

# ACA Industry Labeling Guide, Sixth Edition

# CHAPTER 9 – COMMERCIAL AND SHIPPING LABELING

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## I. Labeling for Toll-Produced and Private-Labeled Products

The Federal Hazardous Substances Act (FHSA) makes it a criminal act to introduce or deliver for introduction into interstate commerce “any misbranded hazardous substance or banned hazardous substance.”

[FHSA Section 4(a), 15 USC 1263]. This responsibility applies to packagers. Packagers should confirm that cautionary labeling on the products they package is correct, regardless of who drafted it, and whether or not their name appears on the label. The FHSA requires only that the name and place of business of the manufacturer, packer, distributor, or seller appear on the label. Thus, the actual manufacturer’s name may not even appear anywhere on the packaging. Since introduction or causing thereof of a misbranded hazardous substance is a prohibited act, the label distributor may share in the responsibility for a violation. A manufacturer may also be held responsible if it introduced the misbranded or banned hazardous substance into interstate commerce. Considering packager and manufacturer responsibility, toll manufacturers may consider labeling products with clear representations of parties involved and their assigned responsibilities.

## II. Warranties

Written warranties related to a product are strictly regulated under the federal [Magnuson-Moss Act](#) and related regulations at [16 CFR Part 700-703 \(Subchapter G\)](#), implemented by the Federal Trade Commission. Covered warranties are not limited to statements made on a product label.

FTC regulations cover the following areas:

- Covered products and scope generally – [16 CFR Part 700](#)
- Disclosure of written consumer product warranty terms and conditions – [16 CFR Part 701](#)
- Pre-sale availability of written warranty terms – [16 CFR Part 702](#)
- Informal dispute settlement procedures – [16 CFR Part 703](#)

## III. Waste Disposal Labeling Guidelines

### 1. General Disposal Statements

For industrial-use products and related packaging, disposal of waste may be subject to regulations promulgated under the federal Resource Conservation and Recovery Act (RCRA) and any analogous state regulations. In the interest of product stewardship and because of the diversity of the potential regulatory requirements governing disposal of waste, the ACA suggested labeling statement for disposal guidance is as follows:

*For disposal guidance of unused amount, contact your local or state government environmental regulatory agency.*

Household paint products that are to be disposed of by consumers are not regulated as hazardous wastes except in California. As with industrial products, disposal labeling for household (consumer) paints is not required by law; however, manufacturers may want to incorporate the general statement above or consider, as an alternative, the following labeling guidance on consumer paints.

### 2. Paint Disposal Statements

**Instructions:** The following are considerations for including information about disposal of paint products on the product label:

- Placement — While placement of the disposal information is not currently mandated by any state or federal law, paint manufacturers may consider including disposal instructions immediately after the “use,” “storage,” or “clean-up” instructions. However, care needs to be taken to ensure that the placement of these instructions is compatible with the precautionary labeling requirements.
- Prominence — While the prominence of the disposal information is not currently mandated by any state or federal law, paint manufacturers may consider giving disposal instructions the same prominence as the “use,” “storage,” or “clean-up” instructions.

### 3. Latex Paint

Leftover latex paint generated by consumers is considered non-hazardous waste in most states. (**Note:** *Latex paint offered for disposal in California is considered hazardous waste, necessitating a consideration of the solvent or oil based statement in lieu of the latex disposal statement.*) As a result, product labels on latex paints may address consumer disposal as follows:

**Environmental Tip:** Give remaining paint to your neighbor, religious institution, school, or other community organizations.

**Partially Full:** Pour residue into absorbent material. When dry, dispose the dried absorbent mixture with normal trash; or save for a household hazardous waste paint collection program.

**Empty:** This container is recyclable in a recycling program.

### 4. Solvent or Oil-Based Paint

Solvent or oil based paint is not a RCRA hazardous waste if generated by consumers. However, it is considered a household hazardous waste by most state and local waste management agencies. As a result, product labels on solvent or oil based paints may address consumer disposal as follows:

**Environmental Tip:** Give remaining paint to your neighbor, religious institution, school, or other community organizations.

**Partially Full:** Pour residue into absorbent material and dispose of according to federal, state, or local regulations; or save for a household hazardous waste paint collection program.

**Empty:** This container is recyclable in a recycling program.

### 5. Aerosol Paint

Aerosol paint (in spray cans) is not a RCRA hazardous waste if generated by consumers. However, it is considered a household hazardous waste by most state and local waste management agencies. As a result, product labels may address consumer disposal as follows:

**Environmental Tip:** Give remaining paint to your neighbor, church, school, or other community organizations.

**Partially Full:** Save for a household hazardous waste paint collection program.

**Empty:** This container is recyclable in a recycling program that accepts aerosol cans.

## IV. Weights and Measures Labeling

### 1. General

#### *a. Federal*

The principal federal legislation governing “weights and measures” labeling is the [Fair Packaging and Labeling Act \(FPLA\) \(15 USC 1453 et seq.\)](#). However, subsequent to its enactment, the Federal Trade Commission (FTC) ruled (on August 5, 1969) that “paints and kindred products” were outside the scope of the definition of “consumer commodity” contained in the FPLA, and therefore these products were not subject to requirements of the Act. In issuing this *General Statement of Policy or Interpretation*, the FTC declared that “...the legislative history of the Act demonstrates the intent of Congress, for the reasons stated therein, to place certain categories (subject to regulation by FTC) outside the scope of the definition of ‘consumer commodity’ in the Act.” The FTC interpretation is codified in [16 CFR Part 503.5](#). At [16 CFR Part 503.2](#), FTC further explains that “adhesives and sealants” are “consumer commodities” covered by the act, whereas it does not consider “inks” a “consumer commodity.”

Products under the “kindred” classification include paint and paint thinners, paint brushes, aerosol paints, underbody coatings, putty, caulking and glazing compounds and allied products (refer to [NAICS Standard Industrial Classification No. 2851](#)).

Notwithstanding this action by the FTC, state and local governments require paint and coatings products comply with state and local weights and measures labeling laws. Fortunately, most states have followed model standards adopted by the National Conference on Weights and Measures, namely the *Uniform State Weights and Measures Law and the Uniform State Packaging and Labeling Regulation*. Since 1993, revisions to labeling requirements of this law have mirrored those of the FPLA. The following discussion of weights and measures labeling requirements is based on the *Uniform State Weights and Measures Law and the Uniform State Packaging and Labeling Requirements*.

Additional information is available on the website of the [National Institute of Standards and Technology, Office of Weights and Measures](https://www.nist.gov/pml/weights-and-measures) at: <https://www.nist.gov/pml/weights-and-measures>.

### **b. State**

The *Uniform State Weights and Measures Law and the Uniform State Packaging and Labeling Regulation* were developed and adopted by the National Conference on Weights and Measures, which is convened annually to provide a forum for state weights and measures officials to discuss matters of mutual interest. The National Conference on Weights and Measures is sponsored by the National Bureau of Standards under its duties to provide “cooperation with the States in securing uniformity in weights and measures laws and methods of inspection.”

The uniform standards are not binding on the states, unless adopted or referenced by state law, as is often the case. Through the National Conference on Weights and Measures, state weights and measures officials have an opportunity to participate in the development of regulations. Modifications recommended by the several committees of the conference are presented and often approved by state delegates at the national conference. Since state officials are in general agreement with the provisions of these two publications, most state weights and measures laws are patterned closely thereafter.

## **2. Labeling Guidance**

As previously discussed, there is no single federal law controlling the weights and measures labeling of the coatings industry’s products. Therefore, the best guidance for the industry in these matters is contained in the *Uniform State Weights and Measures law, the Uniform State Packaging and Labeling Regulation*, and related publications. The most relevant sections of the [Uniform State Packaging and Labeling Regulation](#) are listed below.

### **Section 5. Declaration of Responsibility: Consumer and Nonconsumer Packages**

#### **Section 6. Declaration of Quantity: Consumer Packages**

- 6.1 General
- 6.2 Largest Whole Unit
- 6.3 Net Quantity
  - » 6.3.1 Use of “Net Weight”
  - » 6.3.2 Lines of Print or Type
- 6.4 Terms: Weight, Liquid Measure, Dry Measure, or Count
  - » 6.4.1 Combination Declaration
- 6.5 SI Units: Mass, Measure
  - » 6.5.1. Symbols
  - » 6.5.2. Fractions and Prefixes
- 6.6. Prescribed Units, SI
  - » 6.6.1 Less than 1 Meter, 1 Square Meter, 1 Kilogram, 1 Cubic Meter, or 1 Liter
  - » 6.6.2 One Meter, 1 Square Meter, 1 Kilogram, 1 Liter, 1 Cubic Meter, or More

- 6.7 Inch pound System: Weight, Measure
  - » 6.7.1. Symbols and Abbreviations
  - » 6.7.2 Units of Two or More Meanings
- 6.8 Prescribed Units, Inch-pound system
  - » 6.8.1. Less than 1 foot, 1 square foot, 1 pound, or 1 pint
- 6.11 Fractions
- 6.12 Supplementary Quantity Declarations
- 6.13 Rounding
- 6.14 Qualification of Declaration Prohibited
- 6.15 Character of Declaration: Average
- 6.16 Random Packages

### **Section 7. Declaration of Quantity: Non-consumer Packages**

- 7.1. General
- 7.2. Location
- 7.3. Terms: Weight, Liquid Measure, Dry Measure or Count
- 7.4. SI Units: Mass, Measure
  - » 7.4.1. Symbols
- 7.5. Inch-Pound Units: Weight, Measure
  - » 7.5.1 Symbols and Abbreviations
- 7.6. Character of Declaration: Average

### **Section 8. Prominence and Placement: Consumer Packages**

- 8.1 General
  - » 8.1.1 Location
  - » 8.1.2 Style of Type or Lettering
  - » 8.1.3 Color Contrast
  - » 8.1.4 Free Area
  - » 8.1.5 Parallel Quantity Declaration
- 8.2 Calculation of Area of Principal Display Panel for Purposes of Type Size
  - » 8.2.1 Minimum Height of Numbers and Letters

### **Section 9. Prominence and Placement: Non-consumer Packages**

- 9.1. General

## Section 10. Requirements: Specific Consumer Commodities, Non-consumer Commodities, Packages, Containers

- 10.3 Aerosols and Similar Pressurized Containers
- 10.7 Cylindrical Containers

## Section 11. Exemptions

- 11.16 Small Packages
- 11.23 Tint Base Paint

**NOTE:** To assist in interpreting the provisions of section 11.23 above, review the ACA Sample Labels which follow in the next section.

## Section 12. Variations to be Allowed

- 12.1 Packaging Variations
  - » 12.1.1 Variations from Declared Net Quantity

## V. ACA SAMPLE LABELS FOR TINT BASE PAINTS

Section 11.23 of the [Model State Packaging and Labeling Regulation](#) permits alternate methods for labeling the quantity of tint base paints, depending on the tinting system used.

### 1. Sample Label 1 for Tint Base Paints

Tint base paints normally must be labeled to show actual content. Under certain circumstances, discussed in Sample Label 2, another method may be used.

Recommended Labeling:

*(Principal Display Panel)*

[CONTAINS] \_\_\_\_\_ fl oz (or \_\_\_\_\_ qt or \_\_\_\_\_ gal) / \_\_\_\_\_ l

*(Back Panel — Optional Statement)*

This container is functionally slack filled for the addition of colorant at point of sale. This product is not to be sold without the addition of a colorant.

## 2. Sample Label 2 for Tint Base Paints

Some tint base paints may be labeled as follows if certain preconditions are met, and where the tint base system:

1. Includes definite foreknowledge of how much tint is to be added,
2. Includes an absolute guarantee that the quantity received by the customer is as stated on the label,
3. Provides on the label that tint bases are not intended to be sold without colorant added, and
4. Also bears on the label a content statement reflecting the amount of tint base contained therein.

Recommended Labeling:

*(Principal Display Panel)*

[CONTAINS] \_\_\_\_\_ \*\*CANNOT BE SOLD WITHOUT ADDITION

OF COLORANT

*(Back Panel)*

Before addition of colorant, the contents are \_\_\_\_\_ \*fl oz/ \_\_\_\_\_ \*l; after colorant is added, the contents are \_\_\_\_\_ \*\*\*.

[ ] Bracketed words are optional.

\* Insert number of fluid ounces or liters.

\*\* Dual quantity content statement (SI Metric and Inch Pound) is required.

\*\*\* Insert One Quart or One Gallon, One Liter as appropriate.

**NOTE: The statement of contents, shown under the principal display panel above, must be placed in the bottom 30 percent.**

### 3. Dual Quantity Content Statement

Section 6.6.4 of the [Model State Packaging and Labeling Regulation](#) requires a dual quantity content statement when the Sample Label 1 model is used for labeling the content of tint base paints. Where the number of fluid ounces can be reduced to “common fractions” in terms of quarts, the parenthetical content statement may be expressed in such terms. “Common fractions” are defined as “halves, quarters, eighths, sixteenths, or thirty seconds” (Section 6.11). As a guide, the parenthetical dual quantity content statement that should accompany a given number of fluid ounces is as follows:

Fluid Ounces	Parenthetical Content Statement
28	1 $\frac{3}{4}$ Pts.
29	1 $\frac{13}{16}$ Pts.
30	1 $\frac{7}{8}$ Pts.
31	1 $\frac{15}{16}$ Pts.
***	***
118	3 $\frac{11}{16}$ Qts.
119	3 $\frac{23}{32}$ Qts.
120	3 $\frac{3}{4}$ Qts.
121	3 $\frac{25}{32}$ Qts.
122	3 $\frac{13}{16}$ Qts.
123	3 $\frac{27}{32}$ Qts.
124	3 $\frac{7}{8}$ Qts.
125	3 $\frac{29}{32}$ Qts.
126	3 $\frac{15}{16}$ Qts.
127	3 $\frac{31}{32}$ Qts.

## VI. Shipping, Marking and Labeling Requirements

### 1. Marking

#### a. General Information

- A. The federal regulations governing marking are contained in [49 CFR Part 172, Subpart D](#), more specifically, in Parts 172.300 through 172.338 (*Due to space constraints, these regulations are not reprinted as part of this guide.*) Specific details are also provided in the “Marking and Labeling Module” of ACA’s [Guide to Training Hazardous Materials Employees Involved in Transportation](#) (ACA member login required), available online at: [https://www.paint.org/wp-content/uploads/dlm\\_uploads/2019/12/Transport-Training-Guide.pdf](https://www.paint.org/wp-content/uploads/dlm_uploads/2019/12/Transport-Training-Guide.pdf)

Additional information is also available on website of the Department of Transportation’s web site: <http://hazmat.dot.gov>.

- B. “Marking” is broadly defined as the “descriptive name, identification number, instructions, cautions, weight, specification, or UN marks, or combination thereof,” required on outer packagings (*refer to 49 CFR 171.8*).
- C. 49 CFR 172.300 requires that “every person” who offers hazardous materials for transportation must mark each package, freight container and transport vehicle in the manner required by Subpart D.
- D. All required markings must be (*refer to 49 CFR 172.304*):
1. In English;
  2. Durable;
  3. Printed on or affixed to the package surface or on a label, tag, or sign;
  4. Displayed on a background of “sharply contrasting color”;
  5. Unobscured by other labels or attachments; and
  6. Located away from advertising and other markings that could “substantially reduce its effectiveness.”
- E. The use of abbreviations in a proper shipping name is prohibited, with two exceptions (*refer to 49 CFR 172.308*)(*refer to 49 CFR 172.308*):
1. “Other Regulated Material” may be abbreviated as “ORM”;
  2. When an abbreviation appears in Column 2 of the 49 CFR 172.101 table, it maybe used.
- F. Marking of the proper shipping name or identification number of a hazardous material on a package is prohibited, unless that package contains the hazardous material so identified or its residue. This prohibition, however, does not apply in three situations of relevancy to paint and coatings manufacturers (*refer to 49 CFR 172.303*).
- G. Separate marking requirements are prescribed for non bulk packagings (capacity < 119 gallons for liquids, < 882 pounds for solids, and < 1000 pounds for gases) and for bulk packagings (capacity > 119 gallons for liquids, > 882 pounds for solids, and > 1000 pounds for gases). For the general marking requirements for non bulk packagings refer to 49 CFR 172.301 (described in general in Section II), for bulk packagings, refer to 49 CFR 172.302 (described in general in Section III).
- H. Under the conditions specified, materials may be transported in the United States when shipped in accordance with the regulations under the International Civil Aviation Organization (ICAO) and the International Maritime Organization (IMO) (*refer to 49 CFR 171.11 and 171.12*).

## 2. Specific Markings for Non-Bulk Packagings (refer to 49 CFR 172.301)

- A. *Mandatory:* Before it can legally be offered for transport, a non-bulk packaging must at a minimum display the following two items of information:
1. The proper shipping name of the material being shipped (obtained from Column 2 of the 49 CFR 172.101 table); and
  2. The material's identification number preceded either by "UN" or "NA" (both obtained from Column 4 of the 49 CFR 172.101 table). An exemption from the marking of the identification number is provided in the case of "limited quantities" and ORM D materials (*refer to 49 CFR 172.301(f)*).
- B. *As Appropriate:*
1. Technical Names — In addition, when the proper shipping name of the material being shipped would include a "n.o.s." or other generic description, e.g., "flammable liquids, n.o.s.," the marking on the non-bulk packaging must also include the technical name of the material. Refer to 49 CFR 172.203(k) for further details on technical names. Refer to 49 CFR 172.301(b) for further details on the marking requirements for technical names; and refer to 49 CFR 172.301(f) for details on the exemption from this marking requirement.
  2. Exemption Packagings — "DOT E" followed by the exemption number assigned must be marked on the outside of the packaging when that packaging has been authorized by an exemption (refer to 49 CFR 172.301(c)).
  3. Consignee's or Consignor's name and address, except when the packaging is:
    - a. Transported by highway only and will not be transferred from one motor carrier to another; or
    - b. Part of a carload lot, truckload lot or freight container load, and the entire contents of the rail car, truck or freight container are shipped from one consignor to one consignee. (49 CFR 172.301(d)).
- C. Liquid Hazardous Materials — Specific marking requirements for the transport of non-bulk shipments of hazardous liquids are provided in 49 CFR 172.312. Among these is the requirement that each non-bulk combination package must be legibly marked with orientation arrows pointing to the correct upright direction. For additional details on specification of this marking and applicable exceptions, refer to 49 CFR 172.312.
- D. ORM D Shipments — Specific marking requirements are prescribed for the shipment of ORM D materials (*refer to 49 CFR 172.316*).
- E. "Poisonous" Materials — Specific marking requirements are prescribed for the shipment of poisonous materials (*refer to 49 CFR 172.313*).
- F. "Hazardous Substances" — Specific marking requirements are prescribed for the shipment of hazardous substances in non-bulk packagings (*refer to 49 CFR 172.324*).

## 3. Specific Markings for Bulk Packagings (refer to 49 CFR 172.302)

- A. *Mandatory:* Before it can legally be offered for transport, a bulk packaging must at a minimum be marked with the identification number of the material being transported (refer to 49 CFR 172.302(a) and 172.332).
- B. *As Appropriate:*
1. Exemption Packagings — "DOT E" followed by the exemption number assigned must be marked on the outside of the packaging when an exemption is authorized (*refer to 49 CFR 172.302(c)*).
  2. Residues and vapors (*refer to 49 CFR 172.301(d)*).
  3. Portable tanks, cargo tanks, tank cars, multi unit tank cars, and other bulk packagings — consult 49 CFR 172.326, 172.328, 172.330, and 172.331, respectively.

## 4. U.S. Customs Country of Origin Marking

U.S. Customs marking requirements are contained in [19 CFR 134](#) (*Due to space constraints, these regulations are not reprinted as part of this guide.*)

U.S. Customs requires that every article of foreign origin (or its container) imported into the United States be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or container) will permit, in such manner as to indicate to an ultimate purchaser in the United States the English name of the country of origin of the article, at the time of importation into the Customs territory of the United States (refer to [19 CFR 134.11](#)).

## 5. Labeling

### General Information

- A. The regulations governing labeling for shipments are contained in [49 CFR Part 172, Subpart E](#), more specifically, in Parts 172.400 through 172.450.
- B. A “label” is a form of marking that is required to be used on certain types of packagings to identify hazard characteristics of the material being transported, e.g., “flammable liquid.” The regulations are specific to the label’s size, color, and shape (*refer to 49 CFR 172.407*).
- C. Labeling is required for both a material’s primary hazard and for any subsidiary hazard. For subsidiary hazards refer to 49 CFR 172.402.
- D. The appropriate hazard class, or division number in the case of Division 5.1 (oxidizers) or 5.2 (organic peroxides), must be displayed on the label for the primary hazard, but is prohibited on subsidiary labels (*refer to 49 CFR 172.402*). Note that there are no divisions within Class 3 (flammable and combustible liquids).
- E. A label is required for each hazard class in the case of materials in mixed packagings or materials being shipped in consolidated packagings (*refer to 49 CFR 172.404*).
- F. 49 CFR 172.400 identifies the specific types of packagings for which labeling is required. For example, a label is required for all non bulk packages, but only some bulk packages.
- G. When the use of a label is required, it will be so noted, and the specific label (or labels in the case of a material having both a primary and subsidiary hazard) for that particular material will be indicated by Column 6 of the 49 CFR 172.101 table, and the table provided under Part 172.400; also, refer to Part 172.402 regarding subsidiary hazards.
- H. Details on the placement of labels and general label specifications are provided by 49 CFR 172.406 and 172.407, respectively. As a general rule, labels must be placed on the same surface and near the proper shipping name marking on the packaging.
- I. For details on design specifications for each specific label that may be required (e.g., “flammable liquid,” “corrosive,” “empty”), refer to 49 CFR 172.411 through 172.450.

## Determining the Requisite Labeling — For Paint and Coatings Specifically

- A. Using the table for paint and the information provided in 49 CFR 172.101, you should undertake the following step by step analysis to determine the labeling to use:
- B. **EXAMPLE:** If, after characterization of the material the following is chosen as the shipping name:

Paint including paint, *lacquer, enamel, stain, shellac solutions, varnish, polish, liquid filler, and liquid lacquer base*, **Class 3, UN1263**

Step 1. Determine your material's packaging and refer to 49 CFR 172.400. Remember that Part 172.400 specifies the types of packagings for which labeling is required. As a general rule, labels are required for all non bulk packagings.

Once you determine that the packaging type you intend to use requires labeling, refer to Column 6 of the 49 CFR 172.101 table to determine the proper label to use. Column 6 indicates that materials meeting this proper shipping description should be labeled "flammable liquid."

Step 2. Determine whether your shipment qualifies for a labeling exception.

- a. This is done by looking in column 8A of the "Hazardous Materials Table" in 49 CFR 172.101, or by referring to 49 CFR 172.400a, which identifies several conditions for which an exception from labeling is authorized. For example, Part 172.400a(b) advises that, under certain conditions, materials shipped in "small quantities" and in "limited quantities" may be exempted from labeling under the applicable section in Part 173; in this case, for further details refer to Part 173.4 (for small quantities) and Part 173.150 (for Class 3 flammable and combustible liquids).
- b. Determine whether your material can properly be reclassified. If your material can be reclassified "combustible" under 49 CFR 173.120(b)(2), it would be exempt from the labeling requirements.

Step 3. Determine whether the material has a subsidiary hazard (refer to column 6 of the "Hazardous Materials Table" in 49 CFR 172.101. Subsidiary hazards are listed after the primary hazard, separated by a comma.

- a. In this case, materials meeting this shipping description do not.
- b. Assume, however, for the sake of this example, that your material does have a subsidiary hazard. 49 CFR 172.402 will advise you under what circumstances you must label for the subsidiary hazard. For example, Part 172.402 advises that a label is not required for a flammable liquid with a subsidiary hazard that is being shipped as a Packing Group III material, but it is required when the material is being shipped as a Packing Group I or II material.

Step 4. Refer to 49 CFR 172.419, 172.406 and 172.407. These sections will provide you with the requisite details on, respectively, how a "flammable liquid" label should look, its proper placement on the packaging(s), and its required size and other physical design specifications. If your material presents a subsidiary hazard, you should refer to the applicable section for its description.