

FORMALDEHYDE STANDARDS FOR COMPOSITE WOOD
PRODUCTS ACT

—————
JUNE 22, 2010.—Ordered to be printed
—————

Mr. WAXMAN, from the Committee on Energy and Commerce,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 4805]

[Including cost estimate of the Congressional Budget Office]

The Committee on Energy and Commerce, to whom was referred the bill (H.R. 4805) to amend the Toxic Substances Control Act to reduce the emissions of formaldehyde from composite wood products, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

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AMENDMENT

The amendment is as follows: Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Formaldehyde Standards for Composite Wood Products Act”.

SEC. 2. FORMALDEHYDE STANDARDS FOR COMPOSITE WOOD PRODUCTS.

(a) AMENDMENT.—The Toxic Substances Control Act (15 U.S.C. 2601 et seq.) is amended by adding at the end the following:

“TITLE VI—FORMALDEHYDE STANDARDS FOR COMPOSITE WOOD PRODUCTS

“SEC. 601. FORMALDEHYDE STANDARDS.

“(a) DEFINITIONS.—In this section:

“(1) FINISHED GOOD.—

“(A) IN GENERAL.—The term ‘finished good’ means any good or product (other than a panel) containing—

- “(i) hardwood plywood;
- “(ii) particleboard; or
- “(iii) medium-density fiberboard.

“(B) EXCLUSIONS.—The term ‘finished good’ does not include—

- “(i) any component part or other part used in the assembly of a finished good; or
- “(ii) any finished good that has previously been sold or supplied to an individual or entity that purchased or acquired the finished good in good faith for purposes other than resale, such as—
 - “(I) an antique; or
 - “(II) secondhand furniture.

“(2) HARDBOARD.—The term ‘hardboard’ has such meaning as the Administrator shall establish, by regulation, pursuant to subsection (d).

“(3) HARDWOOD PLYWOOD.—

“(A) IN GENERAL.—The term ‘hardwood plywood’ means a hardwood or decorative panel that is—

- “(i) intended for interior use; and
- “(ii) composed of (as determined under the standard numbered ANSI/HPVA HP-1-2009) an assembly of layers or plies of veneer, joined by an adhesive with—
 - “(I) lumber core;
 - “(II) particleboard core;
 - “(III) medium-density fiberboard core;
 - “(IV) hardboard core; or
 - “(V) any other special core or special back material.

“(B) EXCLUSIONS.—The term ‘hardwood plywood’ does not include—

- “(i) military-specified plywood;
- “(ii) curved plywood; or
- “(iii) any other product specified in—
 - “(I) the standard entitled ‘Voluntary Product Standard–Structural Plywood’ and numbered PS 1-07; or
 - “(II) the standard entitled ‘Voluntary Product Standard–Performance Standard for Wood-Based Structural-Use Panels’ and numbered PS 2-04.

“(C) LAMINATED PRODUCTS.—

“(i) RULEMAKING.—

“(I) IN GENERAL.—The Administrator shall conduct a rulemaking process pursuant to subsection (d) that uses all available and relevant information from State authorities, industry, and other available sources of such information, and analyzes that information to determine, at the discretion of the Administrator, whether the definition of the term ‘hardwood plywood’ should exempt engineered veneer or any laminated product.

“(II) MODIFICATION.—The Administrator may modify any aspect of the definition contained in clause (ii) before including that definition in the regulations promulgated pursuant to subclause (I).

“(ii) LAMINATED PRODUCT.—The term ‘laminated product’ means a product—

“(I) in which a wood veneer is affixed to—

- “(aa) a particleboard platform;
- “(bb) a medium-density fiberboard platform; or
- “(cc) a veneer-core platform; and

“(II) that is—

- “(aa) a component part;
- “(bb) used in the construction or assembly of a finished good; and
- “(cc) produced by the manufacturer or fabricator of the finished good in which the product is incorporated.

“(4) MANUFACTURED HOME.—The term ‘manufactured home’ has the meaning given the term in section 3280.2 of title 24, Code of Federal Regulations (as in effect on the date of promulgation of regulations pursuant to subsection (d)).

“(5) MEDIUM-DENSITY FIBERBOARD.—The term ‘medium-density fiberboard’ means a panel composed of cellulosic fibers made by dry forming and pressing a resinated fiber mat (as determined under the standard numbered ANSI A208.2–2009).

“(6) MODULAR HOME.—The term ‘modular home’ means a home that is constructed in a factory in 1 or more modules—

“(A) each of which meet applicable State and local building codes of the area in which the home will be located; and

“(B) that are transported to the home building site, installed on foundations, and completed.

“(7) NO-ADDED FORMALDEHYDE-BASED RESIN.—

“(A) IN GENERAL.—(i) The term ‘no-added formaldehyde-based resin’ means a resin formulated with no added formaldehyde as part of the resin cross-linking structure in a composite wood product that meets the emission standards in subparagraph (C) as measured by—

“(I) one test conducted pursuant to test method ASTM E-1333-96 (2002) or, subject to clause (ii), ASTM D-6007-02; and

“(II) 3 months of routine quality control tests pursuant to ASTM D-6007-02 or ASTM D-5582 or such other routine quality control test methods as may be established by the Administrator through rulemaking.

“(ii) Test results obtained under clause (i)(I) or (II) by any test method other than ASTM E-1333-96 (2002) must include a showing of equivalence by means established by the Administrator through rulemaking.

“(B) INCLUSIONS.—The term ‘no-added formaldehyde-based resin’ may include any resin made from—

- “(i) soy;
- “(ii) polyvinyl acetate; or
- “(iii) methylene diisocyanate.

“(C) EMISSION STANDARDS.—The following are the emission standards for composite wood products made with no-added formaldehyde-based resins under this paragraph:

“(i) No higher than 0.04 parts per million of formaldehyde for 90 percent of the 3 months of routine quality control testing data required under subparagraph (A)(ii).

“(ii) No test result higher than 0.05 parts per million of formaldehyde for hardwood plywood and 0.06 parts per million for particleboard, medium-density fiberboard, and thin medium-density fiberboard.

“(8) PARTICLEBOARD.—

“(A) IN GENERAL.—The term ‘particleboard’ means a panel composed of cellulosic material in the form of discrete particles (as distinguished from fibers, flakes, or strands) that are pressed together with resin (as determined under the standard numbered ANSI A208.1–2009).

“(B) EXCLUSIONS.—The term ‘particleboard’ does not include any product specified in the standard entitled ‘Voluntary Product Standard–Performance Standard for Wood-Based Structural-Use Panels’ and numbered PS 2–04.

“(9) RECREATIONAL VEHICLE.—The term ‘recreational vehicle’ has the meaning given the term in section 3282.8 of title 24, Code of Federal Regulations (as in effect on the date of promulgation of regulations pursuant to subsection (d)).

“(10) ULTRA LOW-EMITTING FORMALDEHYDE RESIN.—

“(A) IN GENERAL.—(i) The term ‘ultra low-emitting formaldehyde resin’ means a resin in a composite wood product that meets the emission standards in subparagraph (C) as measured by—

“(I) 2 quarterly tests conducted pursuant to test method ASTM E-1333-96 (2002) or, subject to clause (ii), ASTM D-6007-02; and

“(II) 6 months of routine quality control tests pursuant to ASTM D-6007-02 or ASTM D-5582 or such other routine quality control test methods as may be established by the Administrator through rulemaking.

“(ii) Test results obtained under clause (i)(I) or (II) by any test method other than ASTM E-1333-96 (2002) must include a showing of equivalence by means established by the Administrator through rulemaking.

“(B) INCLUSIONS.—The term ‘ultra low-emitting formaldehyde resin’ may include—

“(i) melamine-urea-formaldehyde resin;

“(ii) phenol formaldehyde resin; and

“(iii) resorcinol formaldehyde resin.

“(C) EMISSION STANDARDS.—

“(i) The Administrator may, pursuant to regulations issued under subsection (d), reduce the testing requirements for a manufacturer only if its product made with ultra low-emitting formaldehyde resin meets the following emission standards:

“(I) For hardwood plywood, no higher than 0.05 parts per million of formaldehyde.

“(II) For medium-density fiberboard—

“(aa) no higher than 0.06 parts per million of formaldehyde for 90 percent of 6 months of routine quality control testing data required under subparagraph (A)(ii); and

“(bb) no test result higher than 0.09 parts per million of formaldehyde.

“(III) For particleboard—

“(aa) no higher than 0.05 parts per million of formaldehyde for 90 percent of 6 months of routine quality control testing data required under subparagraph (A)(ii); and

“(bb) no test result higher than 0.08 parts per million of formaldehyde.

“(IV) For thin medium-density fiberboard—

“(aa) no higher than 0.08 parts per million of formaldehyde for 90 percent of 6 months of routine quality control testing data required under subparagraph (A)(ii); and

“(bb) no test result higher than 0.11 parts per million of formaldehyde.

“(ii) The Administrator may not, pursuant to regulations issued under subsection (d), exempt a manufacturer from third party certification requirements unless its product made with ultra low-emitting formaldehyde resin meets the following emission standards:

“(I) No higher than 0.04 parts per million of formaldehyde for 90 percent of 6 months of routine quality control testing data required under subparagraph (A)(ii).

“(II) No test result higher than 0.05 parts per million of formaldehyde for hardwood plywood and 0.06 parts per million for particleboard, medium-density fiberboard, and thin medium-density fiberboard.

“(b) REQUIREMENT.—

“(1) IN GENERAL.—Except as provided in an applicable sell-through regulation promulgated pursuant to subsection (d), effective beginning on the date that is 180 days after the date of promulgation of those regulations, the emission standards described in paragraph (2), shall apply to hardwood plywood, medium-density fiberboard, and particleboard sold, supplied, offered for sale, or manufactured in the United States.

“(2) EMISSION STANDARDS.—The emission standards referred to in paragraph (1), based on test method ASTM E-1333-96 (2002), are as follows:

“(A) For hardwood plywood with a veneer core, 0.05 parts per million of formaldehyde.

“(B) For hardwood plywood with a composite core—

“(i) 0.08 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2012; and

“(ii) 0.05 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2012.

- “(C) For medium-density fiberboard—
 - “(i) 0.21 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2011; and
 - “(ii) 0.11 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2011.
- “(D) For thin medium-density fiberboard—
 - “(i) 0.21 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2012; and
 - “(ii) 0.13 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2012.
- “(E) For particleboard—
 - “(i) 0.18 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2011; and
 - “(ii) 0.09 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2011.
- “(3) COMPLIANCE WITH EMISSION STANDARDS.—(A) Compliance with the emission standards described in paragraph (2) shall be measured by—
 - “(i) quarterly tests shall be conducted pursuant to test method ASTM E-1333-96 (2002) or, subject to subparagraph (B), ASTM D-6007-02; and
 - “(ii) quality control tests shall be conducted pursuant to ASTM D-6007-02, ASTM D-5582, or such other test methods as may be established by the Administrator through rulemaking.
- “(B) Test results obtained under subparagraph (A)(i) or (ii) by any test method other than ASTM E-1333-96 (2002) must include a showing of equivalence by means established by the Administrator through rulemaking.
- “(C) Except where otherwise specified, the Administrator shall establish through rulemaking the number and frequency of tests required to demonstrate compliance with the emission standards.
- “(4) APPLICABILITY.—The formaldehyde emission standard referred to in paragraph (1) shall apply regardless of whether an applicable hardwood plywood, medium-density fiberboard, or particleboard is—
 - “(A) in the form of an unfinished panel; or
 - “(B) incorporated into a finished good.
- “(c) EXEMPTIONS.—The formaldehyde emission standard referred to in subsection (b)(1) shall not apply to—
 - “(1) hardboard;
 - “(2) structural plywood, as specified in the standard entitled ‘Voluntary Product Standard—Structural Plywood’ and numbered PS 1–07;
 - “(3) structural panels, as specified in the standard entitled ‘Voluntary Product Standard—Performance Standard for Wood-Based Structural-Use Panels’ and numbered PS 2–04;
 - “(4) structural composite lumber, as specified in the standard entitled ‘Standard Specification for Evaluation of Structural Composite Lumber Products’ and numbered ASTM D 5456–06;
 - “(5) oriented strand board;
 - “(6) glued laminated lumber, as specified in the standard entitled ‘Structural Glued Laminated Timber’ and numbered ANSI A190.1–2002;
 - “(7) prefabricated wood I-joists, as specified in the standard entitled ‘Standard Specification for Establishing and Monitoring Structural Capacities of Prefabricated Wood I-Joists’ and numbered ASTM D 5055–05;
 - “(8) finger-jointed lumber;
 - “(9) wood packaging (including pallets, crates, spools, and dunnage);
 - “(10) composite wood products used inside a new—
 - “(A) vehicle (other than a recreational vehicle) constructed entirely from new parts that has never been—
 - “(i) the subject of a retail sale; or
 - “(ii) registered with the appropriate State agency or authority responsible for motor vehicles or with any foreign state, province, or country;
 - “(B) rail car;
 - “(C) boat;
 - “(D) aerospace craft; or
 - “(E) aircraft;
 - “(11) windows that contain composite wood products, if the window product contains less than 5 percent by volume of hardwood plywood, particleboard, or medium-density fiberboard, combined, in relation to the total volume of the finished window product; or
 - “(12) exterior doors and garage doors that contain composite wood products, if—

“(A) the doors are made from composite wood products manufactured with no-added formaldehyde-based resins or ultra low-emitting formaldehyde resins; or

“(B) the doors contain less than 3 percent by volume of hardwood plywood, particleboard, or medium-density fiberboard, combined, in relation to the total volume of the finished exterior door or garage door.

“(d) REGULATIONS.—

“(1) IN GENERAL.—Not later than January 1, 2013, the Administrator shall promulgate regulations to implement the standards required under subsection (b) in a manner that ensures compliance with the emission standards described in subsection (b)(2).

“(2) INCLUSIONS.—The regulations promulgated pursuant to paragraph (1) shall include provisions relating to—

“(A) labeling;

“(B) chain of custody requirements;

“(C) sell-through provisions;

“(D) ultra low-emitting formaldehyde resins;

“(E) no-added formaldehyde-based resins;

“(F) finished goods;

“(G) third-party testing and certification;

“(H) auditing and reporting of third-party certifiers;

“(I) recordkeeping;

“(J) enforcement;

“(K) laminated products; and

“(L) exceptions from the requirements of regulations promulgated pursuant to this subsection for products and components containing de minimis amounts of composite wood products.

The Administrator shall not provide under subparagraph (L) exceptions to the formaldehyde emission standard requirements in subsection (b).

“(3) SELL-THROUGH PROVISIONS.—

“(A) IN GENERAL.—Sell-through provisions established by the Administrator under this subsection, with respect to composite wood products and finished goods containing regulated composite wood products (including recreational vehicles, manufactured homes, and modular homes), shall—

“(i) be based on a designated date of manufacture (which shall be no earlier than the date 180 days following the promulgation of the regulations pursuant to this subsection) of the composite wood product or finished good, rather than date of sale of the composite wood product or finished good; and

“(ii) provide that any inventory of composite wood products or finished goods containing regulated composite wood products, manufactured before the designated date of manufacture of the composite wood products or finished goods, shall not be subject to the formaldehyde emission standard requirements under subsection (b)(1).

“(B) IMPLEMENTING REGULATIONS.—The regulations promulgated under this subsection shall—

“(i) prohibit the stockpiling of inventory to be sold after the designated date of manufacture; and

“(ii) not require any labeling or testing of composite wood products or finished goods containing regulated composite wood products manufactured before the designated date of manufacture.

“(C) DEFINITION.—For purposes of this paragraph, the term ‘stockpiling’ means manufacturing or purchasing a composite wood product or finished good containing a regulated composite wood product between the date of enactment of the Formaldehyde Standards for Composite Wood Products Act and the date 180 days following the promulgation of the regulations pursuant to this subsection at a rate which is significantly greater (as determined by the Administrator) than the rate at which such product or good was manufactured or purchased during a base period (as determined by the Administrator) ending before the date of enactment of the Formaldehyde Standards for Composite Wood Products Act.

“(4) IMPORT REGULATIONS.—Not later than July 1, 2013, the Administrator, in coordination with the Commissioner of Customs and Border Protection and other appropriate Federal departments and agencies, shall revise regulations promulgated pursuant to section 13 as the Administrator determines to be necessary to ensure compliance with this section.

“(5) SUCCESSOR STANDARDS AND TEST METHODS.—The Administrator may, after public notice and opportunity for comment, substitute an industry standard or test method referenced in this section with its successor version.

“(e) PROHIBITED ACTS.—An individual or entity that violates any requirement under this section (including any regulation promulgated pursuant to subsection (d)) shall be considered to have committed a prohibited act under section 15.”.

(b) CONFORMING AMENDMENT.—The table of contents of the Toxic Substances Control Act (15 U.S.C. prec. 2601) is amended by adding at the end the following:

“TITLE VI—FORMALDEHYDE STANDARDS FOR COMPOSITE WOOD PRODUCTS

“Sec. 601. Formaldehyde standards.”.

SEC. 3. REPORTS TO CONGRESS.

Not later than one year after the date of enactment of this Act, and annually thereafter through December 31, 2014, the Administrator of the Environmental Protection Agency shall submit to the Committee on Environment and Public Works of the Senate and the Committee on Energy and Commerce of the House of Representatives a report describing, with respect to the preceding year—

- (1) the status of the measures carried out or planned to be carried out pursuant to title VI of the Toxic Substances Control Act; and
- (2) the extent to which relevant industries have achieved compliance with the requirements under that title.

SEC. 4. MODIFICATION OF REGULATION.

Not later than 180 days after the date of promulgation of regulations pursuant to section 601(d) of the Toxic Substances Control Act (as amended by section 2), the Secretary of Housing and Urban Development shall update the regulation contained in section 3280.308 of title 24, Code of Federal Regulations (as in effect on the date of enactment of this Act), to ensure that the regulation reflects the standards established by section 601 of the Toxic Substances Control Act.

PURPOSE AND SUMMARY

H.R. 4805, the “Formaldehyde Standards for Composite Wood Products Act”, was introduced by Rep. Doris Matsui (D–CA) and Rep. Vernon Ehlers (R–MI) on March 10, 2010. H.R. 4805 amends the Toxic Substances Control Act to establish national limits on formaldehyde emissions from domestic and imported composite wood products.

BACKGROUND AND NEED FOR LEGISLATION

Formaldehyde is a chemical known to have adverse effects on human health. It has been recognized by the International Agency for Research on Cancer as a known human carcinogen and by the Environmental Protection Agency (EPA) as both an irritant and a probable human carcinogen.¹ Formaldehyde gas has been listed by the National Toxicology Program, part of the National Institute of Environmental Health Sciences (NIEHS), as “reasonably anticipated to be a human carcinogen.”² Recently, NIEHS nominated formaldehyde for possible reconsideration as a “known carcinogen.”³ In addition, inhalation of formaldehyde can cause nose and throat irritation, difficulty breathing, burning sensations in the

¹ International Agency for Research on Cancer, *IARC Classifies Formaldehyde as Carcinogenic to Humans* (June 15, 2004) (online at www.iarc.fr/en/media-centre/pr/2004/pr153.html); U.S. Environmental Protection Agency, *Formaldehyde Emissions from Pressed Wood Products*, 73 Fed. Reg. 73620, 73622 (Dec. 3, 2008).

² U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, *Report on Carcinogens, Eleventh Edition* (online at ntp.niehs.nih.gov/ntp/roc/toc11.html).

³ U.S. Department of Health and Human Services, Public Health Service, National Toxicology Program, *National Toxicology Program (NTP); Report on Carcinogens (RoC) Center: Request for Public Comments on the RoC Expert Panel’s Recommendation on Listing Status for Formaldehyde and the Scientific Justification for the Recommendation*, 74 Fed. Reg. 67883 (Dec. 21, 2009).

eyes and throat, and nausea.⁴ Other effects include coughing, wheezing, chest pains, bronchitis, and severe allergic reactions.⁵

Despite its known harmful effects, formaldehyde is widely used in a variety of applications. The primary sources of formaldehyde in the air inside homes are composite wood products, also known as pressed wood products.⁶ A variety of these products—including cabinets, furniture, shelving, and doors—are made with adhesives that contain formaldehyde, which can be released into the home.⁷ High levels of airborne formaldehyde have been detected inside homes, particularly in those with significant amounts of new composite wood products.⁸ The most prominent cases of toxicity caused by formaldehyde emissions from pressed wood products are those that followed Hurricane Katrina, in the trailers provided by the Federal Emergency Management Agency as temporary housing to victims of the storm.⁹

The federal government has taken some steps to limit formaldehyde emissions. In the Clean Air Act Amendments of 1990, Congress identified formaldehyde as a hazardous air pollutant for which EPA was required to establish industrial emission standards under the Clean Air Act.¹⁰ Regulations promulgated in the 1980s by the U.S. Department of Housing and Urban Development (HUD) provide standards for formaldehyde emissions, but these apply only to plywood and particleboard materials that are installed in manufactured homes.¹¹ EPA initiated a proceeding in 2008 to consider taking regulatory action under the Toxic Substances Control Act to limit formaldehyde emissions from composite wood products.¹² On June 2, 2010, EPA also released a draft revised assessment of the risks of formaldehyde exposure for expert review and public comment.¹³ With the exception of the HUD regulations for manufactured homes, formaldehyde emissions from composite wood products are not currently regulated by the federal government.

The State of California recently established limits on formaldehyde emissions in most composite wood products. In 2008, after several years of scientific review and rulemaking, the California Air Resources Board finalized rules establishing the standards, the first phase of which went into effect on January 1, 2009.¹⁴

H.R. 4805 establishes national technology-based limits (i.e., limits based on the technological feasibility of the standards) on formaldehyde emissions from most composite wood products. It does so

⁴U.S. Environmental Protection Agency, *Indoor Air Quality: Formaldehyde* (online at: www.epa.gov/iaq/formalde.html#Health%20Effects) (accessed Mar. 15, 2010).

⁵*Id.*

⁶U.S. Environmental Protection Agency, *Formaldehyde Emissions from Pressed Wood Products*, 73 Fed. Reg. 73620, 73622 (Dec. 3, 2008).

⁷*Id.*

⁸U.S. Environmental Protection Agency, *Indoor Air Quality: Formaldehyde* (online at: www.epa.gov/iaq/formalde.html#Health%20Effects) (accessed Mar. 15, 2010).

⁹See generally U.S. Centers for Disease Control, *Final Report on Formaldehyde Levels in FEMA-Supplied Travel Trailers, Park Models, and Mobile Homes* (July 2, 2008) (online at www.cdc.gov/nceh/ehhe/trailerstudy/assessment.htm#final).

¹⁰42 U.S.C. 7412.

¹¹24 CFR 328049.

¹²U.S. Environmental Protection Agency, *Formaldehyde Emissions from Pressed Wood Products*, 73 Fed. Reg. 73620 (Dec. 3, 2008).

¹³U.S. Environmental Protection Agency, Draft Toxicological Review of Formaldehyde in Support of Summary Information on the Integrated Risk Information System (IRIS), 75 Fed. Reg. 30825 (June 2, 2010).

¹⁴California Environmental Protection Agency Air Resources Board, *Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products* (online at www.arb.ca.gov/regact/2007/compwood07/compwood07.htm) (Apr. 2008).

by requiring EPA to issue regulations, not later than January 1, 2013, to apply formaldehyde emissions standards that are equivalent to the California standards for hardwood plywood, medium-density fiberboard, and particleboard that is sold, supplied, offered for sale, or manufactured anywhere in the United States. EPA's regulations must ensure compliance with the federal standard and must include provisions relating to labeling, chain of custody requirements, provisions for sale of products or finished goods that were manufactured before the compliance deadline but are allowed to continue to be sold within a specified time period after the deadline (or product "sell-through"), third-party testing and certification, and other matters of implementation. H.R. 4805 also requires that HUD update its regulations to reflect the standards established by EPA. Under the bill, the new limits will go into effect 180 days after EPA issues its regulations. Finally, EPA will be free to make further limitations at any time subsequent to the initial rulemaking.

LEGISLATIVE HISTORY

H.R. 4805 was introduced on March 10, 2010, by Rep. Matsui and Rep. Ehlers. The bill was referred to the Subcommittee on Commerce, Trade, and Consumer Protection on March 11, 2010, and the Subcommittee held a hearing on the legislation on March 18, 2010. After the hearing, the majority and minority of the Subcommittee and full Committee worked together to address minority concerns with the legislation. The results of this effort were embodied in an amendment in the nature of a substitute by Mr. Waxman, which was offered by Ms. DeGette for Mr. Waxman and was subsequently adopted during full Committee markup on May 26, 2010.

COMMITTEE CONSIDERATION

The full Committee met in open markup session on May 26, 2010, to consider H.R. 4805. Vice Chair DeGette, on behalf of Chairman Waxman, offered a manager's amendment in the form of an amendment in the nature of a substitute, which subsequently passed on a voice vote. The manager's amendment eliminated explicit references within the bill to California law and directed EPA to issue regulations that allow for the sale of older products based on the date of manufacture, rather than the date of sale. In addition, the manager's amendment clarified an ambiguity in the legislation with respect to the legal effect of subsequent changes to the independent standards that are referenced in the bill. The manager's amendment provided that such changes may be adopted by EPA after providing an opportunity for notice and comment. The amendment also struck an explicit reference to the California Air Resources Board in the bill's requirement that EPA consider information regarding the law's application to "laminated products" while still requiring EPA to consider relevant information from all available sources. Furthermore, the manager's amendment extended the deadline for an initial report to Congress on implementation of the bill and required EPA to issue regulations relating to exemption of products that contain only a very small amount of

composite wood products from the requirements of the regulations other than the emissions standards.

The Committee also adopted an amendment offered by Mr. Gingrey that would require EPA to promulgate regulations no later than January 1, 2013, to implement and ensure compliance with the emissions standards contained in section 601(b). H.R. 4805 as introduced set this deadline as January 1, 2012. The Gingrey amendment was approved on a voice vote.

The Committee subsequently ordered H.R. 4805 favorably reported to the House, amended, by a roll call vote of 27 yeas and 10 nays.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list each record vote on the motion to report legislation and amendments thereto. A motion by Ms. DeGette ordering H.R. 4805 favorably reported to the House, amended, was approved by a record vote of 27 yeas and 10 nays. The following is the record vote taken during Committee consideration, including the names of those members voting for and against:

**COMMITTEE ON ENERGY AND COMMERCE – 111TH CONGRESS
ROLL CALL VOTE # 176**

BILL: H.R. 4805, the “Formaldehyde Standards for Composite Wood Products Act”.

MOTION: A motion by Ms. DeGette to order H.R. 4805 favorably reported to the House, amended.
(Final Passage)

DISPOSITION: AGREED TO by a roll call vote of 27 yeas to 10 nays.

REPRESENTATIVE	YEAS	NAYS	PRESENT	REPRESENTATIVE	YEAS	NAYS	PRESENT
Mr. Waxman				Mr. Barton		X	
Mr. Dingell	X			Mr. Hall		X	
Mr. Markey				Mr. Upton			
Mr. Boucher	X			Mr. Stearns		X	
Mr. Pallone				Mr. Whitfield	X		
Mr. Gordon				Mr. Shimkus		X	
Mr. Rush	X			Mr. Shadegg			
Ms. Eshoo				Mr. Blunt			
Mr. Stupak	X			Mr. Buyer			
Mr. Engel	X			Mr. Radanovich			
Mr. Green	X			Mr. Pitts		X	
Ms. DeGette	X			Ms. Bono Mack			
Mrs. Capps	X			Mr. Terry			
Mr. Doyle	X			Mr. Rogers			
Ms. Harman				Mrs. Myrick			
Ms. Schakowsky				Mr. Sullivan			
Mr. Gonzalez	X			Mr. Murphy of PA		X	
Mr. Inslee	X			Mr. Burgess		X	
Ms. Baldwin	X			Ms. Blackburn		X	
Mr. Ross	X			Mr. Gingrey	X		
Mr. Weiner	X			Mr. Scalise	X		
Mr. Matheson	X			Mr. Griffith		X	
Mr. Butterfield				Mr. Latta		X	
Mr. Melancon	X						
Mr. Barrow	X						
Mr. Hill	X						
Ms. Matsui	X						
Mrs. Christensen							
Ms. Castor							
Mr. Sarbanes							
Mr. Murphy of CT	X						
Mr. Space	X						
Mr. McNerney	X						
Ms. Sutton	X						
Mr. Braley	X						
Mr. Weich							

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee are reflected in the descriptive portions of this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that H.R. 4805 would result in no new budget authority, entitlement authority, or tax expenditures or revenues.

STATEMENT OF GENERAL PERFORMANCE GOALS AND OBJECTIVES

In compliance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee's performance goals and objectives are reflected in the descriptive portions of this report.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the committee finds that the constitutional authority for H.R. 4805 is provided in Article I, section 8, clauses 1, 3, and 18 of the United States Constitution.

EARMARKS AND TAX AND TARIFF BENEFITS

H.R. 4805 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI of the Rules of the House of Representatives.

ADVISORY COMMITTEE STATEMENT

No advisory committees were created by H.R. 4805 within the meaning of section 5 U.S.C. App., 5(b) of the Federal Advisory Committee Act.

APPLICABILITY OF LAW TO THE LEGISLATIVE BRANCH

The Committee finds that H.R. 4805 does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act of 1985.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimates of federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandate Reform Act.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the cost estimate on H.R. 4805 prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate on H.R. 4805 provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

JUNE 8, 2010.

Hon. HENRY A. WAXMAN,
Chairman, Committee on Energy and Commerce, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4805, the Formaldehyde Standards for Composite Wood Products Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susanne S. Mehlman.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 4805—Formaldehyde Standards for Composite Wood Products Act

H.R. 4805 would establish emission standards for hardwood plywood, medium-density fiberboard, and particle board that is sold, supplied, offered for sale, or manufactured in the United States. The bill would prescribe several exemptions. Under this legislation, the Environmental Protection Agency (EPA) would be required to issue regulations to implement the standards no later than January 1, 2013, and revise regulations relating to the importation of products covered under this legislation no later than July 1, 2013. EPA also would be required to provide annual reports to the Congress through 2014 on the status of implementing the standard. Finally, within 180 days of regulations being finalized, the Secretary of Housing and Urban Development would be required to update regulations relating to formaldehyde emission levels of products installed in manufactured homes.

CBO estimates that implementing this legislation would cost about \$3 million over the 2011–2013 period, assuming availability of appropriated funds, to issue regulations and prepare reports.

Pay-as-you-go procedures do not apply to this legislation because it would not affect direct spending or revenues.

H.R. 4805 contains no intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

Requiring manufacturers, sellers, suppliers and importers of composite wood products to meet a national standard for formaldehyde emissions would constitute a private-sector mandate as defined in UMRA. According to information from the industry, a significant portion of the industry would already be in compliance with the standard because of actions taken to comply with the standard for formaldehyde emissions established by the California Air Resources Board (CARB) and currently being phased in by the state of California. At the same time, industry sources indicate that the cost to comply with a national standard would significantly exceed the cost of the state standard, which CARB estimated would

exceed \$100 million. Because of uncertainty about the extent to which entities would already be in compliance with the requirements in the bill, CBO cannot determine whether the cost of the mandate would exceed the annual threshold established in UMRA for private-sector mandates (\$141 million in 2010, adjusted annually for inflation).

On January 7, 2010, CBO transmitted a cost estimate for S. 1660, the Formaldehyde Standards for Composite Wood Products Act, as ordered reported by the Senate Committee on Environment and Public Works on December 10, 2009. Both S. 1660 and this legislation would impose the same emission standard on composite wood products. Though deadlines for certain actions differ between the two bills, estimated costs over the next five years for both estimates are the same.

The CBO staff contacts for this estimate are Susanne S. Mehlman (for federal costs) and Amy Petz (for the impact on the private sector). This estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS

This section designates the short title of the bill as the “Formaldehyde Standards for Composite Wood Products Act”.

SECTION 2. FORMALDEHYDE STANDARDS FOR COMPOSITE WOOD PRODUCTS

TITLE VI (in the Toxic Substances Control Act)—Formaldehyde Standards for Composite Wood Products

The bill creates a new title within Toxic Substances Control Act to limit formaldehyde emissions from composite wood products.

Section 601. Formaldehyde Standards

Section 601(a) provides definitions of relevant terms, including ‘finished good’, ‘hardboard’, ‘hardwood plywood’, ‘medium-density fiberboard’, ‘particleboard’, and ‘laminated product’. Although the bill grants EPA the discretion to modify the bill’s definition of ‘laminated product’ before including that definition in its regulations, the Committee urges EPA to seek public comment on the definition set forth in the bill.

Section 601(b) establishes standards, subject to the sell-through regulations promulgated by the Environmental Protection Agency under section 601(d), for formaldehyde emissions from hardwood plywood, medium-density fiberboard, and particleboard sold, supplied, offered for sale, or manufactured in the United States. These standards shall be implemented through regulations issued by EPA under section 601(d), effective 180 days after the issuance of those regulations. The emissions standards contained in this section are the same as those recently imposed by the State of California and apply to the affected wood products regardless of whether they are in the form of an unfinished panel or incorporated into a finished good.

Section 601(c) provides for certain exemptions to the emissions standards established in section 601(b), including an exemption for

wood packaging such as pallets. Stakeholders have raised concerns regarding the potential for formaldehyde exposure from wood pallets and other products not covered by the legislation, and the Committee shares these concerns. While the Committee has chosen to focus this legislation on exposures most likely to be encountered in the home, the Committee recognizes that individuals may be exposed to formaldehyde emissions from manufactured wood found in the workplace or other enclosed places, such as retail stores and other commercial facilities. For that reason, the Committee urges EPA to examine and address, as appropriate, formaldehyde emissions from other sources, including those from wood packaging such as pallets and other containers used for handling, storing, and transporting goods.

Section 601(d) requires EPA to promulgate regulations no later than January 1, 2013, to implement and ensure compliance with the emissions standards contained in section 601(b). The introduced version of H.R. 4805 set this deadline as January 1, 2012, but the deadline was delayed by a year through an amendment offered at markup by Rep. Phil Gingrey (R-GA) and adopted by voice vote. Despite this change, the Committee notes that industry stakeholders have indicated that they plan to comply with the new emissions standards much sooner than 2013. The Committee therefore urges EPA to complete the rulemaking as quickly as possible, given its important impact on consumers and American businesses alike. The regulations shall include provisions related to labeling, sell-through, third-party testing and certification, enforcement, and other issues. While these regulations must reflect the emissions standards contained in section 601(b), EPA is free to make further limitations on emissions at any time subsequent to the initial rulemaking.

With respect to the issue of sell-through of regulated products and finished goods, the regulations shall be based on a designated date of manufacture no earlier than 180 days after promulgation of the regulations, rather than a date of sale. Such regulations also shall prohibit stockpiling of inventory and shall not require any labeling or testing of products or finished goods manufactured before the designated date of manufacture. The Committee expects that EPA will require labeling and testing, as appropriate, of products and finished goods manufactured after the designated date of manufacture sufficient to enable effective enforcement of the standards and sufficient to allow purchasers to identify products and finished goods that comply with the emissions standards.

Section 601(d)(5) provides that EPA may, after public notice and opportunity for comment, substitute an industry standard or test method referenced in the bill with its successor version. The Committee expects EPA to use its discretion under this section to incorporate updated industry standards and test methods in a manner that ensures timely incorporation of updates to such standards and test methods yet does not result in the emissions standards applying to products that are not substantially similar to products previously covered by the emissions standards.

SECTION 3. REPORTS TO CONGRESS

One year after the date of enactment, and annually thereafter through December 31, 2014, EPA shall submit a report to Congress

providing an update on implementation of this Act and describing the extent of industry compliance with its requirements.

SECTION 4. MODIFICATION OF REGULATION

Within 180 days of issuance of regulations by EPA pursuant to this Act, the Secretary of Housing and Urban Development shall update its regulations related to formaldehyde emissions from composite wood products in manufactured housing to reflect the standards established by EPA.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

TOXIC SUBSTANCES CONTROL ACT

TITLE I—CONTROL OF TOXIC SUBSTANCES

SECTION 1. SHORT TITLE AND TABLE OF CONTENTS.

This Act may be cited as the “Toxic Substances Control Act”.

TABLE OF CONTENTS

* * * * *

TITLE VI—FORMALDEHYDE STANDARDS FOR COMPOSITE WOOD PRODUCTS

Sec. 601. Formaldehyde standards.

* * * * *

TITLE VI—FORMALDEHYDE STANDARDS FOR COMPOSITE WOOD PRODUCTS

SEC. 601. FORMALDEHYDE STANDARDS.

(a) **DEFINITIONS.**—*In this section:*

(1) **FINISHED GOOD.**—

(A) **IN GENERAL.**—*The term “finished good” means any good or product (other than a panel) containing—*

- (i) hardwood plywood;*
- (ii) particleboard; or*
- (iii) medium-density fiberboard.*

(B) **EXCLUSIONS.**—*The term “finished good” does not include—*

- (i) any component part or other part used in the assembly of a finished good; or*
- (ii) any finished good that has previously been sold or supplied to an individual or entity that purchased or acquired the finished good in good faith for purposes other than resale, such as—*
 - (I) an antique; or*
 - (II) secondhand furniture.*

(2) *HARDBOARD.*—The term “hardboard” has such meaning as the Administrator shall establish, by regulation, pursuant to subsection (d).

(3) *HARDWOOD PLYWOOD.*—

(A) *IN GENERAL.*—The term “hardwood plywood” means a hardwood or decorative panel that is—

- (i) intended for interior use; and
- (ii) composed of (as determined under the standard numbered ANSI/HPVA HP-1-2009) an assembly of layers or plies of veneer, joined by an adhesive with—
 - (I) lumber core;
 - (II) particleboard core;
 - (III) medium-density fiberboard core;
 - (IV) hardboard core; or
 - (V) any other special core or special back material.

(B) *EXCLUSIONS.*—The term “hardwood plywood” does not include—

- (i) military-specified plywood;
- (ii) curved plywood; or
- (iii) any other product specified in—
 - (I) the standard entitled “Voluntary Product Standard—Structural Plywood” and numbered PS 1-07; or
 - (II) the standard entitled “Voluntary Product Standard—Performance Standard for Wood-Based Structural-Use Panels” and numbered PS 2-04.

(C) *LAMINATED PRODUCTS.*—

(i) *RULEMAKING.*—

(I) *IN GENERAL.*—The Administrator shall conduct a rulemaking process pursuant to subsection (d) that uses all available and relevant information from State authorities, industry, and other available sources of such information, and analyzes that information to determine, at the discretion of the Administrator, whether the definition of the term “hardwood plywood” should exempt engineered veneer or any laminated product.

(II) *MODIFICATION.*—The Administrator may modify any aspect of the definition contained in clause (ii) before including that definition in the regulations promulgated pursuant to subclause (I).

(ii) *LAMINATED PRODUCT.*—The term “laminated product” means a product—

- (I) in which a wood veneer is affixed to—
 - (aa) a particleboard platform;
 - (bb) a medium-density fiberboard platform;
 or
 - (cc) a veneer-core platform; and
- (II) that is—
 - (aa) a component part;
 - (bb) used in the construction or assembly of a finished good; and

(cc) produced by the manufacturer or fabricator of the finished good in which the product is incorporated.

(4) **MANUFACTURED HOME.**—The term “manufactured home” has the meaning given the term in section 3280.2 of title 24, Code of Federal Regulations (as in effect on the date of promulgation of regulations pursuant to subsection (d)).

(5) **MEDIUM-DENSITY FIBERBOARD.**—The term “medium-density fiberboard” means a panel composed of cellulosic fibers made by dry forming and pressing a resinated fiber mat (as determined under the standard numbered ANSI A208.2–2009).

(6) **MODULAR HOME.**—The term “modular home” means a home that is constructed in a factory in 1 or more modules—

(A) each of which meet applicable State and local building codes of the area in which the home will be located; and

(B) that are transported to the home building site, installed on foundations, and completed.

(7) **NO-ADDED FORMALDEHYDE-BASED RESIN.**—

(A) **IN GENERAL.**—(i) The term “no-added formaldehyde-based resin” means a resin formulated with no added formaldehyde as part of the resin cross-linking structure in a composite wood product that meets the emission standards in subparagraph (C) as measured by—

(I) one test conducted pursuant to test method ASTM E-1333-96 (2002) or, subject to clause (ii), ASTM D-6007-02; and

(II) 3 months of routine quality control tests pursuant to ASTM D-6007-02 or ASTM D-5582 or such other routine quality control test methods as may be established by the Administrator through rulemaking.

(ii) Test results obtained under clause (i)(I) or (II) by any test method other than ASTM E-1333-96 (2002) must include a showing of equivalence by means established by the Administrator through rulemaking.

(B) **INCLUSIONS.**—The term “no-added formaldehyde-based resin” may include any resin made from—

(i) soy;

(ii) polyvinyl acetate; or

(iii) methylene diisocyanate.

(C) **EMISSION STANDARDS.**—The following are the emission standards for composite wood products made with no-added formaldehyde-based resins under this paragraph:

(i) No higher than 0.04 parts per million of formaldehyde for 90 percent of the 3 months of routine quality control testing data required under subparagraph (A)(ii).

(ii) No test result higher than 0.05 parts per million of formaldehyde for hardwood plywood and 0.06 parts per million for particleboard, medium-density fiberboard, and thin medium-density fiberboard.

(8) **PARTICLEBOARD.**—

(A) **IN GENERAL.**—The term “particleboard” means a panel composed of cellulosic material in the form of discrete particles (as distinguished from fibers, flakes, or strands)

that are pressed together with resin (as determined under the standard numbered ANSI A208.1-2009).

(B) *EXCLUSIONS.*—The term “particleboard” does not include any product specified in the standard entitled “Voluntary Product Standard-Performance Standard for Wood-Based Structural-Use Panels” and numbered PS 2-04.

(9) *RECREATIONAL VEHICLE.*—The term “recreational vehicle” has the meaning given the term in section 3282.8 of title 24, Code of Federal Regulations (as in effect on the date of promulgation of regulations pursuant to subsection (d)).

(10) *ULTRA LOW-EMITTING FORMALDEHYDE RESIN.*—

(A) *IN GENERAL.*—(i) The term “ultra low-emitting formaldehyde resin” means a resin in a composite wood product that meets the emission standards in subparagraph (C) as measured by—

(I) 2 quarterly tests conducted pursuant to test method ASTM E-1333-96 (2002) or, subject to clause (ii), ASTM D-6007-02; and

(II) 6 months of routine quality control tests pursuant to ASTM D-6007-02 or ASTM D-5582 or such other routine quality control test methods as may be established by the Administrator through rulemaking.

(ii) Test results obtained under clause (i)(I) or (II) by any test method other than ASTM E-1333-96 (2002) must include a showing of equivalence by means established by the Administrator through rulemaking.

(B) *INCLUSIONS.*—The term “ultra low-emitting formaldehyde resin” may include—

(i) melamine-urea-formaldehyde resin;

(ii) phenol formaldehyde resin; and

(iii) resorcinol formaldehyde resin.

(C) *EMISSION STANDARDS.*—

(i) The Administrator may, pursuant to regulations issued under subsection (d), reduce the testing requirements for a manufacturer only if its product made with ultra low-emitting formaldehyde resin meets the following emission standards:

(I) For hardwood plywood, no higher than 0.05 parts per million of formaldehyde.

(II) For medium-density fiberboard—

(aa) no higher than 0.06 parts per million of formaldehyde for 90 percent of 6 months of routine quality control testing data required under subparagraph (A)(ii); and

(bb) no test result higher than 0.09 parts per million of formaldehyde.

(III) For particleboard—

(aa) no higher than 0.05 parts per million of formaldehyde for 90 percent of 6 months of routine quality control testing data required under subparagraph (A)(ii); and

(bb) no test result higher than 0.08 parts per million of formaldehyde.

(IV) For thin medium-density fiberboard—

(aa) no higher than 0.08 parts per million of formaldehyde for 90 percent of 6 months of routine quality control testing data required under subparagraph (A)(ii); and

(bb) no test result higher than 0.11 parts per million of formaldehyde.

(ii) The Administrator may not, pursuant to regulations issued under subsection (d), exempt a manufacturer from third party certification requirements unless its product made with ultra low-emitting formaldehyde resin meets the following emission standards:

(I) No higher than 0.04 parts per million of formaldehyde for 90 percent of 6 months of routine quality control testing data required under subparagraph (A)(ii).

(II) No test result higher than 0.05 parts per million of formaldehyde for hardwood plywood and 0.06 parts per million for particleboard, medium-density fiberboard, and thin medium-density fiberboard.

(b) REQUIREMENT.—

(1) IN GENERAL.—Except as provided in an applicable sell-through regulation promulgated pursuant to subsection (d), effective beginning on the date that is 180 days after the date of promulgation of those regulations, the emission standards described in paragraph (2), shall apply to hardwood plywood, medium-density fiberboard, and particleboard sold, supplied, offered for sale, or manufactured in the United States.

(2) EMISSION STANDARDS.—The emission standards referred to in paragraph (1), based on test method ASTM E-1333-96 (2002), are as follows:

(A) For hardwood plywood with a veneer core, 0.05 parts per million of formaldehyde.

(B) For hardwood plywood with a composite core—

(i) 0.08 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2012; and

(ii) 0.05 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2012.

(C) For medium-density fiberboard—

(i) 0.21 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2011; and

(ii) 0.11 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2011.

(D) For thin medium-density fiberboard—

(i) 0.21 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2012; and

(ii) 0.13 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2012.

(E) For particleboard—

(i) 0.18 parts per million of formaldehyde for any period after the effective date described in paragraph (1) and before July 1, 2011; and

(ii) 0.09 parts per million of formaldehyde, effective on the later of the effective date described in paragraph (1) or July 1, 2011.

(3) COMPLIANCE WITH EMISSION STANDARDS.—(A) Compliance with the emission standards described in paragraph (2) shall be measured by—

(i) quarterly tests shall be conducted pursuant to test method ASTM E-1333-96 (2002) or, subject to subparagraph (B), ASTM D-6007-02; and

(ii) quality control tests shall be conducted pursuant to ASTM D-6007-02, ASTM D-5582, or such other test methods as may be established by the Administrator through rulemaking.

(B) Test results obtained under subparagraph (A)(i) or (ii) by any test method other than ASTM E-1333-96 (2002) must include a showing of equivalence by means established by the Administrator through rulemaking.

(C) Except where otherwise specified, the Administrator shall establish through rulemaking the number and frequency of tests required to demonstrate compliance with the emission standards.

(4) APPLICABILITY.—The formaldehyde emission standard referred to in paragraph (1) shall apply regardless of whether an applicable hardwood plywood, medium-density fiberboard, or particleboard is—

(A) in the form of an unfinished panel; or

(B) incorporated into a finished good.

(c) EXEMPTIONS.—The formaldehyde emission standard referred to in subsection (b)(1) shall not apply to—

(1) hardboard;

(2) structural plywood, as specified in the standard entitled “Voluntary Product Standard—Structural Plywood” and numbered PS 1-07;

(3) structural panels, as specified in the standard entitled “Voluntary Product Standard—Performance Standard for Wood-Based Structural-Use Panels” and numbered PS 2-04;

(4) structural composite lumber, as specified in the standard entitled “Standard Specification for Evaluation of Structural Composite Lumber Products” and numbered ASTM D 5456-06;

(5) oriented strand board;

(6) glued laminated lumber, as specified in the standard entitled “Structural Glued Laminated Timber” and numbered ANSI A190.1-2002;

(7) prefabricated wood I-joists, as specified in the standard entitled “Standard Specification for Establishing and Monitoring Structural Capacities of Prefabricated Wood I-Joists” and numbered ASTM D 5055-05;

(8) finger-jointed lumber;

(9) wood packaging (including pallets, crates, spools, and dunnage);

(10) composite wood products used inside a new—

(A) vehicle (other than a recreational vehicle) constructed entirely from new parts that has never been—

- (i) the subject of a retail sale; or
- (ii) registered with the appropriate State agency or authority responsible for motor vehicles or with any foreign state, province, or country;

(B) rail car;

(C) boat;

(D) aerospace craft; or

(E) aircraft;

(11) windows that contain composite wood products, if the window product contains less than 5 percent by volume of hardwood plywood, particleboard, or medium-density fiberboard, combined, in relation to the total volume of the finished window product; or

(12) exterior doors and garage doors that contain composite wood products, if—

(A) the doors are made from composite wood products manufactured with no-added formaldehyde-based resins or ultra low-emitting formaldehyde resins; or

(B) the doors contain less than 3 percent by volume of hardwood plywood, particleboard, or medium-density fiberboard, combined, in relation to the total volume of the finished exterior door or garage door.

(d) REGULATIONS.—

(1) IN GENERAL.—Not later than January 1, 2013, the Administrator shall promulgate regulations to implement the standards required under subsection (b) in a manner that ensures compliance with the emission standards described in subsection (b)(2).

(2) INCLUSIONS.—The regulations promulgated pursuant to paragraph (1) shall include provisions relating to—

(A) labeling;

(B) chain of custody requirements;

(C) sell-through provisions;

(D) ultra low-emitting formaldehyde resins;

(E) no-added formaldehyde-based resins;

(F) finished goods;

(G) third-party testing and certification;

(H) auditing and reporting of third-party certifiers;

(I) recordkeeping;

(J) enforcement;

(K) laminated products; and

(L) exceptions from the requirements of regulations promulgated pursuant to this subsection for products and components containing de minimis amounts of composite wood products.

The Administrator shall not provide under subparagraph (L) exceptions to the formaldehyde emission standard requirements in subsection (b).

(3) SELL-THROUGH PROVISIONS.—

(A) IN GENERAL.—Sell-through provisions established by the Administrator under this subsection, with respect to composite wood products and finished goods containing regulated composite wood products (including recreational

vehicles, manufactured homes, and modular homes), shall—

(i) be based on a designated date of manufacture (which shall be no earlier than the date 180 days following the promulgation of the regulations pursuant to this subsection) of the composite wood product or finished good, rather than date of sale of the composite wood product or finished good; and

(ii) provide that any inventory of composite wood products or finished goods containing regulated composite wood products, manufactured before the designated date of manufacture of the composite wood products or finished goods, shall not be subject to the formaldehyde emission standard requirements under subsection (b)(1).

(B) IMPLEMENTING REGULATIONS.—The regulations promulgated under this subsection shall—

(i) prohibit the stockpiling of inventory to be sold after the designated date of manufacture; and

(ii) not require any labeling or testing of composite wood products or finished goods containing regulated composite wood products manufactured before the designated date of manufacture.

(C) DEFINITION.—For purposes of this paragraph, the term “stockpiling” means manufacturing or purchasing a composite wood product or finished good containing a regulated composite wood product between the date of enactment of the Formaldehyde Standards for Composite Wood Products Act and the date 180 days following the promulgation of the regulations pursuant to this subsection at a rate which is significantly greater (as determined by the Administrator) than the rate at which such product or good was manufactured or purchased during a base period (as determined by the Administrator) ending before the date of enactment of the Formaldehyde Standards for Composite Wood Products Act.

(4) IMPORT REGULATIONS.—Not later than July 1, 2013, the Administrator, in coordination with the Commissioner of Customs and Border Protection and other appropriate Federal departments and agencies, shall revise regulations promulgated pursuant to section 13 as the Administrator determines to be necessary to ensure compliance with this section.

(5) SUCCESSOR STANDARDS AND TEST METHODS.—The Administrator may, after public notice and opportunity for comment, substitute an industry standard or test method referenced in this section with its successor version.

(e) PROHIBITED ACTS.—An individual or entity that violates any requirement under this section (including any regulation promulgated pursuant to subsection (d)) shall be considered to have committed a prohibited act under section 15.

DISSENTING VIEWS

We, the undersigned Members of the Committee on Energy and Commerce, offer the following comments on H.R. 4805, the Formaldehyde Standards for Composite Wood Products Act. We believe that there may be some legitimate reasons for supporting passage of this legislation, but the deficiencies in this bill outweigh its benefits.

We believe the bill reported by the Committee includes a number of significant improvements over the bill as originally introduced. These changes include: (1) greater clarity regarding the actual emission standards the Environmental Protection Agency (EPA) must promulgate and (2) “sell-through” provisions that ensure fairer treatment of merchants seeking to sell inventory manufactured before the emission standards take effect. Notwithstanding these changes, the bill suffers from at least four critical shortcomings that lead us to oppose its passage. First, the proponents of the bill failed to demonstrate that the emission standards have adequate scientific support. Second, the bill sets a national standard without preempting state regulation. Third, the bill requires EPA to promulgate the standards without making a determination that they are technically feasible and that compliance is not prohibitively expensive. Fourth, the bill requires EPA to regulate consumer products even though the Consumer Product Safety Commission (CPSC) appears better qualified for this task. In addition, as explained below, we disagree with the majority’s description of the bill and provide guidance regarding a term used in the bill.

Excessive exposure to formaldehyde can cause health problems, but we may not need federal formaldehyde emission standards for composite wood products to prevent health harm. The proponents of such standards have the burden of proving the need for them, but have failed to make an adequate case for the specific standards mandated by this bill. Instead, the proponents rely on the increasingly outdated risk assessment conducted by the State of California in issuing its regulations, as explained and called into question by Dr. Mel Anderson in his expert testimony provided at the March 18, 2010, hearing before the Commerce, Trade, and Consumer Protection Subcommittee. Dr. Anderson is a highly credible expert witness with extensive experience studying formaldehyde and we are concerned with his suggestion that the California standards are much more restrictive than necessary to protect consumers from cancer risks. Noteworthy to us was that none of the other witnesses persuasively rebutted this testimony that suggested an overregulation. In short, we feel the hearing record for this bill, while supportive of doing something on the overall subject, indicates that the emission standards mandated by the bill rest on a shaky foundation.

Further, assuming that the health risks posed by formaldehyde in composite wood products warrant some type of federal emission standard, the bill still raises concerns because it does not preempt state regulation. The preemption provisions in Section 18 of the Toxic Substances Control Act (TSCA) would not apply to these standards. Nothing in the bill would preclude states from imposing more stringent and conflicting standards than those mandated by the bill. States could create a patchwork of differing laws and requirements, thereby frustrating the stated goal of creating a uniform, national standard for formaldehyde emissions from composite wood products. In addition, EPA is currently considering a regulation under TSCA addressing the same issues addressed by this bill. If EPA completes its current rulemaking process, any resulting formaldehyde standard would preempt state regulation as provided in TSCA.

The bill would also require EPA to issue the mandated emission standards regardless of whether they ultimately prove technically feasible and affordable. Congress lacks experience regarding the workability of these standards in the real world. Although industry representatives have assured us that they can comply with all of the standards mandated by the bill, including the ones that have not yet taken effect under the California regulation, we have learned through our experience with the Consumer Product Safety Improvement Act that we should be very careful about mandating standards based on the aspiring compliance of a whole industry segment. H.R. 4805 does not provide the EPA with any discretion if one or more of the standards proves technically not feasible to meet or if the high cost of compliance with the standard would prevent manufacturers from remaining in business. It does not make sense to impose a standard which has not been "road tested" and that industry potentially cannot meet. Nor does it make sense to set a standard that, while technically feasible to meet, imposes costs high enough to drive manufacturers out of business. This is especially true here because, as explained above, the standards rest on a shaky, overly conservative, scientific foundation.

Had the four aforementioned issues regarding the bill been resolved more satisfactorily, we would have been more comfortable supporting this legislation.

Moreover, the bill would provide for EPA rulemaking and enforcement of the emissions standards under TSCA even though the CPSC would be in a better position to handle the program under the Federal Hazardous Substances Act. Under TSCA, the EPA regulates industrial chemicals and mixtures rather than consumer products while the CPSC regulates unsafe consumer products under a different statutory framework. Given that the bill addresses supposedly unsafe consumer products, and provides for emission standards as well as labeling and testing requirements, the CPSC arguably is better situated than EPA to handle this. The CPSC's more extensive experience and expertise on issues relating to consumer product safety, sell-through, labeling, and consumer product testing suggest that we should entrust this program to the CPSC instead of to the EPA.

The majority's report also suffers from several shortcomings. We disagree with the report's description of the bill and the invitation

to EPA to take certain actions even though the bill does not provide any authority for it to do so. We also provide guidance to clarify the meaning of the term “showing of equivalence” that appears in several sections of the bill.

In two places the report states that the EPA has authority to change the emission standards from those set forth in the bill. On page three the majority states: “Finally, EPA will be free to make further limitations at any time subsequent to the initial rulemaking.” On page seven the majority states: “While these regulations must reflect the emissions standards contained in section 601(b), EPA is free to make further limitations on emissions at any time subsequent to the initial rulemaking.” We disagree with the majority’s interpretation of the bill. Section (b)(1) provides that “Except as provided in an applicable sell-through regulation promulgated pursuant to subsection (d), effective beginning on the date that is 180 days after the date of promulgation of those regulations, the emission standards described in paragraph (2), shall apply to hardwood plywood, medium-density fiberboard, and particleboard sold, supplied, offered for sale, or manufactured in the United States.” The bill states that these standards apply to the listed products once the EPA promulgates implementing regulations. It does not provide any authority to change the standards in a subsequent rulemaking. Assuming, for the sake of argument, that the majority’s interpretation is correct and EPA is free to promulgate different standards in the future based on a subsequent risk assessment in a new rulemaking, then the EPA could set either a lower or a higher emission standard. In our view, EPA would need new authority from Congress before promulgating different emission standards in a subsequent rulemaking.

Finally, we note that Section 601(b)(3)(B) addresses compliance with the emission standards, and provides for the use of certain tests to demonstrate compliance only if the results include a “showing of equivalence” as established by EPA through rulemaking. Sections 601(a)(7)(A)(ii) and (a)(10)(A)(ii) also include references to a “showing of equivalence.” The bill uses the term “showing of equivalence” as it is generally understood by professionals with expertise in conducting and evaluating tests used to measure formaldehyde emissions. It does not necessarily entail a showing of identical rather than similar results.

We urge all Members of the House to carefully consider these views and urge these changes before providing their support to it.

JOE BARTON, Ranking Member.
 JOHN SHIMKUS.
 ROBERT E. LATTA.
 MARSHA BLACKBURN.
 JOSEPH R. PITTS.
 LEE TERRY.
 CLIFF STEARNS.
 TIM MURPHY.
 GEORGE RADANOVICH.