Concerns Regarding OSHA’s Recent Labeling Guidance

Background – The Department of Transportation (DOT) has long held exclusive jurisdiction over how bulk shipments of hazardous materials—including tank trucks and tank rail cars—are placarded. These placards are straightforward and provide emergency responders with critical information in the event they are confronted with a transportation accident. Specifically, first responders use the placards to identify the hazard at issue, assess the potential threat, and conduct necessary rescue operations to protect human life and the environment. To facilitate prompt responses to these emergencies, placards are simple and easy to process. For example, an acceptable placard and marking under the HMR for anhydrous ammonia is the NON-FLAMMABLE GAS placard modified to display the identification number marking in the center of the placard as shown below.

Issue - Despite DOT’s long-held jurisdiction over the placarding of bulk shipments during transportation, the Occupational Safety and Health Administration (OSHA) has recently stated in guidance and other communications that it intends to infringe on DOT’s jurisdiction and begin requiring its own labels as required by the Hazardous Communication Standard (HCS) to appear on bulk shipments during transportation. Most recently, OSHA stated that “DOT’s regulations at 172.401(c)(5) explicitly permits the transportation of containers labeled in accordance with the Globally Harmonized System of Classification of Labelling of Chemicals (GHS).”

OSHA is incorrect because it fails to acknowledge the clear and important distinction between DOT labels and placards. DOT labels appear on smaller containers such as bags and barrels, while placards are used on bulk containers, such as on tank trucks or tank rail cars. The provision cited by OSHA, 49 C.F.R.172.401(c)(5), is an express exception that allows GHS labelling to appear with DOT labels during transportation. OSHA fails to recognize that there is a near identical provision in DOT’s regulations concerning placarding—49 C.F.R. 172.502(a)-(b)—and that provision has no such exception allowing GHS labelling to appear alongside DOT placards. DOT could have, but chose not to, provide the same exception with respect to placards.

This distinction makes sense. In contrast to the simple and clear elements of a DOT placard, an HCS label can have many different pictograms and textual elements:

Requested DOT Action - In the event of a transportation-related accident, these additional HCS elements could confuse emergency personnel who have long relied exclusively on DOT placards to provide them with the critical information to effectively respond. Likewise, confusion about the overlapping requirements could result in enforcement actions, especially for chemicals covered by HCS in the workplace but not DOT in transportation. These specific safety- and compliance-related concerns are not presented by having HCS
labelling alongside DOT labels on non-bulk packages which are loaded inside a transport vehicle and are not displayed on the outside of the transport vehicle during transportation.

For these reasons, we respectfully request that DOT affirm its exclusive jurisdiction over hazcom in transportation, not just over placarding, labeling and marking of designated hazardous materials. Further that non-DOT hazcom displays be prohibited which could be confused with required DOT placards and markings or the absence of such placards and markings. However, at shipper discretion, a HCS label, in the form of attached tags on or near product valves and filling/discharge openings is acceptable, provided such a tag by its color, design, shape, size or content could not be confused with a required DOT placard or marking.

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Agricultural Retailers Association  
American Chemistry Council  
American Coatings Association  
American Pyrotechnics Association  
American Short Line & Regional Railroad Association  
American Trucking Associations  
Association of American Railroads  
Association of Hazmat Shippers, Inc.  
The Chlorine Institute  
Council on Safe Transportation of Hazardous Articles  
Dangerous Goods Advisory Council  
The Fertilizer Institute  
Gases and Welding Distributors Association  
Industrial Packaging Alliance of North America  
Industrial Steel Drum Institute  
Institute of Makers of Explosives  
International Liquid Terminals Association  
International Vessel Operators Dangerous Goods Association, Inc.  
Lighter Association, Inc.  
National Association of Chemical Distributors  
The National Industrial Transportation League  
National Private Truck Council  
National Propane Gas Association  
National Tank Truck Carriers, Inc.  
Owner-Operator Independent Drivers Association  
Radiopharmaceutical Shippers & Carriers Conference  
Railway Supply Institute  
PRBA-The Rechargeable Battery Association  
Renewable Fuels Association  
Reusable Industrial Packaging Association  
SPI: The Plastics Industry Trade Association  
Sporting Arams & Ammunition Manufacturers’ Institute  
The Sulphur Institute  
Transportation Intermediaries Association  
Truckload Carriers Association