

INTERESTED PARTIES FOR HAZARDOUS MATERIALS TRANSPORTATION

Concerns Regarding OSHA's Recent Labeling Guidance

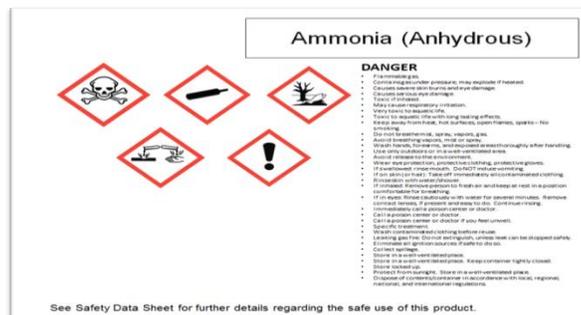
Background – The Department of Transportation (DOT) has long held exclusive jurisdiction over how bulk shipments of hazardous materials—including tank trucks and tank rail cars—are placarded. These placards are straightforward and provide emergency responders with critical information in the event they 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

Lighter Association, Inc.

American Chemistry Council

National Association of Chemical Distributors

American Coatings Association

The National Industrial Transportation League

American Pyrotechnics Association

National Private Truck Council

American Short Line & Regional Railroad
Association

National Propane Gas Association

American Trucking Associations

National Tank Truck Carriers, Inc.

Association of American Railroads

Owner-Operator Independent Drivers Association

Association of Hazmat Shippers, Inc.

Radiopharmaceutical Shippers & Carriers
Conference

The Chlorine Institute

Railway Supply Institute

Council on Safe Transportation of Hazardous
Articles

PRBA-The Rechargeable Battery Association

Dangerous Goods Advisory Council

Renewable Fuels Association

The Fertilizer Institute

Reusable Industrial Packaging Association

Gases and Welding Distributors Association

SPI: The Plastics Industry Trade Association

Industrial Packaging Alliance of North America

Sporting Arms & Ammunition Manufacturers'
Institute

Industrial Steel Drum Institute

The Sulphur Institute

Institute of Makers of Explosives

Transportation Intermediaries Association

International Liquid Terminals Association

Truckload Carriers Association

International Vessel Operators Dangerous Goods
Association, Inc.