



August 1, 2013

Confidential Business Information (CBI) in the Proposed US EPA Regulations

Air Resources Board Discussion Session
Sacramento, CA



EPA's Proposed Approach




EPA plans to require manufacturers of composite wood products to provide records to customers upon request:

In order to assist customers such as fabricators, distributors, importers, and retailers in determining whether they are purchasing compliant composite wood products, EPA would require that all records pertaining to the compliance status of a particular lot, batch, or shipment of composite wood products be provided to purchasers upon request. (78 Fed. Reg. at 34838)

Appears in proposed § 770.40(a):

Records described in paragraph (a)(1) of this section must also be made available to purchasers of their composite wood products.



CARB Approach



Under CARB:

- Manufacturers of composite wood products must label their products as CARB compliant and provide statement of compliance
 - Downstream products must also be labeled as being compliant
- Importers, distributors, fabricators, or retailers must obtain “written documentation from each supplier” that the product meets the CARB emissions standards

CARB does not require that actual test results be provided to customers



EPA Proposed Approach Unnecessary

There are sufficient requirements in the proposed rule to alleviate need for requiring customer access to test results

- composite wood products must be labeled with a statement that they comply with the TSCA Title VI requirements (§ 770.45)
- an importer, fabricator, laminated product producer, distributor, or retailer must obtain “a written affirmation from the supplier that the composite wood products are compliant with this subpart” (§ 770.30)

Information is CBI under TSCA

1. Section 14(b) does not require disclosure of CBI in health and safety studies
 - a. Intended to make information on health and environmental effects available while preserving CBI
2. EPA has never required disclosure of company identity as part of a health and safety study
 - a. E.g., under section 8(e), EPA routinely grants requests to keep company identity confidential
3. May implicate other CBI as well

Overreaching TSCA Authority



Section 14 does not apply to test results that are not submitted to EPA

- Section 14 covers “any information reported to, or otherwise obtained by, the Administrator...” (§14(a))
- Under the proposed rule, test results are not submitted, reported, or otherwise obtained by EPA under TSCA and remain in the hands of manufacturers
- EPA could not provide results in response to a FOIA request because it simply would not have that information

Final Thoughts



- CBI is critically important to industry
- EPA's proposed approach is a significant departure from established CBI practice and appears to be beyond TSCA scope
- The proposed rule provides sufficient safeguards through supply chain to allow for verification
- We support CARB's current approach and we will strongly encourage in our comments that EPA revisit its proposed reporting requirement



Thank you!

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