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

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