



June 29, 2020

The Honorable Andrew Wheeler
Administrator, Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington D.C., 20460

Dear Administrator Wheeler,

The International Wood Products Association (“IWPA”) requests on behalf of its members for Environmental Protection Agency (“EPA”) to provide much needed regulatory relief to allow Third-Party Certifiers (TPCs) under the TSCA Title VI Composite Wood Program to conduct *remote* “on-site” inspections of panel producers during the ongoing COVID-19 pandemic. We request EPA allow *remote* “on-site” inspections for both established and approved panel producers and for new panel producers.¹

Recently, the California Air Resources Board (CARB) provided guidance on procedures to allow flexibility for TPCs to continue their oversight on established and approved composite wood panel producers during this period when on-site inspections may be impossible given global travel restrictions. However, there remains a concern on how to address EPA requirements for an on-site inspection for the establishment of new panel producers under the TSCA VI regulations. We urge EPA to work closely with CARB to develop and issue regulatory relief for TPCs and affected panel producers.

By way of background, the International Wood Products Association is the leading international trade association for the North American international wood products industry. We bring together every segment of the global supply chain, from producers and service providers to importers, distributors, manufacturers, and retailers. Included in our

¹ By using the term “remote on-site inspections” we are referring to the full suite of alternative short-term assessment methods that could be utilized by a TPC (for example, remote inspection of documents and video or other remote or virtual inspections such as live video calls).

associate membership are TPCs under the TSCA VI Composite Wood Program, all of which are small businesses.

I. Travel Restrictions Make It Nearly Impossible for Third-Party Certifiers to Perform On-Site Inspections

On March 31, 2020, as the COVID-19 pandemic swept the globe, the U.S. State Department issued a [Level 4, Do Not Travel Global Health Advisory](#). In this advisory, which is still in effect, the Department of State advised U.S. citizens to “avoid all international travel due to the global impact of COVID-19.” U.S. citizens were told to arrange for immediate return to the United States.

The State Department went the additional step to tell U.S. citizens who live abroad to “avoid all international travel.” Noting that “[m]any countries are experiencing COVID-19 outbreaks and implementing travel restrictions and mandatory quarantines, closing borders, and prohibiting non-citizens from entry with little advance notice.” The State Department warned that if a U.S. citizen choose to travel internationally that not only would travel plans be “severely disrupted” they may also be “forced to remain outside of the United States for an indefinite timeframe.” In addition to travel restrictions, strict quarantine measures have been imposed globally for travel in and out of COVID-19 hotspots.² For these reasons, U.S.-based TPCs have had to curtail the travel of their employees from the U.S. to panel producers located abroad, and curtail the movement of staff located within the regions where they typically provide TPC services to panel producers. The COVID-19 travel disruptions have caused TPCs to dramatically expand their efforts to conduct their activities remotely and in accordance with risk-based controls to ensure the reliability of their activities.

II. Request EPA and CARB Allow TPCs to Conduct *Remote* On-Site Inspections of Panel Producers During the COVID-19 Economic Emergency

Recently, CARB and EPA staff have provided guidance to TPCs on allowable procedures to conduct their activities remotely – including on site inspections. Unfortunately, language in EPA regulations regarding the approval of new panel producers is blocking efforts to continue economic activity despite COVID-19 restrictions. Specifically, 40 C.F.R. 770.15(c)(1)(viii) mandates that an application must contain the results of an “initial, on-site inspection by the TPC of the panel producer.” **We respectfully request that EPA, during the COVID-19 Economic Emergency, allow TPCs to conduct the required on-site**

² [CBP recently reminded](#) all prospective travelers of the restrictions on travel into the United States due to the COVID-19 pandemic. With limited exceptions, aliens may not enter the United States if they have been physically present in Brazil, China, Iran, Ireland, the United Kingdom, or the Schengen Area within the 14 days preceding their attempted entry into the United States. In addition, the United States and Canada have temporarily restricted non-essential travel across the U.S.-Canada land border. States have also begun to impose travel restrictions within the United States. See [A Tri-State Advisory](#) from New York, New Jersey, and Connecticut.

inspections for panel producers using appropriate remote assessment methods, including remote inspection of documents where feasible, videos, and live auditor-directed video calls. Quick action to provide this relief will result in jobs being saved, commerce continuing, and the protection of public health and the environment.

III. E.O. 13924 directs Agencies to Address the COVID-19 Economic Emergency by Rescinding, Modifying, Waiving, or Providing Exemptions from Regulations and Other Requirements that May Inhibit Economic Recovery Consistent with Applicable Law and Protection of Public Health and Safety

EPA has authority to provide relief in light of ongoing travel restrictions in accordance with [Executive Order 13924](#) on Regulatory Relief to Support Economic Recovery. E.O. 13924 directs Agencies to “address this economic emergency by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery, consistent with applicable law and with protection of the environment, public health and safety.”³

E.O. 13924 provides EPA with the ample tools to assist TPCs in their work to conduct assessments of panel producers by allowing for remote on-site inspections during the COVID-19 emergency. For example, EPA could issue a pre-enforcement ruling under E.O. 13892 consistent with statutes and regulations.⁴ Alternatively, EPA could issue an emergency direct final rule adding the definition of “on-site inspection” that allows for alternative assessment methods, including remote assessments in an extraordinary event or circumstance.⁵ Finally, EPA could provide guidance that on-site inspections can be conducted using alternative short-term assessment methods including remote assessments during extraordinary events or circumstances. In all instances, we recommend EPA use the already established International Accreditation Forum [Mandatory Document for the Use of Information Communication Technology \(ICT\) for Auditing/Assessment Purposes](#) to guide EPA’s regulatory relief.

Importantly, by relying on the established guidance provided by the International Accreditation Forum, EPA can ensure that this regulatory relief is narrow and tailored and adequately protects public health, safety and the environment while providing critical regulatory and economic relief to affected TPCs, panel producers, and U.S. purchasers of products containing affected composite wood panels.

³ See Sec. 1 of E.O. 13924 (*Policy*).

⁴ See Sec. 5 of E.O. 13924 (*Compliance assistance for regulated entities*).

⁵ See Sec. 2.1 of International Accreditation Forum, Inc. [IAF Informative Document For Management of Extraordinary Events or Circumstances Affecting ABs, CABs, and Certified Organizations](#) (defining Extraordinary event or circumstances as “a circumstance beyond the control of the organization, commonly referred to as “Force Majeure” or “act of God”. Examples are war, strike, riot, political instability, geopolitical tension, terrorism, crime, *pandemic*, flooding, earthquake, malicious computer hacking, other natural or man-made disasters.”)

IV. If EPA Takes No Action TPCs Will be Unable to Provide Critical Services to Panel Producers

If EPA takes no action, then U.S.-based TPCs will be frozen out of foreign markets. In addition, U.S. buyers of regulated composite wood products will be unable to onboard new suppliers of critical building supplies and residential and commercial furnishings. Initial applications for any new panel producers would continue to require an on-site in person inspection. U.S. TPCs will not likely be able to subcontract with local personnel because of domestic travel restrictions in many countries. This has the potential of not just impacting business during the pandemic, but for years to come as panel producers may be unwilling or unable to shift to U.S.-based TPCs after signing contracts with local certifiers.

V. Conclusion

We request that EPA take quick action to provide much needed regulatory relief to allow TPCs under the TSCA Title VI Composite Wood Program to conduct *remote* "on-site" inspections of panel producers during the ongoing COVID-19 pandemic. We request EPA allow *remote* "on-site" inspections for both established and approved panel producers and for new panel producers. I thank you for your attention to this important issue.

Sincerely,

A handwritten signature in blue ink that reads "Cindy L Squires". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Cindy L Squires, Esq.
Executive Director

CC: Mandy Gunasekara, Chief of Staff, EPA

Alexandra Dapolito Dunn, Assistant Administrator, Office of Chemical Safety and
Pollution Prevention, EPA

Yvette T. Collazo, Director Office of Pollution Prevention and Toxics, EPA

Richard Boyd, Chief, Risk Reduction Branch, Transportation & Toxics Division,
California Air Resources Board