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16 *Attorneys for Plaintiffs Sierra Club and*
17 *A Community Voice-Louisiana*

18
19 UNITED STATES DISTRICT COURT
20 FOR THE NORTHERN DISTRICT OF CALIFORNIA
21 SAN FRANCISCO DIVISION

21 SIERRA CLUB, and A COMMUNITY VOICE-) Civ. No. _____
22 LOUISIANA)

23 Plaintiffs,)

24 v.)

25) **COMPLAINT FOR DECLARATORY**
26) **AND VACATUR RELIEF**

25 SCOTT PRUITT, in his official capacity as)
26 Administrator of the United States Environmental)
27 Protection Agency,)

27 Defendant.)
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INTRODUCTION

1. This action concerns two rules recently promulgated by the Environmental Protection Agency (“EPA”) implementing the Formaldehyde Standards in Composite Wood Products Act. 15 U.S.C. § 2697 (the “Formaldehyde Act,” codified as Title VI of the Toxics Substances Control Act (“TSCA”)). The first rule established emission standards for formaldehyde in composite wood products and associated testing and compliance mechanisms. 81 Fed. Reg. 89674 (Dec. 12, 2016) (the “Formaldehyde Rule”). EPA signed this rule in July 2016 and published it in the Federal Register on December 12, 2016. The second rule extended the Formaldehyde Rule’s compliance dates so that the first compliance deadline is December 12, 2018, one year later than the December 12, 2017 deadline in the Formaldehyde Rule and more than three years after the Formaldehyde Act directed EPA to require compliance. 82 Fed. Reg. 44533 (Sept. 25, 2017) (the “Formaldehyde Delay Rule”).

2. The Formaldehyde Delay Rule violates and exceeds EPA’s statutory authority. In 2010, Congress enacted the Formaldehyde Act directing EPA to promulgate a rule setting emission standards for formaldehyde in composite wood products and associated testing and certification procedures. 15 U.S.C. § 2697. Congress limited EPA’s discretion by prescribing and establishing mandatory deadlines for the core emission standards. EPA had until January 1, 2013 to promulgate the emissions standards and 180 days after the rule’s promulgation to require compliance for three types of wood products. By extending the compliance deadlines for these wood products far beyond 180 days of promulgation of the Formaldehyde Rule and years after the congressional 2013 deadline, the Formaldehyde Delay Rule is in blatant violation of 15 U.S.C. § 2697(b)(1), exceeds EPA’s statutory authority, and is unlawful.

1 ways to reduce their risks. It devoted organizational resources to performing functions that the
2 government should be, but was not performing. It conducted extensive advocacy to compel the
3 government to protect people from formaldehyde emissions from wood products. This advocacy
4 included petitioning EPA to adopt limits on formaldehyde emissions from composite wood
5 products and submitting numerous comments to EPA in support of the proposals to adopt such
6 standards.
7

8 6. The Sierra Club files this lawsuit on behalf of itself and its members. The Sierra
9 Club has more than 829,000 members nationwide, including many thousands of members who
10 are particularly susceptible to harm from formaldehyde emissions and who live in areas recently
11 impacted by natural disasters.
12

13 7. Plaintiff A Community Voice-Louisiana (“ACV”) is a non-profit community
14 organization dedicated to fighting for social and economic justice for low to moderate income
15 families in southern Louisiana. The organization conducts training sessions, runs campaigns,
16 and undertakes other outreach efforts to assist its members and raise broader public awareness
17 about the concerns of southern Louisiana’s lower income families. ACV has been actively
18 engaged in helping lower income neighborhoods in the area recover from the impacts of
19 Hurricane Katrina and avoid further threats to their health and well-being. Many of ACV’s
20 members were housed in FEMA trailers in the wake of the storm and were exposed to elevated
21 levels of formaldehyde.
22

23 8. ACV files this lawsuit on behalf of itself and its members. ACV has many
24 members who have young children, are elderly, have previously been exposed to elevated levels
25 of formaldehyde, and have respiratory ailments and therefore are particularly susceptible to
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1 exposure to additional formaldehyde emissions. ACV's members also all live in an area that still
2 is struggling to rebuild after Hurricane Katrina.

3 9. Plaintiffs' members include people who are sensitive to formaldehyde exposures
4 because of past harm to their health from formaldehyde exposures, existing health conditions like
5 asthma, or being in vulnerable populations like children and the elderly. Plaintiffs' members
6 who live in areas impacted by natural disasters will be exposed to construction, rebuilding, and
7 new furnishings that contain composite wood products. Plaintiffs' members include people who
8 live in housing, work in buildings, or whose children attend day care or school in buildings that
9 are having repairs or new construction or new furnishings using composite wood products.
10

11 10. If EPA had required compliance with limits on formaldehyde emissions from
12 composite wood products in accordance with the Formaldehyde Act, newly manufactured or
13 imported composite wood products would need to comply with the emissions standards by
14 December 12, 2017. While finished goods could use wood products manufactured prior to
15 December 12, 2017, the existing stocks of wood products with higher formaldehyde emissions
16 would be fixed and start to be depleted.
17

18 11. Plaintiffs' members depend on this regulation being in place to protect themselves
19 and their families from formaldehyde emissions above the EPA standards in their homes,
20 workplaces, schools, and day cares. Plaintiffs' members do not control which composite wood
21 products will be used in construction, rebuilding, furnishings, and cabinetry to which they are
22 exposed. They do not receive notice that wood products with higher emissions have been used
23 or installed in their rental housing, their workplaces, or where their children go to school or day
24 care.
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1 myeloid leukemia, and the International Agency for Research on Cancer conducted an
2 assessment concluding that formaldehyde causes leukemia.

3 17. Formaldehyde is a sensory irritant. Eye, nose, and throat irritations, even from
4 formaldehyde exposures of relatively short duration, have been documented in a range of
5 epidemiology and human studies.

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7 18. Formaldehyde exposure is associated with a range of respiratory effects. It can
8 irritate the respiratory tract, decrease pulmonary function, increase the risk of asthma and allergic
9 conditions, especially in children, and increase the severity of childhood asthma attacks.

10
11 19. Epidemiology studies document an association between formaldehyde exposure
12 and adverse reproductive outcomes in women, including reduced fertility.

13 20. Formaldehyde is produced on a large scale worldwide. One major use includes
14 the production of wood binding adhesives and resins used in the manufacture of composite wood
15 products (*i.e.*, hardwood plywood, medium-density fiberboard, and particleboard). Composite
16 wood products are widely used in paneling, flooring, cabinets, furniture, countertops, molding,
17 and door skins.

18
19 21. The hazards of formaldehyde emissions from composite wood products came to
20 the fore when people displaced by Hurricane Katrina and other disasters were housed in trailers
21 provided by the FEMA. Many of the occupants of the FEMA trailers experienced nosebleeds,
22 headaches, eye and skin irritation, and other ailments. Testing by the Centers for Disease
23 Control (“CDC”) documented higher levels of formaldehyde than are typical indoors in the
24 United States. Because of serious health concerns, most of the displaced people were eventually
25 moved out of the FEMA trailers, although the trailers continue to be used as housing in other
26 parts of the country.
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1 22. In 1992, the California Air Resources Board (“CARB”) designated formaldehyde
2 as a toxic air contaminant with no safe level of exposure. This designation requires CARB to
3 take action to reduce human exposure to this toxic air contaminant. Spurred by the FEMA
4 trailers debacle, CARB initiated a formal rulemaking in which it found that formaldehyde is a
5 respiratory irritant and carcinogen and that one of the major sources of exposure is from
6 inhalation of formaldehyde emitted from composite wood products containing urea-
7 formaldehyde resins.

9 23. In 2008, California adopted an Airborne Toxics Control Measure (“ATCM”) to
10 reduce formaldehyde emissions from hardwood plywood, particleboard, and medium-density
11 fiberboard and finished goods (such as cabinets and furniture) made with composite wood
12 products. It phased in the new emissions standards, requiring compliance between July 1, 2009
13 and July 1, 2012, depending on the particular wood product. Manufacturers must demonstrate
14 compliance with the standards through emissions tests and quality control processes certified by
15 a third-party certifier. 17 Cal. Code Reg. §§ 93120-93120.12. CARB estimated that its emission
16 standards would reduce formaldehyde exposures in California by 58% by 2013 and would
17 reduce childhood cancers by 9-26 and lifetime cancer cases by 35-97 per million.
18 <https://www.arb.ca.gov/toxics/compwood/factsheet.pdf>.

21 24. In 2008, the Sierra Club, joined by 25 other organizations and about 5,000
22 individuals, petitioned EPA to adopt the CARB standards under TSCA. EPA declined to adopt
23 the CARB standards because it did not have sufficient information to make the stringent findings
24 then required under TSCA to regulate exposure to chemicals. 73 Fed. Reg. 36504 (June 27,
25 2008). EPA initiated a proceeding to begin gathering information that could provide the basis
26 for adopting and even going beyond the CARB standards. *Id.*

1 II. THE 2010 LAW DIRECTING EPA TO ADOPT FORMALDEHYDE EMISSIONS
2 STANDARDS FOR COMPOSITE WOOD PRODUCTS ON AN EXPEDITIOUS
3 BASIS.

4 25. Congress enacted the Formaldehyde Act in 2010 to establish national limits on
5 formaldehyde emissions from composite wood products because of the chemical's known
6 adverse effects on human health and its wide use in a variety of consumer products made of
7 composite wood such as cabinetry and household furnishings. S. Rep. No. 111-169, at 1 (2010)
8 *see also* H. R. Rep. No. 111-509, pt. 1, at 7-8 (2010).

9 26. The Act directs EPA to adopt formaldehyde emissions standards for hardwood
10 plywood, particleboard, and medium-density fiberboard manufactured, sold, or imported into the
11 United States that must be equivalent to the standards in the CARB Airborne Toxic Control
12 Measure. 15 U.S.C. § 2697(b)(1). The Act leaves EPA no discretion to change those standards
13 and requires EPA to adopt implementing regulations that would ensure expeditious compliance
14 with them.
15

16 27. The Act directs EPA to determine based on all available and relevant information
17 to determine whether to exempt engineered veneer and laminated products from the term
18 "hardwood plywood," subject to the emissions standards, *id.* § 2697(a)(3)(C)(I), and to include
19 various provisions in the implementing regulations, such as labeling, chain-of-custody
20 requirements, sell-through provisions, third-party testing and certification, and recordkeeping
21 requirements. *Id.* § 2697(d)(2).
22

23 28. The Formaldehyde Act directs EPA to finalize emission standards by January 1,
24 2013, *id.* § 2697(d)(1), and to ensure that, within 180 days after promulgation, those standards
25 "shall apply to hardwood plywood, medium-density fiberboard, and particleboard sold, supplied,
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1 offered for sale, or manufactured in the United States,” except for an applicable sell-through
2 regulation. *Id.* § 2697(b)(1).

3 29. The EPA Administrator may adopt sell-through regulations governing composite
4 wood products and finished goods that contain regulated composite wood products, including
5 recreational vehicles, manufactured homes, and modular homes. Such regulations can provide
6 that any inventory of such products or finished goods are not subject to the emissions standards if
7 they are manufactured before a specified date of manufacture, rather than based on the date of
8 sale. *Id.* § 2697(d)(3)(A). Sell-through regulations must prohibit the stockpiling of inventory to
9 be sold after the date of manufacturing. *Id.* § 2697(d)(3)(B). Stockpiling is defined as the
10 manufacture or purchase of a composite wood product or finished good between July 7, 2010
11 and 180 days after promulgation of the regulations that is greater than the rate prior to July 7,
12 2010. *Id.* § 2697(d)(3)(C).

13 30. Under TSCA, the term “manufacture” includes import. *Id.* § 2602(9). The
14 Formaldehyde Act directs EPA, in coordination with the Commissioner of the U.S. Customs and
15 Border Protection to revise regulations related to imported products as necessary to ensure
16 compliance with the Act no later than July 1, 2013. *Id.* § 2697(b)(4).

17 31. Congress set tight timelines for compliance because the regulated industry had
18 represented that a significant portion of the domestic industry is complying with the California
19 standards. H. R. Rep. No. 111-509, pt. 1, at 15 (2010); Cong. Budget Office, Cost Estimate of S.
20 1660 Formaldehyde Standards for Composite Wood Products Act (January 7, 2010),
21 <https://www.cbo.gov/publication/41906>. Congress sought to eliminate the competitive
22 advantage that foreign suppliers not subject to the California standards had in the market and
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1 prevent lower-cost imports with high formaldehyde emissions. H. R. Rep. No. 111-509, pt. 1, at
2 7-9, 14-15; 156 Cong. Rec. H4704 (daily ed. June 23, 2010) (statement of Rep. Matsui).

3 III. PROMULGATION OF THE FORMALDEHYDE RULE ESTABLISHING
4 FORMALDEHYDE EMISSION STANDARDS AND THIRD-PARTY
5 CERTIFICATION.

6 32. In June 2013, EPA proposed two rules. One of the rules proposed formaldehyde
7 emissions standards and implementing measures. 78 Fed. Reg. 34820 (June 10, 2013). The
8 other proposed a framework for the third-party certification program. 78 Fed. Reg. 34796 (June
9 10, 2013).

10 33. On July 27, 2016, EPA signed the Formaldehyde Rule combining and finalizing
11 both of the proposed rules. EPA issued a press release in which the EPA Assistant Administrator
12 for the Office of Chemical Safety and Pollution Prevention heralded issuance of the final rule to
13 protect the public from exposure to formaldehyde, stating:
14

15 We are carrying out important measures laid out by Congress to protect the public from
16 harmful exposures of this widely used chemical found in homes and workplaces. . . . The
17 new rule will level the playing field for domestic manufacturers who have a high rate of
18 compliance with the California standard and will ensure that imported products not
19 subject to California's requirements will meet the new standard and thus, not contain
20 dangerous formaldehyde vapors.

21 EPA News Release, EPA Issues Final Rule to Protect the Public from Exposure to Formaldehyde:
22 Agency Implements Congressionally Enacted Formaldehyde Emission Standards (July 27, 2016)
23 (available at [https://www.epa.gov/newsreleases/epa-issues-final-rule-protect-public-exposure-
24 formaldehyde](https://www.epa.gov/newsreleases/epa-issues-final-rule-protect-public-exposure-formaldehyde)).

25 34. The Formaldehyde Rule codifies the California standards as directed by the 2010
26 Formaldehyde Act. EPA decided not to exempt various wood veneer laminated products in
27 which wood veneer is glued to the composite wood products that are subject to the emissions
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1 standards. The rule also established testing, certification, recordkeeping, and other implementing
2 mechanisms.

3 35. The Formaldehyde Rule signed in July 2016 specified an effective date of 60 days
4 after publication of the rule in the Federal Register and a compliance deadline for the composite
5 wood product emissions standards of one year after publication. Compliance with import
6 certification requirements would be required two years after publication and laminated wood
7 products would be required to comply with the emissions standards seven years after publication.
8

9 36. Even though the Formaldehyde Rule was signed in July 2016, it was not
10 published in the Federal Register until December 12, 2016. As published, it had an effective
11 date of February 10, 2016, and required compliance with the emission standards for composite
12 wood products by December 12, 2017. 81. Fed. Reg. 89674 (Dec. 12, 2016.)
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14 IV. VARIOUS MANEUVERS TO DELAY THE FORMALDEHYDE RULE.

15 37. On inauguration day, the newly installed President directed agencies to freeze
16 regulations that had been published in the Federal Register, but had not yet gone into effect.
17 Following that directive, EPA issued an omnibus final rule delaying the effective dates of 30
18 listed regulations until March 21, 2017. 82 Fed. Reg. 8499 (Jan. 26, 2017). The table listing the
19 rules included the Formaldehyde Rule. *Id.* at 8500. EPA did not comply with notice-and-
20 comment rulemaking requirements in issuing this rule delaying the effective dates.
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22 38. On March 20, 2017, EPA published another final rule delaying the effective dates
23 of a series of rules, including the Formaldehyde Rule, for another 60 days until May 22, 2017.
24 82 Fed. Reg. 14324 (Mar. 20, 2017). EPA again sidestepped notice-and-comment rulemaking
25 procedures in issuing this second delay rule.
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1 39. EPA issued no further rules delaying the Formaldehyde Rule's effective date, and
2 the rule went into effect on May 22, 2017.

3 40. With the Formaldehyde Rule in effect, EPA turned its attention to delaying the
4 compliance deadlines. On May 24, 2017, EPA published both a direct final rule and a proposed
5 rule proposing to extend the Formaldehyde Rule's compliance deadlines by an amount of time
6 equal to the delay in the effective date of the Formaldehyde Rule, a delay of a little more than
7 three months. 82 Fed. Reg. 23735 (May 24, 2017); 82 Fed. Reg. 23769 (May 24, 2017). The
8 direct final and proposed rules justified this delay to allow regulated entities time to establish
9 business relationships, reduce compliance burdens, and prevent disruptions in the supply chain.
10

11 41. EPA pursued a direct final rule because it believed the extension of the
12 compliance deadlines would be noncontroversial and would generate no adverse comments.
13

14 After EPA received adverse comments, EPA withdrew the direct final rule.

15 42. Some importers of wood products urged EPA to extend the compliance deadlines
16 beyond the proposed three months. *See* Comments of International Wood Products Association
17 (represents importers of wood and wood products), available at
18 <https://www.regulations.gov/document?D=EPA-HQ-OPPT-2017-0244-0011>; Furniture Values
19 International, LLC (furniture importer), available at
20 <https://www.regulations.gov/document?D=EPA-HQ-OPPT-2017-0244-0005>.
21

22 43. On September 25, 2017, EPA published the Formaldehyde Delay Rule delaying
23 the compliance deadlines in the Formaldehyde Rule. 82 Fed. Reg. 44533 (Sept. 25, 2017). EPA
24 delayed some of the compliance deadlines by a period of time commensurate with the amount of
25 time the Formaldehyde Rule's effective date had been delayed, a period of slightly more than
26 three months. For one set of deadlines, however, it went further. EPA delayed all of the
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1 compliance deadlines associated with the formaldehyde emissions standards for hardwood
2 plywood, particleboard, and medium-density fiberboard for an entire year beyond the December
3 12, 2017 compliance deadline in the Formaldehyde Rule. The Formaldehyde Delay Rule
4 reiterated EPA’s desire to reduce compliance burdens, provide regulatory flexibility to regulated
5 entities, and prevent disruptions in the supply chain. *Id.* at 44533. It called the new compliance
6 deadlines “a balanced and reasonable timeline” and stated that it “believes extending this
7 compliance date reflects Congressional intent under TSCA Title VI that the agency implement
8 provisions to ensure compliance with the formaldehyde emissions standards as soon as possible
9 while enabling regulated entities to achieve compliance.” *Id.* at 44534. EPA never mentioned
10 the Formaldehyde Act’s direction to require compliance within 180 days of promulgating the
11 Formaldehyde Rule.
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14 44. EPA stated that it does not believe the delay would result in any significant
15 increases in health risk because a majority of wood products conform to the CARB standards.
16 *Id.* at 44534-35. Even though both Congress and EPA have long estimated high compliance
17 rates among domestic manufacturers, EPA never assessed the risks posed by the non-CARB
18 compliant wood products, which had been the motivation for the direction in the Formaldehyde
19 Act.
20

21 CAUSE OF ACTION

22 45. Both the Formaldehyde Rule and the Formaldehyde Delay Rule are final agency
23 actions within the meaning of the Administrative Procedure Act. 5 U.S.C. §704.
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25 46. EPA promulgated the Formaldehyde Rule when it published the rule in the
26 Federal Register on December 12, 2016. The Formaldehyde Rule codified the emissions
27 standards mandated in the Formaldehyde Act, 15 U.S.C. § 2697(b)(2).
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1 47. Pursuant to 15 U.S.C. § 2697(b)(1), EPA had a legal duty to ensure that “effective
2 beginning on the date that is 180 days after the date of promulgation . . . , the emissions standards
3 described in paragraph (2) shall apply to hardwood plywood, medium-density fiberboard, and
4 particleboard sold, supplied, offered for sale, or manufactured in the United States.”

5
6 48. In promulgating the Formaldehyde Delay Rule, EPA never addressed the
7 mandates in 15 U.S.C. § 2697(b)(1) to make the emissions standards “effective beginning on the
8 date that is 180 days after the date of promulgation” for hardwood plywood, medium-density
9 fiberboard, and particleboard sold, supplied, offered for sale, or manufactured in the United
10 States. EPA stated that it “believes extending this compliance date reflects Congressional intent
11 under TSCA Title VI that the agency implement provisions to ensure compliance with the
12 formaldehyde emissions standards as soon as possible while enabling regulated entities to
13 achieve compliance.” 82 Fed. Reg. 44534. This belief and rationale for the Formaldehyde
14 Delay Rule runs directly contrary to the direction in the Formaldehyde Act, 15 U.S.C.
15 § 2697(b)(1).

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18 49. By delaying the compliance dates for the designated emissions standards until
19 December 12, 2018, EPA exceeded its authority under 15 U.S.C. § 2697(b)(1), in violation of 5
20 U.S.C. § 706(2)(C), which makes it unlawful for agencies to take actions “in excess of their
21 statutory jurisdiction, authority, or limitations, or short of statutory right.”

22
23 50. By delaying the compliance dates for the designated emissions standards until
24 December 12, 2018, EPA acted arbitrarily, capriciously, and contrary to the Formaldehyde Act,
25 15 U.S.C. § 2697(b)(1), in violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

26 **REQUEST FOR RELIEF**

27 Plaintiffs respectfully request that this Court grant the following relief:
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