

Small Entity Compliance Guide for Importers, Distributors and Retailers

Formaldehyde Emissions Standards for
Composite Wood Products
Title VI of the Toxic Substances Control Act



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This guide was prepared pursuant to section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. 104-121 as amended by Pub. L. Number 110-28. THIS DOCUMENT IS NOT INTENDED, NOR CAN IT BE RELIED UPON, TO CREATE ANY RIGHTS ENFORCEABLE BY ANY PARTY IN LITIGATION WITH THE UNITED STATES. The statements in this document are intended solely as guidance to aid you in complying with the formaldehyde emissions standards for composite wood products in Title VI of the Toxic Substances Control Act (TSCA) and the implementing regulations in 40 CFR part 770. EPA may decide to revise this guide without public notice to reflect changes in EPA's approach to implementing TSCA Title VI or to clarify and update text.

To determine whether EPA has revised this guide and/or to obtain copies, contact EPA's Small Business Ombudsman Hotline at (800) 368-5888 or (202) 566-1970 in DC, or consult the EPA's formaldehyde website at <http://www.epa.gov/formaldehyde>. The full texts of TSCA Title VI and the implementing regulations are also available at this website.

Introduction

This document is published by EPA as the official compliance guide for small entities, as required by the Small Business Regulatory Enforcement Fairness Act of 1996. Before you begin using the guide you should know that the information in this guide was compiled based on the Formaldehyde Emission Standards for Composite Wood Products regulation published on December 12, 2016. EPA is continually improving and upgrading its rules, policies, compliance programs, and outreach efforts. You can determine whether EPA has revised or supplemented the information in this guide by consulting EPA's formaldehyde website at <http://www.epa.gov/formaldehyde>.

Contents

This guide is organized as follows:

- Introduction
- Regulation Summary and Compliance Timetable
- Who Must Comply
- How to Comply
- For More Information
- Appendix and Acronym List

Terminology

Throughout this guide, the term “composite wood product” refers to the three composite wood products generally regulated by TSCA Title VI—hardwood plywood, medium-density fiberboard (MDF) and particleboard.

Other key terminology is defined in the Appendix: Glossary of Environmental Terms.

OTHER GUIDES TO CONSIDER: *There are other separate small entity compliance guides available for different entities along the value chain, such as:*

1. *Fabricators and Laminated Product Producers;*
2. *Accreditation Bodies (ABs) and Third-Party Certifiers (TPCs), and*
3. *Mills (Panel Producers).*

Each of these guides can be found at <https://www.epa.gov/formaldehyde/resources-and-guidance-materials-translations-formaldehyde-emission-standards-composite>.

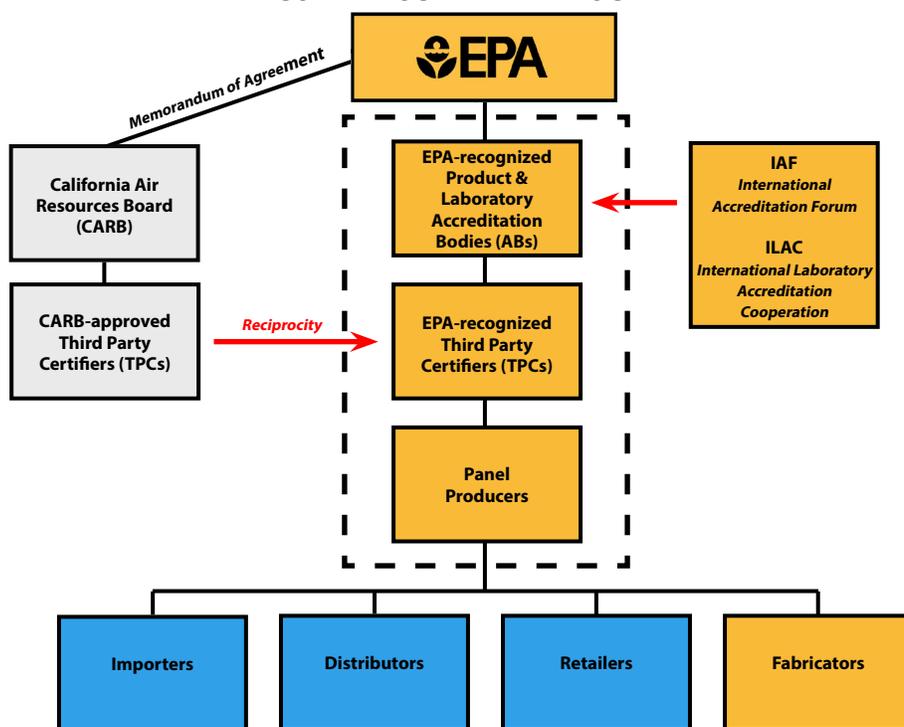
Who Should Use this Guide?

This guide is mainly for small businesses who are importers, distributors, or retailers of regulated composite wood products or component parts or finished goods containing regulated composite wood products. The following are examples of businesses that are likely to be covered under the regulation, including but not limited to:

- 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 (e.g., 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).
- Recreational vehicle (RV) dealers (NAICS code 441210).
- Recreational vehicle merchant wholesalers (NAICS code 423110).

Figure 1 outlines the structure of the TSCA Title VI program and shows the relationships between EPA and the various groups involved in implementation of the regulation. Importers, distributors, and retailers are identified in blue with their relationship to the remainder of the TSCA Title VI program.

FIGURE 1 - TSCA TITLE VI PROGRAM



What Does This Guide Cover?

This guide covers the requirements for importers, distributors, and retailers under the Formaldehyde Standards for Composite Wood Products Act (TSCA Title VI) and the implementing regulations, found at 40 CFR part 770. Specifically, this guide discusses the obligation to purchase and sell compliant composite wood products, component parts, and finished goods, and the associated recordkeeping and labeling requirements.

This guide explains your federal compliance obligations with respect to the formaldehyde regulations under TSCA Title VI. There may be other state or local requirements which apply to you which are different from, or more stringent than, the federal requirements. For more assistance in this area, contact your EPA regional office or state environmental agency.

NOTE: *If you are importing, distributing, or selling composite wood products, or component parts or finished goods containing composite wood products in California you must also comply with the California Air Resource Board's Airborne Toxic Control Measure (CARB ATCM) to control formaldehyde emissions from composite wood products. More information on the CARB ATCM can be found online at <http://www.arb.ca.gov/toxics/compwood/compwood.htm>.*

How Do I Obtain a Complete Copy of the Rule?

A complete copy of the final rule and supporting documents can be found in Federal Register (Vol. 81, No. 81, p. 89674) at <https://www.regulations.gov/document?D=EPA-HQ-OPPT-2016-0461-0001>.

A copy of the final rule and subsequent amendments can also be found at <https://www.epa.gov/formaldehyde/formaldehyde-emission-standards-composite-wood-products>. See section entitled "For More Information" of this compliance guide for additional information resources.

Regulation Summary & Compliance Timetable

Regulation Summary

TSCA Title VI establishes formaldehyde emission standards for three types of composite wood products: hardwood plywood, MDF and particleboard. The purpose of the Act and of the implementing regulations is to reduce formaldehyde emissions from these composite wood products, which will reduce exposures to formaldehyde, resulting in benefits for human health.

To ensure compliance with the formaldehyde emission standards, the regulations require composite wood products to be tested and certified by an EPA-recognized third-party certifier (TPC). Limited testing and certification exemptions are available for products made with no-added formaldehyde-based (NAF) resins or ultra low-emitting formaldehyde (ULEF) resins. To ensure that only compliant products enter and move through the product supply chain, the regulations contain recordkeeping, reporting and labeling requirements. The formaldehyde emission standards are identical to the emission standards currently in place in California, and the regulations are as consistent as practical with the requirements currently in effect under the California Air Resource Board's Airborne Toxic Control Measure (CARB ATCM).

As an importer, distributor or retailer, your responsibilities center on recordkeeping and labeling activities. You must ensure that you purchase only compliant composite wood products, whether they are unfinished panels or incorporated into component parts or finished goods and you must keep records to demonstrate that you have done so. In general, regulated composite wood panels (panels of particleboard, MDF, and hardwood plywood), and finished goods containing regulated composite wood products must be labeled. As an importer, distributor or retailer, you are not required to label products. However, if you purchase individually-labeled panels or finished goods for further resale, you must keep the labels intact on these items. If you purchase panels or finished goods that have been labeled by bundle (or by box, in the case of finished goods), and you sell individual panels or finished goods, you must retain a copy of the label, be able to identify the products associated with that label, and

make the label information available to potential customers upon request. You must have a method (e.g., color-coded edge marking) sufficient to identify the supplier of the panel or finished good which links the information on the label to the products.

Beginning March 22, 2019, importers must also provide an import certification under TSCA Section 13 for all imports of composite wood products, whether in the form of panels or incorporated into component parts or finished goods.

Compliance Timetable

The following table provides a summary of the regulatory requirements and compliance dates. The "How to Comply" section of this guide provides more detail on the rule requirements for importers, distributors and retailers and what they must do to document compliance with the regulation.

Requirement	Compliance Date
<i>Importers</i>	
Bills of lading, invoices, or comparable documents bearing a statement of TSCA Title VI compliance must be obtained and maintained for 3 years. In addition, importers must have the ability to make records identifying the panel producer, the date the products were produced, the supplier (if different) and the date the products were purchased available to EPA within 30 calendar days of request. (40 CFR §§ 770.30, 770.40)	<i>June 1, 2018</i>
Import certification under TSCA section 13 is required. (40 CFR §§ 770.30, 770.40)	<i>March 22, 2019</i>
<i>Distributors and Retailers</i>	
Bills of lading, invoices, or comparable documents must be obtained and maintained for 3 years. (40 CFR §§ 770.30, 770.40)	<i>June 1, 2018</i>

Who Must Comply

How Can I Tell If I Am Subject to This Rule?

You are subject to this rule if you are an importer, distributor, or retailer of hardwood plywood, MDF, or particleboard panels, or component parts or finished goods that contain hardwood plywood, MDF, or particleboard. If you import, distribute, or sell only exempt products, the rule does not apply to you. The following products are exempt:

- Hardboard;
- Structural plywood;
- Structural panels;
- Structural composite lumber;
- Military-specified plywood;
- Curved plywood;
- Oriented strand board;
- Glued laminated lumber;
- Prefabricated wood I-joists;
- Finger-jointed lumber;
- Wood packaging (pallets, crates, spools, dunnage);
- Composite wood products used inside a new vehicle, other than a recreational vehicle, including rail cars, boats, and aircraft;
- Windows that contain composite wood products, if the windows contain less than 5 percent composite wood product by volume; and
- Exterior doors and garage doors that contain composite wood products, if:
 - i. The doors are made from composite wood products manufactured with no-added formaldehyde-based resins or ultra low-emitting formaldehyde resins; or
 - ii. The doors contain less than 3 percent composite wood product by volume.

How to Comply

What Must I Do to Comply?

Importers

Manufactured-by Date

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. Importers must ensure that composite wood products, component parts, or finished goods containing composite wood products being imported into the United States are certified under TSCA Title VI beginning on the manufactured-by date, which is June 1, 2018. Laminated products must use a TSCA Title VI compliant core beginning June 1, 2018; however, the manufactured-by date for which laminated products must be TSCA Title VI compliant does not begin until March 22, 2024. On this date all laminated products are denoted as either laminated products that are exempt from the definition of hardwood plywood or laminated products that are not exempt from the definition of hardwood plywood. Note that the exempt or non-exempt designation of a laminated product you import may impact your recordkeeping and labeling requirements under TSCA Title VI.

Under TSCA, the term manufacture includes import, so for imported goods the manufactured-by date is the date of physical import into customs territory of the United States, not the date that goods were made in a factory. For imported goods, the date (i.e. month and year) that goods were made in a factory is required on the product label. Any composite wood products, component parts, or finished goods containing composite wood products imported into the United States after the applicable manufactured-by date must be certified under TSCA Title VI regardless of the physical manufacture date of the imported product.

Stockpiling

You are not permitted to sell any composite wood products, component parts, or finished goods containing composite wood products that you have stockpiled. Stockpiled products are products that, in an annual year

between July 7, 2010 and June 12, 2017, you have purchased at an average rate at least 20 percent greater than your average rate of purchase during the 2009 calendar year for the purpose of circumventing the emission standards and the other requirements of this rule. EPA recognizes that there may be valid reasons for purchasing products at a higher rate, including an actual increase in demand or sales, a reasonably-anticipated increase in demand due to an event like a natural disaster, or a planned business expansion. Products are “stockpiled” only if they were purchased or fabricated for the purpose of circumventing the emission standards.

Records

You must take reasonable precautions to ensure that any composite wood products, component parts, or finished goods that contain composite wood products you import have been produced in compliance with TSCA Title VI. This means that you must specify TSCA Title VI compliant products when ordering or purchasing from suppliers. You must also obtain and keep the following records to document that you have taken reasonable precautions:

- Records identifying the producer of the composite wood product panels that you are importing, or the producer of the composite wood product panels that are incorporated into the component parts or finished goods that you are importing.
- The date that the composite wood product panels were produced.
- Records identifying your supplier, if different from the panel producer, and the date you purchased the composite wood product panels, component parts, or finished goods.
- Bills of lading, invoices, or comparable documents that include a written statement from your supplier that the composite wood product panels, component parts, or finished goods are TSCA Title VI compliant or were imported before June 1, 2018.

These records must be kept for a period of three years from the import date or the date of the purchases or

shipments described in the records. The records must be made available to EPA within 30 calendar days of request.

Labels

You are not required to label any products. However, you must ensure that the labels applied by panel producers on panels or by fabricators on finished goods remain intact and readable. If you purchase panels or finished goods that have been labeled by bundle (or by box, in the case of finished goods), and you sell individual panels or finished goods, you must retain a copy of the label, be able to identify the products associated with that label, and make the label information available to potential customers upon request. You also must have a method to identify the supplier of the panel or finished good which links the information on the label to the products.

Until March 22, 2019, regulated products certified as compliant with the CARB ATCM Phase II emission standards must be labeled as compliant with either the TSCA Title VI or the CARB ATCM Phase II emission standards. Regulated products manufactured in or imported into the United States after March 22, 2019 may not rely on the CARB reciprocity of 40 CFR 770.15(e) and must be certified and labeled as TSCA Title VI compliant by an EPA TSCA Title VI TPC with all of the required accreditations.

Import Certification

Beginning March 22, 2019, for each imported shipment of composite wood products, or component parts or finished goods that contain composite wood products, you must sign the following certification under TSCA section 13:

"I certify that all chemical substances in this shipment comply with all applicable rules or orders under TSCA and that I am not offering a chemical substance for entry in violation of TSCA or any applicable rule or order under TSCA."

The certification must appear on the entry document or invoice for each imported shipment of composite wood products, or component parts or finished goods that contain composite wood products.

Distributors and Retailers

Manufactured-by Date

By June 1, 2018, regulated composite wood panels and finished products containing such composite wood panels that are manufactured (in the United States) or imported (into the United States) must be certified as compliant with either the TSCA Title VI or the CARB ATCM Phase II emission standards, which are set at identical levels.

If you are importing a composite wood product, component part, or finished good for distribution or retail in the United States, reference the "Importers" section in this guide for the manufactured-by date for importing.

Stockpiling

You are not permitted to sell any composite wood products, or component parts or finished goods containing composite wood products that you have stockpiled. Stockpiled products are products that, in an annual year between July 7, 2010 and June 12, 2017, you have purchased at an average rate at least 20 percent greater than your average rate of purchase during the 2009 calendar year for the purpose of circumventing the emission standards and the other requirements of this rule. EPA recognizes that there may be valid reasons for purchasing products at a higher rate, including an actual increase in demand or sales, a reasonably-anticipated increase in demand due to an event like a natural disaster, or a planned business expansion. Products are "stockpiled" only if they were purchased or fabricated for the purpose of circumventing the emission standards.

Records

You must take reasonable precautions to ensure that any composite wood products, or component parts or finished goods that contain composite wood products you purchase for resale have been produced in compliance with TSCA Title VI. This means that you must specify TSCA Title VI compliant products when ordering or purchasing from suppliers. You must also obtain and keep the following records to document that you have taken reasonable precautions:

- Bills of lading, invoices, or comparable documents that include a written statement from your supplier that the composite wood product panels, component parts, or finished goods are TSCA Title VI compliant or were produced before June 1, 2018.

Labels

You are not required to label any products. However, you must ensure that the labels applied by panel producers on panels or by fabricators on finished goods remain intact. If you purchase panels or finished goods that have been labeled by bundle (or by box, in the case of finished goods), and you sell individual panels or finished goods, you must keep a copy of the label, be able to identify the products associated with that label, and make the label information available to potential customers upon request. You also must have a method to identify the supplier of the panel or finished good which links the information on the label to the products.

How Is My Compliance Determined, and What Happens if the Agency Discovers a Violation?

To maximize compliance, EPA implements a balanced program of compliance assistance, compliance incentives, and traditional law enforcement. EPA knows that small businesses that must comply with complicated new statutes or rules want to do the right thing, but may lack the requisite knowledge, resources, or skills. Compliance assistance information and technical advice helps small businesses to understand and meet their environmental obligations. Compliance incentives, such as EPA's Small Business Policy, apply to businesses with 100 or fewer employees and encourage persons to voluntarily discover, disclose, and correct violations before they are identified by the government (more information about EPA's Small Business Policy is available at <https://www.epa.gov/enforcement/small-businesses-and-enforcement>). EPA's enforcement program is aimed at protecting the public by targeting persons or

entities who neither comply nor cooperate to address their legal obligations.

EPA uses a variety of methods to determine whether businesses are complying, including facility inspections, reviewing records and reports, coordinating with U.S. Customs and Border Protection on importing, and responding to citizen tips and complaints. Under TSCA, EPA may file an enforcement action against violators seeking penalties of up to \$37,500 per violation, per day. The proposed penalty in a given case will depend on many factors, including the number, length, and severity of the violations, the economic benefit obtained by the violator, and its ability to pay. EPA has policies in place to ensure penalties are calculated fairly. These policies are available to the public. In addition, any company charged with a violation has the right to contest EPA's allegations and proposed penalty before an impartial judge or jury.

EPA encourages small businesses to work with the Agency to discover, disclose, and correct violations. The Agency has developed self-disclosure, small business, and small community policies to modify penalties for small and large entities that cooperate with EPA to address compliance problems. For more information on compliance assistance and other EPA programs for small businesses, please contact EPA's Small Business Ombudsman at (202) 566-2075.

For More Information

Get additional information at <http://www.epa.gov/formaldehyde>.

The regulations can be found in the Federal Register (Vol. 81, No. 81, p. 89674) at <https://www.regulations.gov/document?D=EPA-HQ-OPPT-2016-0461-0001>.

A copy of the final rule and subsequent amendments can also be found at <https://www.epa.gov/formaldehyde/formaldehyde-emission-standards-composite-wood-products>. See section entitled “For More Information” of this compliance guide for additional information resources.

Where Can I Go If I Have Questions or Need Further Assistance?

Please contact EPA’s TSCA Hotline with questions by telephone at (202) 554-1404, by fax at (585) 232-3111, or by email at tsc-hotline@epa.gov.

Appendix

Acronym List

ATCM	Airborne Toxic Control Measure
CARB	California Air Resources Board
FR	Federal Register
MDF	Medium-Density Fiberboard
NAF	No-Added Formaldehyde
RV	Recreational Vehicle
TPC	Third-Party Certifier
TSCA	Toxic Substances Control Act
ULEF	Ultra Low-Emitting Formaldehyde

Glossary of Environmental Terms

Bundle means more than one composite wood product, component part, or finished good fastened together for transportation or sale.

Composite wood product means hardwood plywood made with a veneer or composite core, MDF, and particleboard.

Component part means an object other than a panel that contains one or more composite wood products and is used in the construction or assembly of finished goods. Component parts that are sold directly to consumers are considered finished goods.

Distributor means any person or entity to whom a composite wood product, component part, or finished good is sold or supplied for the purposes of resale or distribution in commerce, except that manufacturers and retailers are not distributors.

Finished good means any good or product, other than a panel, that contains hardwood plywood (with a veneer or composite core), particleboard, or MDF and that is not a component part or other part used in the assembly of a finished good. Site-built buildings or other site-built real property improvements are not considered finished goods.

Hardwood plywood means a hardwood or decorative panel that is intended for interior use and composed of (as determined under ANSI/HPVA HP-1-2016 (incorporated by reference, see 40 CFR §770.99)) an assembly of layers or plies of veneer, joined by an adhesive with a lumber core, a particleboard core, a MDF core, a hardboard core, a veneer

core, or any other special core or special back material. Hardwood plywood does not include military-specified plywood, curved plywood, or any plywood specified in PS-1-09, Voluntary Product Standard—Structural Plywood (incorporated by reference, see 40 CFR §770.99), or PS-2-10, Voluntary Product Standard—Performance Standard for Wood-Based Structural-Use Panels (incorporated by reference, see 40 CFR §770.99). In addition, hardwood plywood includes laminated products except as provided at 40 CFR §770.4.

Importer means any person or entity who imports composite wood products, component parts, or finished goods into the customs territory of the United States (as defined in general note 2 of the Harmonized Tariff Schedules of the United States). Importer includes:

1. The entity primarily liable for the payment of any duties on the products, or
2. An authorized agent acting on the entity's behalf.

Medium-density fiberboard or **MDF** means a panel composed of cellulosic fibers made by dry forming and pressing a resinated fiber mat (as determined under ANSI A208.2-2016 (incorporated by reference, see 40 CFR §770.99)).

No-added formaldehyde-based or **NAF resin** means a resin formulated with no added formaldehyde as part of the resin crosslinking structure in a composite wood product that meets the emission standards in 40 CFR §770.17(c).

Particleboard means a panel composed of cellulosic material in the form of discrete particles (as distinguished from fibers, flakes, or strands) that are pressed together with resin (as determined under ANSI A208.1-2016 (incorporated by reference, see 40 CFR §770.99)). Particleboard does not include any product specified in PS-2-10, Performance Standard for Wood-Based Structural-Use Panels (incorporated by reference, see 40 CFR §770.99).

Retailer means any person or entity that sells, offers for sale, or supplies directly to consumers composite wood products, component parts or finished goods that contain composite wood products, except that persons or entities in the construction trades are not considered retailers by selling, renovating, or remodeling buildings.

Ultra low-emitting formaldehyde or **ULEF Resin** means a resin in a composite wood product that meets the emission standards in 40 CFR §770.18(c).