

# Frequent Questions for Regulated Stakeholders about Implementing the Formaldehyde Standards for Composite Wood Products Act

*Updated on January 28, 2019*

## Applicable Products

### **1. What are the specific composite wood products covered by the final rule?**

Under Title VI of the Toxic Substances Control Act (TSCA), three composite wood products are regulated: hardwood plywood, medium-density fiberboard (MDF, including thin-MDF), and particleboard.

**Hardwood plywood** is defined as a hardwood or decorative panel that is intended for interior use and composed of (as determined under ANSI/HPVA HP-1-2016) an assembly of layers or plies of veneer, joined by adhesive with a lumber core, a particleboard core, a medium-density fiberboard core, a hardboard core, a veneer core, or any other special core or special back material. The emission standards for hardwood plywood only apply to hardwood plywood made with a veneer core or a composite core. A composite core consists of a combination of layers of veneer and particleboard or medium-density fiberboard.

**Medium-density fiberboard** is defined as a panel composed of cellulosic fibers made by dry forming and pressing a resonated fiber mat (as determined under ANSI A208.2-2016). This includes thin-MDF, which has a thickness less than or equal to 8 millimeters or 0.315 inches.

**Particleboard** is defined as a panel composed of cellulosic material in the form of discrete particles (as distinguished from fibers, flakes, or strands) that are pressed together with resin (as determined under ANSI A208.1-2016).

There are limited testing and certification exemptions for no-added formaldehyde-based (NAF) resins or ultra-low emitting formaldehyde (ULEF) resins.

### **2. What specific products are *not* covered by the final rule?**

The following products are not covered by regulation:

- Hardboard;
- Structural plywood (per PS-1-09 standard – see FAQ 12 in this section for more information);
- Structural panels (per PS-2-10 standard);
- Structural composite lumber (per ASTM D5456-14b standard);
- Military-specified plywood;
- Curved plywood (see FAQ 3 in this section for more information);
- Oriented strand board;
- Prefabricated wood I-joists (per ASTM D5055-16 standard);

- Finger-jointed lumber;
- Wood packaging, such as pallets, crates, spools, and/or dunnage (this exempts wood packaging from the TSCA Title VI emission standards even if the wood packaging might otherwise, in the absence of the exemption, be regulated);
- Composite wood products used inside a new vehicle other than a recreational vehicle [Note: Mobile homes and/or trailer homes are considered manufactured housing and are regulated under TSCA Title VI];
- Composite wood products used inside new rail cars, boats, aerospace craft, or aircraft;
- Windows that contain composite wood products, if the windows contain less than 5% composite wood product by volume; and
- Exterior doors and garage doors that contain composite wood products, if the doors are made from composite wood products manufactured with NAF or ULEF resins, or the doors contain less than 3% composite wood product by volume.

### **3. Is “curved plywood” regulated by the TSCA Title VI final rule?**

Curved plywood (including bent plywood) is exempt from the definition of hardwood plywood under TSCA Title VI. EPA further notes that this is consistent with the California Air Resources Board’s (CARB’s) current approach to management of curved and bent plywood under the Air Toxics Control Measure (ATCM) standards.

### **4. Are molded products, such as toilet seats, subject to the final rule?**

If these products are fabricated using regulated composite wood panels, then they are regulated under the final rule either as a component part (if they are used in the construction or assembly of finished goods) or as a finished good. However, if these products are not fabricated from panels and are compression molded, or otherwise individually pressed in a way that does not involve the use of a regulated composite wood panel, then they are not subject to the final rule.

### **5. I manufacture a specialty panel. Am I regulated under the final rule?**

To determine if you are regulated, confirm whether you are manufacturing a composite wood panel that meets the definitions for either hardwood plywood, medium density fiberboard, or particleboard as outlined in the respective voluntary consensus standards (e.g., ANSI, ASTM) incorporated in the final rule. In some instances, industry terms and product marketing designations give the appearance that a product is unregulated, but the product qualifies as a regulated composite wood product as per the definition(s) with the incorporated voluntary consensus standard. For example, medium density fiberboard may be marketed as “high-density fiberboard,” in some applications. The final rule states that if a panel meets the applicable voluntary consensus standard definition(s) in its construction, then it is regulated under the final rule.

**6. I manufacture, import, distribute, retail, or sell a product that I believe does not meet the definition of any of the regulated composite wood products (i.e., HWPW-VC, HWPW-CC, PB, MDF, or thin-MDF)), but I believe it meets the construction requirements specified in the relevant voluntary consensus standard of one of the excepted products listed under 40 CFR 770.1(c). What responsibility do I have under the final rule?**

40 CFR 770.1(c) of the rule lists products (with their relevant standards, where applicable) that are excluded from regulation. The Agency believes that panel producers are best able to make the initial determination of whether the specific product(s) they produce meet the definition of one of the excluded products at 40 CFR 770.1(c). If a manufacturer, importer, distributor or retailer of a product believes the product does not meet the definition of any regulated composite wood products (or any applicable downstream entity), then they should be prepared to demonstrate to the Agency any claim that a product is excluded from TSCA Title VI regulation because it fits into one of the excluded categories provided in 40 CFR 770.1(c). As an example, a product may meet a claimed exclusion if it was manufactured according to the requirements or standards of one of the excluded products at 40 CFR 770.1(c), even if that product failed to meet the regulatory exclusion requirements. If there is information (such as engineering, construction, or laboratory analysis) documenting an attempt to meet the exclusion requirement of the select product at 40 CFR 770.1(c), that may nonetheless be sufficient to justify to the Agency the manufacturer's exclusion claim under 40 CFR 770.1(c).

**7. I manufacture a product that was constructed in accordance with PS-1-09 or PS-2-10 and then tested by a certifier authorized to certify those products, but the product I manufactured failed to achieve certification due to a performance or construction characteristic under the PS-1-09 or PS-2-10 standard. Are these products, which were manufactured using a phenol-formaldehyde resin and constructed according to and tested to the PS-1-09 or PS-2-10 standards, subject to the formaldehyde emission standards for hardwood plywood since they are unable to be stamped as certified to the PS-1-09 and PS-2-10 structural standards?**

No. Manufacturers of PS-1-09 or PS-2-10 panels that failed to achieve full certification due to a construction or performance failure that would not result in increased formaldehyde emissions, but which were manufactured according to and tested by a qualified certifier of PS-1-09 or PS-2-10 panels, would not be required to test and certify these panels as hardwood plywood under the TSCA Title VI regulation. A manufacturer, importer, distributor or retailer of these PS-1-09 or PS-2-10 "downfall" products must provide proof, upon request by the Agency, that their product is excluded from the regulation because it was constructed in accordance with the PS-1-09 or PS-2-10 standards. EPA believes that a laboratory report noting the construction or performance deficiency from the certifier, or a comparable document from the certifier stating that the panels were manufactured in accordance with but failed to meet the PS-1-09 or PS-2-10 standard (which would result in not obtaining a PS-1-09 or PS-2-10 product standard stamp of certification) would be the types of documents the manufacturer should be prepared to provide the Agency.

**8. PS-1-09 and PS-2-10 are U.S. standards for structural plywood. Other countries have slightly different standards. Will panels that meet structural plywood standards, such as the European or Australian standards for structural plywood, be accepted by the EPA as equivalent to PS-1-09 and PS-2-10?**

No. The TSCA Title VI regulation only recognizes standards listed under 40 CFR 770.1(c) and products made to those standards as being excluded from the TSCA Title VI regulation.

**9. Who is subject to the final rule requirements?**

All entities along the supply chain, from the manufacture to the sale of composite wood products, are affected by the final rule requirements. This includes panel producers, fabricators, third-party certifiers, importers, distributors, retailers, and accreditation bodies. If you are unsure if your business fits into one of these categories, examples of each include (but are not limited to):

**Importers, distributors, and retailers**

- Furniture stores or merchant wholesalers.
- Lumber, plywood, millwork, and wood panel merchant wholesalers.
- Building material and supplies dealers.
- Manufactured (mobile) home dealers (also includes trailer homes)
- Recreational vehicle dealers and merchant wholesalers.
- Other construction material merchant wholesalers, or wholesale distributors of manufactured homes and/or prefabricated buildings

**Panel producers**

- Veneer product manufacturing
- Plywood product manufacturing
- Engineered wood product manufacturing

**Fabricators**

- Manufactured (mobile) home manufacturing
- Prefabricated wood building manufacturing
- Motor home and recreational vehicle manufacturing
- Travel trailer and camper home manufacturing
- Furniture and related product manufacturing

**Third-Party Certifiers**

- Laboratories conducting independent third-party formaldehyde emissions testing of regulated composite wood products

**Accreditation Bodies (ABs)**

- Product ABs
- Laboratory ABs

**10. I am a renovator/contractor who installs composite wood products in new or existing houses on-site at real property. Are there any requirements that apply to me under the TSCA Title VI regulation beginning June 1, 2018?**

Renovators (e.g., contractors or handymen) who install composite wood products or finished goods (purchased either by the property owner or by the renovator on behalf of the property owner as part of materials for the project) in buildings or other structures that are constructed on site and become a permanent addition to real property are neither fabricating those finished goods to be sold nor retailing those composite wood products or finished goods. Renovators who are not affiliated with a brand of product or supplier are not considered fabricators or retailers under the TSCA Title VI final rule.

TSCA Title VI regulations apply to any renovator who is also a retailer selling composite wood products or finished goods directly to consumers (e.g., direct purchase stores for consumers) and who also happens to install, or provide installation services after purchase, including through subcontractors. Subcontracted renovators who provide services to real property on the behalf of retailers, but do not directly sell composite wood products or finished goods to consumers, are not regulated as retailers under the TSCA Title VI final rule.

For example: a contractor or renovator may have responsibilities under the TSCA Title VI final rule if that renovator or contractor is a custom cabinetmaker. If the custom cabinetmaker is making finished goods from composite wood products or component parts and then selling the finished goods either to a retailer or the public, that contractor or renovator could be a fabricator, distributor, retailer, or a combination of all three.

**11. Is there a *de minimis* amount of composite wood that would not be subject to the regulations?**

No. Finished goods, including component parts sold separately to end users, containing only a *de minimis* amount of regulated composite wood product are exempted from only the labeling requirements. However, the underlying composite wood core material contained within a finished good must still meet the applicable emission standard and be tested and certified. A finished good, including component parts sold directly to consumers, contains a *de minimis* amount of regulated composite wood product if its regulated composite wood product content does not exceed 144 square inches, based on the aggregate sum of each regulated composite wood product's largest surface faces within the component part or finished good. The exception does not apply to finished goods or component parts designed to be used in combination or in multiples to create larger surfaces, finished goods, or component parts.

**12. How do I calculate the area of the finished good I am fabricating to determine if it meets the *de minimis* exemption for labeling?**

The 144-square-inch threshold requirement in 40 CFR 770.45(e) is intended to be calculated in aggregate such that you would sum the area of each regulated composite wood product's largest surface face contained in the component part or finished good.

In the [preamble to the final rule](#), EPA explained the example of a picture frame: “a frame for an eight-inch by ten-inch picture is made up of two-inch wide and one-inch thick composite wood product strips. The outer dimensions of the frame would be 14-inches by 12-inches and the inner dimensions would be 10-inches by 8-inches. This frame contains 88 square inches of composite wood product and would qualify for the *de minimis* exception ( $[12 \times 14] - [10 \times 8]$ ).” Note that each of the four composite wood products in the picture frame has its largest surface face added to the largest surface face of the other composite wood products in the frame to aggregate to the total of 88 square inches. In other words, imagine that the picture frame consists of two 12-inch by 2-inch pieces of composite wood products and two 10-inch by 2-inch pieces of composite wood panels to form the complete 14-inch by 12-inch frame. The 88 square inch total is calculated by summing the largest face of each of the four pieces:  $(12'' \times 2'')$  +  $(12'' \times 2'')$  +  $(10'' \times 2'')$  +  $(10'' \times 2'')$ . Thus, you would calculate the aggregate area of the largest surface face of each composite wood product face in a finished good to determine if the fabricated product is exempt from labeling under the *de minimis* labeling provision.

Another example of how to consider surface area of each face in the aggregate might be best demonstrated by a finished good such as a child’s dollhouse. The fabricator would look at the largest surface face of each composite wood product in the dollhouse (e.g., exterior walls, interior walls, floors, ceilings, etc.) and add up the largest surface face of each composite wood product throughout the dollhouse to determine the aggregate surface area for purposes of the *de minimis* calculation. Another way to look at this example is to visualize deconstructing the dollhouse. Lay all the parts flat on a table and measure the surface area of the largest face of each doll house part that contains regulated composite wood product, and then add them all together to determine if the aggregate sum exceeds 144 square inches. This same approach would be used to determine the total amount of composite wood product in a box.

### **13. Lumber core products are not subject to the CARB ATCM to Control Formaldehyde Emissions from Composite Wood Products. Are they subject to EPA’s final rule?**

No. The definition of hardwood plywood in the final rule includes a variety of core types, but formaldehyde emission standards only apply to hardwood plywood made with a veneer core or a composite core. Hardwood plywood made with a lumber core or a hardboard core is not required to comply with the emission standards or the testing and certification provisions.

### **14. Is structural plywood regulated under the final rule?**

No. The definition of hardwood plywood in the final rule does not include structural plywood as defined in the voluntary consensus standards incorporated into the rule at 40 CFR 770.1(c). Many of the product exemptions under the final rule, such as hardboard, oriented strand board, structural plywood, structural panels, and structural composite lumber, were found to already be made with resins with reduced formaldehyde emissions.

## **Accreditation Bodies (ABs)**

## **1. When do the final rule requirements come into force for ABs?**

The formaldehyde emission standards came into force beginning June 1, 2018. ABs wishing to participate in the EPA Toxic Substances Control Act (TSCA) Title VI Third-Party Certification Program (EPA Program) could begin applying to EPA for recognition beginning on May 22, 2017.

The regulations require that all EPA TSCA Title VI Third-Party Certifiers (TPC) (except those that are California Air Resource Board (CARB) approved and entering under the reciprocity provisions at 40 CFR 770.7(d)) must be accredited by an AB to ISO/IEC 17065:2012(E) and be a TPC, or contract with a laboratory that is accredited to ISO/IEC 17025:2005(E) with scopes of accreditation to include “40 CFR Part 770 – Formaldehyde Standards for Composite Wood Products” before entering the program. For TPCs that enter the TSCA Title VI program as CARB-approved TPCs under the reciprocity provisions at 40 CFR 770.7(d), they will have to gain both accreditations with an EPA TSCA Title VI AB by the end of the transitional period (i.e., March 22, 2019) to continue to certify composite wood products under TSCA Title VI. [See frequent questions for TPCs.](#)

## **2. I am a Product and/or Laboratory AB. How do I obtain EPA recognition under the EPA Program?**

To become recognized as an EPA TSCA Title VI AB, you must apply to EPA using the [EPA Central Data Exchange \(CDX\)](#).

The application requirements for product and laboratory ABs are available under 40 CFR 770.7(a)(2) and (b)(2), respectively. ABs may choose to apply to be recognized as one or both types of ABs (product or laboratory only, or product and laboratory AB). The CDX online application will allow you to select either one or both AB types and provide the information required in the sections.

## **3. When will it be possible to submit AB applications through EPA CDX?**

Applications for the EPA Program were available as of May 22, 2017 [via EPA CDX](#). Please contact the CDX Help Desk for questions or problems when registering. The CDX Help Desk can be contacted at [helpdesk@cdx.net](mailto:helpdesk@cdx.net).

## **4. What is the application fee for ABs to enter into a recognition agreement with the EPA to become an EPA TSCA Title VI AB?**

EPA does not charge fees for ABs to be recognized as an EPA TSCA Title VI AB or when ABs renew their applications.

## **5. How long are ABs recognized under the EPA Program?**

EPA TSCA Title VI ABs are recognized for three years from the date of approval into the program, so long as they maintain good standing in the TSCA Title VI Third Party Certification Program. ABs interested in being recognized under the EPA Program must enter into a recognition agreement with EPA. To maintain their recognition for another three years, an EPA TSCA Title VI AB must submit a renewal application to EPA before the three-year period of their recognition agreement lapses. If an EPA TSCA Title VI AB fails to apply for renewal prior to the expiration of the previous recognition agreement, then its recognition will lapse, and the EPA TSCA Title VI AB may not provide accreditation services under TSCA Title VI.

## **6. How do I renew my recognition agreement?**

Once a recognition agreement is established between EPA and an AB, the AB must submit an application for renewal to EPA [via CDX](#) before the end of the three-year recognition period if the AB wishes to renew the recognition agreement. The application must indicate any changes from the AB's initial application or most recent renewal application.

## Third-Party Certifiers (TPCs)

### **1. When do the final rule requirements come into force for TPCs?**

The formaldehyde emission standards came into force beginning June 1, 2018. All TPCs (including California Air Resources Board (CARB) approved TPCs) must be recognized by EPA prior to certifying any composite wood products under Title VI of the Toxic Substances Control Act (TSCA). TPCs could begin applying for EPA recognition as of May 22, 2017. Under the rule's reciprocity provisions, CARB-approved TPCs will have a transition period, which will end March 22, 2019, to meet the accreditation requirements under the final rule. During the transition period, CARB-approved TPCs must comply with all other aspects of the final rule. Non-CARB-approved TPCs may apply to EPA to become recognized under the EPA TSCA Title VI Third-Party Certification Program (EPA Program) to certify composite wood products only after their Accreditation Body (AB) is recognized by EPA and TPCs are properly accredited by that AB.

### **2. I am a non-CARB TPC. How do I obtain EPA recognition under the final rule?**

To become recognized as an EPA TSCA Title VI TPC, you must apply [via the EPA Central Data Exchange \(CDX\)](#). A non-CARB TPC may apply only after their AB is recognized by EPA and the TPC is properly accredited by their AB.

### **3. I am a CARB-approved TPC. How do I obtain EPA recognition under the final rule during the transition period, which ends on March 22, 2019?**

To become recognized as an EPA TSCA Title VI TPC, CARB-approved TPCs and TPCs subsequently approved by CARB during the transition period (i.e., until March 22, 2019) must apply for EPA



recognition via CDX at <https://cdx.epa.gov>. Per the terms of reciprocity outlined in 40 CFR section 770.7(d)(1), TPCs must maintain their CARB approval and comply with all aspects of the final rule other than the accreditation requirements. This includes providing panel producers with their CARB TPC number, submitting their annual report to CARB and EPA (during the transition period), and providing required notifications to EPA. TPCs must maintain good standing in CARB's TPC program to be recognized by EPA during the transitional period. Any lapse, revocation, or removal from the CARB program (voluntary or otherwise) may result in a loss of recognition by EPA under the TSCA Title VI Certification Program.

Accreditation requirements include accreditation from an EPA TSCA Title VI Product AB to ISO/IEC 17065:2012(E) with a scope of accreditation that includes composite wood products and 40 CFR Part 770 and accreditation from an EPA TSCA Title VI Laboratory AB to ISO/IEC 17025:2005(E) with a scope of accreditation to include 40 CFR Part 770 and the formaldehyde test methods ASTM E1333-14 and ASTM D6007-14, if used.

#### **4. I am a CARB-approved TPC. How can I apply for EPA recognition through CDX if I do not have an EPA TSCA Title VI AB?**

CARB-approved TPCs will have a transition period, which ends on March 22, 2019, to be accredited to the required standards under the final rule by an EPA TSCA Title VI AB. During this transition period, CDX will allow CARB-approved TPCs to bypass the selection of an EPA TSCA Title VI AB during the application process. By March 22, 2019, to continue to certify composite wood products under TSCA Title VI, CARB-approved TPCs must meet all accreditation requirements outlined in the final rule and amend their CDX application to identify their EPA TSCA Title VI AB.

#### **5. How do I know if an AB is recognized by EPA?**

[A list of recognized ABs can be found online.](#)

#### **6. I am a CARB-approved TPC. After I am recognized by EPA what else do I need to do before March 22, 2019?**

By March 22, 2019, in order to continue to certify composite wood products under TSCA Title VI, CARB-approved TPCs will need to provide documentation from CARB to EPA [via CDX](#) that demonstrates that they meet the reciprocity requirements outlined in 40 CFR 770.7(d)(2). Per the terms of reciprocity, a TPC must maintain their CARB approval, comply with all requirements of the final rule, including the accreditation requirements, and submit documentation of the TPC's eligibility for reciprocity from CARB and a copy of their CARB application to EPA via CDX to receive EPA recognition as an EPA TSCA Title VI TPC. Note that a TPC's eligibility for reciprocity can be noted in the TPC's Executive Order from CARB.

#### **7. What happens to CARB-approved TPCs after the transition period ends on March 22, 2019?**

After March 22, 2019, EPA will only recognize TPCs, including CARB-approved TPCs, that are accredited by an EPA TSCA Title VI AB and meet all the application requirements listed in the final rule at 40 CFR section 770.7(c)(2). CARB-approved TPCs may continue to certify composite wood products after the transition period under the final rule if they adhere to the reciprocity requirements outlined in 40 CFR section 770.7(d)(2).

#### **8. When will it be possible to submit TPC applications through CDX?**

Applications for the EPA Program were available as of May 22, 2017, [in CDX](#). TPCs may submit applications at any time to become recognized as an EPA TSCA Title VI TPC. [Please contact the CDX Help Desk for questions or problems when registering using your preferred method of contact.](#)

#### **9. How long are TPCs recognized under the EPA Program?**

EPA TSCA Title VI TPCs are recognized for two years. To maintain their recognition, EPA TSCA Title VI TPCs must submit a renewal application to EPA every two years. They must also have a reassessment or surveillance on-site assessment conducted by their EPA TSCA Title VI AB every two years.

#### **10. How do I renew my recognition as an EPA TSCA Title VI TPC?**

TPCs must submit a renewal application renewal to EPA [via CDX](#). This renewal application should be submitted *before* the two-year period of recognition ends to ensure continued coverage. The application must indicate any changes from the TPC's initial application or most recent renewal application.

#### **11. Will current CARB TPC identification numbers be utilized under the EPA Program?**

To align with the current CARB program, CARB-approved TPCs recognized by EPA through reciprocity will retain their current CARB TPC identification number. EPA created this provision to prevent unnecessary recordkeeping, reporting, and identification issues in tracking products certified by current CARB-approved TPCs. For non-CARB TPCs that receive EPA recognition under TSCA Title VI, EPA will issue numbers that follow a format like the CARB-approved TPC numbers to maintain consistency for users and panel producers in recordkeeping and inventory control.

#### **12. Are TPCs recognized under the EPA Program required to participate in CARB interlaboratory comparisons when they are offered by CARB?**

To align with the current CARB program, all EPA TSCA Title VI laboratories or contract laboratories (defined as a "TPC laboratory" in the final rule) must participate in the CARB interlaboratory comparison for formaldehyde emissions, when offered. This includes TPC laboratories of both CARB-approved TPCs

and non-CARB TPCs. CARB intends to conduct the interlaboratory comparisons no less frequently than every two years. EPA determined that requiring participation in the CARB interlaboratory comparison on a regular basis is necessary to verify that TPC laboratories under the final rule can properly measure formaldehyde emissions from composite wood products.

## Annual Reports

### **1. What timespan must the Accreditation Body (AB) and Third-Party Certifier (TPC) annual reports cover?**

Annual reports must be submitted no later than March 1 of each year starting March 1, 2018, and the report must cover the previous calendar year in which TSCA Title VI accreditation or certification activities were conducted. For example, the 2017 annual report from each AB or TPC that is submitted by March 1, 2018, will contain information and data required under the TSCA Title VI for services provided from January 1, 2017 through December 31, 2017. The annual report for the prior year may be submitted at any time after January 1 but no later than March 1 of each year.

### **2. How should I submit my annual report to EPA?**

Annual reports must be submitted to EPA electronically through the Central Data Exchange (CDX). CDX is the same system ABs and TPCs used to apply for EPA recognition to participate in the TSCA Title VI program. [Access CDX online](#). EPA will not accept reports by email or paper versions submitted by mail. Note that these annual reports can be shared automatically with CARB through the CDX system for those TPCs that also have reporting responsibilities under CARB.

### **3. Am I required to submit an annual report for years that I have not conducted any activities under the TSCA Title VI program?**

If during the calendar year the AB or TPC does not perform any services for accreditation or certification of products under TSCA Title VI, then no annual report would be required.

## Agent for Service

### **1. What is an Agent for Service?**

As defined in 40 CFR 770.3 of the final rule, an Agent for Service is an entity designated by a third-party certifier (TPC) or accreditation body (AB) to receive legal documents and communicate with EPA on their behalf. This is a requirement only for TPCs and ABs located outside of the United States. An Agent for Service must be a person or entity with a physical address in the United States and may be a company, firm, or other entity specializing in this role. The final rule permits TPCs and ABs to share an Agent for Service, meaning that multiple regulated entities may hire the same firm or company to accept documents on their behalf.

## **2. Is there any guidance EPA can provide on selecting an Agent for Service?**

Many private import brokers located in the United States provide import agent services. Whomever you choose, the Agent for Service must be able to accept notices and processes made in administrative and judicial proceedings. Your Agent for Service must have a physical address within the United States, maintain regular business hours to receive notices and documents, forward all legal paperwork and correspondence to your business, and maintain copies of your company's files, as specified. Agents for Service are available in every state in the United States.

## **3. Is an Agent for Service required during the transitional period for California Air Resources Board (CARB)-approved TPCs that are located outside of the United States?**

Yes. CARB-approved TPCs located outside of the United States must have an Agent for Service during the transition period and must provide this information in their application.

## **Laminated Products**

### **1. What are considered laminated products and are they required to be tested for formaldehyde emissions? If so, by when?**

A laminated product is a product in which a wood or woody grass veneer is affixed to a regulated particleboard core or platform, a medium-density fiberboard core or platform, or a veneer core or platform. A laminated product is a component part used in the construction or assembly of a finished good. In addition, a laminated product is produced by either the fabricator of the finished good in which the product is incorporated or a fabricator who uses the laminated product in the further construction or assembly of a component part.

Beginning March 22, 2024, laminated product producers whose products are not exempted from the definition of hardwood plywood will be included as producers of hardwood plywood and will be required to test and certify their products to ensure they comply with the formaldehyde emission standard for hardwood plywood.

### **2. What are the requirements for a laminated product producer?**

Laminated product producers are also fabricators and, beginning June 1, 2018, all laminated product producers must comply with the rule requirements for fabricators. As fabricators, laminated product producers are required to take reasonable precautions for compliance, maintain records, and label finished goods that contain regulated composite wood products accordingly.

Beginning March 22, 2024, producers of laminated products not exempt from the definition of "hardwood plywood" will also become regulated as hardwood plywood producers, and will be

responsible for the same testing, certification, recordkeeping, and labeling as a panel producer of hardwood plywood.

### **3. What are the rule requirements for a producer of an exempt laminated product?**

Laminated product producers are also fabricators and, beginning June 1, 2018, must comply with the rule requirement for fabricators. As fabricators, laminated product producers are required to take reasonable precautions for compliance, maintain records, and label finished goods that contain regulated composite wood products accordingly.

Beginning March 22, 2024, producers of a laminated product will no longer be exempt under 40 CFR 770.4 from the definition of “hardwood plywood.” They will be required to begin complying with the recordkeeping requirements at 40 CFR 770.40(c). These records demonstrate the laminated product producer’s eligibility for the exemption from the rule requirements applicable to hardwood plywood producers (such as testing and certification).

### **4. I am a laminated product producer who wants to use a resin that does not fall under the no-added formaldehyde (NAF) or phenol formaldehyde (PF) exemption. Am I allowed to use an alternate resin?**

Yes. However, beginning March 22, 2024, any laminated product made with a resin that is not a PF or NAF resin (or resin otherwise approved through the resin petition process at 40 CFR 770.4) will be considered a “non-exempt” laminated product and you will be a hardwood plywood (HWPW) panel producer and must comply with all the requirements of a HWPW panel producer, including testing and certification of the product as HWPW, as well as associated recordkeeping documents required of a panel producer.

### **5. Can I petition EPA to expand the exemptions from HWPW for additional resins used to produce a laminated product?**

Yes. The petition process is outlined in 40 CFR 770.4.

## **Testing and Certification**

### **1. What composite wood products need to be tested and certified under the final rule?**

Hardwood plywood (HWPW) (made with a veneer or composite core), medium density fiberboard (MDF, including thin-MDF), and particleboard panels need to be tested and certified. The final rule does not require the testing of component parts, finished goods, or articles containing regulated composite wood products after the initial testing of the composite wood panel used to fabricate the finished good or component part of a finished good. Beginning March 22, 2024, non-exempt laminated products will be designated as hardwood plywood and thus require testing and certification.

**2. I am a fabricator. Do component parts or finished goods I fabricate need to be tested and certified under the final rule?**

No. Beginning June 1, 2018, only composite wood products (i.e., panels) as defined under the final rule must undergo testing and meet emission standards certification requirements. Beginning June 1, 2018, fabricators and retailers are responsible for ensuring that they purchase only compliant composite wood products (i.e., panels that are certified) for use in the fabrication of component parts or finished goods. Also, if you are a fabricator that manufactures laminated products, beginning March 22, 2024, any non-exempt laminated products you fabricate will be required to be tested and certified as HWPW.

**3. I am a panel producer who manufactures composite wood panels that are used in non-exempt laminated composite wood products. Beginning March 22, 2024, am I required to test both the composite wood panels and the non-exempt laminated composite wood products?**

Beginning on March 22, 2024, a manufacturer of composite wood panels who uses those panels to fabricate a non-exempt laminated composite wood product will be required to test and certify the non-exempt laminated composite wood product that incorporates underlying composite wood panels. Prior to March 22, 2024, non-exempt laminated product producers must have tested and certified, or sourced, compliant composite wood panels to be integrated into the core of their laminated products. After March 22, 2024, the testing regimen shifts to the non-exempt laminated composite wood product being fabricated because that laminated product must now meet the HWPW emission standards. This also results in non-exempt laminated product producers becoming designated as a “panel producer” under the Toxic Substances Control Act (TSCA) Title VI final rule and must comply with the requirements of a panel producer.

From June 1, 2018 until March 22, 2019, if you are sourcing composite wood products from outside your manufacturing process to make a laminated composite wood product, the EPA requires that you only utilize CARB ATCM Phase II or TSCA Title VI compliant composite wood panels. From March 22, 2019, if you are sourcing composite wood panels from outside your manufacturing process to make a laminated composite wood product, the EPA requires that you only utilize TSCA Title VI compliant composite wood panels. After March 22, 2024, you will be required to test and certify your non-exempt laminated composite wood products as hardwood plywood through the EPA TSCA Title VI Third-Party Certification Program. After March 22, 2024, both the composite wood panel and the non-exempt laminated composite wood product need to be tested and certified under the final rule. You are also required to retain records and labels as a panel producer.

**4. As a panel producer, I use the same resin to manufacture both HWPW veneer core panels and HWPW composite core panels. Because the resin is the same, is it possible to test both as one HWPW product type?**

Yes. The definition of product type allows for groups of composite wood products, made by an individual panel producer and with the same resin system, that is different from another product type based on panel composition and formaldehyde emission characteristics, to be grouped together.

#### **5. When will EPA TSCA Title VI third-party certifiers (TPCs) begin certifying composite wood panels as TSCA Title VI compliant?**

As of May 22, 2017, TPCs began applying for recognition by EPA and many have been recognized as EPA TSCA Title VI TPCs. After TPCs are officially recognized by EPA, they may begin working with panel producers to establish a program to certify composite wood panels as TSCA Title VI compliant. As of August 25, 2017 (*see* 82 FR 31922), panel producers were able to begin voluntarily labeling composite wood panels as TSCA Title VI compliant if an EPA-recognized TPC certified the panels as compliant. Fabricators producing finished goods made with those TSCA Title VI certified panels were also able to voluntarily label their finished goods as TSCA Title VI compliant beginning August 25, 2017, so long as that finished good was fabricated with TSCA Title VI compliant panels.

#### **6. How do I know if the TPCs our suppliers use are both California Air Resources Board (CARB) approved and EPA-recognized?**

You may confirm a TPC's participation in the CARB program by consulting CARB's website [for a list of approved TPCs](#). This list also includes a field that notes if the TPC is recognized by EPA. [Find an EPA recognized TPC](#).

#### **7. Who is required to test formaldehyde emissions from composite wood products?**

All panel producers are required to have their products tested by an EPA TSCA Title VI TPC (laboratories conducting independent third-party formaldehyde emissions testing of regulated composite wood products) to ensure their products are certified as compliant with the emissions standards. This includes a CARB-approved TPC that is recognized by EPA during the transition period. Panel producers are required to conduct quality control tests on a regular basis to ensure that regulated composite wood products meet emissions standards.

These tests can be conducted on-site if the appropriate equipment is available and test methods show a correlation to test method ASTM E1333-14 or, with a showing of equivalence, the test method ASTM D6007-14. They are also required to meet reporting and recordkeeping requirements for quality control. Beginning March 22, 2024, laminated product producers whose products are not exempted from the definition of hardwood plywood are also required to perform quality control tests on their products. As part of the overall quality control system, TPCs are required to work with the panel producer to establish quality control limits (QCLs) for formaldehyde emissions for all product types, as well as determine a process to ensure panel producers (and laminated product producers) are meeting QCLs.

EPA TSCA Title VI TPCs or their laboratories must test their panel producers' composite wood products quarterly using test method ASTM E1333-14 or, with a showing of equivalence, the test method ASTM

D6007-14. On a quarterly basis, they must also inspect panel producers' (and, if applicable, laminated product producers') products and records and verify quality control test results.

**8. Can a panel producer use a small emissions chamber (ASTM D6007-14) as a routine quality control test method?**

Yes. Approved quality control test methods show a correlation to ASTM E1333-14, or the equivalent ASTM D6007-14 test method per 40 CFR 770.20(d). Other approved quality control test methods include:

- ASTM D5582-14;
- BS EN ISO 12460-3:2015 (Gas Analysis Method);
- DMC (Dynamic Micro Chamber), 2007 User's Manual;
- DMC (Dynamic Micro Chamber), 2012 GP User's Manual;
- BS EN ISO 12460-5:2015 (Perforator Method); and
- JIS A 1460:2015 (24-hr Desiccator Method).

**9. Are fabricators or retailers of finished goods required to conduct formaldehyde emissions testing?**

No. Formaldehyde emissions testing is required to be conducted by panel producers and their TPC. Fabricators and retailers are responsible for ensuring the purchase of only compliant composite wood products (i.e., panels) used in the fabrication of component parts or finished goods.

**10. Do finished goods require testing and third-party certification?**

No. Finished goods do not require formaldehyde emissions testing and certification. However, the finished good and component parts of the finished good must be fabricated with compliant composite wood panels. Fabricators are also required to keep records documenting the finished goods and components parts are made of compliant panels and fabricators must label the compliant finished goods or component parts as TSCA Title VI compliant.

**No-Added Formaldehyde-based (NAF) and Ultra Low-Emitting Formaldehyde (ULEF) Resins**

**1. I am a panel producer whose products are manufactured under an existing NAF or ULEF two-year exemption from the California Air Resources Board (CARB) program. Does this also mean that I am exempt from certification under Title VI of the Toxic Substances Control Act (TSCA)?**

Yes. If you have been approved for a NAF or ULEF exemption by the CARB program, then you are also exempt from the certification requirements under 40 CFR 770.15, testing requirements under 40 CFR



770.20, and reporting requirements under 40 CFR 770.40(b). Each exemption is valid for two years before requiring re-approval, so long as there are no changes in the panel production operation, process, or resin system as explained in 40 CFR 770.17(f) and (g) (for NAF resins) or 40 CFR 770.18(h) and (i) (for ULEF resins). The panel producer should work with its third-party certifier (TPC) to ensure the exemption is maintained by reapplying to either an EPA TSCA Title VI TPC or CARB, as needed, to continue manufacturing exempt NAF/ULEF products under the final rule.

## **2. What are the requirements for composite wood products made with NAF-based and ULEF resins to receive reduced testing and third-party certification exemption?**

Composite wood products made with resins formulated with NAF or ULEF resins are eligible for less frequent testing, or a two-year exemption from third-party testing and certification.

Composite wood products made with NAF-based resins require at least one test conducted under the supervision of an EPA TSCA Title VI TPC pursuant to test method ASTM E1333-14 or ASTM D6007-14. Test results obtained by ASTM D6007-14 must include a showing of equivalence in accordance with test method ASTM E1333-14. Also required are three months of routine quality control tests, including a showing of correlation to test method ASTM E1333-14 or the equivalent ASTM D6007-14 test method per 40 CFR 770.20(d), totaling not less than five quality control tests.

Composite wood products made with ULEF-based resins, require at least two tests conducted under the supervision of an EPA TSCA Title VI TPC pursuant to test method ASTM E1333-14 or ASTM D6007-14. Test results obtained by ASTM D6007-14 must include a showing of equivalence in accordance with test method ASTM E1333-14. Also required are six months of routine quality control tests, including a showing of correlation to test method ASTM E1333-14 or the equivalent ASTM D6007-14 test method per 40 CFR 770.20(d), totaling not less than ten quality control tests. The TPC number must be included on the required label for composite wood panels meeting the NAF and ULEF requirements. Additionally, panel producers manufacturing NAF and ULEF exempt panels may, but are not required to, label that the composite wood panels were made with NAF and ULEF resins in addition to all other label requirements.

## **3. Are melamine- and urea-formaldehyde resins considered NAF-based resins?**

No. Melamine- and urea-formaldehyde resins are not considered to be NAF-based resins, and producers of composite wood product panels made with either a melamine or urea-formaldehyde resin are not exempt from the testing and certification requirements under the NAF provisions. Soy and polyvinyl acetate (PVA) resins are noted by EPA as being candidates for NAF-based resins and producers of composite wood product panels made with either PVA or soy resin would be considered eligible to apply for the NAF-based resin exemption under 40 CFR 770.17.

## **4. Beginning June 1, 2018, what records or documentation must be maintained to demonstrate initial and continued eligibility for a NAF or ULEF exemption or reduced testing under the final rule?**

The records demonstrating initial and continued eligibility for a NAF or ULEF exemption or reduced testing include:

- Approval for reduced testing from an EPA TSCA Title VI TPC or CARB;
- Amount of resin use reported by volume and weight;
- Production volume reported as square feet per product type;
- Resin trade name, resin manufacturer contact information (name, address, phone number, and email), and resin supplier contact information (name, address, phone number, and email); and
- Any changes in the formulation of the resin.

Records demonstrating the initial exemption eligibility under the final rule or CARB must be kept for as long as the panel producer is producing those exempt products.

## **5. What are the labeling requirements for NAF or ULEF exempt composite wood panels?**

Composite wood panels made with NAF-based or ULEF resins may (but are not required to) be labeled as being manufactured in accordance with the NAF or ULEF exemption/reduced testing provisions. However, a label indicating that the product is TSCA Title VI compliant, in addition to other labeling provisions under 40 CFR 770.45, is still required.

## **6. What are the labeling requirements for component parts and finished goods made with NAF/ULEF exempt composite wood panels, or a mixture of NAF/ULEF and compliant composite wood panels?**

If a fabricator uses NAF or ULEF exempt composite wood panels in their finished goods, then the products must be labeled with a statement that the finished goods are TSCA Title VI compliant. Manufacturers of finished goods and component parts that are NAF or ULEF exempt may also choose to label their products as NAF or ULEF exempt. For finished goods that are partially made with panels produced under the NAF or ULEF exemptions, they may, at the discretion of the fabricator, be labeled “product contains TSCA Title VI products and NAF/ULEF products,” “product contains TSCA Title VI products and NAF products,” or “product contains TSCA Title VI products and ULEF products,” whichever most accurately describes the content of the finished good.

## **Recordkeeping/Reporting**

### **1. What qualifies as a “comparable” document in the recordkeeping requirement at 40 CFR 770.40?**

The final rule gives flexibility to regulated entities with respect to this designation. For most composite wood products commonly bought, sold, or shipped, EPA understands that bills of lading or invoices typically track the product through the supply chain. Packing slips, receipts of transfer and documents “comparable” to these examples may be used to ensure compliance with the recordkeeping provisions

of the final rule so long as they bear the identification information for the regulated product. Documents may be maintained in an electronic format (e.g., electronic tracking system, database) so long as all required information under the Toxic Substances Control Act (TSCA) Title VI regulation is able to be generated and presented like a bill of lading or invoice, upon request.

**2. Do panel producers, fabricators, importers, and distributors need to put the compliance statement on invoices, bills of lading, and comparable documents, or is placing the statement on one of these documents sufficient?**

The final rule allows for flexibility for panel producers, fabricators, importers, or distributors to choose the document on which to include the compliance statement. They may affix the statement to a bill of lading, invoice, or comparable document; all documents; or any combination thereof. EPA only requires that the statement is included on one of the aforementioned documents, is retained for three years, and made available to EPA upon request.

**3. Is it necessary to include “TSCA Title VI compliant” on every line item description where it applies, or is a general claim referring to composite wood products being compliant printed on our invoice, bill of lading, or comparable document sufficient?**

One description per invoice, bill of lading, or comparable document would be sufficient to adhere to the requirements in the final rule, assuming that statement would be true for all composite wood products on the document. Panel producers or downstream entities may choose to note which products they are certifying on each document if it will promote transparency for downstream entities.

**4. I am a panel producer. Am I required to track the composite wood panel bundles to their finished goods?**

As a panel producer you are required to maintain records of the purchaser information for each of the composite wood panel bundles you directly sell or distribute. The fabricator and downstream entities are responsible for taking reasonable precautions to maintain a chain of custody for records that identify the supplier of the composite wood products.

**5. Am I required to have all records and documents in English?**

The TSCA Title VI final rule does not explicitly note that English must be used for invoices, bills of lading, or comparable documents under the recordkeeping requirements at 40 CFR 770.40; however, the final rule does require legible English is used for all TSCA Title VI labels (see 40 CFR 770.45).

The U.S. Customs and Border Protection (CBP) has published a guide titled [“Importing into the United States – A Guide for Commercial Importers.”](#) which notes in section 10 that “the invoice and all attachments must be in the English Language, or shall be accompanied by an accurate English

translation.” It is also possible that other government agencies have requirements for importing that you should be aware of; the CBP guide above is noted as an example.

## Labeling

### **1. What are the composite wood product labeling requirements under the final rule?**

#### **Composite wood panels**

Each raw composite wood panel must be labeled separately, or a bundle of panels may be labeled. The label can be a stamp, tag, or sticker and must include the panel producer’s name, lot number, the assigned EPA Toxic Substances Control Act (TSCA) Title VI Third-Party Certifier (TPC) or California Air Resource Board (CARB) TPC number, and statement that the products are TSCA Title VI compliant.

#### **Finished goods containing regulated composite wood products**

Each finished good or every box or bundle containing finished goods must be labeled. If a finished good (including component parts sold separately) is not individually labeled, the importer, distributor, or retailer must retain a copy of the label, be able to identify the products associated with that label and make the label information available to potential customers upon request. The label may be applied as a stamp, tag, or sticker and must include, at a minimum, the finished good fabricator’s name, the date the finished good was produced (in month/year format), and a statement that the finished goods are TSCA Title VI compliant.

#### **Composite wood products made with no-added formaldehyde (NAF)-based and ultra-low emitting formaldehyde (ULEF) resins**

Manufacturers or fabricators of NAF-based or ULEF resins are not required to but may label products as being made with NAF-based or ULEF resins, in addition to the information required on the labels for composite wood panels or finished goods, as applicable.

#### **Composite wood products not for sale**

Panels imported into or transported across the United States for quarterly or quality control testing purposes must be labeled “For TSCA Title VI testing only, not for sale in the United States.” Panels may be re-labeled as TSCA Title VI compliant if test results are below the applicable emission standards.

### **2. When can I begin to label my composite wood panels as TSCA Title VI compliant?**

Beginning August 25, 2017, panel producers were able to voluntarily label composite wood panels as TSCA Title VI compliant if an EPA-recognized TPC has certified the panels as compliant with TSCA Title VI. Early labeling was completely voluntary until the emission standards compliance date (June 1, 2018) when labeling became mandatory for all regulated composite wood panels that are produced domestically and those imported into the United States.

### **3. When can I begin to label my finished goods as TSCA Title VI compliant?**

Beginning August 25, 2017, fabricators of finished goods were able to voluntarily label finished goods as TSCA Title VI compliant if they are fabricated with TSCA Title VI certified composite wood panels. Early labeling was completely voluntary until the emission standards compliance date (June 1, 2018) when labeling became mandatory for all finished goods containing regulated composite wood products that are produced or fabricated domestically and those imported into the United States.

#### **4. Must compliant composite wood products be labeled, and when am I required to begin labeling composite wood products as TSCA Title VI compliant?**

Regulated composite wood products, and finished goods containing composite wood products, manufactured in or imported into the United States beginning June 1, 2018 are required to be labeled as CARB Airborne Toxic Control Measures (ATCM) Phase II or TSCA Title VI compliant. All regulated composite wood products, and finished goods containing composite wood products, manufactured in or imported into the United States after March 22, 2019 are required to be labeled as TSCA Title VI compliant.

Until March 22, 2019, CARB ATCM Phase II compliant composite wood panels are considered TSCA Title VI compliant, and the CARB ATCM Phase II label will satisfy the TSCA Title VI labeling requirement. All composite wood panels manufactured in or imported into the United States after March 22, 2019 must be TSCA Title VI compliant and the label on composite wood panels must include the panel producer's name, lot number, an EPA-recognized TSCA Title VI TPC number, and a TSCA Title VI compliance statement.

Until March 22, 2019, the CARB ATCM Phase II label on finished goods will satisfy the TSCA Title VI labeling requirements. The labels on finished goods fabricated in or imported into the United States after March 22, 2019 must include the fabricator's name, the date the finished good was produced (in month/year format), and a TSCA Title VI compliance statement.

#### **5. If a component part or finished good that contains regulated composite wood is made on or after June 1, 2018, can I label it as TSCA Title VI compliant even if I used composite wood panels that were produced prior to June 1, 2018?**

Composite wood panels produced in or imported into the United States before June 1, 2018 are not regulated under the final rule and may be used in making component parts and finished goods until their stock is depleted (assuming that stockpiling has not taken place in an attempt to circumvent the final rule requirements). Panel producers and downstream entities must keep records documenting that the composite wood panels were manufactured prior to June 1, 2018 for the same three-year retention cycle as required for records of regulated panels. Note however that, beginning August 25, 2017, entities were able to voluntarily label finished goods and component parts as TSCA Title VI compliant if they are made using composite wood panels certified as TSCA Title VI compliant by an EPA-recognized TPC. Fabricators may not use composite wood product stock that was manufactured (including imported) on or after June 1, 2018 which has not been certified by an EPA-recognized TPC as compliant with CARB ATCM Phase II (until March 22, 2019) or TSCA Title VI.

**6. Who is responsible for labeling individual composite wood panels when a bundle is opened?**

Panel producers and fabricators have the primary responsibility for labeling composite wood panels as indicated by 40 CFR 770.45(a) and (c). If a composite wood panel is not individually labeled, then the panel producer, importer, distributor, fabricator, or retailer must have a method (e.g., color-coded edge marking) sufficient to identify the supplier of the panel and linking the information on the label to the products.

**7. Beginning June 1, 2018, do I need to include both a CARB and EPA label on compliant composite wood products and/or finished goods?**

Until March 22, 2019, regulated products certified as compliant with the CARB ATCM Phase II emission standards must be labeled as compliant with either the TSCA Title VI or the CARB ATCM Phase II emission standards. Regulated products manufactured in or imported into the United States after March 22, 2019 may not rely on the CARB reciprocity of 40 CFR 770.15(e) and must be certified and labeled as TSCA Title VI compliant by an EPA TSCA Title VI TPC with all of the required accreditations.

Importing

**1. Are imported composite wood products subject to Toxic Substances Control Act (TSCA) section 13 import certification requirements?**

Yes. Beginning March 22, 2019, importers of articles that are regulated composite wood products, or articles that contain regulated composite wood products, must comply with the import certification regulations for “Chemical Substances in Bulk and as Part of Mixtures and Articles,” as found at 19 CFR 12.118 through 12.127, or as later promulgated.

**2. If a product is imported to the United States before June 1, 2018, can I use this material and still be compliant with the final rule?**

Yes. A composite wood panel, component part, or finished goods imported before the manufactured-by date of June 1, 2018 may be further distributed or incorporated into component parts and finished goods. Panel producers, importers, fabricators, distributors, and retailers are required to retain documentation that the composite wood panel, component part, or finished good was manufactured before June 1, 2018 (or is TSCA Title VI compliant).

**3. What happens to imported composite wood products that are still in transit to the United States on June 1, 2018?**

Beginning June 1, 2018, all composite wood panels, component parts, and finished goods imported into the United States must be certified as California Air Resource Board (CARB) Airborne Toxic Control Measures (ATCM) Phase II or TSCA Title VI compliant. Any items not certified as CARB ATCM Phase II or TSCA Title VI compliant may not be imported into the United States on or after June 1, 2018.

**4. Could composite wood panels, component parts, and finished goods be labeled as TSCA Title VI compliant before June 1, 2018?**

Composite wood products domestically manufactured or imported before the regulatory compliance date (also called the manufactured-by date or import-by date) of June 1, 2018, may have been voluntarily labeled as TSCA Title VI compliant (as of August 25, 2017), but only if the composite wood panels have been certified as TSCA Title VI compliant by an EPA-recognized third-party certifier. Finished goods made from panels, or component parts made from those panels that have been certified as TSCA Title VI compliant may also be voluntarily labeled as TSCA Title VI compliant, so long as that information is accurate.

**5. Under the final rule, is the manufacture-by date for importers the date the composite wood product, component part or finished good was made in the panel mill or fabricator facility or the date it was imported into the United States? Also, does the label on the composite wood product need to reflect the date the product was made or the import entry date?**

In the case of imported products, for the purposes of determining the “manufactured-by date,” and ensuring compliance with the rule requirements, the term “manufacture” means the date of import into the customs territory of the United States. However, the label on the imported, finished good must include the date (in month/year format) the finished good is produced in the fabricator facility outside of the United States.

**6. What does the manufactured-by date mean for non-domestic producers?**

In the case of non-domestic producers, the manufactured-by date is the import-by date, which is June 1, 2018. Beginning on this date, all composite wood panels, component parts, or finished goods containing regulated composite wood imported into the United States must meet the emissions standards, testing, labeling and record keeping requirements of the rule and be labeled as CARB ATCM Phase II or TSCA Title VI compliant. Beginning March 22, 2019, in addition to being certified as TSCA Title VI compliant, all imported composite wood panels, component parts, or finished goods containing regulated composite wood must comply with the TSCA section 13 import certification regulations.

Stockpiling

**1. Beginning June 1, 2018, what are the sell-through provisions for component parts and finished goods that are not certified under Title VI of the Toxic Substances Control Act (TSCA)?**

As instructed by the statute, to avoid issues with sell-through periods, EPA set a manufactured-by date instead of a sell-by date. Any component parts or finished goods containing composite wood products that were produced in the United States or imported into the customs territory of the United States before the manufactured-by date of June 1, 2018, are not subject to the testing requirements and emission standards and thus are not required to be certified and labeled as TSCA Title VI compliant. These component parts or finished goods can be distributed in commerce until the stock is depleted, so long as they have not been stockpiled in an attempt to circumvent the emission standards. Panel producers, fabricators, importers, distributors and retailers must keep records for at least three years showing that the component parts or finished goods containing composite wood products were manufactured prior to June 1, 2018.

### Secondhand Goods

**1. Do the requirements of TSCA Title VI apply to second-hand retail stores (e.g., second-hand charity thrift stores or non-profit building supply recycling stores) or discount stores that receive donations from consumers and other businesses and later sell, supply, or offer for sale goods which are regulated composite wood products or finished goods containing composite wood products?**

Donations of regulated composite wood products, component parts fabricated using composite wood products, and finished goods fabricated using composite wood products from individuals, groups, or businesses that have previously bought those products and used them for their intended end use applications (e.g., use in a home or office) and later removed them from their end use and donated those same products are not subject to the TSCA Title VI regulation as those products have been previously sold (or supplied) to the end user and would be considered “second-hand” upon donation to the second-hand retailer (see 40 CFR 770.1(c)(1)). However, donations from individuals, groups, or businesses of composite wood products or finished goods containing composite wood products that were previously purchased or supplied for the purpose of resale but that were never actually sold and put into their intended end use (e.g., never previously sold or used) would be regulated under the TSCA Title VI regulation and would not be able to use the exception at 40 CFR 770.1(c)(1) for the donations.

One example of this type of scenario would be an individual, group, or business that purchases a pallet of office furniture fabricated on or after June 1, 2018 containing regulated composite wood products sold, supplied or offered for sale to a distributor, retailer, or consumer either immediately or in the future. In this example the individual, group, or business is unable to sell the stock of office furniture and decides to donate to a second-hand charity thrift store (or other like charity) who can sell the furniture to consumers or otherwise find an end use for the furniture. In this example, the furniture was originally purchased by the donating business for the purposes of resale, and only after that business was unable to sell the stock they offered it for donation to the second-hand thrift store. The TSCA Title VI regulation would apply in this example because the products were never previously sold or supplied to an end user by the donating business and the second-hand thrift store is now offering to sell, supply, or offer for sale



those products. The exclusion provision at 40 CFR 770.1(c)(1) would only apply to those donated items from individuals, groups, or businesses that were purchased in good faith for purposes other than resale (e.g., purchasing with the intent of giving the products away to charity for no compensation).

## Starting-up New Mills

### **1. I am panel producer starting-up a new mill or restarting a mill in the U.S. How can I manufacture compliant composite wood products so that I can offer those products as soon as possible for sale, to be supplied, or otherwise distributed in commerce in the U.S.?**

The Agency understands that testing of composite wood products (i.e., panels) that is required of mills and EPA Toxic Substance Control Act Third-party Certifiers (TPCs) prior to TPCs being able to certify panels as meeting the emission standards may take weeks or months for some panel producers and TPCs to obtain through typical testing approaches. Thus, alternative testing approaches that can speed up this process, but that still adhere to the rule's testing requirements, for new mills starting-up or restarting would be beneficial.

The first step in establishing any testing program would be for the start-up or restarting mill to apply under § 770.15(c) to TPC for certification of their composite wood products. The mill (i.e., panel producer) working with the TPC would normally then establish a certification program using the mill's quality control test method (under § 770.20(b)) that has been shown to correlate to the ASTM E1333 test chamber or equivalent ASTM D6007 test chamber.

One alternative approach that may result in more quickly obtaining the quality control testing data required under § 770.20(b), would be for the mill, in the absence of a correlation between the mill quality control test under § 770.20(b) and the TPC's ASTM E1333 test chamber (or equivalent ASTM D6007 test chamber), to acquire (from the EPA-recognized TSCA Title VI TPC or other means) an ASTM D6007 test chamber to use on-site at the mill.

Under this approach, equivalence would be established, according to § 770.20(d), at the mill between the on-site ASTM D6007 test chamber and the TPC's (or TPC's contract laboratory's) ASTM E1333 test chamber. Under this approach, the on-site mill ASTM D6007 test chamber that shows equivalence to the TPC's ASTM E1333 test chamber according to § 770.20(d) would necessarily show correlation to itself under § 770.20(d)(2) and could therefore be used as a quality control test method without additional correlation testing.

Quality control testing must be conducted according to the schedule for quality control testing at § 770.20(b)(2), or more frequently than that schedule if the TPC and mill choose to do so. If the test result of a composite wood product provides an emission limit exceedance for the product being produced, the mill must report the exceedance to their TPC and manage the lot according to the non-complying lot provisions provided at § 770.22.

Once the TPC has confirmed that the composite wood products being produced by the mill are certified as meeting the emission standard, the mill must adhere to all the panel producer requirements under the final regulation, such as working with their TPC under the testing and certification program, labeling

composite wood products, and maintaining records. Please refer to EPA's other guidance materials on the TSCA Title VI program for more information.

- 2. If I as the mill establish a testing program using my TPC's ASTM D6007 test chamber under the optional mill start-up and restart approach outlined in question 1, must the ASTM D6007 test chamber onsite at the mill demonstrate equivalence to the TPC's (or TPC's contract laboratory's) ASTM E1333 test chamber before or after the ASTM D6007 test chamber is relocated to the start-up or restarting mill?**

EPA believes that equivalence between the TPC's (or the TPC's contract laboratory's) ASTM E1333 test chamber and an ASTM D6007 test chamber being housed on-site at the start-up or restarting mill should generally be established after the ASTM D6007 test chamber is delivered to the start-up or restarting mill, as this typically represents in EPA's judgment a significant change in equipment, procedure, or the qualifications of testing personnel. For example, the qualifications of the testing personnel at the mill will often be different than those at the TPC. Also, during shipping, transport, installation, and set-up possible changes may occur with mechanical equipment that would otherwise invalidate the equivalence or correlation if established before shipping. However, a mill may be able to demonstrate that the re-location of equipment would not be expected to result in a significant change in equipment, procedure, or the qualifications of testing personnel, such that it would not be necessary to establish equivalence following the re-location.

- 3. If I as the mill establish an emissions testing program using my TPC's ASTM D6007 test chamber under the optional mill start-up and restart approach outlined in question 1, how must I handle lots that exceed the emission standards under TSCA Title VI?**

Just as with any mill currently producing lots of regulated composite wood product, any composite wood products that exceed their respective emission limits, as shown through the required quality control testing, must be managed as a non-complying lot, and handled according to the non-complying lot provisions provided at § 770.22.

- 4. Can I use testing data generated from my equivalent ASTM D6007 test chamber (acquired from the EPA TSCA Title VI TPC or other means), which is housed on-site at my mill for the purposes of the mill start-up or restart, to establish a correlation to my mill quality control test method (see § 770.20(b))?**

Yes, after equivalence has been established between the on-site ASTM D6007 test chamber and the TPC's (or TPC contract laboratory's) ASTM E1333 chamber, data generated at the mill from the on-site ASTM D6007 test chamber can be used to establish correlation under § 770.20(d) to the panel producer's quality control test method as provided in § 770.20(b).

- 5. If the equivalent ASTM D6007 test chamber (acquired from the EPA-recognized TSCA Title VI TPC or other means), which has been housed on-site at the mill for the purposes of the**

**mill start-up or restart testing, is moved back to the TPC laboratory for them to use for the required quarterly testing of panels from the mill, must equivalence be reestablished between that TPC's ASTM D60007 test chamber and the TPC's ASTM E1333 test chamber?**

As noted in 770.20(d) equivalence should be established whenever there is a significant change in equipment, procedure, or the qualifications of testing personnel. However, a TPC may be able to demonstrate that the re-location of equipment would not be expected to result in a significant change in equipment, procedure, or the qualifications of testing personnel, such that it would not be necessary to establish equivalence following the re-location.

### Use of Experimental Product and Resin Systems

**1. I am a panel producer that wants to conduct research and development on a new product type. What do I need to do under the rule to conduct this research and development of a new product type?**

In the rule, the definition of a panel does not include composite wood products made for the purposes of research and development, provided that these composite wood products made for research and development are not sold, supplied, or offered for sale. Panel producers may therefore conduct research and development activities on such products. Once a panel producer has concluded research and development activities and would like to certify the product as TSCA Title VI compliant so that the products may be sold, supplied, or offered for sale, the panel producer will need to apply to their EPA TSCA Title VI TPC under § 770.15(c), and only after the composite wood products have been tested according to the requirements at § 770.20 and demonstrated that they meet the applicable emission standards under § 770.10, may those panels be sold, supplied, or offered for sale as TSCA Title VI compliant.

**2. I am a panel producer who wants to experiment with a new resin system for the purposes of research and development of a new product type. What must I do to begin certifying a new product type, using a new resin system, as TSCA Title VI compliant?**

Panel producers can follow the sample testing provisions under § 770.24 which allow for the shipping of composite wood products for the purposes of testing of a new resin system by the panel producer's TPC for development of a new product type and eventual certification under TSCA Title VI. Once the panel producer applies to their EPA TSCA Title VI TPC for composite wood product certification under § 770.15(c), and only after the composite wood products have been tested according to the requirements at § 770.20 and demonstrated that they meet the applicable emission standards under § 770.10, may those panels be sold, supplied, or offered for sale as TSCA Title VI compliant.

**3. I am a panel producer who wants to use a new resin, that is within the same resin system I am already using to make a TSCA Title VI certified product type, for purposes of production (not considered to be research and development) of products that would be**

**offered for sale, to be supplied, or otherwise distributed in commerce. What must I do to continue certifying an existing composite wood product type with a new resin?**

The final rule allows for TPCs and panel producers to work together to determine if it is appropriate to combine composite wood products made with a new resin under an existing product type being produced by the panel producer (assuming that resin is part of the same resin system of the previously certified product with similar emission characteristics), or if a new product category needs to be established for certification purposes because of the new resin being used. If a new product category needs to be established, the panel producer and TPC must establish a testing program to ensure the new product meets the certification requirements under the testing provisions at § 770.15(c), which includes generating the required testing data prior to certification and subsequent distribution of the new product in commerce.

### Miscellaneous

**1. Is it possible for one company to be considered as more than one type of regulated entity (i.e., panel producer, fabricator, laminated product producer, distributor, retailer, and importer)?**

Yes. Under Title VI of the Toxic Substances Control Act (TSCA) it is possible for a company to fit into more than one designation of regulated entity. It is important for each business that works with composite wood products to understand their requirements. EPA has prepared several small entity compliance guides to assist with determining designation and requirements under TSCA Title VI. If you are unsure about your designation under TSCA Title VI, [please contact EPA online](#).

**2. Will the final rule preempt California Air Resources Board (CARB) program requirements?**

The final rule does not preempt the CARB program. CARB and EPA continue to work together to harmonize the two rules as much as practicable. It is important to ensure that you are compliant with the TSCA Title VI federal regulation and the CARB program if you are doing business in California.