

## **TECHNICAL BRIEF**

# **TSCA Title VI: What Engineered Wood Flooring Retailers and Distributors Need To Know**

### **1.) Background**

TSCA Title VI, officially the U.S. Environmental Protection Agency's (EPA's) TSCA Title VI 40 CFR Part 770 Formaldehyde Emission Standards for Composite Wood Products, refers to a new environmental regulation that affects composite wood products as of June 1, 2018.

TSCA (Toxic Substances Control Act) is overseen by the US EPA. Originally signed into law in 1976, this act has been amended several times, with the latest version being *TSCA Title VI: Formaldehyde Standards for Composite Wood Products*. TSCA Title VI was modeled after California's formaldehyde emissions regulation (CARB 93120 ATCM).

### **2.) What is the purpose of TSCA Title VI?**

This nationwide legal requirement aims to reduce exposure to formaldehyde emissions from certain wood products produced domestically or imported into the United States. To accomplish this, the regulation sets limits on the allowable formaldehyde emissions from hardwood plywood (HWPW), medium density fiberboard (MDF/HDF), thin MDF (tMDF), and particleboard (PB).

### **3.) What products are affected?**

HWPW, MDF, tMDF, and PB panels, as well as component parts and finished goods that contain these panel products (e.g. engineered wood flooring, laminate flooring, cabinetry, etc.).

### **4.) When does TSCA Title VI take effect?**

Engineered wood flooring manufactured in or imported into the U.S. **on or After March 22<sup>nd</sup>, 2019** must be TSCA Title VI Compliant and labeled accordingly.

Engineered wood flooring manufactured in or imported into the U.S. **between June 1<sup>st</sup>, 2018 and March 22<sup>nd</sup>, 2019** must be either CARB Phase 2 or TSCA Title VI Compliant and labeled accordingly.

Engineered wood flooring manufactured in or imported into the U.S. **before June 1<sup>st</sup>, 2018** is unregulated, but is legal to sell.<sup>1</sup>

<sup>1</sup>Flooring produced in or sold into the state of California prior to June 1<sup>st</sup>, 2018 must be CARB compliant.

<sup>2</sup>*Stockpiling* is defined in section 770.3 of the regulation as “manufacturing or purchasing composite wood products, whether in the form of panels or incorporated into component parts or finished goods, between July 7, 2010 and June 12, 2017 at an average rate at least 20% greater than the average rate of manufacture or purchase during the 2009 calendar year for the purpose of circumventing the emission standards and other requirements of this subpart.”



### 5.) How does this impact my current inventory?

Your current flooring inventory is eligible for sale, provided it meets the above criteria and does not meet the definition of “stockpiling<sup>2</sup>” in the TSCA Title VI regulation. There is no time limit to sell or use old inventory.

### 6.) How does this impact my customers?

Many customers and end-users are aware of the CARB regulation, but they may be less familiar with the new EPA regulation. Clearly, the expectation is that engineered wood flooring manufacturers, along with retailers and distributors, must meet all legal requirements for the products they sell to the public.

### 7.) What are my responsibilities as an engineered wood flooring retailer or distributor?

As of June 1<sup>st</sup>, 2018, retailers and distributors have three primary responsibilities under TSCA:

- A. When buying engineered wood flooring, specify in your purchase order that you require TSCA Title VI Compliant<sup>1</sup> product. Below is a sample generic statement:

***“Flooring produced using composite wood products including hardwood plywood, particleboard or MDF must be EPA TSCA Title VI Compliant”***

- B. When selling engineered wood flooring to an entity that intends to re-sell it (e.g. a distributor, retailer, builder or developer), your invoice, bill of lading (BOL), or other comparable document must declare the product to be TSCA Title VI Compliant. For flooring sold directly to the end user, a compliance declaration does not need to appear on the sales receipt.
- C. Records of these transactions must be kept for at least three years.

### 8.) Additional information

#### Importing

If you are also acting as the importer of record for the flooring you sell, you have additional responsibilities under this regulation. Review the EPA compliance guide for importers, distributors and retailers referenced at the end of this document for more information.

#### Labeling

As a retailer or distributor, you have no labeling requirements. However, if each carton offered for sale is not individually labeled, you must keep a copy of the original bundle label and be able to identify the products associated with it. You also must have a method for identifying the flooring supplier.

<sup>1</sup>Requiring the purchase of “TSCA Title VI Compliant” flooring still enables the supplier to provide CARB Phase 2 compliant flooring produced/imported prior to March 22<sup>nd</sup>, 2019. This is because CARB phase 2 compliant product is considered “TSCA Title VI Compliant” under the regulation until March 22<sup>nd</sup>, 2019.

### Manufactured-by/Imported-by Dates – Example Interpretations

Real-world examples of how to interpret the manufactured-by/imported-by enforcement dates:

- a) Flooring produced or imported into the U.S. **prior** to June 1<sup>st</sup>, 2018 (Not CARB or TSCA Compliant): **Legal**. The flooring was produced before TSCA Title VI went into effect, so it is eligible for sale at any time after June 1<sup>st</sup>, 2018. Note: If the flooring was produced in, or is sold into, the state of California, it needs to be CARB compliant.
- b) Flooring produced **prior** to June 1<sup>st</sup>, 2018 but imported into the U.S. **on or after** June 1<sup>st</sup>, 2018 (Not CARB or TSCA Title VI Compliant): **NOT Legal**. Under TSCA, the term “manufacture” includes “import.” So, for imported goods, the manufactured-by date is the date of physical import into the U.S., not the date that the goods were made in a factory. Since this flooring arrived in the U.S. after June 1<sup>st</sup>, 2018 and is not CARB or TSCA Title VI compliant, it is not eligible for sale in the U.S.
- c) Flooring produced in or imported into the U.S. **prior** to March 22<sup>nd</sup>, 2019 (CARB Compliant): **Legal**. The panels used to produce the flooring are CARB certified (specifically, certified by a third party certifier who is approved by CARB and recognized by EPA) and are appropriately labeled, so this flooring is legal.
- d) Flooring produced in or imported into the U.S. **on or after** March 22<sup>nd</sup>, 2019 (CARB Compliant, **not** TSCA compliant): **NOT Legal**. As of March 22<sup>nd</sup>, CARB compliance is not enough: the flooring must be TSCA Title VI Compliant and labeled as such.

### Resources

- 1.) For more information on your TSCA Title VI responsibilities, review the following EPA-published guidance materials:  
  
Compliance Guide for Importers, Distributors, and Retailers  
[https://www.epa.gov/sites/production/files/2018-06/documents/small\\_entity\\_cg\\_for\\_importers\\_distr\\_and\\_ret\\_june\\_2018.pdf](https://www.epa.gov/sites/production/files/2018-06/documents/small_entity_cg_for_importers_distr_and_ret_june_2018.pdf)  
  
Frequently Asked Questions for Regulated Stakeholders  
<https://www.epa.gov/formaldehyde/frequent-questions-regulated-stakeholders-about-implementing-formaldehyde-standards>
- 2.) To learn more about the differences between CARB and TSCA Title VI, visit  
<https://www.arb.ca.gov/toxics/compwood/comparisontable5.15.19.pdf>
- 3.) Still unclear about your TSCA Title VI responsibilities? Contact the Decorative Hardwoods Association at [resources@decorativehardwoods.org](mailto:resources@decorativehardwoods.org) for assistance.

*This guide is designed to be a quick reference to the EPA TSCA Title VI formaldehyde regulation for retailers and distributors of engineered wood flooring. The DHA disclaims any liability for reliance on this guide for readers' compliance with the EPA regulation or obligation to update the information. Consult the full text of the regulation and your legal advisors on specific questions.*