RECEIVED
OFFICE OF THE SECRETARY
SEP 9 2 40 PM '77
CONSUMER PRODUCT
SAFETY COMMISSION

UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT
SAFETY COMMISSION
WASHINGTON, D.C. 20207

TO : The Commission
Through: Richard E. Rapps, Secretary
Through: Theodore J. Garrish, General Counsel

DATE: SEP 9 1977

FROM : Steve Lemberg, Assistant General Counsel

SUBJECT: Briefing Package on HP 74-16, Regarding Combustibility Labeling for Certain Paint Products - BALLOT VOTE

The attached briefing package on HP 74-16 addresses the request of the National Paint and Coatings Association to permit the required combustibility warning statement on certain paint products to appear elsewhere on the container than on the main panel, as is presently required under 16 CFR 1500.121. We have no legal comments at this time since our views have been incorporated into the briefing paper and draft Federal Register notice at Tab K.

At the request of the Executive Director, the attached package is being forwarded for ballot vote. The Executive Director suggests that this and other selected petition packages may be decided more expeditiously if they are circulated on a ballot vote rather than being placed on a Commission agenda. If any Commissioner requests that this petition be handled as an agenda item, it can be scheduled for the next regular Commission meeting. Since it is desirable to have matters such as this decided quickly, the Office of the Secretary would appreciate your informing them as soon as possible if you would prefer to handle this as an agenda item rather than on a ballot basis. If you have any questions concerning this petition, please call Mark Gulak or Terri Rogers, Office of Program Management, 492-6754.

Please indicate your vote on the alternatives below and return the ballot to the Office of the Secretary by close of buisness, Monday, September 19, 1977.

A. GRANT THE PETITION _____ (Signature) _____ (Date)

☆U.S. GOVERNMENT PRINTING OFFICE: 1974 733-533/3604 1-3

1. APPROVE FR NOTICE

a. As Drafted

_____ (Signature) _____ (Date)

b. With Changes (Specify)

_____ (Signature) _____ (Date)

c. To Exempt Only Paint With Flashpoint Greater Than 100°F (see alternative B in briefing memo)

_____ (Signature) _____ (Date)

B. DENY THE PETITION

_____ (Signature) _____ (Date)

1. ENFORCE MAIN PANEL LABELING:

a. In _____ Months (insert period of time for products to be brought into compliance; see alternative C in briefing memo). (If the Commission decides to deny the petition, the staff will prepare the necessary implementing documents, including a denial letter and a statement of policy for Commission approval.)

_____ (Signature) _____ (Date)

b. Immediately

_____ (Signature) _____ (Date)

C. ABSTAIN

_____ (Signature) _____ (Date)

Comments/Additional Instructions

cc: OEX
B. Simson, OPM

3

RECEIVED
OFFICE OF THE SECRETARY
SEP 9 2 41 PM '77
CONSUMER PRODUCT
SAFETY COMMISSION

UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT
SAFETY COMMISSION
WASHINGTON, D.C. 20207

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Please indicate your vote on the alternatives below and return the ballot to the Office of the Secretary by close of buisness, Monday, September 19, 1977.

✓A. GRANT THE PETITION

(Signature) 12/6/77 (Date)

☆U.S. GOVERNMENT PRINTING OFFICE: 1974 733-533/3604 1-3

1. APPROVE FR NOTICE

a. As Drafted

(Signature) (Date) 10/5/77

b. With Changes (Specify)

(Signature) (Date)

c. To Exempt Only Paint With Flashpoint Greater Than 100°F (see alternative B in briefing memo)

(Signature) (Date)

B. DENY THE PETITION

(Signature) (Date)

1. ENFORCE MAIN PANEL LABELING:

a. In _____ Months (insert period of time for products to be brought into compliance; see alternative C in briefing memo). (If the Commission decides to deny the petition, the staff will prepare the necessary implementing documents, including a denial letter and a statement of policy for Commission approval.)

(Signature) (Date)

b. Immediately

(Signature) (Date)

C. ABSTAIN

(Signature) (Date)

Comments/Additional Instructions

cc: OEX
B. Simson, OPM

Sept 19

SMK

(3)

RECEIVED
OFFICE OF THE SECRETARY
SEP 9 2 41 PM '77
CONSUMER PRODUCT
SAFETY COMMISSION

UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT
SAFETY COMMISSION
WASHINGTON, D.C. 20207

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Through: Richard E. Rapps, Secretary
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A. GRANT THE PETITION

(Signature) (Date)

*U.S. GOVERNMENT PRINTING OFFICE: 1974 733-533/3604 1-3

SEP 9 1977

86

1. APPROVE FR NOTICE

a. As Drafted

(Signature) (Date)

b. With Changes (Specify)

(Signature) (Date)

c. To Exempt Only Paint With Flashpoint Greater Than 100°F (see alternative B in briefing memo)

(Signature) (Date)

B. DENY THE PETITION

(Signature) 9/13/77 (Date)

1. ENFORCE MAIN PANEL LABELING:

a. In 24 Months (insert period of time for products to be brought into compliance; see alternative C in briefing memo). (If the Commission decides to deny the petition, the staff will prepare the necessary implementing documents, including a denial letter and a statement of policy for Commission approval.)

(Signature) 9/13/77 (Date)

b. Immediately

(Signature) (Date)

C. ABSTAIN

(Signature) (Date)

Comments/Additional Instructions

cc: OEX
B. Simson, OPM

SEP 9 1977

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Memorandum

U.S. CONSUMER PRODUCT
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WASHINGTON, D.C. 20207

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U.S. GOVERNMENT PRINTING OFFICE: 1974 733-533/3604 1-3

1. APPROVE FR NOTICE

a. As Drafted

(Signature) (Date)

b. With Changes (Specify)

(Signature) (Date)

c. To Exempt Only Paint With Flashpoint Greater Than 100°F (see alternative B in briefing memo)

(Signature) (Date)

B. DENY THE PETITION

R. David Pittle 10/6/77
(Signature) (Date)

1. ENFORCE MAIN PANEL LABELING:

a. In 24 Months (insert period of time for products to be brought into compliance; see alternative C in briefing memo). (If the Commission decides to deny the petition, the staff will prepare the necessary implementing documents, including a denial letter and a statement of policy for Commission approval.)

(Signature) (Date)

b. Immediately

(Signature) (Date)

C. ABSTAIN

(Signature) (Date)

Comments/Additional Instructions

cc: OEX
B. Simson, OPM

RECEIVED
OFFICE OF THE SECRETARY

UNITED STATES GOVERNMENT

SEP 9 2 41 PM '77

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

Memorandum

CONSUMER PRODUCT SAFETY COMMISSION

TO: The Commission
Through: Richard E. Rapps, Secretary
Through: Theodore J. Garrish, General Counsel

DATE: SEP 9 1977

FROM: Steve Lemberg, Assistant General Counsel

SUBJECT: Briefing Package on HP 74-16, Regarding Combustibility Labeling for Certain Paint Products - BALLOT VOTE

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Please indicate your vote on the alternatives below and return the ballot to the Office of the Secretary by close of buisness, Monday, September 19, 1977.

A. GRANT THE PETITION _____ (Signature) _____ (Date)

U.S. GOVERNMENT PRINTING OFFICE: 1974 733-533/3604 1-3

1. APPROVE FR NOTICE

a. As Drafted

(Signature) (Date)

b. With Changes (Specify)

(Signature) (Date)

c. To Exempt Only Paint With Flashpoint Greater Than 100°F (see alternative B in briefing memo)

(Signature) (Date)

B. DENY THE PETITION

Duane Gardner 10/6/77
(Signature) (Date)

1. ENFORCE MAIN PANEL LABELING:

a. In 24 Months (insert period of time for products to be brought into compliance; see alternative C in briefing memo). (If the Commission decides to deny the petition, the staff will prepare the necessary implementing documents, including a denial letter and a statement of policy for Commission approval.)

Duane Gardner 10/6/77
(Signature) (Date)

b. Immediately

(Signature) (Date)

C. ABSTAIN

(Signature) (Date)

Comments/Additional Instructions

cc: OEX
B. Simson, OPM

9 SEP 1977

RECEIVED
OFFICE OF THE SECRETARY

UNITED STATES GOVERNMENT

SEP 9 2 41 PM '77

Memorandum

CONSUMER PRODUCT
SAFETY COMMISSION

U.S. CONSUMER PRODUCT
SAFETY COMMISSION
WASHINGTON, D.C. 20207

TO: The Commission
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Through: Theodore J. Garrish, General Counsel
FROM: Steve Lemberg, Assistant General Counsel

DATE: SEP 9 1977

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Please indicate your vote on the alternatives below and return the ballot to the Office of the Secretary by close of buisness, Monday, September 19, 1977.

A. GRANT THE PETITION

Barbara H. Thrall 10-6-77
(Signature) (Date)

*U.S. GOVERNMENT PRINTING OFFICE: 1974 733-533/3604 1-3

1. APPROVE FR NOTICE

a. As Drafted Barbara H. Franklin 10-6-77
(Signature) (Date)

b. With Changes (Specify)
(Signature) (Date)

c. To Exempt Only Paint With Flashpoint Greater Than 100°F (see alternative B in briefing memo)

(Signature) (Date)

B. DENY THE PETITION
(Signature) (Date)

1. ENFORCE MAIN PANEL LABELING:

a. In _____ Months (insert period of time for products to be brought into compliance; see alternative C in briefing memo). (If the Commission decides to deny the petition, the staff will prepare the necessary implementing documents, including a denial letter and a statement of policy for Commission approval.)

(Signature) (Date)

b. Immediately
(Signature) (Date)

C. ABSTAIN
(Signature) (Date)

Comments/Additional Instructions

cc: OEX
B. Simson, OPM

RM/OGC/DCC

UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TO : Office of the Secretary
Through: Office of the Executive Director MAF
Through: Bert Simson, Director, Office of Program Management (OPM) for

DATE: 17 AUG 1977

FROM : Irvin Weiss, Program Manager, Poison, Chemical Products, OPM

SUBJECT: HP 74-16 Briefing Paper on Petition of National Paint and Coatings Association, regarding Flammability Labeling.

Attached is a briefing package on the petition. Before transmitting it to the Commission please route it through the Office of General Counsel (OGC) for an additional of a cover memo. OGC has recently reviewed and approved the package, however, we have made the following last minute additional changes:

1) A paragraph in the E&S section has been added to highlight Health Sciences comment regarding a 100°F flashpoint.

2) A new option has been added to the "Alternatives" section dealing with the flashpoint issue.

cc:
HIA: (J. Langston, N. Farage, J. Jones)
C&E: (D. Schmeltzer, C. Jacobson)
E&S: (D. Clay, T. Koch)
FIELD: (J. Delgado)

August 8, 1977

BRIEFING PAPER

on

PETITION OF NATIONAL PAINT

& COATINGS ASSOCIATION

REGARDING FLAMMABILITY LABELING

Irvin Weiss
Poisons & Chemicals
Program Manager
Office of Program Management
492-6453

PETITIONER'S REQUEST:

In his revised petition dated March 23, 1976 (Tab A), John Montgomery, the General Counsel for the National Paint and Coatings Association makes the following request:

> That an exemption from the FHSA requirement of "Front" or "Main" panel labeling be granted for those paints and kindred products in the combustible category which have viscosities greater than 150 Saybolt Universal Seconds at 100° F.

The rationale given for this request is that, in the opinion of the NPCA, low viscosity (thin) materials present a greater flammability hazard than high viscosity (thick) materials with similar flash points because when spilled the higher viscosity materials spread more slowly and present a smaller surface area, resulting in lower risk of flashing. They further state that granting the petition would support the philosophy of keeping the front panel of the label available for statements of greater hazards than combustibility, thus not lessening the effectiveness of the signal word and warning statements on the front panel of those viscous type paints which might present a more significant hazard.

LEGAL CONSIDERATIONS - OGC PROVIDED (Tab B):

The Commission may grant the petition to permit other than main panel labeling under section 3(c) of the Act if it finds that "because of the size of the package involved or because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under this Act is impracticable or is not necessary for the adequate protection of the public health and safety."

The Commission may deny the petition if it cannot make the findings quoted above. If the Commission concludes that the petition should be granted in part and denied in part it may do so by issuing a limited or conditional exemption based on the findings it is able to affirmatively make.

OGC indicates that; ". . .by Congressional direction, the hazard of combustibility was made parallel to and on a par with the other principal hazards cognizable under the Act. In view of this we, therefore, believe that the mere fact that a certain liquid product or class of products is 'combustible' rather than 'flammable' or 'extremely flammable' is insufficient reason in itself to warrant making the statutory finding of 'minor hazard' necessary under section 3(c) of the Act as one of the reasons to support a labeling exemption."

BACKGROUND:

A page of the NPCA labeling guide summarizing the history of combustibility labeling for paint products is included as Tab C. The 1969 amendment cited in this guide required front or main panel labeling of flammability, however, NPCA requested on August 20, 1971, that products

in the combustible range be exempted from this requirement. To date, the Commission has neither granted this exemption nor has it enforced the above requirement. When the FHSA was transferred to the CPSC this policy of an effective stay of enforcement was continued. Subsequent to a February 13, 1976, meeting (Tab D), at which time staff concerns were explained, NPCA amended their petition to eliminate materials with viscositities below 150 Saybolt Universal Seconds (low viscosity) from the requested exemption.

OFFICE COMMENTS:

C&E Tab E provides an explanation of lack of enforcement in this area. "Because of the relatively low hazard associated with the combustibility of enamels and other oil based paints, and because of the priority of other matters, enforcement action against such types of paint products received little attention, so long as these products bore a combustibility warning somewhere on the label." A February 25, 1975 memo to Area Offices clarifies the posture of continuing this "stay of enforcement" until some resolution of labeling policy was established.

E&S Tab F indicates that while they have no hard data, "...it appears that the more viscous products are less hazardous."

Engineering also notes that "Products in use around the house are more likely to encounter an ambient temperature in the 80 - 100°F range than above 100°F," however, they do not recommend restricting the exemption to products having a flash point above 80°F.

HI&A Tab G indicates that oil base paint annual sales are on the order of 130 million gallons (1974). These paints are those most likely to be affected by combustibility labeling.

Economics states that economic effects of a decision requiring front panel labeling, i.e., denying the petition, are a function of timing, as follows:

Immediate effective date - Additional labor costs and/or other costs may result. Some disruptions in the distribution of paint by manufacturers might occur. In addition, because of the large number of small companies in this industry, there may be many companies who are not aware of the Commission's action and will, therefore, be in violation.

One Year effective date - At this time, Economic Analysis has no way of estimating the problems and costs, but it appears that they should be significantly less than for an immediate effective date because the inventory of labels should be reduced at the normal rate.

15-24 months - Should be sufficient. . . with no additional cost or distruptions.

E&S Tab H indicates, based on their experience, that"...viscous solvent-based paints and coatings present a minor hazard" (as to flammability). E&S also refers to an April 12, 1972 Bureau of Product Safety (BPS) memo which seems to advocate granting the petition while restricting the products to a flashpoint in excess of 100°F. (The BPS memo was not supplied).

HI&A Tab I shows that for paint and related products, of an estimated 16,439 injuries in 1976, an estimated 334 were thermal burn injuries. For those codes containing high viscosity products(0907, 0924, and 0937) there were an estimated 120 thermal burn injuries. (HIA does not indicate that moving the warning label from the rear panel to the front panel would have lessened the likelihood of these accidents. On the other hand, the petitioner's claim that the front panel should be reserved for highlighting more significant hazards is not substantiated, either by the petitioner or by the staff.)

C&E Tab J provides for a rational of the exemption. It states:

"The rationale for requiring only the signal word and the statement of principal hazards to appear on the main panel was that in this way the consuming public would be alerted to the principal hazard or hazards before purchasing the article, and could then make a conscious decision whether or not to buy it. The additional precautions concerning minor hazards, actions to be followed or avoided, special instructions for storage, etc., would be readily available on the rear or other panel, where it could be seen at the time of use."

"Combustibility of viscous oil base paints appears to present a minor hazard. It would, therefore, be consistant with long standing policy to permit the minor hazard presented by combustibility of viscous paints to be addressed on the rear panel."

ALTERNATIVES:

A. Grant the Petition - if the Commission finds that:

"...because of the size of the package involved or because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements otherwise applicable under this Act is impracticable or is not necessary for the adequate protection of the public health and safety," it may grant the petition, by exempting products with a viscosity greater than 150 SUS from the requirements of FHSA §1500.121(a) that require the "combustible" hazard statement to appear on the main panel of the container.

B. Grant the petition but restricting it to a flashpoint greater than 100°F. In that case, the FR notice will have to be ammended accordingly.

C. Deny the Petition - Deny the petition and direct the staff to begin enforcement:

- o within 9 months
- o 9-12 months
- o 13-15 months
- o 15 or more months

As indicated by Economic Analysis at Tab G, the economic impact, including costs and distruption, depends on whether enforcement is immediate or in 15 months or more.

Federal Register:

Consistent with the option to grant the petition, a Federal Register Notice is provided as Tab K.

LIST OF TABS

Tab A	Petition from John Montgomery, General Counsel for the National Paint & Goatings Association (NPCA)
Tab B	OGC Guidance Memorandum
Tab C	One Page of the NPCA labeling Guide
Tab D	Log of Meeting with Petitioner, February 13, 1976
Tab E	C&E Comments
Tab F	E&S Comments
Tab G	HIA Comments
Tab H	E&S Comments
Tab I	HIA Comments
Tab J	C&E Comments
Tab K	Federal Register Notice

March 23, 1976

Mr. James McNamara
Office of Standards Coordination and Appraisal
Consumer Product Safety Commission
5401 Westbard Avenue
Bethesda, Maryland 20016

Dear Mr. McNamara:

Re: Combustible labeling for paint products
(Petition HP-74-16)

As requested at our meeting on February 13, 1976, I am writing to provide additional information which, hopefully, will assist you in completing action on the Association's pending petition on subject matter. This letter will serve also to modify our earlier request by narrowing the scope of products to be covered. Relevant comments as to economic impact have been included in the Attachment.

Specifically, the National Paint and Coatings Association hereby revises its earlier petition and -- requests officially that an exemption from the requirements of "Front" or "Main" panel labeling be granted for those paints and kindred products (SIC 2851) in the "Combustible" category and having viscosities greater than 150 Saybolt Universal Seconds at 100°F. Comments in support of this revised petition are attached, supplementing material provided previously.

We appreciate the opportunity for the further discussion of this issue provided by the Commission, and request earliest possible resolution. Meanwhile, pending final action on the requested petition, we again request confirmation of the "stay" of any enforcement against members of the industry who are awaiting patiently, but with increasing concern, for guidance and direction on labeling from our Association. Such guidance and direction must necessarily be based on formal action by the Commission on the pending petition (HP-74-16), as now modified. (My letter of January 14, 1976 to the General Counsel, CPSC, refers.)

Sincerely,

John M. Montgomery

John M. Montgomery
General Counsel

JMM:rw
Attachment

1500
Rhode Island
Avenue, N.W.
Washington, D.C.
20005

Telephone
202 462-6272

Attachment to NPCA letter to CPSC, dated March 23, 1976 on "Combustible labeling for paint products" (Petition HP-74-16)

A. BACKGROUND

Briefly stated by way of review, on August 20, 1971, this Association officially requested an exemption from the requirements of "Main" or "Front" panel labeling for those paints and kindred products which fell in the then-new "combustible" category established by the 1969 amendments to the Federal Hazardous Substances Act (FHSA). This request was based on the strong belief that, because of the minor hazard presented by such products, the public health and safety would best be served by continuing the industry practice of placing the "combustible" warning on the side or rear panel, thereby reserving the front panel for statements of greater hazards.

Stating that experience in both transportation and use had shown that paint products within the "combustible" range are not a serious hazard, the rationale for the Association's position then was presented in some detail. Understanding that the pendency of this "petition" would act as a stay of enforcement of provisions relating thereto, the issue was addressed in the 1972 edition of the Paint Industry LABELING GUIDE published in 1972, but the existing recommended precautionary labels -- developed by the Association's Labeling Committee for use by industry -- were not changed.

Subsequently, after a number of meetings, general discussions and additional exchange of correspondence with the agency, the Association (on March 24, 1975) recommended to its members that "when new labels are prepared for paint thinners and other low viscosity products (below 100 S.U.S.), the Signal Word "Combustible" should be moved from the Rear Panel and placed on the Front or Main Panel." Appropriate modifications to the NPCA Recommended Labels for such products have been prepared and will be published in Supplement No. Two to the Labeling Guide.

Because of continuing confusion in the industry and some misunderstanding on the part of CPSC inspectors in the field, NPCA's letter of January 14, 1976 urged earliest possible resolution of the issue. A meeting on the subject of "Combustible Labeling for Paints" was held at Westwood Towers Building on February 13, 1976 and, as requested at that meeting, this additional information is provided to facilitate early and proper action by the agency (CPSC).

B. MODIFICATION OF PETITION

The National Paint and Coatings Association hereby revises its earlier petition and requests officially that an exemption from the requirements of "FRONT" or "MAIN" panel labeling be granted for those paints and kindred products (SIC 2851) in the "Combustible" category and having viscosities greater than 150 Saybolt Universal Seconds at 100°F.

C. RATIONALE

Although NPCA does not, at the present time, have documented technical data to correlate the fire hazard to viscosity, industry and laboratory experience seems to support the rationale for using viscosity as a criteria for relative fire hazard in this issue. Thinner products (e.g. solvent mixtures such as paint thinners) when spilled will spread out much more rapidly than the common viscous-type paints, thus presenting more area for and possibility of flashing when ignited. Viscous-type paints having a flashpoint in the Flammable range would, of course, continue to carry the Flammable warning on the Front or Main panel.

While it would appear that establishing a dividing line for viscosity as low as 100 SUS would provide for adequate separation of the solvent mixtures, such as paint thinners and reducers, from the common viscous-type paints, it is recognized that there would be a gray area on either side of the line. Accordingly, a dividing line of 150 SUS is suggested to ensure that products falling in the gray area are covered. This will decrease the universe of exempted products, yet support the philosophy of keeping the Front panel of the label available for statements of greater hazards than combustibility, thus not lessening the effectiveness of the Signal Word and warning statements on the front panel of those viscous-type paints which might present a more significant hazard.

Paint thinners, which normally have a viscosity about the same as a cleaning fluid, might be misused for cleaning purposes, thus introducing the greater possibility of a fire hazard. Viscous-type paints, with which all consumers are familiar, are not likely to be so mis-used.

D. ECONOMIC IMPACT

It is customary for manufacturers of paints and coatings to maintain a very large stock of labels (on hand and in-print process) for viscous-type paints in the Combustible category. One major manufacturer estimates this figure to be approximately three (3) million labels. Since the company size, market and product lines vary for all manufacturers of paints and coatings, no meaningful average can be provided.

Lead time for preparing label copy and printing is about nine (9) months. Considering the additional time for deliveries of shipments and for the actual manufacturing process, fifteen (15) to twenty-four (24) months is required for orderly planning and transition for significant label changes without serious waste and resultant economic impact. Each printed label is estimated to cost about five (5) cents, thus the value of label inventory for a manufacturer of viscous-type paints is substantial.

There would be great economic waste if existing label stocks should have to be discarded. Overprinting might be possible in some cases, in order to avoid discarding large numbers of labels, but overprinting may clutter the label and confuse the consumer; it is neither a satisfactory nor recommended alternative to new (revised) labels, but would reduce waste if possible.

If a regulatory action were to require changing labels of stocks already manufactured, there would be substantial additional labor costs for affecting individual changes on the products on dealers' shelves and in warehouses. Since most shipping cartons still would be sealed, this could result in the loss of cartons in addition to the added labor costs. This not only would be costly to manufacturers, but also would cause disruption of sales and deny some products to the consumer during this period of time.

E. CONCLUSIONS

1. A dividing line of 150 SUS for viscosity would ensure that all solvent-type mixtures, such as paint thinners, would carry the Combustible warning on the front panel, yet would not require such warning for viscous-type paints. Thus, the Front panel would be reserved for warnings of the more significant hazards which such products might present.

2. Although understood that most manufacturers already have converted their labels for "thin" products in the combustible category, some time (approximately six months) should be allowed to ensure that all affected companies would have time to bring their products into compliance once final action on the requested petition has been promulgated.

3. If the petition were to be denied altogether, a minimum of twelve (12) months should be allowed for label changes in order to permit an orderly transition. This assumes, of course, that the Order would apply only to products manufactured after the effective date of the action, in order to avoid totally unnecessary economic waste which would be incurred if labels had to be changed on products on dealers' shelves and in shipping cartons in warehouses and storerooms.

John M. Montgomery

John M. Montgomery
General Counsel
National Paint & Coatings Association
1500 Rhode Island Avenue, N.W.
Washington, D. C. 20005

March 23, 1976

MAY 2 9 1975

James M. McNamara, OSCA
THRU : Al Dimcoff, Deputy Executive Director
THRU : Margaret A. Freeston, Acting Assistant General Counsel
D.S. Lemberg, Office of the General Counsel

NPCA Petition HP 74-16 Regarding Combustible Hazard Labeling for Paint and Kindred Products; Comments on February 10, 1975, Draft Briefing Package

The hazard of combustibility was added to the list of hazards in the FHSA in 1969 by Public Law 91-113. The purpose was to clarify and close a gap in the existing legislation as to the application of the preemption clause of the FHSA to state and local combustibility labeling requirements. 1/ The effect of this amendment was to add a new "principal hazard" to be accounted for in the labeling of hazardous substances. 2/ Thus, by Congressional direction, the hazard of combustibility was made parallel to and on a par with the other principal hazards cognizable under the Act. In view of this we, therefore, believe that the mere fact that a certain liquid product or class of products is "combustible" rather than "flammable" or "extremely flammable" is insufficient reason in itself to warrant making the statutory finding of "minor hazard" necessary under section 3(c) of the Act as one of the reasons to support a labeling exemption.

In order for the Commission to grant the petition there should be information available to show that the product for which the exemption is being requested is somehow different from other products in the combustibility category in a way that makes the front panel labeling requirements of 16 CFR 1500.121 unnecessary to the protection of the public health and safety for that product. We, therefore, recommend that the draft letter at TAB I be amended to include as a reason

1 / S. Rep. No. 237, 91st Cong., 1st Sess. 7 (1969) H.R. Rep. No. 389, 91st. Cong., 1st Sess. 13 (1969).
2 / Section 2(p)(1)(E) of the FHSA requires a conspicuous "affirmative statement of the principal hazard or hazards, such as 'Flammable 'Combustible', 'Vapor Harmful,' 'Causes Burns,' 'Absorbed Through skin,' or similar wording descriptive of the hazard."

for denial that no information is available to demonstrate that the combustibility hazard of paints and kindred products is minor in comparison with the hazard presented by other combustible liquids, and that no other good and sufficient reason, based on information supplied by the petitioner or otherwise available to the Commission, has been presented to warrant granting the petition. This reason could replace conclusion No. 1 in the draft letter. We would also recommend eliminating conclusion No. 3 completely as the desire to grant exemptions sparingly is not particularly relevant to the prescribed statutory considerations.

If the Commission decides to grant the petition either in whole or in part we recommend that the order implementing this decision consist of normal notice and comment rulemaking. The Administrative Procedure Act requires a notice of proposed rulemaking to be published in the Federal Register except:

> "(A) to interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice; or (B) when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(3).

Therefore, since the situation presented here does not appear to reasonably fall within the exempting language, and since no severe time constraints appear to exist, normal rulemaking procedures should be followed. 3/

Finally, we would recommend eliminating alternative No. 3 since it appears sufficiently covered in alternative No. 2.

DSLemberg:pm:5/28/75
cc: DSLemberg
GC Chron; GC File; GC Reading

3/ Note that the draft FDA exemption regulation at Tab D, p.3 states: "Notice and public procedure and delayed effective date are unnecessary prerequisites to the promulgation of this order, and I so find, since the Federal Hazardous Substances Act contemplates such modification of the labeling requirements under certain conditions." However, we know of no authority for the proposition that simply because a statute contemplates a certain type of regulatory action, and fails to specify the rulemaking procedures to be followed, that the agency may dispense with the requirements of 5 U.S.C. 553.

Fk

7. *Combustible Hazard*—The Federal Hazardous Substances Act was amended in 1969 to include "Combustible" products under the term "hazardous substances." However, NPCA requested (by letter of August 20, 1971) that the Commissioner, FDA exempt "Combustible" products from any front-panel labeling requirements in order that the effectiveness of the present front-panel warning for flammable and extremely flammable products not be reduced. Since final action on this request had not been taken by the Commissioner, FDA, prior to publication of the new Labeling Guide, nor had the agency finalized the regulations implementing the 1969 amendments to FHSA, the NPCA Recommended Precautionary Labels were *not* changed to show the word "Combustible" on the main (or front) panel of the label.

   Final action on the above request was not taken by the Commissioner, FDA prior to the time (May 14, 1973) when statutory responsibilities for FHSA were transferred to the Consumer Product Safety Commission (CPSC), nor had any action on this request been taken by the Commission prior to March 15, 1974 when the material for Supplement No. 1 was delivered to the printer. Under these circumstances, NPCA still has not recommended that all "Combustible" statements be placed on the main (or front) panel because such action would nullify any proper exemption which the Commission later might authorize.

   Notwithstanding the above, NPCA is aware that some companies already have made label changes *and* that CPSC field representatives are commencing to raise more questions on this subject. Because of the latter development, NPCA has re-submitted—to the Chairman, CPSC—its request for exemption. Although a total exemption still is being urged, it appears unlikely that any exemption will be granted for paint thinners and other low viscosity products.

8. (Label 41 Series) *Deliberate Abuse*—It is recommended that the following statement cautioning against deliberate abuse (intentional misuse) of aerosol products be included on the Back Panel label—

   "WARNING—Use only as directed; intentional misuse by deliberately concentrating and inhaling the contents can be harmful or fatal."

Note. The above statement was one of two included in the proposed regulation on "Self-Pressurized Household Products Containing Fluorcarbon Propellants" which was published in the Federal Register on May 3, 1973 (38 F.R. 10956). Although this regulation has *not* yet been finalized, it is anticipated that a requirement for such a label (or its substantial equivalent) will be included in any action of the Consumer Product Safety Commission which may result from the Public Hearings on Aerosol Spray Products held in Washington, D.C. on February 20 and 21, 1974.

Revised—March 15, 1974

LOG OF MEETING

SUBJECT: COMBUSTIBILITY LABELING FOR PAINTS

DATE OF MEETING: February 13, 1976

PLACE OF MEETING: Westwood Towers Bldg.
Room 802

TIME OF MEETING: 1:00 P.M.

LOG ENTRY SOURCE: Harvey Tzuker H.T.
Technical Liaison Division
Office of Standards Coordination & Appraisal

COMMISSION REPRESENTATIVES:

James McNamara	OSCA
Dale Miller	BCM
Vincent Martino	BEA
Dale Ray	BEA
Harvey Tzuker	OSCA
James Price	BES
Margaret Neely	BES
Charles Jacobson	BCM

NON-COMMISSION REPRESENTATIVES:

Mr. Ralph A. Brown
National Paint and Coatings Association, Washington, D.C.

Mr. John M. Montgomery
National Paint and Coatings Association

SUMMARY OF MEETING:

This meeting was requested by Mr. John Montgomery of the National Paint and Coatings Association (NPCA) to discuss their petition regarding combustibility labeling for paints and other substances, petition number HP-74-16. This petition requests an exemption from placing combustibility warnings on the front panels of containers of paints and kindred products.

Mr. Montgomery explained that manufacturers and packagers had been putting cautionary labeling on back panels before the Hazardous Substances Act (HSA) had been enacted. He stated members of the Association had, pending a resolution of the petition, continued to place their combustibility designations on the back panels, and what he termed "principal hazard" warnings (i.e., poison) on the front panels. He said that industry's main point in this was to avoid "cluttering" the front panels and thereby perhaps lessening the impact of the warning statements.

Mr. Montgomery stated that the NPCA had approximately one year ago recommended to the industry through its labeling guide that "thin" products, those having viscosities of less than around 100 or 150 Saybolt Universal Seconds (SUS), such as paint thinners, move their combustibility warnings to the front panels of these products. He expressed the hope that this voluntary action may put a different light on the Commission's consideration of their petition.

Mr. James McNamara, OSCA, asked if NPCA was considering revising their petition to request a labeling exemption only for more viscous paints (viscosities greater than 100 to 150 SUS). Mr. Montgomery indicated that the NPCA was considering such a revision.

Mr. McNamara then inquired if NPCA had any technical data relative to fire hazards for using SUS as a criteria. Mr. Montgomery replied that he did not have any technical information to support the view that thinner products were more hazardous. He remarked that he thought thinner products would spread out more and could thus present a greater hazard than more viscous products.

Mr. McNamara questioned how great the economic impact on the industry would be if the petition were denied. Mr. Royal A. Brown

of the NPCA said that if the compliance data could be extended for two years, the impact would be minimal, but that if the compliance date was immediate, a severe impact could be expected. He explained that the turnover rate on labels was about a year although a large stock of many products and labels are always in inventory and would take more than a year to deplete.

Mr. McNamara requested a letter from the NPCA containing the following points: a revision of the petition, if thought necessary, so that it would apply to the more viscous products, identification of the products above and below 100 SUS, a discussion of multiple hazard labeling, rationale and any data that could support viscosity as a rationale and a discussion of the economic impact at various time spans should the petition be denied.

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E

UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

TO : Bernard Scharf, TAD/OSCA
Through: William H. Garber, Assistant Director for Legal and Technical Review

DATE: May 13, 1976

FROM : Dale G. Miller, Director
Division of Inspection and Enforcement, BCM

SUBJECT: HP 74-16 NPCA Petition
Re: Labeling for Certain Paints and Kindered Paints

On November 6, 1969, the Federal Hazardous Substances Act was amended to include, among other things, a new hazard category for "combustible" substances. Combustible liquids are defined in the statute as those liquids having a flash point above 80 degrees to and including 150 degrees fahrenheit when measured by the Tagliabue open cup tester. This amendment was suggested by the Food and Drug Administration because there were a few products, such as charcoal lighter fluid, that were known to have caused injuries because of their combustibility, but which did not fall within the flash point range specified in the Federal Hazardous Substances Act. The Secretary of HEW, in the agency comments on the bill dated May 22, 1969, stated, "Certainly, mixtures as combustible as charcoal lighters and similar products, which do not meet the flash point test for flammable liquids, should be labeled with a combustible warning".

Because of the relatively low hazard associated with the combustibility of enamels and other oil based paints, and because of the priority of other matters, enforcement action against such types of paint products received little attention, so long as these products bore a combustibility warning somewhere on the label. This policy was in effect at the time the National Paint and Coatings Association (NPCA) subsequently petitioned FDA for an exemption to permit continued placement of combustible warnings on other than the main panel, and while it may have appeared that a stay of enforcement was initiated because of this petition, it was simply a continuation of previous enforcement priorities. The attached memo of February 25, 1975, from the Bureau of Compliance to all area offices was sent out to clarify this policy, since non-uniform approaches to combustible labeling on viscous paints were being applied by different area offices. No such policy exists for thin products in the combustible category, such as paint thinners, or for more flammable products such as shellac, lacquer thinners, brush cleaners, and similar products, and when necessary action has been taken to see that the necessary warnings were placed on the main panel of these classes of products.

The policy of not recommending formal action against products with technical labeling violations is consistant with present BCM policies

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with respect to other product categories. Where the only violation is placement of a signal word, or statement of hazard on the side or rear panel instead of on the main panel, we have not ordinarily recommended formal legal action. We have, however, attempted to obtain correction by means of letter of advice etc., but in the case of viscous oil based paints, we recommend continuing the present policy of not taking action against viscous paints solely because the combustible warning is placed on other than the main panel, at least until the Commission decides on the NPCA exemption request.

This exemption request was submitted by NPCA in 1971 and has remained unresolved since then. To suddenly commence enforcement action after such a long delay would not result in a strong case, and would probably have little appeal for a U.S. Attorney called upon to initiate seizure or prosecution.

If the technical bureaus concur, the Bureau of Compliance believes that granting this exemption is consistant with the purposes of Section 3(c) of the Federal Hazardous Substances Act. However, if the Commission decides to deny this petition, we believe that because of the foregoing reasons a reasonable period of time should be allowed for the industry to make the necessary changes in placement and a Statement of Policy should be published in the Federal Register. What constitutes a reasonable period of time will depend on the information provided by the Bureau of Economical Analysis in their comments.

Attachment

UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

DATE: FEB 25 1975

TO : AREA OFFICE COMPLIANCE OFFICERS
THRU: AREA OFFICE DIRECTORS

FROM : Dale C. Miller, Director, BCMI
THRU: Mary K. Ryan, Director, BCM

SUBJECT: Combustible Labeling of Paint

There appears to be some confusion concerning the placement of the combustible warnings on containers of viscous oil based paints.

There was submitted to FDA a request to exempt paint products from front panel combustible labeling requirements. The paint industry has traditionally carried the combustible warning, even before there was a combustible category in the FHSA, but on the rear or side panel. The basis for the exemption is that combustibility presents a minor hazard. With the formation of the Commission, the National Paint and Coatings Association renewed their exemption request, since no action had been taken by FDA, and the request is currently unresolved.

Until such time as a decision is made on the pending request, no action should be taken against viscous paints solely because the combustible labeling does not appear on the main panel (If granted, the exemption will probably apply only to viscous oil based paints and not to thin products such as mineral spirits).

Dale C. Miller

Dale C. Miller

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UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

TO : Bernard Scharf, TAD, OSCA

DATE: April 29, 1976

RECEIVED
APR 30 1976
TECHNICAL ANALYSIS DIVISION

FROM : James I. Price, Director, BESB

SUBJECT: HP 74-16 NPCA Petition on Labeling for Certain Paints and Kindred Products

This is in response to your memo of April 16, 1976, concerning the subject petition. As you are aware, this petition has been addressed previously in various memoranda and documents which are in the record and still appropriate to the issue. The letter of March 23, 1976, from NPCA modifies their earlier request by introducing viscosity considerations.

The following discussions apply to the specific requests in your memorandum.

1. We have no hard data to conclusively prove that more viscous products are less hazardous. It appears that the proposed value of 150 SUS will effectively divide the more viscous products, such as enamels, from less viscous products such as paint thinners. Intuitively and through experience, it appears that the more viscous products are less hazardous because they are less likely to spread rapidly over large surface areas after an accidental spill. Also, products such as paint thinners are sometimes used with rags or other materials and spread about as cleaning agents, thus presenting more of a fire hazard.

2. Restricting the exemption to products with a flashpoint of 100°F TOC or greater has been discussed in the past, but this provision has not been proposed by the petitioner. The combustible label applies to products with flashpoints between 80 and 150°F. Products in use around the home are obviously much more likely to encounter an ambient temperature in the 80 to 100°F range than above 100°F. If the product exceeds its flashpoint, then there is obviously more likelihood of a fire occurring if the vapors encounter an open flame.

An additional comment is appropriate. It seems that a more important issue than location of labeling may be that of the effectiveness of labeling in general and particularly as it applies to products labeled in accordance with the FHSA and applicable regulations. The practice is to string together a number of hazards in one paragraph. It is worth considering whether the message and meaning is getting through to the consumer in the most effective manner.

UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

TO : Irvin Weiss, OPM

DATE: July 19, 1977

FROM : Nancy Farage, HECP

SUBJECT: HP 74-16 NCPA Labeling Petition

A. The following information is supplied in order to update the data on the characteristics and size of the paint industry included in my original memo dated April 28, 1976.

Production- 1974 (million of gallons)

Trade Sales	475
Industrial Finishes	457

Value of Shipments- 1974 (million of dollars)

Trade Sales	$1,871
Industrial Finishes	1,801

Types of Trade Sales (million of gallons)

	1972	1974
Solvent-Based	215	130
Water-Based	199	280

This last table shows a shift from solvent-based to water-based paints. This means that the amount of paint that the labeling requirement would apply to was less in 1974 than in 1972.

B. Because of the short time we have to respond to this briefing paper, no attempt was made by Economic Analysis to recontact the NCPA regarding their earlier comments. We assume that their comments and our original timing comments are still relevant.

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UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

TO : Bernard Scharf, TAD/OSCA

DATE: April 28, 1976

THRU : Walter R. Hobby, Director, BEA

FROM : Nancy Farage, BEA

SUBJECT: HP 74-16 NPCA Labeling Petition

A. Industry data. We have the following information concerning the characteristics and size of the paint industry:

In 1972 approximately 1300 companies with 1600 establishments manufactured paints and allied products. The percent of value shipped by the largest 4 companies was 22% and by the largest 8 was 34%. Although there are a few very large companies, the industry includes a substantial number of small manufacturers.

Paints can generally be divided into two major categories: trade sales and industrial finishes. Trade sales, which account for roughly 45% of the total volume, are all stock type (shelf-goods) sales to consumers, jobbers, dealers, painters, contractors, builders, and automobile refinish jobbers. They are generally sold through company owned stores, independent retailers or independent wholesalers. Retail stores handled an estimated 300 million gallons of trade sales paints in 1974, or about 63% of all trade sale gallons sold in that year. See the chart below for the distribution of sales of paints by retail stores and the approximate total numbers of these retail stores.

Trade sales paint products basically consist of two types: water and solvent based. Regulation on combustible labeling would probably affect oil-based paints but not water based paints. In 1972 there were 215 million gallons of solvent based paints shipped as compared with 199 million gallons of water-based paints.

Retail Store	Estimated % of Total Retail Sales of Paint	Estimated Number of Retail Establishments
Paint, glass and wallpaper	50%	10 - 15,000
Department, general merchandise, and variety	29%	56,000
Hardware	9%	26,000
Building material stores	7%	25 - 30,000
Other	4%	-

B. Timing Considerations. We are providing these comments in response to your request for us to discuss the economic implications in term of various lead times for compliance if the petition is denied.

The economic effects of labeling paint products as combustible depend on the effective date and on whether the effective date is applicable to all products in the market or to products manufactured after the effective date. The following considerations are based on the assumption that the effective date applies only to products made after that date.

1) An immediately effective date would mean that the can labels on hand would not be in compliance and new labels would have to be ordered and delivered or old labels would have to be altered to comply. It is very unlikely that any company would be able to have complying labels ready immediately because of the mechanics involved in planning, printing and delivering new labels. Therefore, some disruption of the normal distribution of the manufacturers might occur.

While physically altering the labels on hand may be a possible alternative, this would result in additional labor costs and/or other costs depending on how a company accomplishes it. The NPCA states that although overprinting might be possible in some cases, it is not a satisfactory alternative to new labels because it may clutter the label and confuse the consumer.

If the labels on hand could not be converted and the entire inventory was useless, costs would result. The NPCA has estimated the cost of a label as 5 cents each. BEA believes this figure will vary for manufacturers depending on factors such as the sizes of orders and what is to be printed. Total inventory loss for manufacturers will depend on inventory on hand and in process. NPCA estimates that the number of labels on hand may be a 9-12 months supply for many companies. Because of the various size of companies and the different sizes of label inventories each may have, we have no estimate on what this cost might be.

An additional problem of an immediately effective date is that there may be many companies who might not be aware of Commission action and who may find themselves in violation because of their lack of knowledge. Because of the large number of small companies in this industry, this may be a serious problem and should be taken in consideration.

2) An effective date in one year may eliminate some of the costs that would be incurred if there was an immediately effective date, but would still result in some additional costs to the industry. The NPCA estimates 9 months are needed for developing, printing and delivering labels. (This estimate seems generous to BEA.) Any one company may have hundreds of different labels each of which would need to be changed. In addition to this time, time would be needed for changing over to the new labels in the manufacturing process. The problems involved in this phase depend on the size of the company and the operational procedures involved in the change of labels. While this entire process of changing labels could be accomplished in 12 months, the NPCA believes it would require additional effort and costs on the part of manufacturers for such things as special ordering of labels and possible overtime for workers.

We have no way of estimating at this time what the problems and costs of a twelve months effective date would be, but it appears that they should be significantly less than for an immediately effective date because the inventory of labels should be naturally reduced in that time.

3) A 15-24 month lead time before the labeling rule is effective should be sufficient for all companies to use their existing stocks of labels and to convert to complying labels with no additional cost or disruption of normal operating procedures.

4) If the effective date of compliance applies not only to goods manufactured after that date but to all goods in the market, the economic impact on the industry would be greater than discussed in the three points above. It would include costs and problems previously discussed as well as costs at the sales level that might result because labels on shelf goods, goods in transit and goods in warehouses would need to be altered or replaced. Assuming that the cans would not be recalled, but would be changed on site, labor and material costs would probable be incurred. In addition if the effective date were immediate, there might be disruptions of sales because items available for sale would not be in compliance.

C. If the petition is granted, there should be no economic effects on companies because no change from the present system would be required.

UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

TO : Bernard Scharf
Technical Analysis Division, OSCA

DATE: May 5, 1976

FROM : R. Hehir, Ph.D., Director, BBS

SUBJECT: Petition HP 74-16, NPCA Request for Exemption from Front Panel Labeling for Certain Combustible Paints and Kindred Products

The amendment, submitted by NPCA, to Petition HP 74-16 narrows the group of products for which an exemption from "front" or "main" panel labeling is being requested; i.e., from all paints and kindred products which fall into the combustible category to those which have a viscosity greater than 150 SUS.

As previously indicated in our memo of 10/4/74, it has been our experience that viscous solvent-based paints and coatings present a minor hazard in this regard. We also feel that there is some validity to the argument presented by the petitioner that the "front" or "main" panel of a label should be reserved for more significant hazards.

The Bureau finds there is substantial merit to the proposal contained in the April 12, 1972 Bureau of Product Safety memo on this matter, which would grant an exemption from "front" panel placement of the required combustible labeling for those paint products with viscosities greater than 150 SUS at 100° F and Tagliabue Open Cup flashpoints above 100° F. As indicated in that memorandum, the specified flashpoint >100° F would exceed the ambient temperatures during the summer in most parts of the United States, and paints having a flashpoint greater than 100° F would not be expected to present a significant fire hazard under ordinary conditions of storage or use.

There is, in general, little correlation between flashpoint and viscosity, particularly for those products which are "flammable" or "extremely flammable." The flashpoint is a measure of the ability of a product to give off vapors of ignitable concentration as a function of temperature. It is, in general, related to the most volatile flammable component present in the product. The determination of a flashpoint is an important test for fire

and safety regulations, and is used as a guide under the FHSA for cautionary labeling required to adequately warn the user of a product's flammability hazard; i.e., "extremely flammable," "flammable," and "combustible."

Viscosity is a liquid's resistance to flow. It varies among different liquids and increases to some extent as the temperature drops. In the U. S., the viscosity of oils is usually determined with a Saybolt Universal Viscometer. It is a measurement of the time in seconds required for a given quantity of oil or mixture to drain through a standard hole at a fixed temperature; e.g., 100° F.

The viscosity of a product may be related to its overall fire hazard, particularly when considering products in the combustible range. The more viscous the product, the slower the flow and spread when spilled and, therefore, a smaller area of exposure to an ignition source. Conversely, the lower the viscosity of the product, the more rapidly the liquid will spread when spilled, will form thinner layers and make a larger area available for an ignition source.

As indicated by the petitioner, the establishment of a specified viscosity of 150 SUS as a criterion rules out an exemption for the more hazardous low viscosity solvent-type paint products; e.g., certain paint thinners and brush cleaners. These products, because of their low viscosity, will spread rapidly when spilled, form thin layers which could quickly reach ambient temperature, and would also produce much higher vapor concentrations. They are products of the type which might be used by the layman as a cleaning solvent.

UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

TO : James Eisele, PM
Through: Joann Langston, AED, HIA; Dr. Robert D. Verhalen, DAED, HIA
Robert E. Frye, Director, HEPA

DATE: June 28, 1977

FROM : Elaine A. Tyrrell, HEPA

SUBJECT: HP74-16, NPCA Petition on Labeling for Certain Paints and Kindred Products.

Epidemiology was requested by Melvin Kramer to update its memorandum of April 28, 1976, regarding our input to the subject petition.

The purpose of this update was to provide current information for a Federal Register proposed exemption from full label requirements, FHSA for certain solvent-based paints and other similar surface coating materials. Specifically, we were asked to supply a breakdown of thermal burn injuries for paints and related products, considering both product flash point and viscosity. NEISS Surveillance Data for these 6 product codes for calendar year 1976 are listed below. It should be noted that the estimates presented for thermal burns are based on a relatively small sample.

Code	Product Description	NEISS Estimated Injuries CY 1976	NEISS Estimated Thermal Burns CY 1976
0903	Solvent Based Cleaning and Sanitizing Compound	3,875	37
0907	Paints, Varnish, Shellac, Rust Preventative, etc.	5,219	57
0908	Paint and Varnish Thinners	3,146	150
0924	Paint and Varnish Removers	2,215	63
0933	Turpentine	1,783	27
0937	Rust Remover	201	0
	Total	16,439	334

As can be observed in the table, out of a total 16,439 estimated injuries for these 6 product codes for calendar year 1976, 334 represent thermal burn injuries.

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CPSC in-depth investigations, Surveillance Desk reports, and death certificates were reviewed for calendar years 1975 and 1976. There were 7 in-depth investigations, 16 Surveillance Desk reports, and 22 death certificates on file relating to thermal burn injuries and these products.

Six of the seven in-depth investigations involved products of low viscosity such as paint thinner, lacquer thinner, enamel reducer, and turpentine. Of these six incidents, only 2 involved vapor ignition, but no information was given concerning the flash points of the products in these 2 cases. In the one remaining incident, a high viscosity product was involved. Automotive paint spilled out of the container onto a warm hotplate and ignited.

Of the 16 reports on file with the Injury Surveillance Desk, four listed paint or lacquer thinner as being involved, four listed a "solvent", three listed lacquer or varnish, two listed paint, one listed cleaning fluid, one listed paint and varnish remover, and one listed automobile undercoating. In six of these cases vapor ignition occurred - two with paint or lacquer thinner, two with paint, one with lacquer or varnish, and one with paint and varnish remover. Paint or lacquer thinner, "solvent," cleaning fluid, and lacquer or varnish may be considered low viscosity products while paint and varnish remover and automobile undercoating as high viscosity products. Paint can be low or high viscosity. No information was given in any of these reports regarding either viscosity or flash point.

Low viscosity products were involved in all but 2 of the incidents in the death certificates. No details were presented in the certificates concerning whether or not a vapor ignition occurred.

UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

TO : Bernard Scharf, SCAT
Through: Dr. Robert Verhalen, Director, BEP

DATE: April 28, 1976

FROM : Edward Irwin, BEPH

SUBJECT: HP 74-16, NPCA Petition on Labeling for Certain Paints and Kindred Products

The Bureau of Epidemiology was requested to supply a break out of thermal burn injuries by flash point of product. Viscosity was also to be considered. Initially a review of NEISS Surveillance Data was conducted for 6 product codes as shown below:

Code	Product Description	NEISS Reported Injuries	Reported Thermal Burns
Total		807	17
0903	Solvent based cleaning and sanitizing compounds	210	4
0907	Paints, varnish, shellac, rust preventive, etc.	261	2
0908	Paint and varnish thinners	158	7
0924	Paint and varnish removers	86	1
0933	Turpentine	81	3
0937	Rust remover	11	0

As is shown in the table, only 17 out of 807 reported injuries were thermal burns.

In-Depth Investigations, Death Certificates, and Surveillance Desk reports were also reviewed. From these sources, incidents involving thermal burns were extracted and reviewed. In all of the codes checked, except 0937, there was at least one investigated thermal burn injury. Altogether, for the period from July 1, 1972, to the present there were 26 investigated thermal burn injuries associated with the subject products. In addition, there were 13 Death Certificates and 12 Surveillance Desk reports.

There were 2 incidents which involved paints which may have been of high viscosity. In one of these a child had intentionally lighted the paint in a can and then threw the flaming can which struck the victim. The other incident was an explosion incident. Ten one-gallon cans of paint were stored near a gas floor furnace in a closed kitchen. The victim was cleaning the vent over the floor furnace when an explosion occurred, possibly from paint fumes and/or dust. Both latex and oil-based paints had been used and lids were not secure. Victim suffered second degree burns to her face and arm.

There were several explosion and ignition incidents involving aerosol paints. These are not discussed here, because in use, the paint is mechanically vaporized.

In addition, there were 24 additional investigated thermal burn incidents involving products of low viscosity, such as turpentine, paint thinner, cleaning solvent, or paint remover. All but one of these incidents occurred as a result of vapor ignition. There were 15 burn injuries requiring hospitalization and 3 deaths resulting from these incidents. All of the deaths resulted from vapor ignition incidents.

In none of the vapor ignition incidents involving paints and kindred products was information available concerning the temperature at which ignition occurred.

In summary, there is very little epidemiological data with which to answer the questions posed, and what is available is of questionable value.

Attachment

UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT
SAFETY COMMISSION
WASHINGTON, D.C. 20207

TO : James McNamara, SCAT

DATE: October 24, 1975

FROM : Dr. Robert Verhalen, Director, BEP

SUBJECT: BEP Input to Petition HP-74-16, National Paint and Coating Request for Exemption to Combustible Labeling

In response to your memo dated October 15, 1975, a summary of the NEISS data for FY '75 on Product Codes 907 (paint, etc.), 908 (paint thinner), 913 (lubricants), 915 (methyl alcohol), 924 (paint remover), 933 (turpentine), and 937 (rust remover) is attached.

Attachment

NEISS DATA, FY 1975, PAINTS, PAINT THINNERS, PAINT REMOVERS, TURPENTINE, METHYL ALCOHOL, RUST REMOVERS, LUBRICANTS

	Total	907 Paint, etc.	908 Paint Thinner	913 Lubri-cants, etc.	915 Methyl Alcohol	924 Paint Remover	933 Turpentine	937 Rust Remover
Estimate, Total No.	15,143	5,349	3,061	2,695	78	2,333	1,546	81
Percent by Age Group		100.1	100.0	100.1	100.0	100.0	99.9	100.0
>5		34.1	50.5	53.1	55.7	25.5	79.6	76.0
5-14		11.2	12.0	5.6	0.0	9.9	7.6	9.7
15-25		11.7	7.6	16.2	16.0	18.2	8.0	14.3
25-64		42.1	29.1	24.4	28.3	44.1	4.6	0.0
65+		1.0	0.8	0.8	0.0	2.3	0.1	0.0
Sample, Total No.	567	245	147	130	6	82	83	7
Percent by Age Group		100.0	100.0	100.1	99.9	100.0	99.9	100.0
> 5		46.1	61.2	53.1	33.3	31.7	72.3	71.4
5-14		15.5	12.9	5.4	0.0	11.0	8.4	14.3
15-25		9.4	6.8	18.5	33.3	20.7	12.0	14.3
25-64		27.8	18.4	22.3	33.3	35.4	6.0	0.0
65+		1.2	0.7	0.8	0.0	1.2	1.2	0.0
Percent Male*		63.2	66.1	64.9	82.7	55.9	68.7	46.2
Mean FSI*		27	122	93	304	81	80	12
Percent by Diagnosis		100.0	99.0	99.8	99.9	100.0	99.9	100.0
Thermal Burns		1.2	2.0	1.5	-	-	2.4	-
Thermal Burns		4.1	12.9	3.8	-	25.6	7.2	14.3
Scalds		-	-	14.5	33.3	-	-	-
Poisoning		49.4	65.3	50.0	66.6	30.5	79.5	-
Foreign Body**		22.4	7.5	2.3	-	13.4	1.2	71.4
Other/N.S.		22.9	12.2	27.7	-	30.5	9.6	14.3
Percent Hospitalized		3.7	14.3	4.6	16.7	3.7	10.8	-
No. Hospitalized, Total	49	9	21	6	1	3	9	-
Thermal Burns	3	-	2	1	-	-	-	-
Chemical Burns	-	-	-	-	-	-	-	-
Scalds	2	-	-	1	1	-	-	-
Poisoning	44	9	19	4	-	3	9	-
Foreign Body**	-	-	-	-	-	-	-	-

* Based on weighted estimates

** Primarily in the eye

Note: Of a total of 700 cases for the seven product categories involved, only 3 (0.4%) were hospitalized for thermal burns. Only 10 cases (1.4%) of therma burns were reported in all.

Hold

OCT 15 1975

James Bradley, EEPH

James M. McNamara, Technical Analysis Division, OSCA

EEP Input to Petition NP-74-16, National Paint and Coating Request for Exemption to Combustible Labeling

REFERENCE: EEPH Memo to James M. McNamara, Same Subject, Dated September 3, 1974

Would you please assist us in completing this project by updating or verifying the accuracy of the data contained in the referenced memorandum. A response by October 21, 1975, would be most helpful. Thank you for your continuing cooperation.

Attachment

bc:
Chron
ORU (2)
JMMcNamara:jae:10/14/75

UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

TO : James McNamara (TAD) (OSCA)
THRU : Robert Verhalen, Dr.PH (BEP)
James Bradley (BEPH)
FROM : Howard C. Heard, Jr. (SAB) (BEPH)

DATE: September 3, 1974

SUBJECT: Petition: HP 74-16, National Paint and Coating (Combustible Hazard)

These remarks are submitted in response to your request for a critique of the petition from National Paint and Coating Association.

On the basis of NEISS data for fiscal year 1974 less than two percent of reported treatments involved thermal burns. Hospitalization was required for less than one-tenth of one percent of these treatments for burns.

Attached is a summary of statistics relating to emergency room visits for injuries associated with paints and kindred products.

On the basis of data that are present in BEP, this petition should be granted.

Attachment

*U.S. GOVERNMENT PRINTING OFFICE: 1974 733-533/3604 1-3

SUMMARY

NEISS DATA, FY 1974, PAINTS, PAINT THINNERS, PAINT REMOVERS, TURPENTINE, METHYL ALCOHOL, RUST REMOVERS, LUBRICANTS

	Total	907 Paint, etc.	908 Paint Thinner	913 Lubricants, etc.	915 Methyl Alcohol	924 Paint Remover	933 Terpentine	937 Rust Remov
Estimate %, by,								
Age:	14,300	5300	3200	1800	700	1000	2200	10
<5		46.5	60.5	54.4	72.3	18.1	85.9	69.
5-14		8.7	5.4	3.7	14.5	20.3	6.5	--
15-25		15.0	13.8	5.5	5.6	14.7	3.6	7.
25-64		29.4	19.9	32.6	7.6	45.8	4.0	23.
65 +		0.3	0.4	3.8	0.0	1.1	0.0	--
% Male Mean								
FSI		70.4	55.4	64.0	75.1	52.6	64.3	48.
Sample %, By								
Age:	852	381	160	89	45	57	114	
<5		64	73	66	71	31	86	6
5-14		12	6	5	13	11	6	-
15-24		11	11	6	7	16	3	1
25-64		13	11	18	8	41	7	1
65 +		1	1	2	--	2	--	-
%, by Diagnosis:								
Burns, Thermal		2	1	1	7	4	--	-
Burns, Chemical		6	15	2	13	39	9	3
Burns, Scalds		--	--	7	--	--	--	-
Poisoning		68	73	69	76	30	84	6
Foreign Body		14	3	--	--	12	2	-
(Eye Prim.)								
Other								
% Hospitalized		38	18	9	20	7	19	-
No. Hospitalized:								
Thermal Burn		2	--	--	1	1	--	-
Chemical Burn		--	--	--	3	1	1	-
Poisoning		141	29	8	5	2	20	-
Foreign Body,		1	--	--	--	--	--	-
Eye								

Note: Of 852 cases in sample, only 4 (less than .1%) were hospitalized for thermal burns. Only 16 (1.9%) cases of thermal burns were reported in all.

DCM

10 MAY 1977

Office of Standards Coordination Appraisal
Attention: Joseph Fandey

Dale C. Miller, Director, BCMI

Petition HP 74-16 (Combustibility of Paints)

We have the following comments which may be helpful in resolving the subject petition:

The initial proposal of the implementing regulations under the Federal Hazardous Substances Act (published in April 1961) would have required that all cautionary labeling appear on the main panel of the container. Numerous comments were received in response to the proposal and because of extreme objections, an informal public hearing was held by the Commissioner of the Food and Drug Administration, and any interested persons were given an opportunity to present their views orally and in writing. After reviewing all written and oral comments, the Food and Drug Administration revised its policy and modified the regulation to require that only the signal word and the statement of principal hazard or hazards appear on the main (front) panel of the container. The balance of the cautionary labeling could appear elsewhere on the label provided that the main panel bore an additional statement such as "Read other cautions on _____ panel".

The rationale for requiring only the signal word and the statement of principal hazards to appear on the main panel was that in this way the consuming public would be alerted to the principal hazard or hazards before purchasing the article, and could then make a conscious decision whether or not to buy it. The additional precautions concerning minor hazards, actions to be followed or avoided, special instructions for storage, etc., would be readily available on the rear or other panel, where it could be seen at the time of use.

Combustibility of viscous oil base paints appears to present a minor hazard (see comments of EBS and BES). It would, therefore, be consistant with long standing policy to permit the minor hazard presented by combustibility of viscous paints to addressed on the rear panel.

cc:
Reading, Records, Chron
BCMI: DCMiller plc 5/5/77

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Part 1500]

CERTAIN SOLVENT-BASED PAINTS AND OTHER SIMILAR SURFACE-COATING MATERIALS

Proposed Exemption From Full Labeling

AGENCY: Consumer Product Safety Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Consumer Product Safety Commission (Commission) proposes a rule that would amend the regulations under the Federal Hazardous Substances Act (FHSA) to permit any required warning statement about the combustibility of certain paint products to appear elsewhere on the container than on the main (or front) panel. The National Paint and Coatings Association (NPCA) petitioned the Commission to take this action. The Commission granted the petition because it believes the hazard of combustibility of certain paint products to be sufficiently minor so as to make a requirement for front panel labeling of the warning not necessary to adequately protect the public health and safety, provided that any required warning is prominently placed on a different area of the container.

DATES: Interested persons are invited to submit written comment on this proposal on or before _____ [insert date 30 days after publication in the FEDERAL REGISTER]. The proposed effective date is the date of publication in the FEDERAL REGISTER of any final regulation.

ADDRESSES: Comments should be addressed to the Consumer Product Safety Commission, Office of the Secretary, 1111 18th Street, NW., Washington, D.C. 20207.

FOR FURTHER INFORMATION CONTACT: Irvin Weiss, Office of Program Management, 5401 Westbard Avenue, Bethesda, Maryland 20207 (301-492-6453).

SUPPLEMENTARY INFORMATION: On May 17, 1974, the Commission received a petition (HP 74-16) from the NPCA, which was subsequently modified by NPCA on March 23, 1976. As modified, the petition requests amendment of the regulations under the Federal Hazardous Substances Act (FHSA) (15 U.S.C. 1261 et. seq.) so as to exempt from the main panel labeling requirements (16 CFR 1500.121(a)) those paints and kindred products falling within the combustible category (as defined in section 2(1) of the FHSA) which have a viscosity greater than 150 Saybolt Universal Seconds (SUS) at 100° F.

The basis for this request for exemption is the petitioner's belief that low viscosity (thin) products (e.g. paint thinners) pose a relatively greater flammability hazard than do high viscosity (thick) products (e.g. paint) even though they have similar flash points. This greater hazard occurs because, when spilled, the low viscosity products spread out much more rapidly than the high viscosity products and thereby present a larger area for, and possibility of, flashing when ignited.

Thus, the petitioner argues, to require front panel labeling for both the high viscosity products and the relatively more hazardous low viscosity products would dilute the importance of using such labeling for statements of "greater" hazards.

The Commission has considered the petition and other relevant information and agrees that there is a distinction in the relative level of hazard posed by the high viscosity products versus the low viscosity products. Further, a study of the Commission's NEISS Surveillance Data for CY 76 shows an estimated 16,439 injuries involving paints and kindred products and of that total only 334 were estimated as thermal burns. Only an estimated 120 of these were in categories of high viscosity products.

SUMMARY OF PROPOSAL

1. Scope of exemption. The petitioner requested that the exemption extend to those "paints and kindred products" in the "combustible" range and having viscosities greater than 150 SUS at 100° F. The Commission finds that the term "kindred products" is vague and therefore has substituted the terms "solvent-based paints and other similar surface coating materials" in its proposal. For the purposes of this regulation, this includes fluids or semifluid materials, with or without a suspension of finely divided coloring matter, which change to a solid film when applied to a surface.

2. Viscosity level of exempted products. The petitioner requested that the viscosity level be set greater than 150 SUS to clearly ensure separation of the low viscosity products from the high viscosity products. This level would provide an adequate margin of safety by excluding from exemption those products of medium viscosity (100 - 150 SUS). The Commission agrees with the petitioner that this level appears to accomplish the distinction necessary to support this proposed exemption and therefore it is included in the proposal of § 1500.83(a)(37) below.

EFFECTIVE DATE

The Administrative Procedure Act (5 U.S.C. 553(d)(1)) allows the Commission to set as an effective date for "a substantive rule which grants or recognizes an exemption or relieves a restriction" at a period less than the 30 days required of most other rules. For this reason and since no delay in the effective date after publication of any final rule would appear to be necessary in this instance, the Commission proposes that the effective date for this § 1500.83(a)(37) be immediately upon its publication as a final rule in the FEDERAL REGISTER.

ENVIRONMENTAL CONSIDERATIONS

The Commission's interim rule on environmental review (42 FR 25494, May 18, 1977) provides that labeling regulations are non-major actions for which an environmental review is not normally required under the National Environmental Policy Act, 42 &SC 4321-4347. An assessment of the potential environmental impact has been made of proposed section 1500.83(a)(37) permitting a combustibility warning statement to be placed on containers of certain paint and similar surface coating products in areas other

than on the main panel. The Commission concludes that there are no potentially significant environmental impacts associated with the proposal. Therefore, there is no need for an environmental impact statement.

CONCLUSION AND PROPOSAL

Section 3(c) of the FHSA (15 U.S.C 1262(c)) requires that for the Commission to exempt a hazardous substance from full compliance with the labeling requirements otherwise applicable, it must find that "...because of the size of the package involved or because of the minor hazard presented by the substance contained therein, or for other good and sufficient reasons, full compliance with the labeling requirements...is impracticable or is not necessary for the adequate protection of the public health and safety....."

Based on the information submitted by the petitioner and the analysis made of it by the Commission (discussed above), the Commission preliminarily determines that those solvent-based paints and other similar surface-coating materials described in the proposal of § 1500.83(a)(37) below, present a "minor" or lesser hazard as compared with other paint products classified as "combustible" by section 2(1) of the FHSA because of their higher viscosity. The Commission preliminarily finds that to require front panel labeling for these products so as to ensure maximum visibility to the consumer at the time of purchase, is unnecessary, since a combustibility warning on a place other than the main panel will adequately serve to inform the consumer at the time of use. Therefore, the Commission preliminarily finds that full compliance with the labeling requirements of the FHSA is not necessary for the adequate protection of the public health and safety.

Therefore, the Commission proposes to exempt such products from the main panel labeling provisions of 16 CFR 1500.121(a). In proposing this action, the Commission wishes to stress that products generally classified as "combustible" by the FHSA are not to be considered as minor hazards.

Accordingly, pursuant to section 3(c) of the FHSA (15 U.S.C. 1262; 74 Stat. 375, as amended, 83 Stat. 189) and under authority vested in the Commission by section 30(a) of the Consumer Product Safety Act (15 U.S.C. 2079(a); 86 Stat. 1231), the Commission proposes to add a new paragraph (37) to 16 CFR 1500.83(a) as follows:

§ 1500.83 Exemptions for small packages, minor hazards, and special circumstances.

(a) The following exemptions are granted for the labeling of hazardous substances under the provisions of § 1500.82:

* * * * *

(37) Solvent-based paints and other similar surface-coating materials including fluids or other semifluid materials, with or without a suspension of finely divided coloring matter, which change to a solid film when applied to a surface. For purposes of this regulation, such products are exempt from the requirements of § 1500.121(a) that would otherwise require the "combustible" hazard statement to appear on the main panel of the container, provided that:

(i) The solvent-based paint or other similar surface-coating material has a viscosity greater than 150 Saybolt Universal Seconds at 100° F.

(ii) The container bears, in full accordance with § 1500.121, any additional cautionary information that may be required for the particular paint product.

* * * * * *

Interested persons are invited to submit, on or before_____ [insert date 30 days after publication date], written comments regarding this proposal. Comments received after this date will be considered to the extent practicable. Comments and any accompanying data or material should be submitted, preferably in five copies, addressed to the Secretary, Consumer Product Safety Commission, Washington, D.C. 20207. Comments may be accompanied by a memorandum or brief in support thereof. Received comments and accompanying data may be seen in the Office of the Secretary, during working hours Monday through Friday.

Dated: _____

_____
RICHARD RAPPS,
Secretary, Consumer Product
Safety Commission.