

Enforcement of the CARB Formaldehyde in Composite Wood Regulation

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Summary

- The Regulation - Fabricators
- The 3 legged stool of enforcement
- Inspections - The FLEC
- Fairness
- Penalties
- Status

The ATCM

(Airborne Toxic Control Measure)

- ...no person shall sell, supply, offer for sale, or manufacture for sale in California any composite wood product which, at the time of sale or manufacture, does not comply with the emission standards in Table 1...
- **CHSC § 93120.2.a**

Fabricator Requirements

- § 93120.7.d *Labeling Requirements.*

Fabricators must:

- Label their finished goods ... destined for sale or supply in California.
- The label shall be applied ... on every finished good produced, or on every box...

Label Requirements

- Fabricator's name
- Date the product was produced
- Product was made with compliant HWPW, PB, or MDF
- or no-added formaldehyde resins or ULEF

Invoice Requirements

- Designate their goods as being made with HWPW, PB, or MDF that complies with the applicable emission standards specified in section 93120.2(a) on the bill of lading or invoice provided to distributors, importers, other fabricators, or retailers.

The 3 Legged Stool of Enforcement

- Enforcement - Inspections will take place
 - Fairness - Everyone treated the same
 - Deterrent - Every violator pays a price
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- Without all three, your enforcement program will fail.

Inspections

- Focus on the Retailer
- no person shall sell, supply, offer for sale, or manufacture for sale in California any composite wood product which, at the time of sale or manufacture, does not comply with the emission standards

The FLEC Screening Test

- Field and Laboratory Emission Cell for materials emissions testing - Markes Intl.
- The FLEC simulates the large chamber test
- Correlate FLEC results with chamber test
- Correct for Temperature and Humidity
- Can be used in a retail store
- Interscan portable formaldehyde analyzer, 0-500ppb, model 4160-500b



Chain of Custody

- Chain of custody - will point back to distributor, importer, fabricator, manufacturer
- Violation may appear to be only “paperwork”. But without certain records, it is impossible to determine whether the law has been or is being broken.

Fairness

- We will attempt to inspect all retailers of all types of wood products and furniture in all areas of California
- Imported and domestic
- Proportional to sales
- We will attempt to follow the documentation and find all responsible parties
- Enforce the law vigorously, without fear or favor.

Civil Violations

- Violations that are negligent, unintentional, or cases of strict liability
- Strict liability in tort is the concept that in certain situations a defendant is liable for plaintiff's damages without any requirement that the plaintiff prove that the defendant was negligent.

Penalties

- Strict Liability – any person who violates a rule or regulation, emission limitation ... for a toxic air contaminant (\$10,000 for each day of violation) HSC 39674b, 42400.3.5a
- Strict Liability – any person who violates a rule or regulation, emission limitation ... for recordkeeping (\$1,000 for each day of violation) HSC 42400a

Strict Liability

- Strict liability is imposed against the manufacturer and in favor of the user or consumer in order to relieve injured consumers "from problems of proof inherent in pursuing negligence ... and warranty ... remedies, ..." (*Greenman v. Yuba Power Products, Inc.*, supra, 59 Cal.2d at p. 63.)

Strict Liability (cont.)

- The liability was created judicially because of the economic and social need for the protection of consumers in an increasingly complex and mechanized society, and because of the limitations in the negligence and warranty remedies.

Consumer Fraud

- CA Business and Professions Code (section 17200 et seq.) – unfair business practices – civil - \$2,500 per day
- This may apply to labeling as CARB certified prior to actual certification

Criminal Violations

- Intentional, reckless, knowing, or that display a flagrant disregard for human health and the environment. Punishable by a fine of up to \$75,000 and one year in county jail. Each day of violation is a separate offense. (HSC 42400.3)

Criminal Violations (cont.)

- Knowing violations – failure to take corrective action after notice - \$40,000 (HSC 42402.2)
- Knowing falsification of document with intent to deceive - \$35,000 (HSC 42402.4)

Overall Status

- Screening tool selected - FLEC / Interscan
- CARB Small Chamber correlation - June
- Small/Large Chamber round robin testing - September
- FLEC correlation - ongoing
- CARB ready for enforcement - December