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California Reverses Position: Wood Pallets and Other Wood Packaging Materials Are Not Subject to the State's New Formaldehyde Limits

California caused much consternation and confusion within the business community when it advised that the state's new formaldehyde limits applied to wood pallets and other wood packaging materials. Wisely, the state has now reversed its position.

On March 16, 2009, the California Air Resources Board (CARB) issued its Air Toxic Control Measure (ATCM) to Reduce Formaldehyde Emissions from Composite Wood Products, setting emission limits for furniture and other finished products made with hardwood plywood, particleboard, medium density fiberboard, and thin medium density fiberboard (thickness \leq 8mm).¹

The ATCM generally applies to manufacturers, distributors, importers, fabricators and retailers who sell, offer for sale, or supply composite wood products in California. The regulation also affected manufacturers and distributors of non-wood products because the state considered wood packaging such as pallets, skids, boxes, and crates to be "finished goods," and thus subject to the ATCM formaldehyde limits:

"Finished goods" means any good or product, other than a panel, containing hardwood plywood, particleboard, or medium density fiberboard. Component parts are not "finished goods," although they are used in the assembly of finished goods. "Finished goods" do not include used goods such as antiques or second-hand furniture. For the purposes of this subsection, a "used good" means a "finished good" that has previously been sold or supplied to the ultimate purchaser.

Accordingly, both in-state and out-of-state businesses that shipped goods in wooden

packaging within or into the state were required to use wood packaging fabricated with low-emitting formaldehyde composite wood.

CARB not only required the package to bear an ATCM-compliance statement, but also each invoice for shipments in which wood packaging was used had to list the wood packaging and restate the compliance statement. To support these certification statements, businesses had to maintain strict purchasing records and other documentation to prove that the materials supplied to them complied with the ATCM.

CARB further complicated the issue with a series of convoluted interpretations, including when a pallet would be deemed to be "passing through the state," and thus exempted from the ATCM limits. After being inundated with questions from industry, CARB made the sensible decision to exclude wood packaging material from the rule. In its statement CARB indicated that it

... it was not CARB's intent to regulate wood packaging as 'finished goods.' To be consistent with this intent and provide fairness to the regulated community, CARB staff interprets the ATCM as not applying to wood packaging. These products are not subject to any of the requirements of the ATCM.

For more information on the ATCM, please contact Jean-Cyril (JC) Walker at (202) 434-4181 (walker@khlaw.com) or Komal Jain at (202) 434-4138 (jain@khlaw.com)

¹ 17 Cal. Code Regs. § 93120 - 93120.12.