

ALERT

TSCA 2019 and Composite Wood Products: The March 22 Deadline for Formaldehyde Declaration and Upcoming EPA Prioritization Activities

March 18, 2019

This month marks a major milestone for compliance with the Formaldehyde Emission Standards for Composite Wood Products Act, otherwise known as Title VI of the Toxic Substances Control Act (TSCA). These rules require hardwood plywood, medium-density fiberboard, and particleboard products sold, supplied, offered for sale, imported to, or manufactured in the United States to demonstrate compliance with emission standards through a third-party certification program that includes laboratory testing. To stay in compliance, companies must now make the transition from California third party certification to using EPA-approved third party certifiers (TPCs). Beyond this, formaldehyde and formaldehyde emissions, which are already highly regulated, are slated to receive even more scrutiny under TSCA in 2019 and beyond.

As of March 22, 2019, regulated composite wood products manufactured in or imported to the United States must be certified and labeled as TSCA Title VI compliant by an EPA-accredited TPC. To continue to certify these products, these TPCs must comply with new accreditation requirements as of this date. Additionally, moving forward U.S. Customs and Border Protection (CBP) will require regulated composite wood products that are imported into the U.S. to be certified as TSCA Title VI compliant. Up to now, domestically manufactured or imported composite wood panels and finished products containing them have had to be certified as compliant with either TSCA Title VI or California's Phase II emission standards. The standards themselves are virtually identical, but certification by a TPC

Authors

Martha E. Marrapese
Partner
202.719.7156
mmarrapese@wiley.law
Tracy Heinzman
Partner
202.719.7106
theinzman@wiley.law

Practice Areas

Environment & Product Regulation
Toxic Substances Control Act (TSCA)

that has been approved by CARB will no longer be recognized by EPA or CBP as compliant.

“Composite wood products” regulated by TSCA include panels made from pieces, chips, particles, or fibers of wood bonded together with a resin. Regulated products are those that take the form of hardwood plywood (HWPW), particleboard (PB), and medium density fiberboard (MDF). The 40 C.F.R. Part 770 regulations also apply to composite wood products used in finished goods such as cabinets, doors, furniture, flooring products, moldings, toys, mirror and photo frames, audio speakers, base boards, shelving, and countertops. Under 40 C.F.R. § 770.10, the emission standards that these products must meet, which are based on using test method ASTM E1333-10, are as follows:

- (1) For hardwood plywood made with a veneer core or a composite core, 0.05 parts per million (ppm) of formaldehyde.
- (2) For medium-density fiberboard, 0.11 ppm of formaldehyde.
- (3) For thin medium-density fiberboard, 0.13 ppm of formaldehyde.
- (4) For particleboard, 0.09 ppm of formaldehyde.

In addition to these limits, third party certification and import certification requirements, other provisions include product-testing requirements (with exceptions), labeling, and recordkeeping. EPA’s final rule on formaldehyde emissions from composite wood products is available at: <https://www.regulations.gov/document?D=EPA-HQ-OPPT-2016-0461-0001>.

Formaldehyde also is slated to be taken up this year under TSCA’s existing chemical prioritization process under the new risk evaluation provisions in section 6 of the Act. In March, EPA is initiating prioritization of at least 20 “high priority” chemicals for risk evaluation under TSCA and formaldehyde is slated to be on the list. The prioritization process is expected to take about 9 months, and the risk evaluation process that will follow will take about 3.5 years. Within two years of this risk evaluation process, a rulemaking will then be implemented to control any uses of chemicals that do not meet the TSCA safety standard. EPA is required to consider all known and reasonably foreseeable uses of a chemical in this process and determine whether the use meets TSCA’s safety standard of no unreasonable risk. Accordingly, despite Title VI requirements for emissions in composite wood products, industry stakeholders should be ready to engage on the record concerning their uses of formaldehyde with respect to worker and consumer exposures to composite wood products, general population exposure, and exposures in susceptible subpopulations.

Finally, as a brief reminder, this industry sector should remain mindful of California’s 2018 updates to Proposition 65 rules and the impact of these requirements on web-based advertising and sales. Formaldehyde, which has been on the Prop 65 list since 1988, has a No Significant Risk Level (NSRL) of 40 µg/day. The new content and methods for Prop 65 safe harbor warnings became effective Aug. 30, 2018. Warning language previously approved under court orders are still effective. Otherwise, the use of a yellow triangle symbol, warning language that specifies the identity of one or more listed chemicals in the product,

and referral to the state website for more information are needed to meet the new safe harbor warning standards. Compliance with these changes, as well as attention to placement and prominence of the safe harbor warnings and use of the optional short form label warning that references the specific hazard and the state website, are likely to be scrutinized under Prop 65's citizen enforcement provisions. We expect on-line compliance to be a particular focus for enforcement going forward.