

# **EPA's Formaldehyde Rule: Importer Best Practices**

International Wood Products Association

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# Overview



# Reasonable Precautions

# Records

By Dec. 12, 2017, importers must take reasonable precautions to ensure that the composite wood products they sell meet the EPA rule by:

- Maintaining for **3** years from date of import bills of lading, invoices, etc. that include a **written statement from the supplier that the products are TSCA Title VI compliant** or were produced before Dec. 12, 2017
- Making available to EPA within 30 days of request:
  - **Records identifying the panel producer and date of panel production**
  - Records identifying supplier (if different) and date of purchase

40 C.F.R. § 770.30(b)

# Importers must ensure compliance

Importers must take **reasonable precautions** to ensure the products they sell meet the EPA rule

- 40 C.F.R. § 770.30(a)

Importers must sell products with labels stating the products are TSCA Title VI compliant

Importers must submit import certifications to CBP

This means importers must certify compliance to their customers and to the U.S. government

# Importers' dilemma

Foreign panel producers, fabricators, and distributors are not subject to TSCA

- No EPA enforcement of them
- No independent obligation to comply

Tools for importers

- Contracts requiring TSCA Title VI compliance
- Due diligence – outreach to supply chain

# Identify supply chain participants

Must be able to tell EPA within 30 days the identities of panel producer and direct supplier (and dates)

Must be able to certify compliance, based ultimately on compliance by foreign panel producer(s)

Work with direct supplier to identify upstream participants leading to the panel producer(s)

Need to be able to reach panel producer(s)

# Contracts

Have contract obligating supplier to meet all requirements it would have under EPA rule if it were in the U.S.

- E.g., require prompt notification of non-complying lots, labeling for compliance, certification statements on bill of lading or invoice, etc.

May not have contract with panel producer

- In that case, require supplier to have contract with each panel producer requiring panel producer to comply with EPA rule



# Work with your supply chain

## Inform them of the EPA rule's requirements

- Explain the differences from CARB

## Confirm whether panel producers are CARB-compliant

- Identify their third-party certifiers and testing labs
- Check with their TPCs for compliance history
- Confirm that their TPCs are CARB-approved
- Confirm that their TPCs will apply to EPA for recognition (or have done so or have received EPA recognition)

## If not CARB-compliant, either:

- Refuse to do business with them, or
- Help them become TSCA Title VI compliant

# Work with your supply chain

Confirm panel producers have QA testing capability and adequate work practices

Confirm their understanding of all panel producer obligations under the EPA rule

Visit their facilities

Meet with their compliance staff

Provide compliance checklists and other materials in the local language

Follow up

# Labeling Requirements

# Labeling

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Importers must: Leave intact labels certifying TSCA Title VI compliance on finished goods or component parts sold separately to end users,

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Unless *de minimis* amount of composite wood products content (144 square inches based on the surface area of the largest face), or

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Unless imported prior to Dec. 12, 2017, in which case the products must not be labeled as TSCA Title VI compliant

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40 C.F.R.  
§ 770.45

# 40 C.F.R. § 770.45(f)

“Composite wood products and finished goods made entirely of composite wood products manufactured before the manufactured-by date **must not be labeled** as TSCA Title VI compliant.”

- Manufactured-by date = December 12, 2017
- Including for imports

Goods imported before December 12 must not be labeled

Goods imported on or after December 12 must be labeled

Labeling must be done by foreign supplier prior to shipment

Logistics?

# Advocacy

Joint industry conference on formaldehyde rule on January 18-19 focused on this issue

- Eric Winchester committed to tell EPA management

CPA, IWPA, KCMA, and AFHA sent letters to EPA on January 6 and January 31, 2017

- Laid out problem, suggested enforcement discretion
- No response yet from EPA

# Import Certification

# Import certification

By Dec. 12, 2018,  
importers must:

- Comply with the CBP TSCA import certification requirements



40 C.F.R. § 770.30(d)



# Elements

## What is subject to import certification:

- Articles that are composite wood products (“hardwood plywood made with a veneer or composite core, medium-density fiberboard, and particleboard”) that are regulated under the formaldehyde rule
- Articles that contain regulated composite wood products
- Excludes excluded products (not regulated)
  - Listed in 40 C.F.R. § 770.1(c), e.g., structural plywood, second-hand finished goods

# Elements

What must  
be done?



Submit to CBP a  
positive import  
certification  
indicating that the  
chemicals in the  
articles to be  
imported comply with  
TSCA

# CBP Regulations

## Title 19 – Customs Duties

- Part 12 – Special Classes of Merchandise
- §§ 12.118-12.127: TSCA
- Also § 127.28

Originally  
adopted 1983

Amended 2016

- 81 Fed. Reg. 94980 (Dec. 27, 2016)
- Effective March 21, 2017
- Establishes an electronic option for filing import certifications and makes other changes

# Certifications

## Positive statement:

- “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 thereunder.”

## Negative statement:

- “I certify that all chemical substances in this shipment are not subject to TSCA.”
- Intended for pesticides, FDA-regulated materials, etc.

# What does the certification mean?

“All chemical substances” = formaldehyde

No other chemicals in imported articles are subject to section 13 certification requirements (unless a SNUR applies to imported articles)

“Comply with all applicable rules” = formaldehyde rule

“Certify” = formal representation to U.S.

Subject to enforcement action for false statements to the government, 18 U.S.C. § 1001

# Negative certification?

Should the negative certification be submitted for imports of exempt articles?

- No
- Implies not subject to TSCA – not a pesticide, etc.
- The chemicals in imported articles are subject to TSCA even if exempt from the formaldehyde rule

Await EPA guidance

Possible – voluntarily submit a positive certification

- The chemicals in the articles would be in compliance with TSCA

# Filing process – electronic

Paper process without blanket certification, submitted to port director, or

Submit certification electronically to:

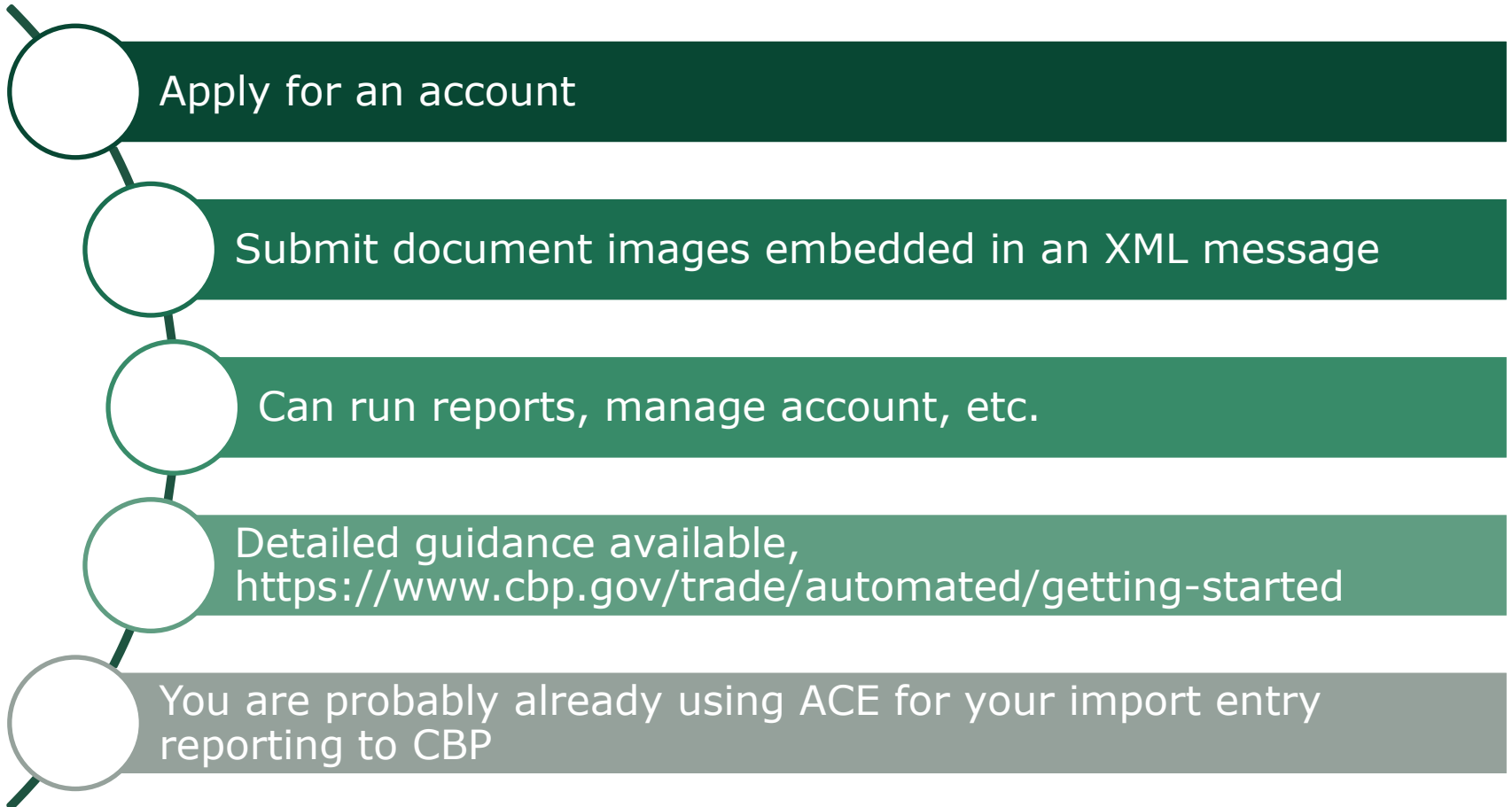
the **Automated Commercial Environment system (ACE)**,  
or

any other CBP-authorized Electronic Data Interchange (EDI)

Submit additional information about the certifier (importer or agent)

Name, phone number, address, email address

# ACE process





# Non-Complying Lots

# Importer obligations

## Importers must:

- Send a notification to their customers if:
  - They receive a notification that they received composite wood products belonging to a non-complying lot, and
  - They have further distributed the composite wood products

## The notification must:

- Identify the panel producer, describe the products, indicate type of test failure, and
- State that that composite wood products belonging to the non-complying lot must be isolated and cannot be further distributed, and what panel producer will do

40 C.F.R. § 770.22(f)

# Timing

Given transportation delays, notifications should reach importer prior to import

- Unless imported from Canada or Mexico

If importer has already shipped products, must notify its customers

Effectively, importer cannot ship products to customers in U.S.

# Questions?



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