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Re: Commentary on Record-Keeping Requirements in Proposed Amendments to the Formaldehyde Emissions from Composite Wood Products Regulations, as published in Canada Gazette, Part I, Vol 157, June 17, 2023

Gentlemen and Ms. Blais:

We are pleased to submit these comments from the Right Reg Coalition. We appreciate the government's outreach to industry and offer us an opportunity to submit comments on the Formaldehyde Emissions from Composite Wood Products Regulations as well as the proposed amendments published in the Gazette on June 17, 2023 (collectively "CANFER"). We welcome all opportunities to bring the final version of CANFER into closer alignment with the U.S. EPA's TSCA Title VI regulations and provide a structure that permits meaningful enforcement.

We are providing two submissions for consideration. We consider this document to be the most important, addressing the record-keeping provisions specified in the current regulation and the proposed amendments. Our additional submission is a collection of specific technical and general administrative recommendations.

INTRODUCTION

As an introduction, the Right Reg coalition includes industry trade associations as well as individual companies. We represent all segments of the wood working industries and the extended supply chain within the Canadian market. Products include composite wood panels, cabinets, flooring, furniture and more. Our member companies range from primary and secondary manufacturers, laminators, and fabricators to distributors, importers and retailers. Our desire and intent is to work with the government of Canada and officials to address inconsistencies between TSCA Title VI and CANFER and to remove the unintended burdens the current language imposes on Canadian businesses. Harmonization with TSCA Title VI would fully accomplish the intended purpose of the Canadian regulation and simplify implementation and on-going compliance for all parties.

The industry welcomes the regulation in principle. This is why we call ourselves the “Right Reg,” because we do want the regulation—we just want it designed “right,” and to provide maximum security and benefit for the Canadian market and consumer with the minimal harm done to Canadian businesses. The requests are for administrative fixes only, to align CANFER and TSCA Title VI where possible and to eliminate sources of potential confusion by the regulated industry and the Canadian consumer.

During the initial development of the Rule, the Government conducted an impact analysis and identified 38 upstream manufacturers, 202 downstream manufacturers, and 1,148 importers/retailers in Canada. Within those categorizations, they further identified 18% of the manufacturers, 66% of the downstream manufacturers and 89% of the sellers as small businesses. All those small businesses are completely unprepared to assume the administrative burden and supply chain management that the Rule and the proposed Amendments would impose. Further, CANFER is forcing the exposure of confidential information in a supply chain and increasing liability risk, all of which could lead directly to severe economic impact on Canadian companies.

Therefore, our position is that the record-keeping structure of the regulation as it stands is unduly burdensome for Canadian small businesses and those doing business in Canada. Most importantly, none of it is necessary.

The primary record keeping responsibility should be on the company first placing the product on the Canadian market—either a domestic manufacturer of the composite wood panels or laminated products, or an importer of any type of composite wood product. The government would have the ability, through normal commercial transactions, to trace a product being sold at retail to the responsible manufacturer or importer. This manner of record keeping will also ensure physical copies of records are kept on Canadian soil at the point of manufacturing or importing. This responsible party must provide the necessary records to aid appropriate enforcement. There is no need for any other entity in the supply chain to be burdened with confusing record-keeping responsibilities, that add no value and are inconsistent with what is currently required by TSCA Title VI.

We believe our proposals regarding record-keeping will assist the Minister in conducting strong and more effective enforcement and place the primary responsibility for compliance appropriately on those that first introduce regulated products to the Canadian market and who best understand the requirements for achieving or verifying compliance.

THE RIGHT REG’S KEY POSITIONS

1. Modify the Record-Keeping Requirements and Reject “Attestation” amendment in its entirety

The Right Reg coalition proposes completely rejecting the suggested “Attestation” system outlined in *“Canada Gazette, Part I, Volume 157, Number 24: Regulations Amending the Formaldehyde Emissions from Composite Wood Products Regulations”*.

Clearly the proposed attestation requirement was intended to reduce the number of pieces of paper (or electronic files) that must be exchanged along the supply chain, however it does not significantly change the actual information required to be collected and shared with the market at large. The actual effect is to *increase* the potential for confusion and *add to* the overall record keeping burden. It significantly increases the burden on Laminators and Fabricators, many of whom are small businesses, to assume responsibility for the entire supply chain which can extend several companies back. Yet the information as structured will rarely reveal actual types or sources of supply nor does it provide evidence of product compliance at the shipment level. Further it does not eliminate the confidentiality concerns repeatedly raised by the industry.

We recognize the government's desire to be able to identify sources of production, particularly of imported products. We fully support the need to maintain the integrity of the supply chain and recommend requiring compliance become a routine business obligation of each node in the supply chain. The requirement for all parties to maintain "libraries" of Declarations and Attestations does not support this objective. We believe our proposals place the primary responsibility for compliance information on those who should now, and traditionally have always been, expected to shoulder it. We address the question of original record-keeping language and the proposed "Attestation" in greater detail later in our comments.

2. Specify responsibilities in Sections 26-30 by industry role and product types

The Canadian and international supply chain contains companies of all sizes and roles from the Big Box store to the small "mom and pop" retailer. Some companies produce in huge volumes while others are custom shops. Some companies have the buying power or knowledge to purchase directly from manufacturers while others rely on distributors or others to assist in their sourcing. Each company is a specialist in their product and position and should not be burdened with administrative work that does not provide a benefit to them or to the security of the supply chain. Further, each company should be able to clearly identify their responsibilities when reading the Regulation. We therefore propose rewriting sections 26-30 regarding record-keeping to better reflect the actual structure of the market and to clearly delineate appropriate responsibilities for retaining the records needed to demonstrate compliance.

We note that the Composite Panel Association (CPA) also has concerns regarding recordkeeping requirements on "manufacturers." We feel that our proposed language will eliminate their concerns regarding responsibilities of manufacturers and importers by clearly specifying the responsibility of the importer to conduct due diligence on their foreign suppliers and to provide required information to the Canadian government.

Our proposed revision starts by grouping text related to certain organizational roles such as "manufacturer" and "importer" together. The current regulatory text scatters responsibilities which can lead to confusion. We then propose to specify responsibilities for each type of organization by product type. Finally, we propose adding a clearer requirement that every organization within the supply chain conducts reasonable precautions to validate the compliance of the composite wood materials in which they trade, thus better protecting the integrity of the supply chain, providing a clear set of shipment level records to support enforcement, and further aligning the Regulation to that of EPA TSCA Title VI.

The proposed structure of the Regulation would therefore specify responsibilities as follows:

- 26 Manufacturer of panels/laminated products
- 27 Manufacturer of exempt laminated products
- 28 Manufacturer component parts/finished goods
- 29 Importers
- 30 Sellers

We have provided complete and detailed proposed language for these five sections of the regulation, following CANFER's previous language and formats. Before presenting the full text, we would like to expand on three specific concepts and changes integrated into our proposal.

2a. Edits to the Manufacturer's information disclosure and label record-keeping requirements

In the Manufacturer's responsibilities, the regulation currently specifies disclosure to the Minister of "total production" sold in Canada and requires the manufacturer to maintain a copy of each label. We believe the first requirement to be legitimately impossible for many manufacturers, no matter how well meaning,

and the second requirement to be a herculean burden without value. Our suggested Record-Keeping rewrite includes these two modifications which we wish to highlight:

Item #1: Total Production Sold in Canada Disclosure:

Existing language:

(iii) the total production volume, expressed in square metres, of composite wood panels and laminated products manufactured and sold in Canada, and

Modified language:

(iii) the total production volume, expressed in square metres, of composite wood panels and laminated products manufactured and sold directly to a purchaser in Canada, and

Manufacturers of composite wood panels and laminated products can only know the first purchaser of those products at the time of sale. A panel manufacturer in the United States could sell 1,000 m² of plywood to a flooring manufacturer who is also located in the United States. That flooring manufacturer, in turn, may incorporate those purchased composite wood panels into engineered wood flooring and then sell just 200 m² of this flooring to an importer/distributor in Canada. Pursuant to EPA TSCA Title VI and CANFER, the original panel manufacturer must retain records to identify the purchaser (flooring manufacturer) of the composite wood panels it produced, but the panel manufacturer has no knowledge of the volume of their panels that was converted to engineered wood flooring and subsequently imported to Canada. We have no objection to requiring a panel manufacturer to provide information regarding what they knowingly sold directly into Canada, but it is impossible for them to know the total amount of their material that enters the Canadian market in all the varied forms.

We note that, with regard to Importer responsibilities in our proposed rewritten text below, our proposed approach will assist the Government to identify the entity who first placed a regulated composite wood products on the Canadian market which the original panel manufacturer themselves likely will not know unless they happen to be manufacturing in Canada or are selling directly to an importer in Canada. Continuing with our example above, under our proposal, the importer would be required, upon request by the Minister, to identify the flooring manufacturer as well as their flooring manufacturer's supplier of the composite wood panels or laminated products that are incorporated into the flooring. So, while the original panel manufacturer may not know that percentage of their production ended up in Canada, the government would still be able to identify them as the original manufacturer of the composite wood panel contained in the flooring.

Item #2: Manufacturer Record Keeping Requirements for Labels:

Existing language:

(iv) a copy of each label required under subsection 20(1); and

Modified language:

(iv) a representative copy of labels used under subsection 20(1); and

A literal reading of the existing text in CANFER Section 26 suggests the intent is for the manufacturer of a composite wood panel or laminated product to retain a copy of every label they generate for each product and batch of material they produce and sell. If that is the case, not only does this pose an unreasonable and unrealistic record-keeping burden for the manufacturer, but we also don't believe such a literal interpretation of the existing regulatory text reflects the actual expectations of the Government regarding label record-keeping requirements. If the Government intended to have a manufacturer store a copy of every label from every production lot, then we point out this could be thousands of labels per year. We offer three examples of how this would be impractical for manufacturers and fail to aid enforcement:

- A small laminated products producer who laminates wood veneers to a CANFER or TSCA Title VI compliant platform for the purposes of producing finished goods cabinetry products could manufacture multiple lots of custom cabinets in a day for different homes—they would have to attempt to record and sort labels for every single product and lot—it could be dozens of labels a day for a small custom shop to cope with.
- A manufacturer of engineered wood flooring may serve as a private label manufacturer of flooring products for five different customers utilizing the same plywood raw material. Each customer may require their product to be produced with different colored stains. The flooring manufacturer could record a single label of compliance based on the plywood used which represents five different buyers and multiple brands or SKU numbers but provides no enforcement or record-keeping value.
- It is common practice in the industry, under TSCA Title VI, to ensure all required label data is on the box of a finished good, but this information is not always located in one label. In many cases, the company name may be pre-printed on the box, a separate label may be created to indicate compliance to the consumer, and a third location might provide the lot/production date information. This is done for advertising or labor-saving purposes. Keeping label copies under this scenario means either saving a meaningless partial label, saving an entire box, or re-designing an entire package.

Therefore, we propose to modify CANFER Section 26 to align with the text of EPA TSCA Title VI [reference 40 CFR 770.40 (a) (9)] and make it clear regarding the expectations for the retention of “representative copies of labels used.” We feel the requirement is logical, aligns with TSCA Title VI, and is a reasonable administrative burden for the manufacturer or laminator.

2b. Addition of “reasonable precautions” to all companies’ responsibilities

Throughout our proposed restructuring of CANFER sections 26-30, we have adopted language from TSCA Title VI stating that the regulated stakeholder **“must take reasonable precautions to ensure that the composite wood products they sell, supply, offer for sale, or hold for sale, whether in the form of panels, component parts, or finished goods, comply with the emission standards and other requirements of this subpart.”**

We feel this is an important requirement that is currently missing from the existing or Government-proposed regulatory text as it clearly places the responsibility for product compliance on all members in the chain of commerce. We have previously referred to this concept as the “Ask and Answer” system. This system creates a specific paperwork trail in which the purchaser is explicitly required to request (the Ask) the delivery of compliant composite wood products, component parts or finished goods, whether in purchase orders or other business contractual documents which thus creates a contractual obligation for the supplier to deliver products that comply to the Regulation. Sellers must subsequently confirm in writing that they have satisfied this contractual obligation by indicating on routine commercial documents such as invoices, packing lists or bills of lading that the products they delivered to the purchaser comply to the Regulation (the Answer).

In contrast, CANFER’s current and proposed record-keeping system requires each entity in the supply chain from the original panel manufacturer to the final retailer to obtain, retain and pass down either a “bundle” of Declarations of Certification created by the original panel manufacturer, or an Attestation created by a manufacturer of component parts or finished goods that consolidates the information included on the Declarations of Certification provided by their suppliers. To meet these obligations, these Declarations of Certification must identify the name of original manufacturer of panels or laminated products or the name of the manufacturer of the component parts or finished goods. Not only do these requirements provide greater opportunities for accidental misrepresentation or even deliberate fraud, they

also require the identity of each manufacturer of the composite wood panels, laminated products, component parts or finished goods to be disclosed to every downstream entity. The consequence of this system is a massive increase to the administrative burden of the entire supply chain with no commensurate benefit to enforcement as well as the forced disclosure of potentially confidential business and supply chain data that promotes commercial espionage and supply chain circumvention thus harming Canadian businesses large and small.

By adopting our proposed approach, the Government will create a system that clearly puts the onus on the purchaser to ascertain the compliance status of the goods they intend to purchase and to retain records in the form of invoices, bills of lading, or equivalent documents provided by the supplier that the delivered goods are compliant. Compliance becomes a contractual obligation as well as one of the routine activities in commerce. This documentation must be retained for every shipment; not simply when a general Declaration of Certification or Attestation is first issued or when it is revised for some reason thus providing a far stronger basis for enforcement by regulators as well as for private businesses who now have the records needed to enforce the contractual obligation.

It should be noted that, while the TSCA Title VI invoice/Bill of Lading (BOL) record-keeping requirement implies the invoice/BOL document must identify the name of the direct supplier who is selling the composite wood products to the purchaser, it does not necessarily require the seller to disclose the identity of the original manufacturer of the composite wood panels, laminated products, component parts or finished goods being traded, nor does it require the seller to disclose other upstream entities such as intermediary distributors in the supply chain. Nevertheless, the requirements in Section 770.30(b) make it clear that records identifying these entities and the status of the products contained in each shipment must be retained by the seller. This is arguably a far stronger shipment-level method of product traceability compared to the current CANFER Declaration of Certification or proposed Attestation requirements. It also eliminates most concerns related to the forced disclosure of confidential business information and it is, by far, a much lower administrative burden to regulated stakeholders.

Finally, we note that most, if not all Canadian manufacturers of regulated composite wood products already follow TSCA Title VI requirements as their products often enter the US market whether directly as a composite wood panel or after further processing into a component part or finished good. Therefore, the industry and the market already has a reasonable understanding of TSCA Title VI requirements. To the best of our knowledge, the industry has very limited to no understanding of the CANFER requirements for obtaining, retaining, and passing down copies of Declarations of Certification or Attestations. Successful implementation of the CANFER Regulation will come with harmonization with TSCA.

In the end, the key to an enforceable system is that the original composite wood panel or laminated product is tested and certified as conforming to either TSCA Title VI or CANFER regulations and there is a system of reasonable, common-sense requirements for compliance verification and record-keeping that allow for effective enforcement of those who place regulated composite wood products on the Canadian market while minimizing the record-keeping burden to the extent possible. As written, CANFER does not provide traceability that is unique to a specific product or order, rather it has specified a generalized approach to identifying the *potential* content of the good being traded while placing a significant administrative burden on regulated stakeholders that has no commensurate benefit to enforcement and that poses significant risk of liability or supply chain circumvention due to the forced disclosure of confidential supply chain information down the chain of commerce. The Regulation must be amended to resolve these issues and to eliminate the requirement for downstream entities after the point of manufacture or import in Canada to retain and pass down copies of the Declaration of Certification or proposed Attestation requirements.

2c. Timeframe for Disclosures/Additional Disclosures

The original text and the amendments specified a wide range of time periods for disclosures/additional disclosures with numbers ranging from 14 to 30 to 40 to 60 days. To minimize confusion, we propose to

standardize all language to a consistent time frame of 30 days regardless of the company's role or product. All regulated stakeholders have the same amount of time to provide required records upon request. This is in alignment with TSCA Title VI's requirements. We did allow an additional 30 days (as previously provided for) if translation was required.

RECOMMENDED REVISED LANGUAGE

As line by line editing is difficult to read, we have provided our recommended text for several sections in full. The actual changes throughout may be minor or even non-existent in some portions while obviously more significant in others. The proposal of a mass replacement may seem presumptuous, and if so, we apologize, however it was far easier to present—and hopefully for the Government to review—as a full replacement rather than as selective edits.

1. Proposed Language for Sections 26-30:

The following is the proposed language to replace, in full, the current CANFER Sections 26-30.

Record Keeping

Manufacturer — panels or laminated products

26 (1) A manufacturer of composite wood panels or laminated products must maintain a record of the following information and documents, in English or French or both languages:

(a) in respect of the tests referred to in paragraph 7(1)(b),

- i. the name and contact information of the person performing or overseeing the tests,
- ii. the dates on which the tests were performed,
- iii. the type of composite wood panel or laminated product that was tested,
- iv. the lot number of the composite wood panel that was tested or the month and year of manufacture of the laminated product that was tested, as the case may be,
- v. the test method used, and
- vi. the test results, including the data used for establishing equivalence in accordance with Section 2 of the Directive;

(b) in respect of the tests referred to in paragraph 8(1)(b),

- i. the name and contact information of the person performing or overseeing the tests,
- ii. the corporate name and civic address of the facility where the tests were performed,
- iii. the dates on which the tests were performed,
- iv. the type of composite wood panel or laminated product that was tested,

- v. the lot number of the composite wood panel that was tested or the month and year of manufacture of the laminated product that was tested, as the case may be,
- vi. the test method used, and
- vii. the test results, including the data used to establish the correlation of results in accordance with subsection 8(4), if applicable;

(c) in respect of the composite wood panels or laminated products,

- i. their description, and
- ii. information allowing each composite wood panel or laminated product to be traced to a specific lot;

(d) in respect of the resin used,

- i. its trade name,
- ii. if the manufacturer of the composite wood panels or laminated products purchases resin, the names, civic and postal addresses, telephone numbers and, if any, the email addresses of the supplier and of the manufacturer of the resin as well as records of purchase of the resin from the supplier, and
- iii. if the manufacturer of the composite wood panels or laminated products uses its own resin, documents describing the type and amount of resin used by volume and weight;

(e) in respect of changes to the manufacturing of composite wood panels and laminated products,

- i. details of any increase of more than 10% in the resin used,
- ii. details of any change in resin composition that results in an increase in formaldehyde emissions, and
- iii. details of any other change that may result in an increase in formaldehyde emissions;

(f) in respect of a composite wood panel or laminated product made with a no-added-formaldehyde resin or an ultra-low-emitting-formaldehyde resin,

- i. the production volume, expressed in square metres, of each product type manufactured,
- ii. the resin trade name,
- iii. the name, civic and postal addresses, telephone number and, if any, email address of the resin supplier,
- iv. documents demonstrating that the conditions under section 10 or 11, as the case may be, are met,
- v. the volume and weight of resin that the manufacturer uses, and
- vi. details of any change in composition of the resin;

(g) in respect of particleboard, medium-density fibreboard or thin medium-density fibreboard for which testing has been performed in accordance with subsection 8(6), documents demonstrating the average results referred to in that subsection;

(h) in respect of any non-compliant lot,

- i. a list of all non-compliant lots manufactured by the manufacturer that indicates whether each lot was destroyed or treated and, if it was treated, the results obtained from re-testing performed in accordance with subsection 16(4), and
- ii. a copy of the written notice provided by the manufacturer in accordance with subsection 16(5); and

(i) in respect of the third-party certifier,

- i. the declaration of certification referred to in section 19 and all supporting documentation referred to in that section for any composite wood panel that constitutes the core or platform of a laminated product referred to in subsections 7(4) and 8(5) and for any other product types,
- ii. the date and details of the most recent verification that the third-party certifier performed in respect of the manufacturer's composite wood panels or laminated products, and
- iii. the qualifications of the third-party certifier under section 18.

Retention period and location

(2) The information and documents included in the record must be retained for a period of five years after the day on which they are made at one of the following locations:

- a) the manufacturer's principal place of business in Canada; or
- b) any other place in Canada where the record can be inspected, if the manufacturer notifies the Minister of the civic address of that place within 30 days after the day on which the record is moved to that place for retention.

Disclosure to Minister

(3) On request, the manufacturer must provide the Minister with any of the information and documents referred to in subsection (1) in English or French or both languages within 30 days after the day on which the request is made or, if the information is to be translated from a language other than English or French, within 60 days after the day on which the request is made.

Purchaser

(4) On request, the manufacturer must make any of the information or documents referred to in paragraph (1)(a) available to a person that purchases a composite wood panel or laminated product from the manufacturer.

Additional disclosure to Minister

(5) On request, the manufacturer must provide the following information to the Minister:

(a) in respect of composite wood panels or laminated products sold by the manufacturer,

- i. the name, civic and postal addresses, telephone number and, if any, email address of the purchaser,
- ii. the purchase order number or the invoice number and the production volume purchased, expressed in square metres,
- iii. the total production volume, expressed in square metres, of composite wood panels and laminated products manufactured and sold directly to a purchaser in Canada, and
- iv. a representative copy of labels used under subsection 20(1); and

(b) in respect of the shipping of composite wood panels or laminated products, the shipping invoice number.

Timeframe for additional disclosure

(6) The manufacturer must provide the information referred to in subsection (5) to the Minister in English or French or both languages within 30 days after the day on which the request is made or, if the information is to be translated from a language other than English or French, within 60 days after the day on which the request is made.

Manufacturer — exempted laminated products

27 (1) A manufacturer of laminated products referred to in subsections 7(4) and 8(5) must maintain a record of the following information and documents in English or French or both languages:

(a) in respect of the resin used,

- i. its trade name,
- ii. if the manufacturer of the laminated products purchases resin, the names, civic and postal addresses, telephone numbers and, if any, email addresses of the supplier and of the manufacturer of the resin as well as records of purchase of the resin from the supplier, and
- iii. if the manufacturer of the laminated products uses its own resin, documents demonstrating the manufacturer produces phenol-formaldehyde resin or no-added-formaldehyde resin; and

(b) in the case of a product type whose core or platform is a composite wood panel,

- i. if the manufacturer of the laminated products purchases the composite wood panels, the names, civic and postal addresses, telephone numbers and, if any, email addresses of the supplier and of the manufacturer of the composite

wood panels as well as records of purchase of the composite wood panels from the supplier,

- ii. if the manufacturer of the laminated products uses its own composite wood panels, documents demonstrating that formaldehyde emissions from those panels do not exceed the applicable limit set out in subsection 6(1) or the correlated limit referred to in subsection 6(2), and
- iii. the declaration of certification referred to in section 19 for the core or platform.

Retention period and location

(2) The information and documents included in the record must be retained for a period of five years after the day on which they are made at one of the following locations:

- a) the manufacturer's principal place of business in Canada; or
- b) any other place in Canada where the record can be inspected, if the manufacturer notifies the Minister of the civic address of that place within 30 days after the day on which the record is moved to that place for retention.

Disclosure to Minister

(3) On request, the manufacturer must provide the Minister with any of the information and documents referred to in subsection (1) in English or French or both languages within 30 days after the day on which the request is made or, if the information is to be translated from a language other than English or French, within 60 days after the day on which the request is made.

Manufacturer of component parts or finished goods

28 (1) A manufacturer of component parts or finished goods must demonstrate that they have taken reasonable precautions by maintaining, in English or French or both languages:

- a) in relation to any composite wood panels or laminated products that were acquired in order to be incorporated into the component parts or finished goods a copy of the bill of lading, invoice, or comparable document for the product types that are acquired and incorporated into the component parts or finished goods that identifies the name of the supplier and includes a written statement from the supplier that the product types are compliant.
- b) in relation to any composite wood panels or laminated products that were acquired in order to be incorporated into the component parts or finished goods and that are part of a non-compliant lot,
 - i. a copy of any written notice provided in accordance with subsection 16(5); and
 - ii. information on the measures taken in accordance with subsection 16(7), if applicable.

Retention period and location

(2) The information and documents included in the record must be retained for a period of five years after the day on which they are made at one of the following locations:

- a) the manufacturer's principal place of business in Canada; or
- b) any other place in Canada where the record can be inspected, if the manufacturer notifies the Minister of the civic address of that place within 30 days after the day on which the record is moved to that place for retention.

Disclosure to Minister

(3) On request, the manufacturer of component parts or finished goods must provide a copy of the documentation referred to in subsections (1)(a) and (1)(b) to the Minister within 30 days after the day on which the request is made or, if the information is to be translated from a language other than English or French, within 60 days after the day on which the request is made.

Additional Disclosure to Minister

(4) On request, the manufacturer of component parts or finished goods must provide the following information to the Minister:

- a) the name of the manufacturer of the composite wood panels or laminated products that are incorporated into the component parts or finished goods and the civic and postal addresses, telephone number and, if any, email address of its principal place of business;
- b) the name of the supplier of the composite wood panels or laminated products, if different from the manufacturer referred to in paragraph (a), and the civic and postal addresses, telephone number and, if any, email address of its principal place of business; and
- c) the date on which the manufacturer purchased the composite wood panels or laminated products.

Timeframe for additional disclosure

(6) The manufacturer must provide the information referred to in subsection (6) to the Minister in English or French or both languages within 30 days after the day on which the request is made or, if the information is to be translated from a language other than English or French, within 60 days after the day on which the request is made.

Importer – Composite wood panels, laminated products, component parts or finished goods

29 (1) In respect to the importation of composite wood panels or laminated products, the importer must demonstrate that they have taken reasonable precautions by maintaining a record of the following information and documents in English or French or both languages :

- a) a copy of the bill of lading, invoice, or comparable document for the imported product types that identifies the name of the supplier and includes a written statement from the supplier that the product types are compliant.
- b) Except for exempted laminated products referred to in subsections 7(4) and 8(5), a copy of the declaration of certification referred to in section 19 for all certified composite wood panels or laminated products.

- c) in relation to any composite wood panels or laminated products that were acquired for import and that are part of a non-compliant lot:
 - i. a copy of any written notice provided in accordance with subsection 16(5); and
 - ii. information on the measures taken in accordance with subsection 16(7), if applicable.

(2) In respect to the importation of component parts or finished goods, the importer must demonstrate that they have taken reasonable precautions by maintaining a copy of the bill of lading, invoice, or comparable document for the imported product types that identifies the name of the supplier and includes a written statement from the supplier that the component parts or finished goods are made using compliant composite wood panels or laminated products.

Retention period and location

(3) The records referred to in subsections (1) and (2) must be retained for a period of five years after the day on which they are imported at one of the following locations:

- a) the importer's principal place of business in Canada; or
- b) any other place in Canada where they can be inspected, if the importer notifies the Minister of the civic address of that place within 30 days after the day on which the record is moved to that place for retention.

Disclosure to Minister

(4) On request, the importer must provide the Minister with the records referred to in subsections (1) and (2) in English or French or both languages within 30 days after the day on which the request is made or, if the information is to be translated from a language other than English or French, within 60 days after the day on which the request is made.

Additional disclosure to Minister

(5) On request, the importer must provide the following information to the Minister:

- (a) in relation to the composite wood panels or laminated products that the importer imports:
 - i. the name of the manufacturer of the composite wood panels or laminated products and the civic and postal addresses, telephone number and, if any, email address of its principal place of business;
 - ii. the lot number or date of manufacture of any composite wood panel or laminated product;
 - iii. the name of the supplier of the composite wood panels or laminated products, if different from the manufacturer referred to in paragraph (a1), and the civic and postal addresses, telephone number and, if any, email address of its principal place of business;
 - iv. the date on which the importer purchased any composite wood panel or laminated product;
 - v. the results of any tests performed in accordance with paragraph 7(1)(b);
 - vi. the qualifications of the third-party certifier under section 18; and

- vii. the date and details of the most recent verification that the third-party certifier performed in respect of the composite wood panels or laminated products.

(b) in relation to the composite wood panels or laminated products that are incorporated into the component parts or finished goods that the importer imports,

- i. the name of the manufacturer and the civic and postal addresses, telephone number and, if any, email address of its principal place of business;
- ii. the date of manufacture of the component parts or finished goods ;
- iii. the name of the supplier of the composite wood panels or laminated products, if different from the manufacturer referred to in paragraph (a), and the civic and postal addresses, telephone number and, if any, email address of its principal place of business; and
- iv. the date on which the importer purchased any component part or finished good.

Timeframe for additional disclosure

(6) The importer must provide the information referred to in subsection (6) to the Minister in English or French or both languages within 30 days after the day on which the request is made or, if the information is to be translated from a language other than English or French, within 60 days after the day on which the request is made.

Seller — composite wood products

30 (1) A person that sells or offers for sale composite wood products must demonstrate that they have taken reasonable precautions by a maintaining a copy of the bill of lading, invoice, or comparable document that identified the name of the supplier and includes a written statement from the supplier that the composite wood products, component parts, or finished goods are compliant.

Retention period and location

(2) The records referred to in subsections (1) must be retained for a period of five years after the day on which it is made at one of the following locations:

- a) the person's principal place of business in Canada; or
- b) any other place in Canada where the record can be inspected, if the person notifies the Minister of the civic address of that place within 30 days after the day on which the record is moved to that place for retention.

We believe this proposed language meets the Government's needs for traceability as well as achieving the goal of closer alignment with TSCA Title VI. This language better clarifies responsibilities based on actual market structure and will place the compliance responsibility on the companies that **should** have responsibility. This language will increase the ability of the government to conduct more effective enforcement.

Most importantly, this will not hurt small businesses. Most, if not all Canadian manufacturers and importers of regulated products already follow TSCA Title VI requirements as their products often enter

the US market directly either as a raw panel or after further processing into a component part or finished good. Therefore, the industry and the market already have a reasonable understanding of TSCA Title VI requirements. To the best of our knowledge the domestic downstream manufacturing and retail industries have limited to no understanding of the CANFER specific requirements for record-keeping or specialized CANFER-unique documentation like the proposed “Attestation”. Successful implementation of our proposed language into the CANFER Regulation will come with harmonization with TSCA and allow a smooth and faster integration into the entire Canadian market.

2. Proposed Language for Sections 26-30 Requires Editing the “Prohibitions” section

If our record-keeping revisions are accepted, the Prohibitions section would be edited as follows:

Prohibitions Import, sell, or offer for sale

5 A person must not import, sell or offer for sale a composite wood product that contains formaldehyde unless

- (a) formaldehyde emissions from the composite wood panel or laminated product, or from every composite wood panel and laminated product incorporated into the component part or finished good, do not exceed the applicable limit set out in subsection 6(1) or the correlated limit referred to in subsection 6(2);
- **(b) in accordance with (section 26-30), as the case may be, the person conducts reasonable precautions to ensure that the composite wood products they sell, supply, offer for sale, or hold for sale, whether in the form of panels, component parts, or finished goods, comply with the emission standards and other requirements.**
- (c) the person provides the information set out in section 31 to the Minister in accordance with that section.

3. Proposed Necessary Edits to Section 19

Section 19 outlines the conditions under which a company may produce a Declaration of certification or, under the proposed Amendments, an Attestation, as well as the required format and contents for those documents. We feel small edits to Section 19 will improve enforcement and reduce the risk of non-compliant material entering from overseas, while Section 19.1, the proposed Attestation, should be rejected completely.

3a. Section 19: Declaration of Certification

The Regulation, both as enacted and in proposed edits does not provide for a mechanism to easily verify certification through the required Declaration of Certification system. However a few small changes as noted below would significantly strengthen the rule. The proposed language is (with bolded text indicating changes):

Declaration of certification

19 (1) A manufacturer may prepare a declaration of certification **in coordination with the third-party certifier** contracted under TSCA Title VI or as referred to in Section 18 for a product type that it manufactures demonstrating that

Contents of declaration

(2) The declaration of certification must be produced in English or French or both languages and include

- (a) the name of the third-party certifier or the number assigned to the third-party certifier by the United States Environmental Protection Agency;
- (b) the civic and postal addresses, telephone number and, if any, email address of the third-party certifier;
- (c) the name of the manufacturer and civic and postal addresses of the location at which the product type is manufactured;
- (d) a list of the product types in respect of which the declaration applies; and
- (e) for each product type, the date on which the requirement in paragraph (1)(a) or (b), as the case may be, was fulfilled.
- **(f) evidence of third party certifier approval of the Declaration of Certification.**

(2a) A valid and active TSCA Title VI Certification issued by a recognized TPC that includes all information in (2a-e) will be recognized as an acceptable Declaration of Certification.

The edits are necessary to address the fact that a Declaration of Certification created by a manufacturer of composite wood panels or laminated products, without any TPC oversight has a significant potential to contain accidental errors or, more importantly, could easily be created whole-cloth as a fraudulent representation. By ensuring that the TPC must provide some form of evidence of review, the TPC becomes aware of when their name was used by a manufacturer to claim compliance to the Regulations and can to publicly identify their clients as is required by ISO/IEC 17065 Section 7.8 to permit purchasers to quickly check representations made to them.

We are aware the Government is unable to directly regulate a TPC. The Declaration of Certification, which is prepared and issued by the certified manufacturer of composite wood panels or laminated products, was created as a work-around to this challenge. However, such self-declaration programs offer endless opportunities for bad actors to create and issue their own unmonitored declarations. In addition, the Declaration requirement has already led to tremendous confusion in the marketplace. Not only are well-meaning companies creating inaccurate or incomplete declarations, but it is also unclear to purchasers if they should demand a declaration from each and every entity in the supply chain.

Recognizing an existing TSCA Title VI Certification provided by a TPC is a very “safe” solution to avoid confusion. To the extent that an organization purchases or sells TSCA Title VI compliant composite wood products, most responsible purchasers would prefer a TSCA Title VI certification document issued or approved by a qualified Third-Party Certifier over an unverified statement on a manufacturer’s letterhead.

In either of our two acceptable forms of the Declaration, the onus remains on the panel manufacturer to complete the steps needed to demonstrate compliance (and thus obtain the certification documents). And by requiring the manufacturer to obtain TPC approval over any representation made to the market, either by recognizing the TSCA Title VI certification document or a TPC-approved manufacturer’s Declaration of Certification, it eliminates the risk that a panel manufacturer might issue an inaccurate, incomplete, or wholly invalid Declaration of Certification.

3b. Section 19.1: The Attestation Concept

We recognize the Government created the proposed “Attestation” system in an attempt to ease the burden associated with the current requirement to pass a “bundle” of Declarations of Certification down the chain of commerce and to reduce the amount of paperwork needed by consolidating the information contained in the Declarations of Certification into a single document. While the Government’s objectives

are sound, the proposed Attestation solution still places the burden on small Canadian companies to collect and maintain copies of all possible Declarations of Certification, an action which does not support the goals of the Amendments to reduce the record-keeping burden. Therefore, as stated originally, we reject in its entirety the proposed amendment adding “Section 19.1” to the Regulation.

For purchasers of composite wood panel products who buy directly from the original panel producer, industry best practice already includes the collection and review of the TSCA Title VI certificate issued by an authorized TPC to validate the panel producer’s certification status. While most major importers do review the panel inputs utilized in the production of the component parts or finished goods they import, it is virtually unheard of for buyers to ask domestic suppliers for information regarding the origin or producer of the panel components.

It is even far less common for companies that purchase composite wood panels from a domestic importer or distributor, or who purchase component parts or finished goods from a domestic fabricator to obtain and retain copies of the certificates issued by the original panel producer. Not only are such buyers typically small businesses who do not have the expertise or resources to collect and validate this documentation, but also most sellers would view such requests as a violation of their supply chain confidentiality. Instead, it is the buyer’s responsibility to formally request the purchase of compliant composite wood panels, component parts or finished goods from the seller, and it is the seller’s responsibility to deliver such compliant products and provide evidence thereof in the form of invoices, bills of lading or other comparable shipping documents. CANFER’s attempt to force all buyers in the supply chain to collect and retain bundles of Declarations and/or Attestations runs counter to standard business behavior and we question the legal foundation for forcing this exposure of proprietary information to companies without contractual relationships.

The Right Reg cannot emphasize strongly enough that the mandated passage of actual Declarations of Certification down the supply chain is both inappropriate and impractical.

The goals of the Regulation are to ensure that:

- 1) the original composite wood products (MDF, particleboard, plywood or laminated products) are tested and certified as conforming to either TSCA Title VI or CANFER regulations unless exempted as provided by the regulatory text, and;
- 2) all stakeholders in the chain of commerce trade in compliant composite wood panels, component parts or finished goods, and;
- 3) there is a mechanism by which the Government can trace material in the marketplace back to the responsible parties for enforcement purposes.

The Regulation, with the adjustments recommended by The Right Reg and other commentors will achieve the first goal. Small changes to language, such as requiring TPC oversight in the creation of Declarations of Certification will further reduce the risk of non-conforming material entering the supply chain in the first place.

Achieving both the second and third goals requires the Government to design an effective yet common-sense system to monitor and manage trade occurring throughout the remainder of the supply chain. The current structure incorrectly hopes that a pass-through system of generic Declarations and Attestations will somehow reduce the risk of non-conforming panels entering the market or that they will be traceable back to specific suppliers if found.

Frankly, it is the market demand for compliant material that will ensure the success of the first goal more than fear of Government enforcement. We point out that CARB ATRM 93120, which was the first global regulation governing formaldehyde emissions of composite wood products, quickly became THE industry standard outside of California, not because it was legally mandated, but because it was demanded by the

consumer. By the time TSCA Title VI was implemented, the vast majority of panel producers and fabricators of component parts and finished goods were already able to meet TSCA Title VI requirements because they had been pushed to follow CARB 93120 years previously. CANFER, too, has the benefit of leveraging the industry's knowledge and best practices implemented as a result of both CARB 93120 and TSCA Title VI while also knowing that almost the entire composite wood panel industry has the ability to produce compliant panels for the Canadian market.

To ensure the Canadian market receives compliant composite wood products, the commercial marketplace must demand them. Buyers must state in contracts or other purchasing documents for every order that they want CANFER/TSCA Title VI compliant material and the sellers must confirm each time in invoices, bills of lading or similar commercial documents that they are delivering compliant material. These contractual commitments hold far more weight than a collection of "possible" panel sources. It also ensures a transaction specific path for the Government to, if necessary, trace material back through the supply chain for enforcement purposes, and objective that will not be achieved through the dissemination of worthless Declarations that, at best, simply identify "possible" suppliers.

Of course, the end goal is to keep non-conforming panels from ever entering the Canadian market. That is done by ensuring a demand for compliance oversight and record-keeping is placed on the companies best able to do this: the domestic manufacturers and the importers who are first to place the composite wood products into commerce. The language we have proposed places that burden directly on those two market positions.

The domestic manufacturer and the importer must have the responsibility for ensuring material first entering the Canadian marketplace conforms with the requirements of the Regulation. There is no benefit by placing new record-keeping burdens on any buyer or seller, on any fabricator or laminator.

Downstream entities should demand compliant material on their purchase orders and contracts and they should confirm—attest—to their customers that they are providing compliant material. If asked, they should be able to provide evidence of any reasonable precautions taken. But they should not be required to collect Declarations—it simply is not a reasonable or meaningful precaution.

The Right Reg Coalition has discussed the Regulation and the proposed Amendments with multiple Associations and other industry stakeholders to ensure broad industry representation in our comments. We have found significant and impressive alignment regarding our collective concerns and proposed solutions, and we believe most comments will echo our proposals. However, we are aware that one or more parties have suggested that, rather than eliminate the Government-proposed Attestation requirement, it might be sufficient to reduce the content requirements presented in the proposed text of section 19.1(2)(b). In doing so, the commenters have suggested the Attestation include a statement to indicate the preparer "*has a Declaration of Certification for all composite wood panels in the products*".

The Right Reg Coalition respectfully but firmly rejects this suggestion. By including this suggested revision into the text of section 19.1(2)(b), the Government would still place an unmanageable burden to collect and retain copies of all Declarations of Certifications on the laminated product producers and fabricators of component parts or finished goods—no matter how far down the supply chain they may be.

While we understand and support the commenter's goal to minimize the burden of preparing the proposed Attestations by reducing required content, it is the existence of an Attestation system that is the concern. Their language requiring that a company "has a Declaration" for every possible panel manufacturer would do nothing to resolve any of the industry's concerns regarding the administrative burden, the liability, the supply chain confidentiality, etc. Regardless of specific contents, continuing a program of mandating that Declaration of Certifications and the proposed Attestation pass through the supply chain will continue to present an impossible solution for Canadian businesses, large or small, to implement.

While we object to the inclusion of section 19.1 in its entirety, if the Government ultimately decides that a separate Attestation document is required rather than appearing in the form of a statement as appropriate on a bill of sale or an invoice, The Right Reg recommends that Section 19.1(2)(b) – Contents of Attestation – be revised to simply read:

(2) The attestation must be produced in English or French or both languages and include the following representations of the manufacturer regarding its component parts or finished goods:

(a) that all composite wood panels incorporated in them are compliant; and

(b) that it has taken reasonable precautions by maintaining bills of lading, invoices, or comparable documents that include a written statement from the supplier of the composite wood panels that they are compliant with EPA TSCA Title VI or CANFER.

4. Recommend Edits to Section 31, the Required Registration of Stakeholders

First, we need to point out that the industry still remains largely unaware of the Regulation and their responsibilities under it. We would be surprised if the Minister has received registrations from even a quarter of the nearly 1400 impacted Canadian stakeholders previously identified let alone the thousands of manufacturers worldwide who are producing CANFER or TSCA Title VI-certified composite wood products that eventually make their way into the Canadian market. We would encourage, upon publication of the Amended Rule, that a new public outreach and education program be conducted. All Association members of the Right Reg will gladly participate in communicating responsibilities to their members.

The Right Reg recognizes that the Government is concerned about their ability to enforce against imported material. We believe that the current or proposed chain-of-custody and record-keeping provisions in the existing government proposals do NOT aid in that enforcement. On the other hand, our proposed record-keeping language will create a system that requires each purchaser to be responsible for ensuring that the materials they source are compliant and for retaining records at the shipment level to demonstrate the composite wood products, from all potential sources, are either CANFER or TSCA Title VI certified. Through this system, each company is responsible for tracking their own immediate purchases and their own direct sales, and the Government can work up or down the supply chain to trace the material to its source.

The Right Reg recognizes that the Government is concerned about their ability to inspect records in Canada and that imported material might not receive the same attention to record keeping as domestic production. The Right Reg believes that this is the traditional and necessary responsibility of the importer, and our proposed regulatory adjustments achieve this goal.

Finally, the Right Reg notes that by far, most commercial importers of composite wood products are Canadian companies, in part because of certain financial benefits in General Sales Tax recovery. However, to address the rare case of a Non-Resident Importer (NRI) bringing in regulated composite wood products, we propose an amendment to the registration (Reporting) requirements in CANFER Section 31 to ensure that records will be available in Canada.

Reporting

Information to Minister

31 (1) Every person that manufactures, imports, sells, or offers for sale a composite wood product that contains formaldehyde must provide the Minister with the following information in writing:

(a) its name, civic and postal addresses, telephone number and, if any, email address as well as the name of its contact person; and

(i) in the case of a non-resident importer, the name, civic and postal addresses, telephone number and email address as well as the name of its contact person of a Canadian based representative who will be responsible for maintaining and providing records, if requested; and

(b) a statement of whether it manufactures, imports, sells, or offers for sale composite wood panels, laminated products, component parts or finished goods, as the case may be.

Canadian regulations already place these burdens on the importer, however, this language makes it more explicit and ties the record-keeping requirements directly to CANFER enforcement.

Regarding enforcement on imported products, we note that (as summarized from Canada Border Services Agency (CBSA) guidance at: <https://www.cbsa-asfc.gc.ca/import/guide-eng.html>), an importer (resident or non-resident) is responsible for reporting and accounting for its imported goods to the CBSA. The importer must accurately describe the quantity and nature of the goods, assigning a ten-digit tariff classification number to each product to determine appropriate duty and tax. Value and country of origin must be declared, and the importer must pay all applicable customs duties, excise duties, excise taxes, goods and services taxes (GST), and other defined duties.

In addition, existing regulations address the two key concerns for CANFER enforcement:

- The importer must always be certain that it satisfies all the applicable regulatory requirements and statutes that impact imported goods, and the goods must not be prohibited from coming into Canada.
- The CANFER Regulation makes it clear that non-compliant goods must not enter Canada. Therefore, the importer has responsibility for its supply chain. Adding a chain-of-custody requirement of Declarations of Certification or Attestations does nothing to mitigate their responsibility. In the edits we propose, the importer's responsibilities for additional disclosure are clear and will mandate a more aggressive management of their supply chain. There is little confusion regarding their responsibilities and ultimate liability for the performance of their foreign suppliers.
- Finally, importers must maintain books and records in Canada and must be prepared to provide access to and copies of pertinent books and records during a CBSA or other government agency trade compliance audit. Details of such responsibilities are found at <https://www.cbsa-asfc.gc.ca/publications/dm-md/d17/d17-1-21-eng.html>.

Access to an importer's records is therefore already an established Governmental right. We presume that the Minister has created Section 31 and the establishment of a database of regulated stakeholders unique to CANFER to both improve public communication and to aid in future enforcement. Our proposed addition of specific registration of an NRI's record retention location is being suggested to aid the Minister in easier enforcement of CANFER and is not establishing a right outside of what already exists.

CONCLUSION

Again, the industry welcomes the regulation in principle. Our suggested language has been crafted to support smooth incorporation into the Canadian composite wood industry's business practices for both

regulated stakeholders and the government. We seek harmonization with TSCA Title VI to ensure that the entire North American market operates under the same requirements. Adopting our recommendations will provide industry with routes to smooth integration with no unnecessary burdens, particularly none placed on small Canadian businesses. The domestic manufacturers and importers, the companies experienced in TSCA Title VI who have always held responsibility for compliance, are prepared to shoulder that burden here. We believe we have offered solutions to minimize both accidents and deliberate fraud and strengthen the Regulation for more meaningful enforcement.

We want the final Regulation to offer assurances to the Canadian market that their composite wood products meet the required standards. We believe that the technical fixes outlined in our other submission are necessary to ensure that the regulated industries understand their exact responsibilities under the rules and that the Third Party Certifiers responsible for oversight are able to provide professional services that do not conflict with their existing TSCA Title VI programs. Our proposed administrative and record-keeping fixes as specified here will align CANFER and TSCA Title VI where possible and will eliminate sources of potential confusion both by the regulated industry as well as for all other stakeholders and the consumer.

When the final amendments are published, our member associations will be pleased to work with the Government to actively educate the industry regarding their responsibilities under CANFER and to support wide-spread distribution of information to the market to inform the final consumer.

We appreciate your consideration.

Respectively submitted

The Right Reg Coalition

www.rightreg.ca