therefore concludes that this action will have a nominally positive economic effect on the small entities subject to the rule.

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 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.A., this action would not materially alter the requirements for labeling composite wood products and finished goods containing composite wood products as TSCA Title VI compliant. Rather, the final rule will allow TSCA Title VI compliant products to be labeled as such earlier sooner than currently permitted.

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 rulemaking does not involve technical standards that would require the consideration of voluntary consensus standards pursuant to NTTAA section 12(d), 15 U.S.C. 272 note.

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

EPA has determined that the human health or environmental risk addressed by 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). As addressed in Unit II.A., this

action would not materially alter the requirements for labeling composite wood products and finished goods containing composite wood products as TSCA Title VI compliant.

Rather, the final rule will allow TSCA Title VI compliant products to be labeled as such earlier sooner than currently permitted.

K. 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).

List of Subjects in 40 CFR Part 770

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

Dated: June 21, 2017.

Wendy Cleland-Hamnett,

Acting 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).

§770.45 [Amended]

2. In §770.45, remove paragraph (f).

[FR Doc. 2017-14513 Filed: 7/10/2017 8:45 am; Publication Date: 7/11/2017]