

Labeling Requirements Under the OSHA Hazard Communication Standard

Security Equipment Corporation manufactures self-pressurized personal protection and animal deterrent products. As explained below, these products are not subject to labeling requirements under the Globally Harmonized System (GHS) hazard communication regulations adopted by the Occupational Safety & Health Administration (OSHA).

Personal Protection Products

The OSHA hazard communication regulations, as amended by the March 26, 2012 Globally Harmonized System (GHS) final rule,¹ provide several exemptions from OSHA labeling requirements. One of these exemptions applies to:

any consumer product or hazardous substance as those terms are defined in the Consumer Product Safety Act (15 U.S.C. 2051, *et seq.*) and Federal Hazardous Substances Act (15 U.S.C. 1261, *et seq.*), respectively, when subject to a consumer product standard or labeling requirement of those Acts, or regulations issued under those Acts by the Consumer Product Safety Commission....

29 C.F.R. § 1910.1200(b)(5)(v). This exemption applies to Security Equipment Corporation's personal protection products, because each of those products is a "hazardous substance" as defined by the Federal Hazardous Substances Act (FHSA) and is subject to labeling requirements under the FHSA and regulations issued under the FHSA by the Consumer Product Safety Commission (CPSC).

In particular, Security Equipment Corporation's personal protection products are "irritants" and therefore "hazardous substances" as defined by the FHSA.² These products – including products marketed primarily for law enforcement use – are readily available for sale to consumers, and are therefore "intended, or packaged in a form suitable, for use in the household" within the meaning of the FHSA.³ As a result, Security Equipment Corporation's personal protection products are subject to labeling requirements imposed by the FHSA and by regulations issued under the

¹ 77 Fed. Reg. 17574 at 17786 (March 26, 2012).

² See 15 U.S.C. §§ 1261(j) and 1261(f)(1)(iii).

³ See 16 C.F.R. 1500.3(C)(10)(i) (defining "intended, or packaged in a form suitable, for use in the household" to include hazardous substances that, under their "customary or reasonably foreseeable condition of purchase, storage, or use may be brought into or around a house, apartment, or other place where people dwell, or in or around any related building," including products "designed primarily for professional use but which are available in retail stores . . . for nonprofessional use.")

FHSA by the Consumer Product Safety Commission (CPSC).⁴ Accordingly, these products are exempt from OSHA GHS labeling requirements. 29 C.F.R. § 1910.1200(b)(5)(v).

Animal Deterrent Products

Security Equipment Corporation's animal deterrent products are "pesticides" as defined by the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. § 136(u), and are subject to labeling requirements imposed by FIFRA and by regulations issued by the Environmental Protection Agency. As such, these products are excluded from the definition of "consumer product" under the Consumer Product Safety Act and from the definition of "hazardous substance" under the FHSA.⁵ As a result, these products are not subject to the exemption from OSHA GHS labeling requirements that applies to Security Equipment Corporation's personal protection products. However, the OSHA hazard communication regulations provide a separate exemption from GHS labeling requirements for any "pesticide as such term is defined in the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 et seq.) when subject to the labeling requirements of that Act and the labeling regulations issued under that Act by the Environmental Protection Agency." 29 C.F.R. § 1910.1200(b)(5)(i). Accordingly, Security Equipment Corporation's animal deterrent products are nevertheless exempt from OSHA labeling requirements.

⁴ See 15 U.S.C. §§ 1261(p) and 1263(a) (hazardous substances "intended, or packaged in a form suitable, for use in the household" must be labeled in accordance with specified FHSA labeling requirements to be lawfully "introduced in commerce" under the FHSA); 16 C.F.R. § 1500.121.

⁵ See 15 U.S.C. §§ 2052(a)(5)(D) and 1261(f)(2).