

WHMIS 2015 Update

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Presentation Outline

- Transition to WHMIS 2015
- Health Canada Guidance
- Regulatory Cooperation Council Update
- Consultation on Publication of Classifications
- Common enquiries
- Next Steps

Transition to WHMIS 2015

- **WHMIS 2015** (February 11, 2015)
 - Implementation of the Globally Harmonised System of Classification and Labelling of Chemicals (GHS)
 - ***NEW*** *Hazardous Products Regulations* (HPR)
 - *Amended Hazardous Products Act* (HPA)
 - One label, one safety data sheet (SDS) can meet Canadian and US requirements
- WHMIS 2015 delivers on part of the Canada-United States (U.S.) Regulatory Cooperation Council (RCC) Joint Action Plan to:
 - “align and synchronize implementation of common classification and labelling requirements for workplace hazardous chemicals within the mandate of the U.S. Occupational Safety and Health Administration (U.S. OSHA) and Health Canada” without reducing protections for workers
- The mechanism to protect confidential business information remained unchanged

Transition to WHMIS 2015

Purpose of transition

- To allow time for stakeholders to adjust to the new system
- To move old labels and safety data sheets out of the supply chain and workplaces in a predictable and consistent manner across Canada

Approach

- The implementation of WHMIS 2015 will take place gradually, over a four-stage transition period
- **The first deadline is approaching: May 31, 2017**

Transition to WHMIS 2015

Phases	Timing	Manufacturers and Importers	Distributors	Employers
Phase 1	February 11, 2015 to May 31, 2017	WHMIS 1988 or WHMIS 2015	WHMIS 1988 or WHMIS 2015	WHMIS 1988 or WHMIS 2015*
Phase 2	June 1, 2017 to May 31, 2018	WHMIS 2015	WHMIS 1988 or WHMIS 2015	WHMIS 1988 or WHMIS 2015*
Phase 3	June 1, 2018 to November 30, 2018	WHMIS 2015	WHMIS 2015	WHMIS 1988 or WHMIS 2015*
Completion	December 1, 2018	WHMIS 2015	WHMIS 2015	WHMIS 2015*

*Consult your jurisdiction for requirements and transition timelines

Health Canada Guidance

Health Canada Guidance

- Health Canada guidance has been developed and shared:
 - Basic information to stakeholders on SDSs, labels, and Canada/U.S. variances available on Health Canada website;
 - New FAQs added to the Health Canada website in June, 2016
 - Detailed Canadian guidance on the use of Generic Chemical Names on SDSs; and with support from U.S. OSHA, requirements for disclosure of ingredient concentrations.
 - Responses to numerous supplier enquiries through our email account

Technical Guidance



Health
Canada Santé
Canada

Your health and
safety... our priority.

Votre santé et votre
sécurité... notre priorité.

Technical Guidance on the Requirements of the *Hazardous Products Act* and the *Hazardous Products Regulations*

WHMIS 2015 Supplier Requirements

Phase 1

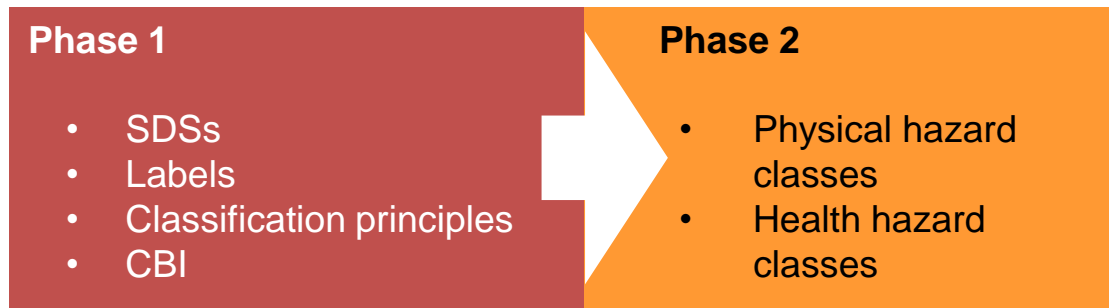


Canada

- Phase 1 of Health Canada's Technical Guidance was released on June 29, 2016
- Available on request at whmis.gc.ca
- Information on principles of classification, label and SDS requirements, and the mechanism to protect confidential business information
- Incorporates guidance pieces on concentration ranges and generic chemical names that were released in 2015
- Overview webinar in October

Technical Guidance

- The Technical Guidance is being released in phases
- Phase 2 of the Technical Guidance is targeted for release in Fall 2016 to support manufacturers and importers in advance of the June 2017 transition milestone



- Webinar on Phase 2 in Winter 2017
- The purpose is to assist suppliers of hazardous products destined for the workplace to understand and comply with requirements under the HPA, HPR and the *Hazardous Materials Information Review Act* (HMIRA)
- The employer and worker requirements of WHMIS are not the focus of HC's technical guidance.
 - Health Canada is aware that several PT jurisdictions are developing WHMIS 2015 employer guidance documents.

Technical Guidance - Development

- The development of the technical guidance has been informed by taking into consideration:
 - Comments received from stakeholders as part of the *Canada Gazette* Part I publication of the proposed HPR
 - Comments received from the Current Issues Committee on guidance priorities
 - Stakeholder inquiries received through the WHMIS inquiries email account
 - Comments from expert reviewers, including OSHA and the CCOHS
 - Stakeholder comments will be welcome after release and will be used to adjust future versions of the technical guidance, or to develop stand-alone guidance, as appropriate.

Regulatory Cooperation Council

Regulatory Cooperation Council (RCC)

- The RCC was created in 2011 to increase regulatory transparency and coordination between Canada and the U.S.
- Health Canada and the U.S. Department of Labor established a Memorandum of Understanding (MOU) in 2013 to promote ongoing collaboration on the implementation of GHS updates.
- As part of the RCC Joint Forward Plan, Health Canada and U.S. OSHA developed a Regulatory Partnership Statement (RPS) based on the MOU, and a Work Plan for Workplace Chemicals
- The RPS describes the partnership agreement between Health Canada and U.S. OSHA regarding workplace chemicals, including that of implementing a deeper collaborative relationship between the agencies to support implementation of the GHS.
- Key principles in our relationship include:
 - The level of protection offered to workers by the existing systems should not be reduced
 - Each country's regulatory processes should be respected
 - Harmonization means establishing a common and coherent basis for chemical hazard classification and communication
 - Stakeholder engagement informs the development of the work plan and its objectives

Regulatory Cooperation Council (RCC)

- HC and U.S. OSHA have agreed to work cooperatively to:
 - Reach common decisions on the implementation and interpretation of the GHS and future developments in the GHS to the greatest extent practicable,
 - Align the technical implementation and guidance related to each country's implementation of the GHS to the greatest extent practicable, and
 - Work together to endeavour to have common positions for the United Nations Sub-Committee of Experts on the GHS (UNSCEGHS) to the greatest extent practicable
- Stakeholders have been engaged routinely in the regulatory development process and stakeholder meetings will continue to be held as part of the GHS implementation

2016-17 RCC Work Plan Development - Stakeholder Comments on Draft

- Continued meaningful stakeholder engagement remains very important
- Need for technical guidance on the HPR to support industry transition and compliance
- A “model” Canada-U.S. label and safety data sheet that explains requirements and variances would be useful
- Importance of having a working group to address variances between Canada and the U.S.
- Preference to return to prescribed concentration ranges under the old *Controlled Products Regulations* and alignment of CBI protection mechanism - CBI requirements in Canada under the HMIRA vs. CBI in the U.S.
- Need to address Physical Hazards Not Otherwise Classified and Health Hazards Not Otherwise Classified requirements in Canada vs. Hazards Not Otherwise Classified requirements in the U.S.
- Importance of Canada-U.S. coordination of synchronization of GHS updates was raised
- Information on how Canada and the U.S. collaborate in international GHS discussions would be helpful, as well as reporting out from UNSCEGHS meetings remains of interest

2016-17 RCC Workplan for Workplace Chemicals

<http://www.hc-sc.gc.ca/ahc-asc/legislation/acts-reg-lois/rcc-ccmr/wp-workplace-pt-travail-eng.php>

Or

<http://www.trade.gov/rcc/documents/2016-rcc-workplace-safety-work-plan.pdf>

3 main areas of work, and ongoing activities in support of those areas:

- **Guidance development to support implementation of the GHS and understanding of interpretation of technical issues and requirements in both Canada and the U.S.**
 - Engagement of stakeholders to identify priorities for guidance
 - Coordination, to the greatest extent possible, of Canada and U.S. updates to guidance, including those to align with the publication of revisions to the GHS Purple Book
- **Coordination of common positions and participation in international discussions on the GHS**
 - Establishment of forward plans, where appropriate, to address international issues raised at the UNSCEGHS
- **Maintaining alignment on the GHS implementation**
 - Communication of GHS updates to stakeholders and potential impacts for Canada and the U.S. related to alignment with revisions of the GHS Purple Book
 - Within the existing working group for work place chemicals, identification of desired regulatory amendments as a result of publication of future revisions of the GHS Purple Book
 - Where variances occur between Canada and the U.S. regarding adoptions of future revisions of the GHS Purple Book, communication of impact and, where appropriate, forward plan to stakeholders

2016-17 RCC Workplan for Workplace Chemicals

Develop guidance for stakeholders

- Issue compliance promotion materials (e.g., joint guidance on label variances and alignment, descriptions of respective regulatory frameworks, use of concentration ranges, as well as other fact sheets) to assist stakeholders with GHS implementation and how to comply with requirements of the HPR and the HCS 2012. 1st Quarter 2017
- Issue ad hoc materials to support interpretations on regulatory and technical issues and to increase predictability for stakeholders on issues related to GHS implementation in both countries, as may be necessary. Ongoing: 3rd/4th Quarter 2016
- Issue Canadian technical guidance on hazard communication and classification requirements in support of suppliers (manufacturers, importers, distributors) being able to meet the HPR requirements. Summer/Fall 2016

2016-17 RCC Workplan for Workplace Chemicals

Coordinate common positions and participate in UNSCEGHS

- Host stakeholder sessions to inform stakeholders of issues prior to the UNSCEGHS international meetings and solicit feedback. June 2016, November 2016
- Convene the working group for workplace chemicals in advance of international meetings to create common positions, where appropriate. June 2016, November 2016
- Provide joint updates to stakeholders on issues that arise from the international discussions. August 2016, January 2017

Maintain alignment on the implementation of the GHS

- Convene a two day face-to-face meeting between U.S. OSHA and Health Canada to discuss items from the most recent revisions of the GHS Purple Book for proposed adoption in the Canadian and U.S. regulations. September 2016
- Host a joint Canada/ U.S. stakeholder meeting to discuss future updates to the Canadian and U.S. regulations. 1st Quarter 2017

Consultation on Publication of Classifications

- Health Canada initiated a consultation with stakeholders this summer on a proposal to publish classifications of substances in accordance with the HPR.
- Consultation opened: July 14, 2016
- Consultation closes: September 30, 2016
- The published classification information could be used to help Canadian importers and suppliers of hazardous products to prepare safety data sheets (SDSs) that are in compliance with the *Hazardous Products Regulations* (HPR)

Consultation on Publication of Classifications

- Health Canada evaluates and classifies a large number of chemical substances each year (484 in 2014/2015 and 650 from April to November 2015).
- These classifications are carried out according to the regulations made under the HPA as required by the administration of the HPA and HMIRA.
- Classifications have potential value to all regulated parties under the HPA.
- In addition, the Open Government initiative supports providing open access to public sector information, and would support the publication of these classifications for the potential benefit of a wider audience.

- We propose that, for each chemical substance that has been assessed against the HPR by Health Canada, the following be published in the WHMIS section of the Health Canada website:
 - the Chemical Abstract Services (CAS) Registry number of the substance,
 - the WHMIS 2015 classification(s), and
 - the date the public literature was last searched for information on the specific chemical substance.
- The results of all evaluations would be published, including those chemical substances that did not meet any of the classification criteria provided in the HPR, and those for which no publicly available information was retrieved.

Consultation on Publication of Classifications

- Suppliers would remain accountable for compliance with the HPA/HPR.
- Suppliers would not be bound by the classifications published on the Health Canada website.
- However, the publication would represent Health Canada's opinion on the appropriate classification for a substance, and as such, suppliers should be prepared to support any deviation from the published classification. This support could include:
 - conclusive proprietary data in the possession of the supplier that supplements the publically available literature,
 - if their product is a mixture, data on the mixture that supersedes the available data on the individual ingredients,
 - information (significant new data) that became available after Health Canada completed its literature search, resulting in the need for the supplier to apply a different classification than the one Health Canada had published, or
 - other reasons for deviation may also be possible.
- No information would be published that would link a chemical substance to a specific product, so that the confidentiality of CBI information would be maintained.
- A feedback mechanism would be established to enable discussion of the published classifications.

Consultation on Publication of Classifications

Charge Questions

- Do you have any concerns related to the proposal Health Canada is putting forward, especially with respect to confidential information? If yes, do you have a suggestion on how the identified issue could be addressed?
- Do you think that classifications should be removed from the website if they have not been updated for a certain period of time? If a classification should be removed, what period would you suggest as a cut off?
- What would you consider the minimum amount of information to be included, for you to find the publication of chemical substance classification useful?
- Health Canada has proposed that a feedback mechanism should be established to enable stakeholders to provide feedback and engage in discussions related to the classification of chemical substances. What elements do you think would be key to include in such a feedback mechanism?

Consultation on Publication of Classifications

Next Steps

- Health Canada will review all submissions received, and use the feedback to prepare a path forward for the publication of classifications on Health Canada's website.

Common Enquiries

- Under WHMIS 2015, why is it mandatory to provide a bilingual Safety Data Sheet (English and French)?
- Under WHMIS 2015, why is it mandatory to provide a Canadian supplier identifier on the label and SDS?
- Under WHMIS 2015, why are CBI requirements not aligned with US trade secret requirements?
- Under WHMIS 2015, what are the document retention requirements?

Bilingual SDSs

Under WHMIS 2015, why is it mandatory to provide a bilingual Safety Data Sheet (English and French)?

Bilingual SDSs

Hazardous Products Regulations

Bilingual safety data sheet and label

6.2 (1) The information elements provided on a safety data sheet and on a label must be in both official languages of Canada.

Bilingual presentation

(2) The information elements referred to in subsection (1) may

- (a)** in the case of a safety data sheet, appear either on a single bilingual safety data sheet or in a document in two unilingual parts that constitute one bilingual safety data sheet; and
- (b)** in the case of a label, appear either on a single bilingual label or in a group of information elements in two unilingual parts that constitute one bilingual label.

Bilingual SDSs

The requirement in the HPR comes from the OLA.

Official Languages Act

Regulatory activities relating to health, safety and security of public

- **26** Every federal institution that regulates persons or organizations with respect to any of their activities that relate to the health, safety or security of members of the public has the duty to ensure, through its regulation of those persons or organizations, wherever it is reasonable to do so in the circumstances, that members of the public can communicate with and obtain available services from those persons or organizations in relation to those activities in both official languages.

Canadian Supplier Identifier

Under WHMIS 2015, why is it mandatory to provide a Canadian supplier identifier on the label and SDS?

Canadian Supplier Identifier

Hazardous Products Regulations

3 (1) Subject to section 3.6 and for the purposes of paragraphs 13(1)(b) and 14(b) of the Act, the label of a hazardous product or the container in which the hazardous product is packaged must provide, in respect of the hazardous product, the following information elements:

(b) the initial supplier identifier;

1 (1) The following definitions apply in these Regulations.

initial supplier identifier means the name, address and telephone number of

- **(a)** the manufacturer; or
- **(b)** the importer of the hazardous product who operates in Canada.

manufacturer means a supplier who, in the course of business in Canada, manufactures, produces, processes, packages or labels a hazardous product and sells it.

i.e. name, address and telephone # of Canadian manufacturer or Canadian importer

Canadian Supplier Identifier

US OSHA has the same requirement in their jurisdiction, for identifying information of a US entity on the label and SDS.

This information identifies the regulated party in each jurisdiction that could be subject to compliance and enforcement action, if necessary.

Canadian Supplier Identifier

Exception:

Importation for use in own work place — safety data sheet

5.9 (1) If an importer imports a hazardous product from a foreign supplier for use in their own work place in Canada and obtains a safety data sheet from the foreign supplier, the importer is exempt from the requirement to provide, on the safety data sheet, the specific information element set out in paragraph 1(d) of Schedule 1 if the name, address and telephone number of the foreign supplier is retained on the safety data sheet.

Importation for use in own work place — label

(2) If an importer imports a hazardous product from a foreign supplier for use in their own work place in Canada, the importer is exempt from the application of paragraph 3(1)(b) in respect of the requirement to provide the initial supplier identifier on the label if the name, address and telephone number of the foreign supplier is retained on the label.

Canadian Supplier Identifier

Other exception:

Importation to bring into compliance

- **5.15 (1)** The importation of a hazardous product is exempt from the application of paragraph 14(b) of the Act [*labelling requirements*] if the hazardous product is imported for the purpose of being brought into compliance with the labelling requirements of these Regulations before it is used or sold.

Credible evidence

- **(2)** A supplier who imports a hazardous product for the purpose described in subsection (1) must, on the request of an inspector, provide credible evidence to the inspector that it is being brought into compliance with the labelling requirements of these Regulations.

Confidential Business Information (CBI)

Under WHMIS 2015, why are CBI requirements not aligned with US trade secret requirements?

Confidential Business Information (CBI)

The Hazardous Materials Information Review Act

- If a supplier or employer does not want to disclose a trade secret on their SDS/label, they must file for a claim with HC for disclosure exemption.

Supplier or employer can claim:

- The chemical name or concentration of an ingredient, substance or material.
- The name of a toxicological study that identifies an ingredient, substance or material.

Employer may also include:

- The chemical, common, generic, trade or brand name of the hazardous product, or
- Information that could be used to identify the supplier.

Confidential Business Information (CBI)

The implementation of the GHS in Canada did not fundamentally alter the elements of the Confidential Business Information (CBI) claims process.

- The CBI mechanism was set out in legislation by Parliament in 1988, based on consensus recommendations from regulators, industry, employers and organised labour
- The fees required for CBI submissions are set out in the *Hazardous Materials Information Review Regulations*, and adjustment would require a full regulatory amendment process, including consultation
- Adjustments to the HMIRA were not considered as part of the adoption of GHS because CBI was outside the RCC commitment
- Alignment with the US approach to protection of CBI would be a reduction in the level of protection currently provided to Canadian workers by way of the government review of labels and SDSs.

Confidential Business Information (CBI)

- The CBI mechanism requirements have limited impact:
 - The impact on market access is limited to the 7 day standard required to issue a Registry Number
 - Sales can proceed during the time required to issue a final decision
 - Fees can be reduced by batching of submissions or for small companies
- Data from foreign suppliers can be provided directly to Health Canada if it cannot be shared with the Canadian CBI applicant.
- Foreign suppliers can apply directly for the HMIRA RN themselves.

Record Keeping Requirements

- Under WHMIS 2015, what are the document retention requirements?

Record Keeping Requirements

- **14.3 (1)** Every supplier who sells or imports a hazardous product that is intended for use, handling or storage in a work place in Canada shall prepare and maintain
 - (a) a document containing a true copy of a **label** that represents the label that is affixed to, printed on or attached to the hazardous product or the container in which the hazardous product is packaged in order to meet the requirement set out in paragraph 13(1)(b) or 14(b), as the case may be, when they sell or import the hazardous product;
 - (b) a document containing a true copy of a **safety data sheet** for the hazardous product that represents the safety data sheet that is in their possession in order to meet the requirement set out in paragraph 13(1)(a) or that they obtain or prepare in order to meet the requirement set out in paragraph 14(a), as the case may be, when they sell or import the hazardous product;
 - (c) if the supplier obtained the hazardous product from another person, a document that indicates the **person's name and address, the quantity of the hazardous product obtained by the supplier and the month and year in which they obtained it**;
 - (d) a document that indicates, for any sales of the hazardous product that result in a transfer of ownership or possession, **the locations at which those sales took place, the period during which they took place, and, for each month in that period, the quantity sold during the month**; and
 - (e) the prescribed documents.
- (2) The supplier shall keep the documents for **six years** after the end of the year to which they relate or for any other period that may be prescribed.

Every supplier must maintain a copy of the label and SDS of the product for 6 years after the end of the year in which they were last used.

Next Steps

1. Release Phase 2 of the Technical Guidance in Fall 2016 to support manufacturers and importers in advance of June 2017 transition milestone
2. Continue discussions on guidance within HC-U.S. OSHA working group, related to:
 - Variances
 - Coordination of future updates of guidance
 - Alignment with GHS Purple Book
3. Work with U.S. OSHA and stakeholders to identify issues/topics that may be considered for future joint Canada-U.S. guidance, as per RCC commitments
4. Prepare a path forward for the publication of classifications
5. Develop and distribute *ad-hoc* guidance, as needed, outside of the Technical Guidance
6. Receive stakeholder feedback on the Technical Guidance

Thank You!

For further information:

- **Health Canada Website:**
 - WHMIS.gc.ca
- **General enquiry:**
 - whmis_simdut@hc-sc.gc.ca
 - 1-855-407-2665