

# **Consumer Labeled Products in the Workplace: Duty to Warn**

Jon Hernan and Clint Byrd  
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# Presenters

- Jon Hernan is a partner in the Orlando office of Bowman and Brooke LLP. He has significant experience in products liability defense litigation and serves as national counsel for W.M. Barr & Company, Inc.
- Clint Byrd is the Assistant General Counsel for W.M. Barr and manages all domestic and international litigation, including all products related matters.

# Topics

- Product liability and workplace safety
- Government Requirements
- Industrial vs. Consumer Labels
- Dual use labels

# Product Liability vs. OSHA

- Product Liability
  - Injured consumer or employee
  - Failure to Warn
  - Compliance Defenses
- OSHA
  - Burden on employer
  - Manufacturer not liable for OSHA non-compliance

# Definition of Warnings

- A statement telling of or an indication providing evidence of impending danger, difficulty, or misfortune.

# Labels

**DANGER**



Do not hold  
the wrong end  
of a chainsaw

**WARNING**



If you are the type of person that actually could potentially do something as stupid as printed on these labels, you probably cannot read said warning labels to begin with. The world would be better without you. Please ignore all future danger signs so we can move on. Thank you.

[www.rulesmatters.com](http://www.rulesmatters.com)

# Definition of Instructions

- Instructions inform persons how to use and consume products safely.

# Instructions





# Design Hierarchy

1. Design to eliminate the hazard
2. Guard against the hazard
3. Warn against the hazard

# Warning/Instructions Locations

- On product
- SDSs
- Technical data sheets
- Catalogs (printed and websites)
- Ads and promotions
- Sales representations
- How to Videos

# Content of Warnings/Instructions

- Government/Industry Requirements
- Description of Hazard/Signal words
- Proper Use Instructions
- Foreseeable uses/misuses
- What to do in the event of hazard

# Consumer Products

- Federal Hazardous Substances Act (FHSA): 15 USC §1261-78
- Consumer Product Safety Commission (CPSC) regulations: 16 CFR 1500.121
- Preemption lives!

# FHSA

- CFR Title 16 Part 1500 is a promulgation of federal rules that advise of the requirements of the FHSA
- Tells how to determine whether a product requires labeling
- States what labeling is required for specific products
- Notes products that are banned
- You can view regulations at [www.cpsc.gov](http://www.cpsc.gov)

# When does a Product require Labeling?

- FHSA covers only products that, during *reasonably foreseeable* purchase, storage or use may be brought into or around a place where people live
- Requires hazardous household products (“hazardous substances”): to bear labeling that (1) alerts consumers to the potential hazards of those products present; and (2) tell consumers what they need to do to protect themselves and their kids from those hazards

# When does a Product require Labeling?

- Whether a product must be labeled depends on its contents and the likelihood that consumers will be exposed to hazards it presents
- To require labeling a product must be toxic, corrosive, flammable, combustible, an irritant, a strong sensitizer, or it must generate pressure through decomposition, heat or other means
- The product must have the potential to cause substantial personal injury or substantial illness during or as the result of any customary or foreseeable handling or use, including reasonably foreseeable ingestion by children

# Per FHSA, Consumer Labels must include the following:

- Name, Place of Business of manufacturer or seller
- Common name for the chemical or important components
- Signal Words: “DANGER” “WARNING” “CAUTION” “POISON”
- An Affirmative Statement of Principal Hazards
- Precautionary Measures
- First Aid (if necessary)
- Instructions for storage and handling (if necessary)
- The statement “KEEP OUT OF REACH OF CHILDREN”



# FHSA

- (1) which states conspicuously (A) the name and place of business of the manufacturer, packer, distributor or seller; (B) the common or usual name or the chemical name if there be no common name; (C) the hazard statement if the substance is corrosive, or highly toxic, (D) the signal word "WARNING" or "CAUTION" on all other hazardous substances; (E) an affirmative statement of the principal hazard or hazards, such as "Flammable," "Combustible," "Vapor Harmful," "Irritant," "Burns," "Absorbed Through Skin," or similar wording describing the hazard; (F) the precautionary statement if the substance is highly toxic or extremely toxic; (G) the hazard pictogram if the substance is highly toxic or extremely toxic; (H) instructions for any hazardous substance which is defined as "highly toxic" by subsection (h); (I) instructions for handling and use of the hazardous substance; (J) the name and address of the manufacturer, packer, distributor or seller of the hazardous substance, adequate directions for the protection of the user from the hazard, and other information as may be required by the Secretary.
- (2) on which any statements required under subparagraph (1) of this paragraph are located prominently and are in the English language in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the label.

**the name and place of business of the manufacturer, packer, distributor or seller**

**the signal word "WARNING" or "CAUTION" on all other hazardous substances**

**English language in conspicuous and legible type in contrast by typography, layout, or color with other printed matter on the label**

# FHSA: Placement of Labels

- Must appear “*prominently*” on each principal display panel
- Placed parallel to the base of the package
- The signal word(s), statements of hazard, and instructions to read carefully cautionary information located elsewhere must be blocked together within a square or rectangular area with or without a border
- Cautionary Statements must be separated on all sides from other material by a border or space no smaller than the minimum allowable height of the type size required
- Type size is based on the area of the primary display panel and is found in the regulations
- Signal words must be in capital letters
- All cautionary labeling must appear on any outer container or wrapping for retail display of the substance AND on the container

# Accompanying Literature with Directions for Use

- Cautionary information is required in the proximity of directions for use
- Signal word(s) and Principal Hazards must appear in CAPITAL LETTERS
- The language must appear CONSPICUOUS – the CFRs provide further details

# DISCLAIMERS

- It is not permitted to use any statement that negates any hazard(s) of the product

No aplique sobre suelos ni rocíe este producto en áreas mayores a 1 pie cuadrado (0.093 m3) ya que el riesgo de incendio y los riesgos a la salud incrementarán dramáticamente.

**¡PELIGRO! EXTREMADAMENTE INFLAMABLE. LOS VAPORES PUEDEN PROVOCAR COMBUSTIONES SÚBITAS O INFLAMARSE DE MANERA EXPLOSIVA. MANTÉNGASE ALEJADO DE FUENTES DE CALOR, CHISPAS, LLAMAS Y CUALQUIER OTRA FUENTE DE IGNICIÓN.** Extinga todas las flamas y pilotos, y apague las estufas, calentadores, motores eléctricos y cualquier otra fuente de ignición durante su uso y hasta que se hayan disipado los vapores. No fume. **USE ÚNICAMENTE CON UNA VENTILACIÓN ADECUADA PARA EVITAR LA ACUMULACIÓN DE VAPORES.** No use en áreas donde los vapores se puedan acumular y concentrarse tales como sótanos, cuartos de baño y áreas pequeñas y encerradas. Si se utiliza bajo techo, abra todas las ventanas y las puertas y mantenga una ventilación cruzada de aire fresco en movimiento a través del área de trabajo. Si nota un olor fuerte o se siente ligeramente mareado, DETÉNGASE, la ventilación es inadecuada. Abandone el área de inmediato. **SI EL ÁREA DE TRABAJO NO ESTÁ BIEN VENTILADA, NO USE ESTE PRODUCTO.** Una máscara para el polvo no otorga protección contra los vapores.

**¡PELIGRO! DAÑINO O MORTAL SI SE TRAGA. VAPOR DAÑINO. IRRITA LOS OJOS.** Contiene acetona y xileno. Ciertos informes asocian la sobreexposición repetida y prolonga a los solventes con dolencias neurológicas y otras afecciones fisiológicas. El uso indebido de este producto para concentrar e inhalar de manera deliberada sus vapores puede resultar dañino o mortal. Evite el contacto con los ojos y el contacto con la piel. Evite respirar sus vapores y el contacto con la piel, los ojos y la ropa. No lo ingiera. **ADVERTENCIA:** Usar este producto le expondrá a productos químicos que ocasionan cáncer y afecciones reproductivas de acuerdo a lo establecido por el Estado de California.

**PRIMEROS AUXILIOS: SI SE TRAGA,** no induzca el vómito. Llame de inmediato y solicite instrucciones a su centro de control de intoxicaciones, sala de urgencia del hospital o a su médico. **SI EL PRODUCTO ENTRA EN CONTACTO CON LOS OJOS,** enjuague de inmediato con agua, quítese los lentes de contacto en caso de llevar alguno y continúe enjuagando con agua durante al menos 15 minutos. Si persiste la irritación, obtenga atención médica. **EN CASO DE CONTACTO CON LA PIEL,** lave de inmediato con jabón y agua. Si persiste la irritación, obtenga atención médica.

**MANTÉNGASE FUERA DEL ALCANCE DE LOS NIÑOS.**

**"Do NOT apply to large areas. NO APLIQUE este producto en grandes areas."**



Keep out of Reach of Children



**ADHESIVE & GLUE**



**ASPHALT & TAR\***



**DRIED LATEX PAINT**

**Removes The Toughest Stuff™ Ultra Fast • Ultra Strong**

**DANGER! EXTREMELY FLAMMABLE. HARMFUL OR FATAL IF SWALLOWED. VAPOR HARMFUL. EYE IRRITANT. VAPORS MAY CAUSE FLASH FIRE OR IGNITE EXPLOSIVELY.** Read entire label prior to use or storage.

**¡PELIGRO! EXTREMADAMENTE INFLAMABLE. DAÑINO O MORTAL SI SE TRAGA. VAPOR DAÑINO. IRRITA LOS OJOS. LOS VAPORES PUEDEN PROVOCAR COMBUSTIONES SÚBITAS O INFLAMARSE DE MANERA EXPLOSIVA.** Lea toda la etiqueta antes de usar o almacenar este producto.

1 GAL. (3.785L)

Do not apply to floors or spread this product over surface areas greater than 1 sq. foot because fire and health safety risks will increase dramatically.

**DANGER! EXTREMELY FLAMMABLE. VAPORS MAY CAUSE FLASH FIRE OR IGNITE EXPLOSIVELY. KEEP AWAY FROM HEAT, SPARKS, FLAME AND ALL OTHER SOURCES OF IGNITION.** Extinguish all flames and pilot lights, and turn off all stoves, heaters, electric motors and all other sources of ignition during use and until all vapors are gone. Do not smoke. **USE ONLY WITH ADEQUATE VENTILATION TO PREVENT BUILDUP OF VAPORS.** Do not use in areas where vapors can accumulate and concentrate such as basements, bathrooms and small, enclosed areas. If using indoors open all windows and doors and maintain a cross ventilation of moving fresh air across the work area. If strong odor is noticed or you experience slight dizziness – **STOP** – ventilation is inadequate. Leave area immediately. **IF THE WORK AREA IS NOT WELL VENTILATED, DO NOT USE THIS PRODUCT.** A dust mask does not provide protection against vapors.

**DANGER! HARMFUL OR FATAL IF SWALLOWED. VAPOR HARMFUL. EYE IRRITANT.** Contains Acetone and Xylene. Reports have associated repeated and prolonged overexposure to solvents with neurological and other physiological damage. Intentional misuse of this product by deliberately concentrating and inhaling vapors can be harmful or fatal. Avoid contact with eyes and contact with skin. Avoid breathing of vapors or mist and contact with skin, eyes and clothing. Do not take internally. **WARNING:** Using this product will expose you to chemicals which are known to the State of California to cause cancer and reproductive harm.

**FIRST AID: IF SWALLOWED, do not induce vomiting.** Call your poison-control center, hospital emergency room or physician immediately for instructions. **IN CASE OF EYE CONTACT,** immediately flush with water, remove any contact lens, continue flushing with water for at least 15 minutes. If irritation persists, get medical attention. **IN CASE OF SKIN CONTACT,** immediately wash with soap and water. If irritation persists, get medical attention.

**KEEP OUT OF REACH OF CHILDREN**



Goof Off Pro Strength Remover cuts through the toughest adhesives quickly. It works the

Signal Words Contrasting to draw out language

glass, brick, wood, concrete, grout, fiberglass, hand tools and most automotive surfaces. Also safe on fully cured varnished and oil-base painted surfaces. **DIRECTIONS:** Always use safety goggles. People with sensitive skin should use solvent resistant gloves. Apply with a cloth, then blot or rub lightly until spot is removed. Do not apply to floors or spread this product over surface areas greater than 1 sq. foot because fire and health safety risks will increase dramatically. You may need to rewash some surfaces to renew gloss. **CAUTION:** Always test on an inconspicuous area first, as every hard surface is different. Damages many plastics, worn vinyl floors, some automotive paints, and some carpets. **IMPORTANT:** Carefully read all directions, notes and cautions prior to use. Only use this product as directed on the label. **STORAGE:** Do not use or store this product near any source of heat or open flame, furnace areas, pilot lights, stoves, etc. Keep it in a cool, dry place. Keep container closed when not in use. Do not reuse this container.

General Purpose Adhesive Remover 20% VOC

\*Use a nonflammable product such as Citristrip Adhesive Remover or Klean-Strip Adhesive Remover for floors or other large surface areas.

\*\* Regulations only allow use on painted automobile surfaces.

Product Information Hotline: 1-877-GOOF-4663 • 1-877-466-3633

FG657

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**Do NOT apply to large areas. Only apply with a cloth.**

**NO APLIQUE este producto en grandes areas. Aplique únicamente con un paño.**

Goof Off Pro Strength Remover atraviesa rápidamente los puntos y las manchas más resistentes. Resulta efectivo desde el principio para eliminar lo que los limpiadores comunes no pueden tratar. Úselo para eliminar suciedades y errores costosos en el taller mecánico, en el taller o en casa. ¡Actúa más rápido y mejor que los demás solventes.

...y muere no\*\* sabía de les\*\*

ES: Zócalos, bñn, parches de mano y la es. También

...e se agria... m... de acetate completamente curadas.

**INSTRUCCIONES:** Use siempre gafas de protección. Las personas con piel sensible deberán usar guantes resistentes a los solventes. Aplique únicamente a un paño. Frote suavemente hasta eliminar la mancha. No aplique sobre suelos ni rocíe este producto en áreas mayores a 1 pie cuadrado (0.093 m3) ya que el riesgo de incendio y los riesgos a la salud incrementarán dramáticamente. Puede que tenga que volver a encerar ciertas superficies para renovar su brillo.

**PRECAUCIÓN:** Siempre haga una prueba en un área discreta, debido a que cada superficie dura es diferente. Daña muchos plásticos, los suelos de vinilo gastados, algunas pinturas de automóviles y algunas alfombras.

**IMPORTANTE:** Lea cuidadosamente todas las instrucciones, notas y avisos de precaución antes de usar este producto. Use este producto únicamente según se indica en la etiqueta.

**ALMACENAJE:** No use ni almacene este producto

...ga el tific

20%

Company name and information

\*\* Los reglamentos sólo permiten su uso en superficies automotrices pintadas.

# PREEMPTION

- **FHSA:**

The vast majority of courts interpreting the preemptive effect of the FHSA have held that the FHSA preempts state law claims for defective or inadequate labeling on hazardous substances, excepting claims for noncompliance with the labeling requirements of the Act.

- **Practical effect: if manufacturer can prove compliance lawsuit gets dismissed.**

# Do we need to comply with FHSA?

- Consumer or Industrial Product?
- The test is not whether the product says it is for industrial use. The test is, under 16 C.F.R. sec. 1500.3(c)(10)(i), "whether under any reasonably foreseeable condition of purchase, storage, or use the article may be found in or around a dwelling."
  - Products used or stored in a garage, shed, carport, or other building that is part of a household are covered.
- Thus, if you know your product can be used by a consumer, you must comply.

# What is a Consumer Product?

Congress said:

....products which are primarily or exclusively sold to industrial or institutional buyers would be included within the definition of consumer product so long as they were produced or distributed for use of consumers.



## What has CPSC said:

“...the manufacturer of a product has the responsibility to determine the distribution and use patterns of its products and to act accordingly. In our opinion, any doubts should be resolved in favor of considering a product to be a consumer product.”

# Industrial Products

- Occupational Safety and Health Administration (OSHA) 29 CFR 1910.1200
- OSHA's Hazard Communication Standard (HCS) is now aligned with the Globally Harmonized System of Classification and Labeling of Chemicals (GHS)

# Consumer vs. Industrial: Why is this important?

- Industrial products are designed for users who are usually trained and supervised.
- Consumer products are designed for non-professionals who may not know how to use the product safely and may not read the warnings and instructions.
- SDS are not meant for consumers and therefore is not really an adequate warning and instruction for consumer use.

# Industrial Products

- Chemicals used for professional use
- Not sold or available to consumers
- Industrial products subject to OSHA requirements but mostly imposed on employer not manufacturer.
- Employer and manufacturer do not have a legal responsibility to report to OSHA if the industrial product is defective.
- Manufacturer may have to report new hazards to EPA and update SDS/label (OSHA).

# Industrial Chemicals

- Under the provisions of the Hazard Communication Standard, employers are responsible for informing employees of the hazards and the identities of workplace chemicals to which they are exposed.
- Burden on manufacturer is to inform the employer of the hazards and employer must then communicate to employees

# How to Communicate?

- Chemical manufacturers and importers are required to review available scientific evidence concerning the hazards of the chemicals
- Employers can rely on the evaluations performed by the chemical manufacturers to establish the hazards of the chemicals.
- SDS
- On Product Labels

# What Are Safety Data Sheets

- SDS is a detailed information bulletin prepared by the manufacturer of a chemical that describes:
  - the physical and chemical properties,
  - physical and health hazards,
  - routes of exposure,
  - precautions for safe handling and use,
  - emergency and first-aid procedures

# Hazard Communication Standard

## SAMPLE LABEL

CODE \_\_\_\_\_  
Product Name \_\_\_\_\_ } **Product Identifier**

Company Name \_\_\_\_\_  
Street Address \_\_\_\_\_  
City \_\_\_\_\_ State \_\_\_\_\_  
Postal Code \_\_\_\_\_ Country \_\_\_\_\_  
Emergency Phone Number \_\_\_\_\_ } **Supplier Identification**

### Hazard Pictograms



**Signal Word**  
**Danger**

Keep container tightly closed. Store in a cool, well-ventilated place that is locked.  
Keep away from heat/sparks/open flame. No smoking.  
Only use non-sparking tools.  
Use explosion-proof electrical equipment.  
Take precautionary measures against static discharge.  
Ground and bond container and receiving equipment.  
Do not breathe vapors.  
Wear protective gloves.  
Do not eat, drink or smoke when using this product.  
Wash hands thoroughly after handling.  
Dispose of in accordance with local, regional, national, international regulations as specified.

**In Case of Fire:** use dry chemical (BC) or Carbon Dioxide (CO<sub>2</sub>) fire extinguisher to extinguish.

#### First Aid

If exposed call Poison Center.  
If on skin (or hair): Take off immediately any contaminated clothing. Rinse skin with water.

Highly flammable liquid and vapor.  
May cause liver and kidney damage. } **Hazard Statements**

**Precautionary Statements**

### Supplemental Information

#### Directions for Use

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Fill weight: \_\_\_\_\_ Lot Number: \_\_\_\_\_  
Gross weight: \_\_\_\_\_ Fill Date: \_\_\_\_\_  
Expiration Date: \_\_\_\_\_



# Pictograms



# Dual Labels

- OSHA HCS vs. FHSA?
- CPSC has not accepted HCS labels as compliant with FHSA.
- Therefore, selling products for industrial use and consumer use would technically need two labels.
- What are chances of enforcement?

# Why important?

- Industrial products and consumer products both subject to product liability laws and litigation. But laws are different depending on what type of product it is.
- May be impossible to defend industrial product used unsafely by consumer.