

PRELIMINARY DRAFT: JUNE 20, 2006

PROPOSED REGULATION ORDER

AIRBORNE TOXIC CONTROL MEASURE TO REDUCE FORMALDEHYDE EMISSIONS FROM COMPOSITE WOOD PRODUCTS

Adopt new section 93120, Title 17, California Code of Regulations, to read as follows:

Section 93120. Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products.

(a) Purpose. The purpose of this airborne toxic control measure is to reduce formaldehyde emissions from composite wood products that are sold, supplied, offered for sale, used, or manufactured for sale in California. The composite wood products covered by this regulation are particleboard, medium density fiberboard, hardwood plywood, and finished products made from these materials.

(b) Applicability. This airborne toxic control measure applies to:

(1) Manufacturers of particleboard, medium density fiberboard, and hardwood plywood that manufacture, sell, supply, or offer these products for sale in California, and

(2) Distributors and importers of particleboard, medium density fiberboard, and hardwood plywood and finished products that are made from these materials, that sell, supply, or offer these products for sale in California, and

(3) Fabricators that use particleboard, medium density fiberboard, and hardwood plywood to make other products that are sold, supplied, or offered for sale in California, and

(4) Retailers of particleboard, medium density fiberboard, and hardwood plywood and finished products that are made from these materials, that sell, supply, or offer these products for sale in California.

(c) Definitions. For the purposes of this section, the following definitions shall apply:

(1) "AHA" means the American Hardboard Association.

(2) "ARB" means the California Air Resources Board.

- (3) "ASTM" means the American Society for Testing and Materials.
- (4) "ANSI" means the American National Standards Institute.
- (5) "Batch" means ...
- (6) "Composite Wood Products" means all engineered wood products including particleboard, medium density fiberboard, and hardwood plywood.
- (7) "Distributor" means any person to whom a composite wood product is sold or supplied to for the purposes of resale or distribution in commerce, except that manufacturers, retailers, and consumers are not distributors.
- (8) "Executive Officer" means the Executive Officer of the California Air Resources Board, or his or her delegate.
- (9) "Fabricator" means any person that uses composite wood products to make other products for sale or supply in California.
- (10) "Facility" means the entity where composite wood products are manufactured, used, or sold in California. This includes, but is not limited to, manufacturing plants, distribution centers, warehouses, and retail stores.
- (11) "Fiber" means the slender threadlike elements of wood or similar cellulosic material, which are separated by chemical and/or mechanical means, as in pulping, that can be formed into boards.
- (12) "Fiberboard" means a composite panel composed of cellulosic fibers (usually wood or agricultural material) made by wet or dry forming and compacting a mat of fibers by a cold press. The ANSI standard for fiberboard is ANSI/AHA A194.1-1985 (cellulosic fiberboard).
- (13) "Finished Goods or Products" means any good or product, other than a panel, containing hardwood plywood, particleboard, or medium density fiberboard.
- (14) "Formaldehyde" means a colorless gas at room temperature, that at elevated concentrations, has a strong, pungent odor and can be irritating to the eyes, nose, and lungs (i.e., CAS No. 50-00-0), that is used in the resins to bond the wood substrates in composite wood products.
- (15) "Hardboard" means a composite panel composed of cellulosic fibers made by dry or wet forming and hot pressing of a resinated fiber mat. The ANSI standards for hardboard are ANSI/AHA A135.4-1995 (basic hardboard),

ANSI/AHA A135.5-1995 (prefinished hardboard paneling), and ANSI-AHA A135.6-1998 (hardboard siding).

(16) “Hardwood” means the wood of a deciduous broad-leafed tree. Examples of hardwoods include, but are not limited to, aspen, birch, and oak.

(17) “Hardwood Plywood” means a panel, molding, or other structural building material composed of an assembly of hardwood layers or plies of veneer or veneers, in combination with lumber core, particleboard core, medium density fiberboard core, hardboard core, or of a special core material joined with an adhesive.

(18) “Importer” means a person who manufactures or wholesales, through employees or agents, composite wood products manufactured outside of the United States for the purpose of sale or resale in California.

(19) “Manufacturer” means any person who imports, manufactures, assembles, produces, packages, or repackages a composite wood product (see Government Code section 14887(c)).

(20) “Medium Density Fiberboard” means a composite wood product panel, molding, or other structural building material composed of cellulosic fibers (usually wood) made by dry forming and pressing of a resinated fiber mat (ANSI A208.2-202, medium density fiberboard).

(21) “Panel” means any standard size particleboard, medium density fiberboard, or hardwood plywood board (e.g., 4 ft by 8 ft) produced for sale, supply, or distribution by a composite wood product manufacturer.

(22) “Particle” means a distinct fraction of wood or other cellulosic material produced mechanically and used as the furnish for a particleboard. Particles are larger in size than fibers.

(23) “Particleboard” means a composite wood product panel, molding, or other structural building material composed of cellulosic material (usually wood) in the form of discrete pieces or particles, as distinguished from fibers, which are pressed together with resin.

(24) “Person” shall have the same meaning as defined in Health and Safety Code section 39047.

(25) “Plywood” means a panel product consisting of layers of wood veneers hot pressed together with resin. Plywood includes panel products made by hot pressing (with resin) veneers to a substrate such as other veneers, particleboard, medium density fiberboard, or lumber.

(26) "Press Conditions" means ...

(27) "Resin Formulation" means ...

(28) "Retailer" means any person who sells, supplies, or offers for sale, composite wood products, either finished or in panel form, directly to consumers.

(29) "Softwood" means the wood of a coniferous tree. Examples of softwoods include, but are not limited to, southern yellow pine, Douglas-fir, and white spruce.

(30) "Third Party Certifier" means an entity, such as the Composite Panel Association or Hardwood Plywood & Veneer Association, that certifies the emission test procedures and facilities used by manufacturers to conduct formaldehyde emission tests.

(31) "Veneer" means thin sheets of wood peeled or sliced from logs for use in the manufacture of wood products such as plywood, laminated veneer lumber, or other products.

(d) *Emission Standards for Hardwood Plywood, Particleboard, and Medium Density Fiberboard.*

(1) *Emission Standards.* The emission standards in Table 1 apply to hardwood plywood (HWPW), particleboard (PB), and medium density fiberboard (MDF) that is sold, supplied, offered for sale, or manufactured for sale in California.

Except as provided in the "sell through" provisions of subsections (e)(2), (f)(3), (g)(3), (h)(3), and (h)(4), no person shall sell, supply, offer for sale, or manufacture for sale in California any HWPW, PB, or MDF which, at the time of sale or manufacture, does not comply with the emission standards in Table 1 on or after the effective dates specified in Table 1:

Table 1 Phase 1 and 2 Emission Standards for Hardwood Plywood (HWPW), Particleboard (PB), and Medium Density Fiberboard (MDF) ¹				
Effective Date	---- Phase 1 (P1) and 2 (P2) Emission Standards (ppm) ----			
	HWPW-VC	HWPW-CC	PB	MDF
July 1, 2008	P1: 0.09	P1: TBD	P1: 0.18	P1: 0.21
July 1, 2010	P2: 0.03	P2: TBD	P2: 0.08	-----
January 1, 2012	-----	-----	-----	P2: 0.08

⁽¹⁾ Based on the large chamber test method (ASTM E1333-96) in parts per million (ppm). HWPW-VC = veneer core; HWPW-CC = composite core. TBD = to be determined.
Note: Standards for HWPW-CC are under review.

A product “does not comply with the emission standards in Table 1” if:

(A) The product was produced by a manufacturer without a current third-party certification program that complies with subsection (e)(3) and provides verification of the HCHO emission properties of the product, or

(B) Records of testing conducted by the manufacturer or the third party certifier show that a particular product or batch of product sold, supplied, or offered for sale in California exceeded the applicable emission standard specified in Table 1, or

(C) The product is tested at any time after it is manufactured, using one of the test methods specified in subsection (d)(3), and is found to exceed the applicable emission standard specified in Table 1, or

(D) A finished product contains any HWPW, PB, or MDF which does not comply with the emission standards in Table 1 (i.e., the HWPW, PB, or MDF contained in the finished product complies with any of the criteria set forth in paragraphs (A), (B), or (C) above).

(2) *Exemptions.* The emission standards in subsection (d)(1) do not apply to plywood and particleboard materials when installed in manufactured homes and subject to the United States Housing and Urban Development regulations (24 Code of Federal Regulations§ 3280.308).

In addition, the phase 1 emission standards in subsection (d)(1) do not apply to HWPW, PB, or MDF manufactured with phenolic and/or isocyanate adhesives, in accordance with the bond provisions of U.S. Product Standard PS1 – “Construction and Industrial Plywood” or U.S. Product Standard PS 2 –

“Performance Standard for Wood-based Structural-use Panels”, and for adhesives systems with no-added formaldehyde, such as polyvinylacetate and soy resins. All of these products are subject to the phase 2 emission standards as specified in subsection (d)(1).

(3) Compliance Testing.

(A) Compliance with the emission standards for HWPW, PB, and MDF in subsection (d)(1) shall be demonstrated by conducting product emissions tests using the large chamber test method (ASTM E1333-96); or an alternate test procedure as specified in subsection (d)(3).

(B) Test methods other than ASTM E1333-96 (i.e., large chamber test) may be used if they are demonstrated to provide equivalent results to those obtained using ASTM E1333-96. All alternative test methods must be approved in writing by the Executive Officer prior to use as specified in subsection (d)(3)(C).

(C) An application to use an alternative test method must be submitted to the ARB in writing, and must include, at a minimum, the following information and data:

1. A complete description of the test method used to quantify product emissions, including all procedures used, precision and reproducibility, and the criteria used to verify the validity of the test (e.g., modified small chamber test procedure, quality assurance and quality control measures).

2. Results collected using the alternate test method and corresponding equivalent emission rate(s), as stipulated in the large chamber test method (ASTM E1333-96)

(D) Within 30 days of receipt of an application, the Executive Officer shall notify the applicant in writing that the application is complete, or if additional information or testing is required to complete the application. If the Executive Officer finds that an application complies with the requirements of this subsection, then he or she may issue an Executive Order certifying that the alternate test procedure provides equivalent results to ASTM E1333-96, and authorize its use for compliance testing.

(e) Requirements for Manufacturers of Hardwood Plywood, Particleboard, and Medium Density Fiberboard.

(1) *Emission Standards.* Except as provided in the “sell through” provisions in subsection (e)(2), all manufacturers of HWPW, PB, and MDF must comply with the requirements of section (d). All HWPW, PB, and MDF manufactured on or after the effective dates specified in subsection (d)(1) must comply with the emission standards specified in subsection (d)(1).

(2) *Sell-through of Composite Wood Products Manufactured Before the Effective Dates of the Phase 1 and Phase 2 Standards.* Composite wood products manufactured before the phase 1 and phase 2 effective dates specified in subsection (d) may be sold, supplied, or offered for sale by the product manufacturer for up to one month after each of the specified effective dates. The specific sell through dates for the phase 1 and phase 2 standards are as follows:

(A) Hardwood plywood, particleboard, and medium density fiberboard manufactured before July 1, 2008 that does not comply with the phase 1 emission standard may be sold, supplied, or offered for sale by the product manufacturer until July 31, 2008. Beginning August 1, 2008, all products subject to the phase 1 standard must comply with this standard, regardless of the date on which the products were manufactured.

(B) Hardwood plywood and particleboard manufactured before July 1, 2010 that complies with the phase 1 standard but does not comply with the phase 2 standard may be sold, supplied, or offered for sale by the product manufacturer until July 31, 2010. Beginning August 1, 2010, all HWPW and PB subject to the phase 2 standard must comply with this standard, regardless of the date on which the products were manufactured.

(C) Medium density fiberboard manufactured before January 1, 2012 that complies with the phase 1 standard but does not comply with the phase 2 standard may be sold, supplied, or offered for sale by the product manufacturer until January 31, 2012. Beginning February 1, 2012, all MDF subject to the phase 2 standard must comply with this standard, regardless of the date on which the products were manufactured.

(3) *Third Party Certification.*

(A) Manufacturers of HWPW, PB and MDF must demonstrate compliance with the emission standards specified in subsection (d)(1) via third party certification. The third party certification approach is based in part on the *Composite Panel Association's Grademark Program (Composite Panel Association, 2006 Update)* and the *Hardwood Plywood & Veneer Association's Testing and Inspection Program (Hardwood Plywood & Veneer Association, 2005)*. Manufacturers must either participate in an existing third party certification program and follow the minimum requirements listed below or participate in an equivalent third party certification program approved by the Executive Officer and follow the minimum requirements listed in subsection (e)(3)(C).

(B) *Equivalent Third Party Certification.* Applications for "equivalent third party certification," must be submitted in writing (i.e., certification application) to the Executive Officer. Within 30 days of receiving an application for certification,

the Executive Officer will contact the applicant in writing and notify them if additional information is needed. When a complete application has been received, ARB will review the application and notify the applicant in writing, as to whether their application is approved. If an application is not approved, applicants may provide additional information and reapply for certification. If the new information is sufficient, the Executive Officer may approve the application.

(C) *Minimum Requirements.* All certification programs must contain, at a minimum, provisions requiring that:

1. Each product and production line must comply with a certification program and be routinely checked as specified in subsection (e)(3)(C)(4) for formaldehyde emissions through a quality control program that correlates the routine test data measured by the desiccator test (ASTM D 5582-00) or small chamber test (ASTM D 6007-02) with values obtained using ASTM E1333-96, to verify compliance with the applicable emissions standard in subsection (d)(1);

2. Quality control limits must be established for each product and production line;

3. Quality control tests correlating routine testing with ASTM E1333-96 values must be based on a predetermined minimum number of sample measurements (e.g., 20 data points);

4. Each product and production line must be tested at least once every 8 ± 1 hour of production, and whenever:

- i. a production run ends before reaching eight hours; or
- ii. the resin formulation and percentage of formaldehyde in the resin is increased; or
- iii. there is a decrease in press time; or
- iv. the quality control manager suspects the product may not comply with the emission standard;

5. Reduced testing may be allowed if a consistent correlation is documented for a period of six-months;

6. At least quarterly, randomly selected samples from each production line and each product will be tested in a large chamber following ASTM E 1333-96 under supervision of a third party certifier. Test results that do not comply with applicable emission standards will result in notification to the Executive Officer by the third party certifier and loss of certification of that product until it can be demonstrated to the Executive Officer that the product complies with the applicable standard.

7. If a batch of panels or boards is out of compliance, the plant must keep records of what is done to reduce emissions (e.g., use of a scavenger, sealant,

or aging), and results of retests to verify compliance with the applicable emissions standard in subsection (d)(1);

8. Records must be kept for at least three years to document the implementation of the above six requirements; and

9. All panels or boards, or bundles of panels or boards, must be stamped or labeled to demonstrate compliance with the applicable formaldehyde emission standard in subsection (d)(1) and to identify all of the following:

- i. product manufacturer;
- ii. date and shift of production and/or lot number

10. Documentation via chain-of-custody must accompany each bundle of panels or boards as they are sold, supplied, offered for sale, used, or manufactured for sale in the California marketplace. The documentation must include the method of verifying compliance with applicable emission standards in subsection (d)(1) and the name of the third party certifying agency, so that distributors, importers, and fabricators have documentation to verify the information specified in subsection (e)(3)(C)(9) above.

(4) Product Labeling Requirements. Each batch of HWPW, PB, and MDF must be clearly labeled to indicate compliance with the emission standards specified in subsection (d)(1). The label shall be applied as a stamp, tag, or bar code on every panel produced. The label shall include, at a minimum, all of the following information:

1. Manufacturer name;
2. Date of production;
3. Product lot number or batch produced; and
4. ARB-designated marking (to be specified) to denote that the product complies with the applicable phase 1 or 2 emission standards specified in subsection (d)(1).

(5) Records Maintenance and Emissions Data Reporting Requirements.

(A) Phase 1 Standards. Beginning July 1, 2008, manufacturers of HWPW, PB, and MDF must maintain records documenting the procedures used, quality control data, and laboratory test results, including, but not limited to, ASTM E1333-96 test results conducted on a quarterly (or more frequent) basis, results from tests conducted on-site during periods between ASTM E1333-96 tests with either small-chambers (ASTM No. D6007-02) or desiccators (ASTM No. D5582), and other applicable quality control data.

Each ASTM 1333-96 test shall be assigned a unique identification number that serves as the basis for tracking the compliance of HWPW, PB, and MDF offered for sale in California to its applicable phase 1 emission standard. At a minimum, emissions test data for each product certified to a phase 1 standard in subsection (d)(1) must be kept for a period of three-years.

All manufacturers subject to this regulation must submit quarterly ASTM 1333-96 test data to ARB within seven-days of the end of the quarter. The reporting form must, at a minimum, include:

1. Name, address, and contact information of the manufacturer and their third party certifier;
2. List of composite wood products and amount of panels covered by the specified large-chamber test (e.g., the batch numbers produced during the quarter and the test identification number); and
3. A summary table of the small-chamber or desiccator tests performed during the quarter.

(B) *Phase 2 Standards.* Manufacturers must demonstrate compliance with the phase 2 emission standards in subsection (d)(1). This demonstration must be made on or before July 1, 2010 for manufacturers of HWPW and PB, and on or before January 1, 2012 for manufacturers of MDF. For products made with resins with no-added formaldehyde, after a period of six-months in which product emission levels are found to be at or below the prescribed product emission standard (i.e., 0.03 ppm for HWPW, and 0.05 ppm for PB and MDF), manufacturers may request a waiver from future data submissions from the Executive Officer. Subject to written approval by the Executive Officer, the submission of future phase 2-related emissions data may be waived. In their place, manufacturers shall submit a monthly letter documenting their continued production of compliant products made with resins with no-added formaldehyde.

In the event that manufacturers change their resin formulation or modify their press conditions, they must notify ARB and their third party certifier, and resume data submissions until there is sufficient data to establish that the new product complies with the phase 2 standards, as determined by the Executive Officer. At a minimum, emissions test data for each product certified to a phase 2 standard in subsection (d)(1) shall be kept for a period of three-years.

(6) Recordkeeping Requirements for Manufacturers of Hardwood Plywood, Particleboard, and Medium Density Fiberboard.

(A) For every panel produced for sale in California, manufacturers must maintain documentation that:

1. Allows each panel produced to be traced to a specific ASTM 1333-96 test that demonstrates compliance with its applicable phase 1 or 2 emission standard specified in subsection (d)(1);

2. Identifies the entity that purchased the panel and the amount purchased; and

3. Identifies the entity that transported the panel to the purchaser.

These requirements are met if manufacturers follow the structure and requirements of chain-of-custody programs developed for use in the Forest Stewardship Council (Forest Stewardship Council, 2004) or the Sustainable Forest Initiative (Reference).

******* Other qualifying chain-of-custody programs under evaluation *******

(B) For each batch of product, proof of its measured formaldehyde emission level must be traceable through its chain-of-custody documentation to a specific ASTM 1333-96 test, and listed on a form with a unique manufacturer identification number that also contains, at a minimum, the following information:

1. Manufacturer information (i.e., company name, contact person, address, phone number, email address)

2. Emissions test information (i.e., name of third-party certifier (TPC), TPC information – company name, contact person, phone number, mailing and email addresses, and statement on product invoice which certifies that the shipment of HWPW, PB and/or MDF complies with the emission standards in subsection (d)).

3. Product information (i.e., description of the panel (e.g., ½” hardwood plywood) and date of manufacture and batch/run number)

4. Purchaser information (i.e., Purchaser’s name, contact person, address, and phone number, and purchase order or invoice number)

5. Product transporter information (i.e., Delivery company name, contact person, phone number, and address, and shipping invoice number)

(7) *Facility inspections.* Each manufacturing plant may be inspected by ARB, local air district officials, or third party certifiers. In the course of an inspection, chain-of-custody programs used by manufacturers may be audited and a sample may be secured for emissions testing (Appendix B).

(f) Requirements for Distributors and Importers of Hardwood Plywood, Particleboard, and Medium Density Fiberboard and Finished Goods Containing Those Materials.

(1) *Emission Standards.* Except as provided in the “sell through” provisions of subsection (f)(3), all distributors and importers must comply with the requirements of subsection (d)(1) for all HWPW, PB, MDF panels and finished goods containing these materials that are sold, supplied, offered for sale, or purchased for sale in California.

(2) *Additional Requirements to Help Ensure that Complying Products are Purchased.* Distributors and importers must take reasonable prudent precautions to insure that the panels and finished goods they purchase comply with the applicable emission standards specified in subsection (d)(1). “Reasonable prudent precautions” include instructing each supplier that the products they supply to a distributor or importer must comply with the applicable emission standards, and obtaining written documentation from each supplier that this is so. This subsection does not affect the liability of any person for any violation of subsection (d)(1).

In addition, distributors and importers must keep records showing the date of purchase and the supplier of the panels and finished goods, and document what precautions were taken to insure that the panels and finished goods comply with applicable emission standards. These records must be kept for a minimum of three-years.

(3) *Sell-through of Composite Wood Products Manufactured Before the Effective Dates of the Phase 1 and Phase 2 Standards.* Composite wood products manufactured before the phase 1 and phase 2 effective dates specified in subsection (d)(1) may be sold, supplied, offered for sale, or used by distributors and importers for up to five months after each of the specified effective dates. The specific sell through dates for the phase 1 and phase 2 standards specified in subsection (d)(1) are as follows:

(A) Hardwood plywood, particleboard, and medium density fiberboard manufactured before July 1, 2008, that does not comply with the phase 1 emission standard may be sold, supplied, offered for sale, or used by distributors, importers, or fabricators until November 30, 2008. Beginning December 1, 2008, all composite wood products (i.e., panels and finished goods) sold, supplied, or offered for sale must comply with the phase 1 standard regardless of the date on which the products were manufactured.

(B) Hardwood plywood and particleboard manufactured before July 1, 2010 that complies with the phase 1 standard but does not comply with the phase 2 standard may be sold, supplied, offered for sale, or used by the distributors, importers, or fabricators until November 30, 2010. Beginning December 1, 2010, all HWPW and PB (i.e., panels and finished goods) sold,

supplied, or offered for sale must comply with the phase 2 standard regardless of the date on which the products were manufactured.

(C) Medium density fiberboard manufactured before January 1, 2012 that complies with the phase 1 standard but does not comply with the phase 2 standard may be sold, supplied, or offered for sale until May 31, 2012. Beginning June 1, 2012, all MDF (i.e., panels and finished goods) sold, supplied, or offered for sale must comply with the phase 2 standard regardless of the date on which the products were manufactured.

(4) Product Labeling Requirements for Panels and Finished Goods.

(A) *Panels.* If the HWPW, PB, or MDF panels procured by a distributor or importer are not modified by the distributor or importer, no additional labeling is required. If the goods are modified, distributors and importers would be subject to the labeling requirements specified for fabricators in subsection (g)(4).

(B) *Finished goods containing HWPW, PB, or MDF.* If the finished goods purchased by a distributor or importer are not modified by the distributor or importer, no additional labeling is required. If the finished goods are modified, the distributor or importer must either:

1. Label the modified goods as specified for fabricators in subsection (g)(4)(1), or
2. State on the bill of lading or invoice, that the goods are made with HWPW, PB, or MDF that complies with the applicable phase 1 or phase 2 standard specified in subsection (d)(1).

(5) *Facility inspections.* Distributors and importers may be inspected by ARB, local air district officials, or third party certifiers. In the course of an inspection, chain-of-custody programs used by manufacturers may be audited and samples may be secured to determine compliance with applicable emission standards.

(g) Requirements for Fabricators that use Hardwood Plywood, Particleboard, or Medium Density Fiberboard and Finished Goods Containing Those Materials.

(1) *Emission Standards.* Except as provided in the sell through provisions of subsection (g)(3), all fabricators must comply with the requirements of subsection (d)(1) for all HWPW, PB, MDF, and finished goods containing these materials that are sold, supplied, offered for sale, or purchased for sale in California.

(2) *Additional Requirements to Help Ensure that Complying Products are Purchased.* Fabricators must take reasonable prudent precautions to insure that

the panels and finished goods they purchase are in compliance with the applicable emission standards specified in subsection (d)(1), and are labeled as compliant with the applicable phase 1 or phase 2 standards in subsection (d)(1). “Reasonable prudent precautions” include instructing each supplier that the products they supply to the fabricator must comply with the applicable emission standards, and obtaining written documentation from each supplier that this is so. This subsection does not affect the liability of any person for any violation of subsection (d)(1).

In addition, fabricators must keep records showing the date of purchase and the supplier of the panels and finished goods, and document what precautions were taken to insure that the panels and finished goods comply with applicable emission standards. These records must be kept for a minimum of three-years.

(3) Sell-through of Composite Wood Products Manufactured Before the Effective Dates of the Phase 1 and Phase 2 Standards. Finished goods containing HWPW, PB, or MDF manufactured before the phase 1 and phase 2 effective dates specified in subsection (d)(1) may be sold, supplied, offered for sale by fabricators for up to twelve months after each of the specified effective dates. The specific sell through dates for the phase 1 and phase 2 standards specified in subsection (d)(1) are as follows:

(A) Finished goods containing HWPW, PB, or MDF manufactured before July 1, 2008, that does not comply with the phase 1 emission standard may be sold, supplied, or offered for sale by fabricators until June 30, 2009. Beginning July 1, 2009, all finished goods sold, supplied, or offered for sale must comply with the phase 1 standard regardless of the date on which the products were fabricated.

(B) Finished goods containing HWPW or PB manufactured before July 1, 2010 that complies with the phase 1 standard but does not comply with the phase 2 standard may be sold, supplied, or offered for sale by fabricators until June 30, 2011. Beginning July 1, 2011, all finished goods sold, supplied, or offered for sale must comply with the phase 2 standard regardless of the date on which the products were fabricated.

(C) Finished goods containing MDF manufactured before January 1, 2012 that complies with the phase 1 standard but does not comply with the phase 2 standard may be sold, supplied, or offered for sale until December 31, 2012. Beginning January 1, 2013, all finished goods sold, supplied, or offered for sale must comply with the phase 2 standard regardless of the date on which the products were manufactured.

(4) Product Labeling Requirements. Fabricators must either:

1. Label their finished goods containing HWPW, PB, or MDF destined for sale or supply in California by applying a stamp, tag, or bar code. The label shall be applied as a stamp, tag, or bar code on every finished good produced. The label shall include, at a minimum, the fabricator's name and an ARB-designated marking (to be specified) to denote that the product was made with HWPW, PB, or MDF compliant with the applicable phase 1 or 2 emission standards in subsection (d)(1). Or,

2. Designate their products as being made with HWPW, PB, or MDF compliant with the standards specified in subsection (d)(1) on bills-of-lading or invoices to retailers or other entities that sell products to the public.

(5) *Facility inspections.* Fabricators are subject to periodic inspection by ARB and/or local air district officials. In the course of an inspection, ARB or local district officials may audit the records maintained by fabricators to document their purchases and sales of HWPW, PB, or MDF and/or finished goods made with those materials, to establish compliance with applicable emission standards specified in subsection (d)(1).

(h) Requirements for Retailers that Sell, Supply, or Offer for Sale, Hardwood Plywood, Particleboard, and Medium Density Fiberboard Panels and Finished Goods Containing Those Materials.

(1) *Emission Standards.* Except as provided in the sell through provisions of subsection (h)(3), all retailers must comply with the requirements of subsection (d)(1) for all HWPW, PB, MDF, and finished goods containing these materials that are sold, supplied, offered for sale, or purchased for sale in California.

(2) *Additional Requirements to Help Ensure that Complying Products are Purchased.* Retailers must take reasonable prudent precautions to insure that the HWPW, PB, or MDF and finished goods containing those materials, that they purchase are in compliance with the applicable phase 1 or phase 2 emission standards specified in subsection (d)(1). "Reasonable prudent precautions" include instructing each supplier that the products they supply to the retailer must comply with the applicable emission standards, and obtaining written documentation from each supplier that this is so. This subsection does not affect the liability of any person for any violation of subsection (d)(1).

In addition, retailers must keep records showing the date of purchase and the supplier of the panels and finished goods, and document what precautions were taken to insure that the panels and finished goods comply with applicable emission standards. These records must be kept for a minimum of three-years.

(3) *Sell-through of HWPW, PB, or MDF Panels Before the Effective Dates of the Phase 1 and Phase 2 Standards.* Hardwood plywood, particleboard, or medium

density fiberboard panels manufactured before the phase 1 and phase 2 effective dates specified in subsection (d)(1) may be sold, supplied, or offered for sale by retailers for up to 12 months after each of the specified effective dates. The specific sell through dates for the phase 1 and phase 2 standards specified in subsection (d)(1) are as follows:

(A) Hardwood plywood, particleboard, and medium density fiberboard manufactured before July 1, 2008, that does not comply with the phase 1 emission standard may be sold, supplied, offered for sale, or used by retailers until May 31, 2010. Beginning June 1, 2009, HWPW, PB, and MDF sold, supplied, or offered for sale must comply with the phase 1 standard regardless of the date on which the products were manufactured.

(B) Hardwood plywood and particleboard manufactured before July 1, 2010 that complies with the phase 1 standard but does not comply with the phase 2 standard may be sold, supplied, offered for sale, or used by retailers until May 31, 2011. Beginning June 1, 2011, all HWPW and PB panels sold, supplied, or offered for sale must comply with the phase 2 standard regardless of the date on which the products were manufactured.

(C) Medium density fiberboard manufactured before January 1, 2012 that complies with the phase 1 standard but does not comply with the phase 2 standard may be sold, supplied, or offered for sale by retailers until November 30, 2012. Beginning December 1, 2012, all MDF panels sold, supplied, or offered for sale must comply with the phase 2 standard regardless of the date on which the products were manufactured.

(4) Sell-through of Finished Goods Containing HWPW, PB, or MDF Before the Effective Dates of the Phase 1 and Phase 2 Standards. Finished goods containing HWPW, PB, or MDF manufactured before the phase 1 and phase 2 effective dates specified in subsection (d)(1) may be sold, supplied, offered for sale, or used by retailers for up to 18 months after each of the specified effective dates. The specific sell through dates for the phase 1 and phase 2 standards specified in subsection (d)(1) are as follows:

(A) Finished goods containing HWPW, PB, or MDF manufactured before July 1, 2008, that does not comply with the phase 1 emission standard may be sold, supplied, or offered for sale by retailers until December 31, 2010. Beginning January 1, 2010, finished goods containing HWPW, PB, and MDF sold, supplied, or offered for sale must comply with the phase 1 standard regardless of the date on which the products were manufactured.

(B) Finished goods containing HWPW or PB manufactured before July 1, 2010 that complies with the phase 1 standard but does not comply with the phase 2 standard may be sold, supplied, offered for sale, or used by retailers until December 31, 2011. Beginning January 1, 2012, all finished goods

containing HWPW and PB panels sold, supplied, or offered for sale must comply with the phase 2 standard regardless of the date on which the products were manufactured.

(C) Finished goods containing MDF manufactured before January 1, 2012 that complies with the phase 1 standard but does not comply with the phase 2 standard may be sold, supplied, or offered for sale by retailers until June 30, 2013. Beginning July 1, 2013, all finished goods containing MDF sold, supplied, or offered for sale must comply with the phase 2 standard regardless of the date on which the products were manufactured.

(5) *Facility inspections.* Retailers are subject to periodic inspection by ARB and/or local air district officials at anytime during the year. In the course of an inspection, ARB or local district officials may audit the records maintained by retailers to document their purchases and sales of ARB-compliant products.

(i) Severability.

Each part of this section shall be deemed severable, and in the event that any part of this section is held to be invalid the remainder of this section shall continue in full force and effect.

Note: Authority cited: Sections 39600, 39601, 39650, 39658, 39659, 39666, and 41511, Health and Safety Code. Reference: Sections 39650, 39658, 39659, 39666, and 41511, Health and Safety Code.