Health Canada Santé Canada

Canada

Workplace Hazardous Materials Bureau
Consumer Product Safety Directorate
Healthy Environments and Consumer Safety Branch
Health Canada

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Presentation to the Society of Chemical Hazard Communication (SCHC)

April 21-25, 2018

YOUR HEALTH AND SAFETY... OUR PRIORITY.

Presentation Outline

- **Transition to WHMIS 2015 Update**
- **Compliance & Enforcement (C&E)**
  - Overview of the Program
  - Roles and Responsibilities
  - Activities
- **Regulatory Initiatives**
  - Prescribed Concentration Ranges
  - Other Initiatives
  - Further GHS alignment
- **Confidential Business Claims Statistics**

TRANSITION TO WHMIS 2015 UPDATE

Transition to WHMIS 2015

Background

On February 11, 2015, the amended *Hazardous Products Act* (HPA) and the new *Hazardous Products Regulations* (HPR) came into force, implementing the Globally Harmonised System of Classification and Labelling of Chemicals (GHS) in Canada.

- The system is now referred to as “WHMIS 2015”.
- The *Controlled Products Regulations* and *Ingredient Disclosure List* have been repealed.
- It is now possible to meet Canadian and U.S. requirements using **a single label and safety data sheet.**

Transition to WHMIS 2015

Phases	Timing	Manufacturers and Importers	Distributors	Employers
Phase 1	February 11, 2015 to May 31, 2018	WHMIS 1988 or WHMIS 2015	WHMIS 1988 or WHMIS 2015	WHMIS 1988 or WHMIS 2015*
Phase 2	June 1, 2018 to August 31, 2018	WHMIS 2015	WHMIS 1988 or WHMIS 2015	WHMIS 1988 or WHMIS 2015*
Phase 3	From September 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 the appropriate jurisdiction for requirements and transition timelines

Transition to WHMIS 2015

Find more information on transition at: www.whmis.gc.ca.

Impact on You:

- Target deadline for full transition remains unchanged.
- Good practices to consider for Distributors while proactively preparing for the transition:

Transition to WHMIS 2015

Find more information on transition at: www.whmis.gc.ca.

Impact on You:

- Good practices to consider for Employers while proactively preparing for the transition:
  - Meet with workplace leadership to develop a transition plan with milestones and responsibilities
  - Establish and maintain an accurate list of all hazardous products in your workplace and whether they are WHMIS 1988 or WHMIS 2015 compliant
  - Understand how the hazard classification criteria of WHMIS 1988 and WHMIS 2015 differ. These differences mean that some products may have different hazard classifications under WHMIS 2015 compared to WHMIS 1988
  - Review training processes and materials to make sure they are WHMIS 2015 ready. Remember that as long as you have both WHMIS 1988 and WHMIS 2015 products in your workplace, you will need to educate and train your employees on both WHMIS 1988 and WHMIS 2015 requirements
  - Communicate with your suppliers to find out if upcoming shipments will contain Safety Data Sheets (SDSs) and labels that are WHMIS 2015 compliant, and to request that they be provided as soon as they become available
  - Plan to use up or remove WHMIS 1988 stock, or relabel these products with WHMIS 2015-compliant labels, prior to the deadline date set by your jurisdiction. Products with WHMIS 2015 labels must have a WHMIS 2015 SDS, not a WHMIS 1988 MSDS
  - If you still have WHMIS 1988 products in your workplace as the transition deadline approaches, request WHMIS 2015 labels and SDSs from your suppliers. Confirm that the SDS and label provided applies to your WHMIS 1988 product. Some suppliers are taking the opportunity to rename and/or reformulate their products
  - Safely dispose of hazardous products that cannot be brought into compliance

COMPLIANCE AND ENFORCEMENT

Compliance and Enforcement

Overview of Program

Health Canada, in collaboration with federal, provincial and territorial (FPT) jurisdictions across Canada, launched a national HPA and HPR compliance and enforcement program.

Definitions:

- **Compliance** – the state of conformity of a regulated supplier or of a regulated hazardous product with legislative and regulatory requirements.
- **Enforcement** – inducing or compelling compliance with a legislative requirement.

Guiding Principles:

- Primacy of occupational health and safety
- Fairness, equity and consistency
- Transparency and accountability
- Collaboration and harmonisation
- Graduated approach to compliance and enforcement

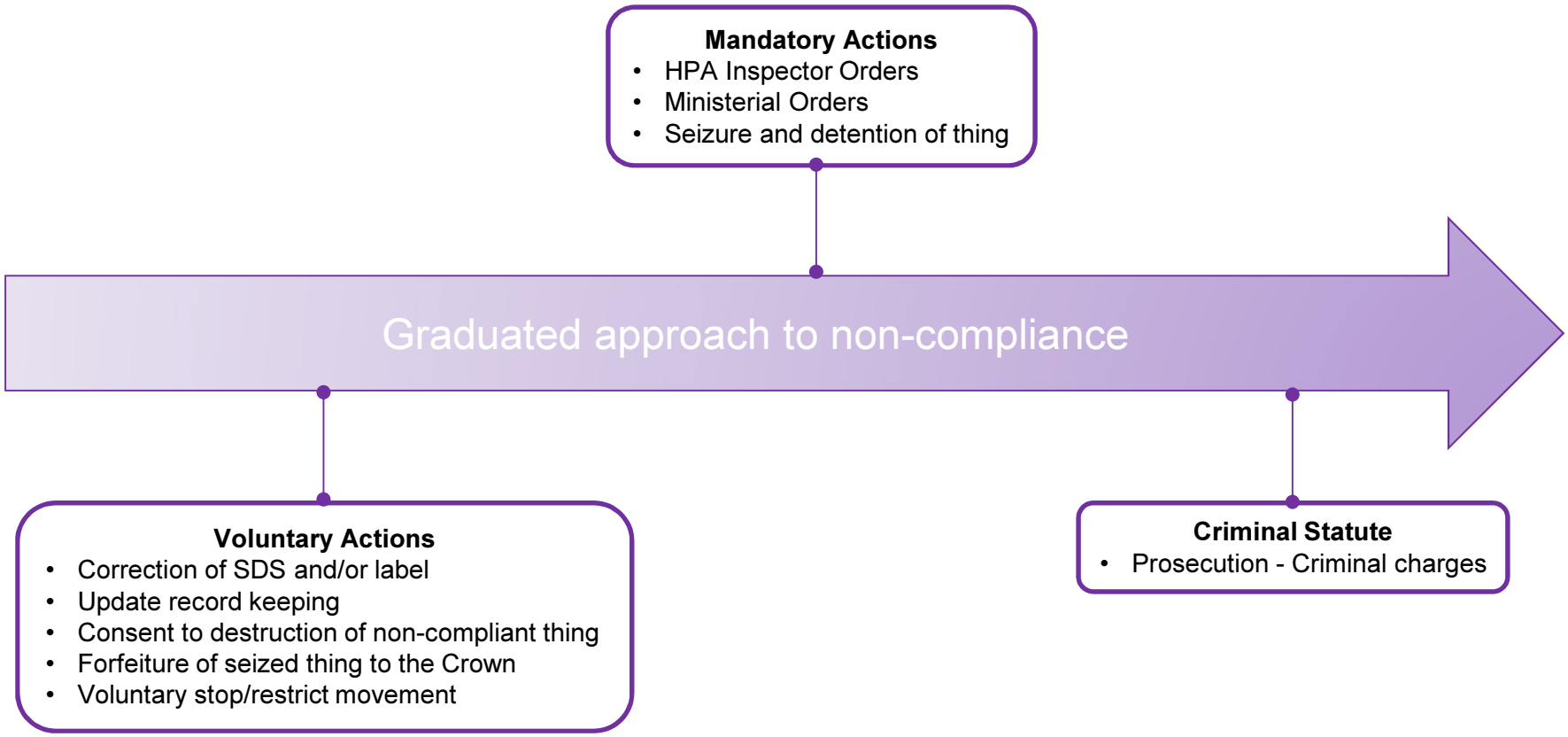
Compliance and Enforcement
Overview of Program

Response to Non-Compliance

- When a regulated party becomes aware that they are not in compliance with the HPA and/or HPR, it is their responsibility to take timely and appropriate action to comply.
- Voluntary actions to address non-compliances may avoid further enforcement actions by HPA Inspectors and/or Health Canada.
- Generally, the response to non-compliances will take a graduated approach, starting with voluntary compliance measures.
    - ➢ However, in cases where there is a high risk to the health and safety of workers, HPA Inspectors and/or Health Canada may proceed directly to mandatory enforcement actions.
- Health Canada may also collaborate with the Canada Border Services Agency (CBSA) to assess compliance at the border.

Compliance and Enforcement

Overview of Program



Compliance and Enforcement
Roles and Responsibilities

Health Canada

- Leads the delivery of Compliance and Enforcement activities under the HPA and HPR on a national level.
- Collaborates with federal, provincial and territorial (FPT) jurisdictions across Canada to designate HPA Inspectors.
- Develops educational materials for inspectors.
- Provides regulatory expertise, as required.

FPT Jurisdictions

- Administer a compliance and enforcement program by performing compliance promotion, conducting inspections and following up on non-compliances.

Compliance and Enforcement
Roles and Responsibilities

HPA Inspectors

- Provided with a list of specific powers to conduct compliance and enforcement activities, such as:
  - Examine, test and take sample of any product, mixture, material or substance where the inspector has reasonable grounds to believe it is a hazardous product.
  - Examine, copy, take extracts from any document.
  - Take photographs.
  - Order to move or not move or restrict the movement of a hazardous product and/or conveyance.
  - Seize and detain anything.
  - Order the storage and/or movement of seized things.

Compliance and Enforcement

Roles and Responsibilities

Suppliers

- Keep a true copy of the label and SDS of a hazardous product.
- Keep specific purchasing information.
- Keep specific sales information.
- Keep the above mentioned documents for a period of six years after the end of the year to which they relate.
- Provide the above mentioned documents to the Minister or HPA Inspector upon request; and.
- Shall not obstruct or provide false or misleading information to an HPA Inspector.

Compliance and Enforcement
Activities

Compliance Promotion:

- Encourage compliance through education.
- A compliance promotion package was disseminated by FPTs to suppliers and employers across Canada that conduct activities regulated under the HPA or the HPR.
  - Basic information on WHMIS 2015, roles and responsibilities of suppliers, employers and workers, transition to WHMIS 2015.
- The package helps suppliers make well-informed decisions towards compliance.

Compliance and Enforcement

Activities

Inspections:

- Inspections of supplier and employer locations where hazardous products are located were conducted to verify compliance with the HPA and/or the HPR.
- Compliance was assessed through the review of documents that a supplier is required to keep and maintain (i.e. labels, SDSs, specific sales and purchasing information) and/or verifying practices for how/when the SDS is provided to a purchaser upon sale.
- Enforcement actions will be taken if found to be required.
- Approximately 100 inspections have been conducted and not all are yet complete given that inspectors are working with regulated parties to bring them into compliance.

Compliance and Enforcement
Activities

Safety Data Sheet Audit Project

- As part of compliance and enforcement activities, a project was undertaken to assess and analyze compliance of 188 publically available SDSs of hazardous products

- Each section of the SDS was reviewed for compliance with the HPA and the HPR

The findings presented are preliminary results and have not yet been finalized.

Compliance and Enforcement
Activities

The **top 5** sections with the highest prevalence of non-compliances are presented:

SDS Section	% of Non-Compliant SDS	Common Information Element Non-Compliances
Section 9: Physical and Chemical Properties	98.4%	• False/Misleading (incorrect use of “not available” vs. “not applicable”) • Relative Density • Odour
Section 2: Hazard Identification	96.3%	• Precautionary statement • Other hazards • Hazard statement
Section 3: Composition/Information on ingredients	89.4%	• Common name • Concentration with unit of measurement • CAS registry numbers
Section 11: Toxicological information	88.8%	• Delayed & immediate effects • Numerical measures of toxicity • Symptoms related to physical, chemical, toxicological characteristics
Section 1: Identification	73.4%	• Recommended use & restrictions on use • Heading • Other means of identification

REGULATORY INITIATIVES

Regulatory initiatives
Prescribed Concentration Ranges

Current Status:

- Under the HPR, companies were required to use the CBI protection mechanism provided by the HMIRA to protect CBI ingredient concentrations.

- In light of the previous practice of companies having used prescribed concentrations under the CPR, regulated parties proposed that they should have a means to protect the concentrations or concentration ranges of ingredients (as opposed to the identity of the ingredient) without having the burden and cost of the HMIRA application process.

- Following discussions with the WHMIS Current Issues Committee (CIC), proposed changes to the HPR were published in the *Canada Gazette* (CG), Part I on October 21, 2017 and were open for a 30 day public comment period.

Regulatory initiatives
Prescribed Concentration Ranges

Final Amendment to the HPR (published in CG, Part II on April 18, 2018)

- The following prescribed concentration ranges are permitted to be used when an actual concentration or concentration range falls within one of the ranges:

a. from 0.1 to 1 %;
b. from 0.5 to 1.5 %;
c. from 1 to 5 %;
d. from 3 to 7 %;
e. from 5 to 10 %;
f. from 7 to 13 %;
g. from 10 to 30 %;
h. from 15 to 40 %;
i. from 30 to 60 %;
j. from 45 to 70 %;
k. from 60 to 80 %;
l. from 65 to 85 %; and
m. from 80 to 100 %.

- In the case of an actual concentration range falling between ranges (a) to (g) and not fitting entirely within any one range, two ranges may be combined *as long as the range falls entirely with that combined range*.
- Any supplier who uses a prescribed concentration range would have to provide a statement to the effect that the actual concentration or concentration range is withheld as a trade secret, immediately following the prescribed range.

Regulatory Initiatives
Other Initiatives

- Health Canada is currently investigating the policy and regulatory options it has available to address concerns raised by stakeholders related to Consumer Products and Carcinogens, Mutagens, Reproductive toxins and Respiratory sensitizers (CMRRs).

- On October 21, 2017 Health Canada published a Notice of Intent in CG Part I to seek written comments from all interested parties on questions relating to possible amendments to the HMIRA and HPA and their regulations.

- Specifically, Health Canada asked whether:
  - CMRRs should be able to be claimed as CBI under the HMIRA; and
  - the HPA exclusion for Consumer Products should be amended so that, for Consumer Products intended for use, handling or storage in workplaces, hazard information through labels and SDSs would be required under the HPA.

- Since the publication in CG Part I, Health Canada has convened a working group of interested CIC members to discuss options with respect to the consumer product exclusion under the HPA.

Regulatory Initiatives
Further GHS Alignment

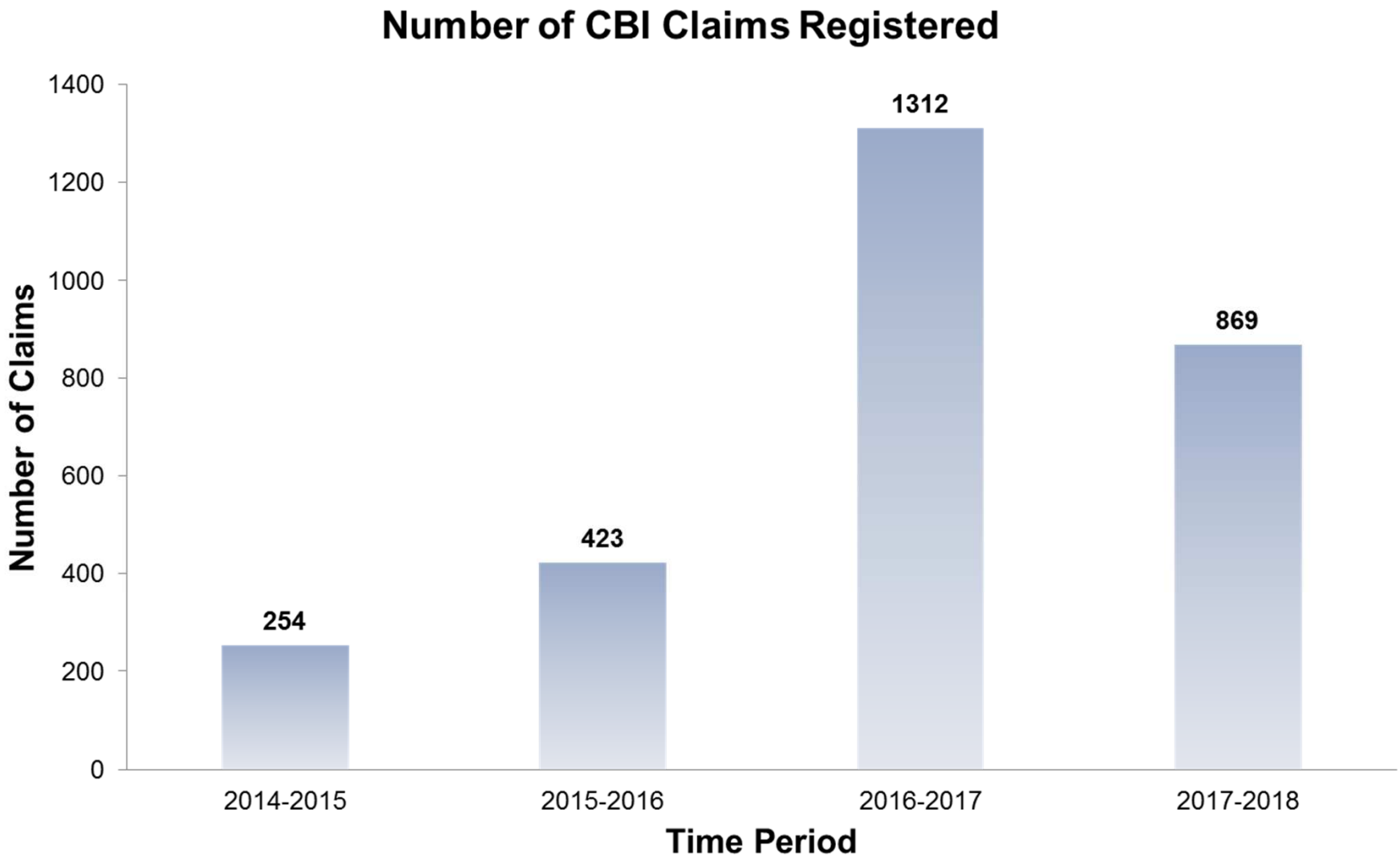
- Health Canada's HPR are currently aligned with Rev. 5 of the GHS.
- Rev. 7 of the GHS was published in 2017.
- Currently, Health Canada is looking at updating the regulations to align with this latest version of the GHS Purple Book.

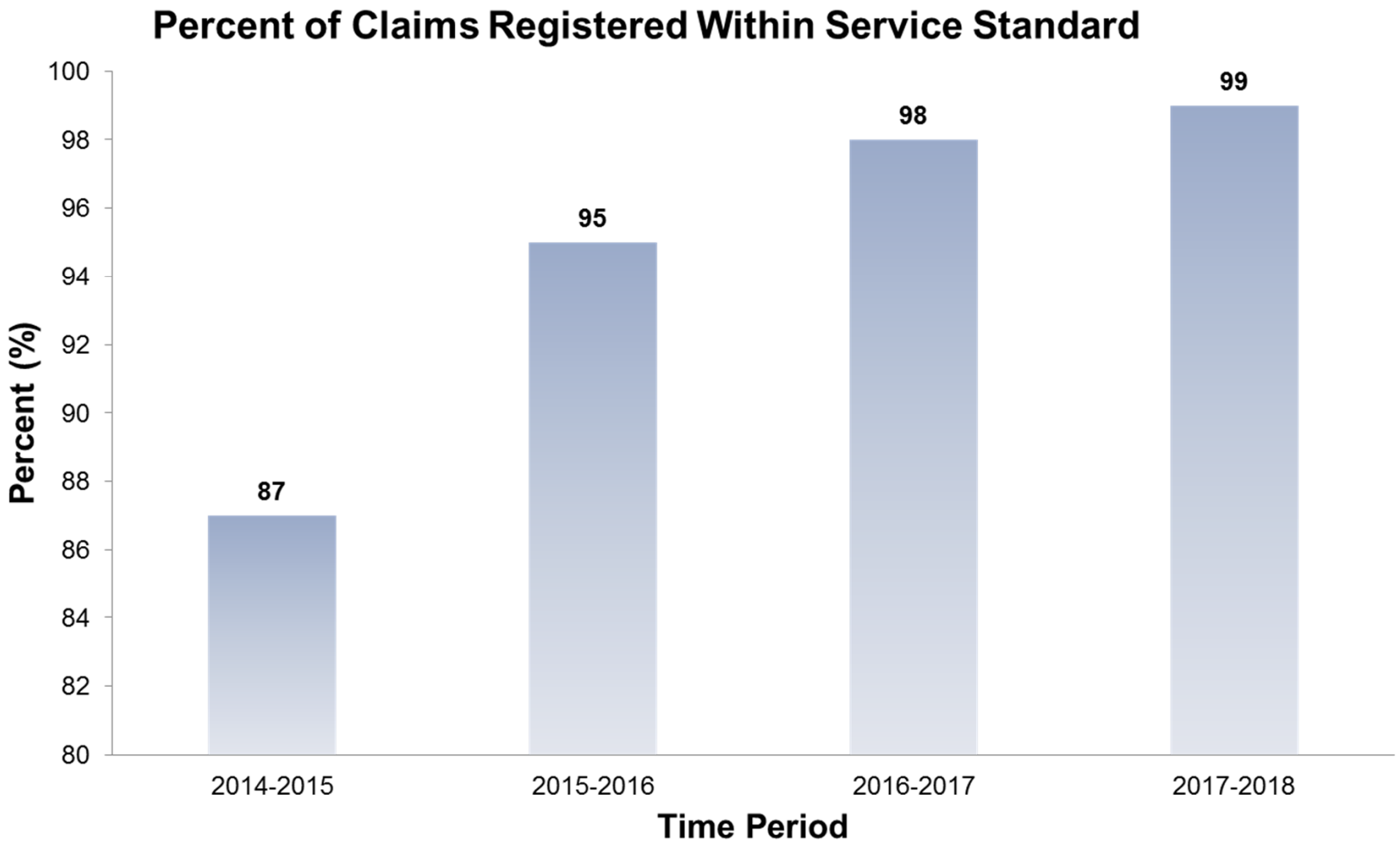
Regulatory Initiatives
Regulatory Cooperation

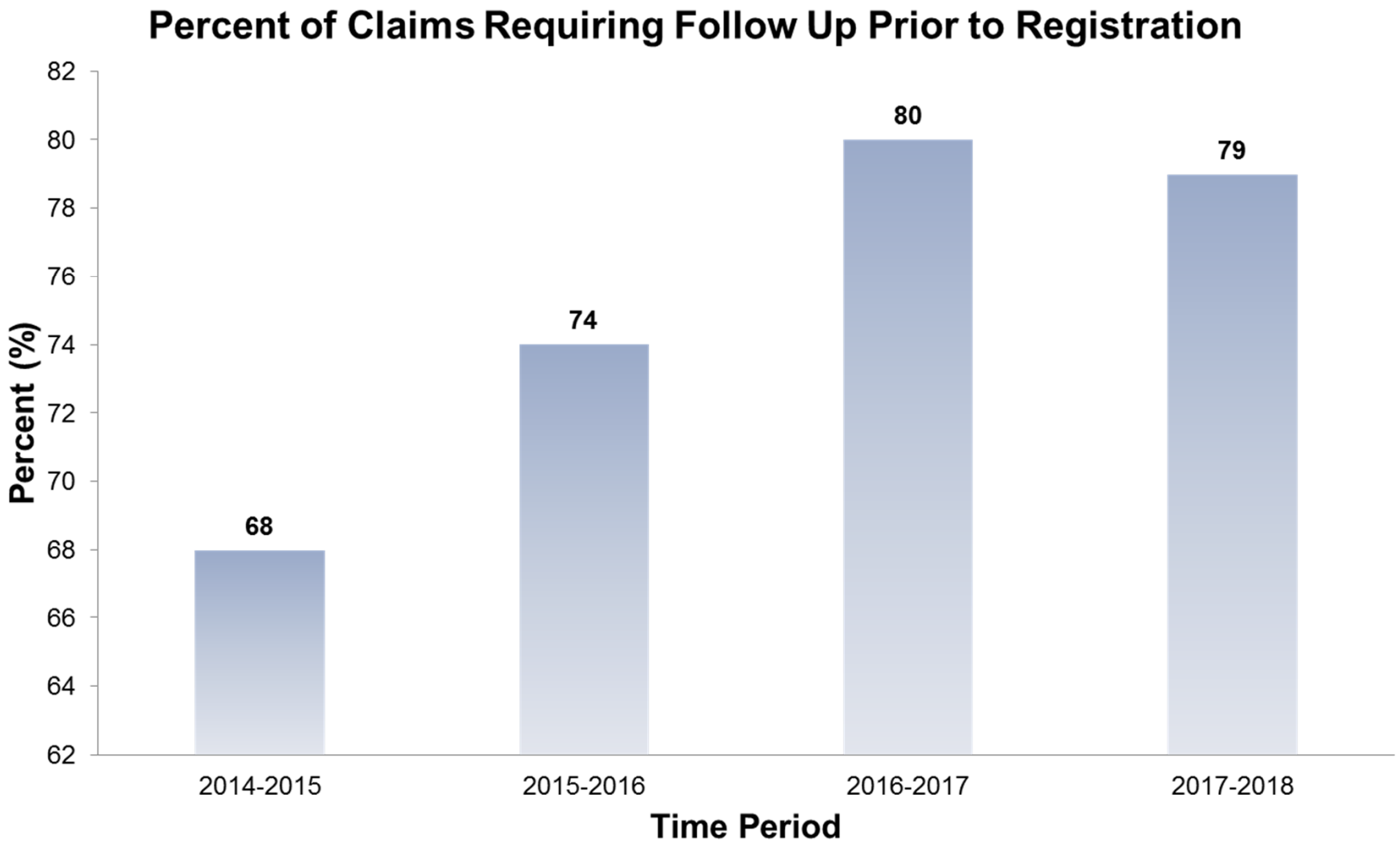
- Health Canada and OSHA have been working on 3 pieces of joint guidance and are hoping to make them available later this year.

- OSHA and Health Canada have discussed and agreed on a new work plan going forward to continue our collaboration under the RCC. We hope to share it this year.

CONFIDENTIAL BUSINESS CLAIMS STATISTICS


Number of CBI Claims Registered
1400
1200
1000
800
600
400
200
0
Number of Claims
254
423
1312
869
2014-2015
2015-2016
2016-2017
2017-2018
Time Period


Percent of Claims Registered Within Service Standard
100
98
96
94
92
90
88
86
84
82
80
Percent (%)
87
95
98
99
2014-2015
2015-2016
2016-2017
2017-2018
Time Period


Percent of Claims Requiring Follow Up Prior to Registration
82
80
78
76
74
72
70
68
66
64
62
Percent (%)
68
74
80
79
2014-2015
2015-2016
2016-2017
2017-2018
Time Period

Common Issues and/or Missing Information in a HMIRA Claim for exemption application

- CBI disclosed on the SDS*
- Missing payment*
- 100% composition incomplete *
  - missing CAS RN and/or full chemical name
  - ingredients disclosed on SDS but not on composition

*Items marked are required prior to receiving a HMIRA RN and are some of the required components of a complete application package

Common Issues and/or Missing Information in a HMIRA Claim for exemption application

- Claim codes in Part III ≠ CBI indicated in Part VII ≠ CBI as disclosed on SDS*
- Generic Chemical Name on application ≠ Generic Chemical Name on SDS*
- Missing French translation of the Generic Chemical Name*
- Clarification on components of a complex mixture

*Items marked are required prior to receiving a HMIRA RN and are some of the required components of a complete application package

New Policy on Management of Unregistered CBI Claims

- A new policy has been implemented.
- The policy establishes the procedures to manage CBI claims filed under the HMIRA that cannot be issued an HMIRA RN due to missing information. This renders the application incomplete.
- If the missing information is not submitted within a specified time, incomplete CBI claim applications will be considered withdrawn.
- If a claimant wishes to re-submit a CBI claim for exemption application, the application will be processed as a new application and all associated documents must be submitted with the new application.
    - ➢ All relevant documents and data submitted to support the former application will be destroyed and will not be returned to the claimant or used in the review of the new application.

Thank You!

For further information:

- **Health Canada Website:**
  - **www.canada.ca/en/health-canada**
- **General enquiry:**
  - **whmis_simdut@hc-sc.gc.ca**
  - 1-855-407-2665