



Overlapping Labels Can Lead to Liability

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Multiple regulatory agencies worldwide exercise jurisdiction over how hazards associated with chemicals in the workplace are communicated to employees and others. This creates a complex web of requirements and compliance-related confusion in domestic and international commerce. To relieve this regulatory burden, the United States (principally by and through OSHA and DOT) and the international community came together to develop and establish the United Nations Globally Harmonized System of Classification and Labeling of Chemicals (GHS). In 2011 and 2012, DOT revised its hazardous materials regulations (HMRs), and OSHA modified its hazard communication standard (HCS), to conform to the GHS. By adopting the GHS, the United States believes it will result in a clearer, more effective methodology for conveying information on hazardous chemicals to employers, distributors or shippers, and to downstream users. Although OSHA and DOT continue to implement and enforce their distinct regulatory programs, the HCS and HMRs have been harmonized as much as practicable to minimize overlap. Such harmonization is not without problems, however.

Under OSHA's HCS, manufacturers and distributors must ensure each container leaving the workplace is labeled, tagged, or marked, no matter if they are shipping products directly to end-user employers or to other distributors who in turn ship to end-users. OSHA requires that labels be affixed to or printed on the "immediate container," but does not require that labels be placed on the outer packaging. For example, OSHA labels attached to the container housing the chemical product (i.e., inner bottles) need not also be placed on the outer packaging or box, although it is permissible to do so. Labeling on the outer packaging falls within DOT's control.

There are times, however, where the OSHA labels must appear on the outer surface of the packaging along with any applicable DOT labeling. Typically, this involves a 55-gallon drum that serves as the "immediate container" and "shipped container" (and sometimes workplace container). OSHA's regulations preclude manufacturers and distributors from using or placing labels in such a way that conflict or interfere with DOT labels. In such circumstances, a manufacturer or distributor must refer to Appendix C of 29 C.F.R. 1910.1200 to determine precedence of pictograms and proper display of labels. Where a pictogram required by DOT appears on a shipped container, the pictogram specified in Appendix C.4 for the same hazard must not appear.

Although the regulatory programs were harmonized under the GHS, careful consideration must be given to the placement of labels on packaging and containers before placing chemicals into commerce. Overlapping labels may lead to liability for manufacturers and distributors that could have been avoided by a better understanding of applicable regulatory requirements.

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