

Sierra Club Agreement and Implications for TSCA Title VI Compliance

CPA Formaldehyde Emissions Grademark Certification Program



Webinar
March 23, 2018



Presentation Overview

- Brief Background
- Key Issues with Court's Ruling
- Summary of Agreement
- Implications for Compliance
 - Panel Producer
 - Finished Product Manufacturer
- Remaining TSCA Title VI Issues

Brief Background

- Sierra Club et al. filed suit against EPA (10/31/17)
 - Challenged EPA compliance deadline extension rule (from 12/12/17 to 12/12/18)
 - Alleged EPA exceeded statutory authority
 - Emissions standards required 180 days after promulgation
- CPA filed amicus brief (12/14/17)
- Hearing on summary judgment motions (1/26/18)

Brief Background

- Court issues opinion (2/16/18)
 - ▣ Rules in favor of Plaintiffs and vacates compliance extension rule
 - ▣ Stays order and Parties given until March 9 to reach settlement and set date of vacatur
- Settlement discussions begin immediately
 - ▣ Three weeks to negotiate
- CPA plays key role in great team effort
 - ▣ CPA technical expertise – identified major issues, possible solutions
 - ▣ Led discussions with Sierra Club
 - ▣ Coordinated with other trade groups and DOJ

Key Issues

- Effect of the Vacatur
 - ▣ Not automatically set new compliance date – retroactive effect!
 - ▣ Loss of sell-through
- Timing
 - ▣ Importers required considerably more time
- Possibility of CARB “reciprocity”
 - ▣ Introduced by Plaintiffs in response brief
 - ▣ Unclear if would require EPA rulemaking (thus not feasible)

Stipulated Agreement

- Delay of entry of the vacatur
 - ▣ Court's stay lifted and vacatur into effect on **June 1, 2018.**

- New “Manufactured-by” Date
 - ▣ Applied prospectively from June 1 - treated as the new manufactured-by date
 - ▣ Composite wood products and finished goods containing them produced between 12/12/17 and 6/1/18 not out of compliance

- Sell-through preserved
 - ▣ Covers panels manufactured prior to 6/1/18 and finished goods made from them

Stipulated Agreement

- CARB reciprocity secured
 - EPA will recognize as TSCA Title VI compliant all CARB 2 certified panels and finished products made with those panels until **March 22, 2019**

- Labeling clarified
 - Panel manufacturers and finished goods manufacturers can label products made with CARB-2 certified panels as TSCA Title VI compliant until 3/22/19

Panel Producer Compliance

- Panels produced before 6/1/18 may be sold or used to fabricate finished goods at any time (sell-through)
- Reciprocity with CARB-2 through 3/22/19
 - Starts at date of Court's order (3/13/18)
 - Apply CARB requirements for emissions and testing (e.g., excursions, averaging of compliance tests)
 - May be labeled as TSCA Title VI compliant

Panel Producer Compliance

- Recordkeeping, reporting, labeling and non-complying lot provisions go into effect 6/1/18
 - Non-compliance determined by which certification relying on (i.e., CARB or TSCA)
- No sell through for 3/22/19 reciprocity date
 - Customers likely to want TSCA certified panels earlier to manage inventory
 - Once approved TSCA Title VI manufacturer, must meet all existing requirements

Fabricator Compliance

- Source either:
 - ▣ CARB Phase 2 panels up to 3/22/19; or
 - ▣ TSCA Title VI panels
- Must meet labeling and recordkeeping requirements starting June 1, 2018
 - ▣ May label products made with CARB-certified panels as TSCA Title VI compliant until 3/22/19
- No sell through for 3/22/19 – must manage inventories
- Note: includes TFL producers, laminators, etc.

Remaining Issues

- Experimental trial runs
- Annual correlations
- Compliance test averaging
- NAF/ULEF – need for alignment with CARB
- Mill start-up and restart situations
- Specialty, low volume production

Additional Resources

- ❑ CPA Website and Brochure
 - ❑ <https://www.compositepanel.org/public-policy/formaldehyde-standards-tsca-title-vi.html>

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