



## **TSCA Title VI Certification and Sell-Through Provisions**

### **Q & A**

*January 4, 2018*

#### **What is the current compliance date for panel producers and finished product manufacturers?**

The current compliance date under TSCA Title VI for panel producers and finished product manufacturers is **December 12, 2018**. This date represents a one-year extension by EPA from the original compliance date of December 12, 2017.

For panel producers, this means that by December 12, 2018, mills must be certified by an EPA-recognized third-party certifier and meet all emissions, labeling and recordkeeping requirements for all panels made on or after that date. Subject to sell-through provisions discussed below, finished product manufacturers must source TSCA Title VI compliant composite wood and meet all recordkeeping and finished goods labeling requirements by December 12, 2018.

Earth Justice has filed a lawsuit challenging the EPA's statutory authority to extend the compliance date from December 12, 2017 to December 12, 2018. The court hearing on this case is scheduled for January 12, 2018 in the federal district court in Oakland, California. There is the possibility that the current compliance date could be altered as a result of this case.

#### **I am hearing that mills are still not able to get their certification...why is that?**

North American panel mills have been voluntarily meeting the California Air Resources Board (CARB) Phase 2 formaldehyde emission requirements (the same emission levels under EPA's TSCA Title VI) and have been complying with the stringent certification and testing requirements on a national basis for many years. Unfortunately, CARB compliance does not allow for the vast majority of products to be immediately certified under TSCA Title VI thanks to subtle differences between the two regulations.

One critical distinction between the CARB and EPA regulations is the "correlation" between tests conducted by third-party certifiers (TPCs) and in-plant quality-control tests that are a condition of TSCA Title VI certification. CARB recognizes two tests for developing correlations – large chamber (E-1333) and small chamber (D-6007) - while EPA currently only allows for the large chamber. This essentially prohibits the vast majority of mills that have relied on small chamber-based correlations from proceeding with third-party certification.



## **When will mills that have relied on small chamber correlations be able to get certification?**

EPA has acknowledged that both the large chamber and small chamber test should be allowed, and is working to amend the regulation accordingly. This amendment is expected in late January 2018. Once the amendment is finalized, the significant majority of panel producers that have relied on small chamber correlations under CARB will be able to proceed promptly with certification under TSCA Title VI.

## **How does EPA's sell-through provision work?**

TSCA Title VI is clear that all composite wood panels, component parts and finished goods containing composite wood panels made or imported before December 12, 2018 may be sold or offered for sale at any time. Composite wood panels made before December 12, 2018 may be used to fabricate component parts or finished goods at any time, including after the compliance date. (See §770.2(e)(4))

The regulation does place limits on stockpiling non-compliant material before December 12, 2018, so product manufacturers will need to review this carefully in preparing for the compliance date. (See §770.12)

## **As a finished product manufacturer, can we still purchase and use panels made prior to the compliance date that are not TSCA Title VI certified?**

Yes – finished product manufacturers can purchase and use at any time composite wood panels made prior to the compliance date that are not TSCA Title VI certified. As provided in TSCA Title VI and confirmed in multiple EPA presentations\* since finalizing the regulation, composite wood panels produced before the compliance date “are not subject to the rule.” The preamble (pg. 89710) states in regard to the use of panels made prior to the compliance date:

*Composite wood products and laminated products manufactured before the applicable manufactured-by date can be incorporated into finished goods at any time. Retailers, fabricators, and distributors are permitted to continue to buy and sell these composite wood products and laminated products, as well as finished goods that incorporate these products, **because they would be considered compliant with TSCA Title VI and its implementing regulations...***

Finished product manufacturers must simply have records demonstrating that panels were produced prior to the compliance date and comply with the stockpiling provisions.

\*Presentation also available on CPA's website at [www.CompositePanel.org](http://www.CompositePanel.org).