

## Legal Updates & News

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## Composite Wood Products “Across-the-Board” Face New California Limits on Formaldehyde

April 2007

by [Peter Hsiao](#), [Susan P. Linden](#)

### LUEL Briefing, April 30, 2007

California has imposed stringent new limits on formaldehyde emissions from composite wood products and finished goods. The new standards will apply to manufacturers, distributors, importers, fabricators, and retailers. The regulations will cap emissions on all such products sold in California.

The regulations will be implemented in two phases, beginning January 1, 2009. The California Air Resources Board (ARB) estimates that costs to manufacturers to implement Phase 1 will be \$19 million per year. Costs for Phase 2 are estimated to be \$127 million per year. This represents an estimated increase in production costs of between 1% and 7% for Phase 1, and between 8% and 30% for Phase 2.

### Background

Composite wood products reportedly are responsible for approximately 5% of formaldehyde emissions in California. Human health risks exist in both ambient air and indoor air. Combined exposures can lead to substantial total exposure to formaldehyde in both adults and children. In addition to cancer risks, formaldehyde also can cause eye, nose, and/or throat irritation.

The ARB identified formaldehyde as a toxic air contaminant (TAC) in 1992. The ARB was required to develop Airborne Toxic Control Measures (ATCMs) to reduce formaldehyde emissions to the lowest achievable level. The regulations establish an ATCM that will significantly reduce the amount of formaldehyde emissions from composite wood products bound together with a resin or adhesive. Affected products include primarily hardwood plywood, particleboard, and medium density fiberboard. According to the ARB, these products are made with urea-formaldehyde resins with high formaldehyde emission rates.

### The New Regulations

The regulations apply to composite wood products and finished goods that are manufactured, distributed, fabricated, imported, sold, offered for sale, or supplied for shipment and use in California. The regulations exempt hardwood plywood and particleboard materials installed in manufactured homes regulated by the US Department of Housing and Urban Development.

Phase 1 emissions standards take effect January 1, 2009. On July 1, 2009, additional regulations for hardwood plywood with a composite core take effect.

Phase 2 emission standards take effect in 2011 and 2012 on a staggered schedule depending on the type of material. The Phase 2 standards are more stringent than the Phase 1 standards.

Manufacturers must use an approved third-party certifier to demonstrate compliance. The regulations include requirements for initial large-scale testing of the products, and daily quality assurance testing on a smaller scale. The third party certifiers must approve the quality assurance system at the manufacturer. In addition, the manufacturer is required to label each panel or bundle of products, and each bill of lading or invoice, to verify its compliance with the standards.

The regulations also provide a transition period to allow the sale of existing inventories of non-compliant products. Manufacturers can sell non-compliant products for one month after the applicable regulations become effective. Distributors and importers can continue to sell products for five months after the effective date. Fabricators have a 12-month sell-through date. Retailers have either a 12- or 18-month sell-through date depending on whether they are selling composite wood products or finished goods.

Recordkeeping requirements also are imposed. Manufacturers must keep records of quality assurance emissions test data for each product. In addition, manufacturers are required to keep records, including tracking information, purchaser and transporter information, disposition of non-complying lots or batches. In general, records must be kept for two years.

While formaldehyde emissions from composite wood products are regulated in Europe, Japan, and Australia, they have not been in the United States. California becomes the first state to do so. The regulations pose the problem of inconsistent requirements for manufacturers, distributors, and contractors who widely use these products.

The regulations are complex, and additional information is available upon request from Morrison & Foerster.