WHMIS

WHMIS - Confidential Business Information (CBI)

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Important Information

Canada has aligned the Workplace Hazardous Materials Information System (WHMIS) with the Globally Harmonized System of Classification and Labelling of Chemicals (GHS).

This document discusses the WHMIS supplier requirements as regulated by the federal legislation – the *Hazardous Products Act* (HPA) and the *Hazardous Products Regulations* (HPR). This document reflects the *Hazardous Products Regulations* requirements as of December 15, 2022. The changes introduced in December 2022 are in force. Suppliers are granted a 3-year transition period (to December 15, 2025) to bring product classifications, safety data sheets, and labels into compliance with the amendments.

For most workplaces, the most notable impact will be seen in the changes to the flammable gases class, and the new class of chemicals under pressure.

Health Canada is the government body responsible for the overall WHMIS supplier-related laws. WHMIS is also regulated in the workplace by the provinces, territories and federal (for federally regulated workplaces) governments under their occupational health and safety legislation. While these jurisdictions based their WHMIS regulations on a common model, small variations between jurisdictions may exist.

Suppliers and employers must use and follow the WHMIS requirements for labels and safety data sheets (SDSs) for hazardous products sold, distributed, or imported into Canada.

Please refer to the following OSH Answers documents for more information about WHMIS:

- WHMIS – General
- WHMIS – Pictograms
- WHMIS – Labels
- WHMIS – Hazard Classes and Categories
- WHMIS – Safety Data Sheets (SDSs)
- WHMIS – Education and Training
- WHMIS – WHMIS Program
- WHMIS – Glossary
- WHMIS – Variances
- WHMIS – Laboratories
- WHMIS - Information for Suppliers and Importers
- WHMIS - Legislation

What is confidential business information (CBI) within WHMIS?

The Workplace Hazardous Materials Information System (WHMIS) requires that suppliers of hazardous products provide employers, through safety data sheets (SDS) and labels, the necessary information to make it possible to safely use hazardous products in Canadian workplaces.

If suppliers want to protect certain information that is required to be disclosed on SDS and label, they can protect it as confidential business information (CBI) by filing a claim under the *Hazardous Materials Information Review Act* (HMIRA).

Health Canada is the government body responsible for the protection of confidential business information (CBI) and WHMIS-related laws.

What is the protection of confidential business information?

The protection of confidential business information (CBI) is a process that allows certain information, such as the chemical identity of one or more hazardous ingredients in a WHMIS-regulated product, not to be disclosed on the safety data sheet (SDS) or label for the hazardous product. To protect confidential business information, there are 2 mechanisms to exempt suppliers and/or employers from some of these requirements:

- Health Canada is responsible for administering one of these mechanisms through the review of claims for exemption (see next section for more information).
- The *Hazardous Products Regulations* also provides suppliers the option of using prescribed concentration ranges to mask concentrations or concentration ranges that are confidential business information.

The confidential business information mechanism balances workers' right-to-know with industry's need to protect trade secrets.

What information can be claimed for confidential business information protection?

The following information can be claimed for exemption by suppliers or employers:

- chemical identity of a hazardous ingredient, substance or material (including impurities and stabilizing solvents)
- concentration or concentration range of a hazardous ingredient, substance or material (see note on concentration ranges below)
- the name of any toxicological study that identifies the ingredient, substance or material

Employers may also claim:

- product identifier (for example, chemical name, trade name)
- other means of identification information
- information that could be used to identify the supplier

If a claim has been filed to protect the chemical identity or true concentration (or true concentration range) of an ingredient, this information must be replaced in the SDS, and if applicable, on the label by a reference to the *Hazardous Materials Information Review Act (*HMIRA) claim for exemption information (e.g., an asterisk linking to the HMIRA Registry Number (RN)). The chemical name of the trade secret ingredient must be replaced with a code name or code number (e.g., a generic chemical name). For example, methanol can be replaced by ‘alcohol’. Additionally, the Chemical Abstracts Service (CAS) No., and true concentration or concentration range may be replaced with a word such as "Proprietary", "CBI" or "Trade Secret". For example,

Substance	CAS No.	% (w/w)
Alcohol *	Proprietary *	Proprietary* (10-30%)
Trichloroisocyanuric Acid	87-90-1	0.1%

* HMIRA RN: 3333 – Decision Granted Date January 1, 2025

Concentration ranges

If the concentration or concentration range is claimed as a trade secret, suppliers are encouraged to provide a replacement concentration range that includes the true concentration or true concentration range.

Note that suppliers can protect the actual concentration or concentration range of an ingredient without submitting a confidential business information claim by providing one or a combination of two adjacent concentration ranges prescribed in the *Hazardous Products Regulations*. If suppliers use the prescribed concentration ranges to protect the trade secret, they must include a statement indicating that the actual concentration is withheld as a trade secret on the SDS, immediately following the concentration range.

Substance	CAS No.	% (w/w)
Methanol	67-56-1	10-30%*
Trichloroisocyanuric Acid	87-90-1	0.1%

*The actual concentration range has been withheld as a trade secret.

What does it mean when I see a generic chemical identity listed on a safety data sheet?

This listing indicates that the supplier has applied for the exact ingredients in the hazardous product to be considered "confidential business information." For example, a confidential business information claim may be granted if stating the ingredient name on the safety data sheet would give competitors of that product financial gain, or if there was a significant cost to the development of the product. If the name of an ingredient is claimed as confidential business information, a generic chemical identity must be listed, as well as all physical or health hazard information, preventive measures, and first aid.

While the ingredients may not be disclosed on the safety data sheet, there is a requirement that the supplier must disclose the name of the ingredient to a safety or health professional, for example, in an emergency.

How do I know if a confidential business information claim is valid?

The supplier or employer that is claiming a trade secret must replace the specific confidential business information with the HMIRA registry number and the date of filing or the date the claim was granted, on the product SDS and, if applicable, on the label.

Health Canada provides a list of Active Claims for Exemptions that shows:

- Registry number (RN or Reg #)
- Case number
- Claimant name
- Product identifier (usually product name)
- Claim/exemption status
- Expiry date for the confidential business information exemption claim

The registry number of the product in the table (on the Health Canada site) links to a more detailed record that includes the above information as well as the following:

- Claim type (original or refiling)
- Date of filing
- Claim validity status (i.e., valid, partially valid, invalid)
- Claim validity decision date

To verify that the SDS or label has an active confidential business information claim, the HMIRA registry number and date shown on the SDS and label should match the information on the Health Canada web page, and the link to the registry number will provide confirmation that the claim was determined to be valid.

What is required in a complete application package?

When applying for confidential business information exemption, certain items and information must be provided, including but not limited to:

- Copy of safety data sheet, label, or both – in both English and French
- Relevant business information for the applicant (claimant)
- Product identifier(s) and description
- 100% composition of product, including all Chemical Abstracts Service (CAS) numbers, chemical identities and actual concentrations and/or concentration ranges.
- Information to support the claim (e.g., Are there measures in place to protect the confidentiality of the information being claimed? What is the economic value and material financial loss to the claimant under different situations?)
- French translation of generic chemical name(s).
- All mandatory information is on the forms.
- A declaration of confidentiality signed by the individual with signing authority for the claimant.
- Payment information (credit card) or cheque/money order.

The information provided in the application must be consistent across all the documents submitted:

- All ingredients disclosed on the SDS are also disclosed on the product's 100% composition document.
- The product identifier and generic chemical names are the same on the application form and the SDS, label, or both.
- The subject of the claim for exemption is the same throughout the forms and the SDS.

What are the steps in the confidential business information exemption process?

1. The claimant applies for the HMIRA Claim for Exemption, which involves completing an online application package and providing all the information specified to Health Canada.
2. Health Canada does a preliminary review of the claim package. If the package is incomplete, the claimant is notified and the claim is put on hold until the missing information is provided.

3. If the package is complete, Health Canada will review the information and register the claim if it meets the filing requirements, including receipt of payment. The claimant will receive a Hazardous Materials Information Review Act (HMIRA) Registry Number (RN). This HMIRA RN allows the supplier to sell or import, or the employer to use, the product with the confidential business information hidden.
4. The SDS and/or label must show the HMIRA RN and the date filed (date on which the HMIRA RN was assigned) or the date granted (date of the claim validity determination granting the 3-year exemption), as appropriate, with a direct link to the replacement information. Suppliers (or employers) who apply to withhold CBI must continue to meet label and SDS requirements. These requirements include the details of any safety precautions workers need to take when using the product and the first-aid treatment required in the case of exposure.
5. Health Canada will next assess the validity of the claim according to the criteria outlined in section 3 of the Hazardous Materials Information Review Regulations.
6. If the claim is determined to be valid or partially valid (in other words, some of the CBI requested in the claim meets the criteria), the supplier may continue selling or importing, or an employer may continue using, the product without disclosing the exempted information for which the claim is considered valid for a period of 3 years, after which the exemption expires.
7. Health Canada will subject all products with a 3-year exemption to a prioritization process. This process is based on criteria that rank products based on potential risk factors related to worker health and safety. The prioritization process helps Health Canada determine which products to select for an in-depth compliance review. Prioritization will be complemented by other reasons to select a product for review, including random sampling. Suppliers (or employers) are responsible for ensuring that their product's safety data sheet (SDS) (and label, if applicable) are compliant, whether it is prioritized for in-depth compliance review or not.
8. Health Canada proceeds with prioritizing the exemption, ranking products based on potential risk factors related to worker health and safety. Some exemption applications will be selected for an in-depth compliance review, including random sampling. The in-depth review includes checking:
    a. for the validity of the trade secret claim, and
    b. whether the SDS or label are fully compliant, verifying the classification and that WHMIS regulatory requirements are met.

9. Health Canada may provide a compliance decision to the claimant that outlines findings on claim validity and SDS and/or label compliance. The claimant has 30 days to respond to the compliance decision with any new information if they do not agree with Health Canada's preliminary compliance decision. All new information the claimant provides will be considered and used to inform Health Canada's final compliance decision. Health Canada reviews any claim amendments after the 30-day response period (if applicable) and issues their final compliance decision to the claimant. The compliance decision will include corrective measures (orders) required for any non-compliances found in the label and/or safety data sheet.
10. The claimant then has 30 days to comply with these corrective measures by providing a revised copy of the safety data sheet (and label, if applicable) containing all requested changes to Health Canada.
11. Once the claimant has met all requirements, Health Canada will notify the claimant by sending a confirmation letter.
12. If the claimant does not comply with the order, Health Canada will take further appropriate compliance and enforcement action, such as suspending or cancelling the confidential business information exemption. Health Canada publishes a notice of decision online.
13. For claims granted 3-year exemptions, the claim expires at the end of the 3 years. At that time, the supplier or employer must refile the claim if they wish to continue to protect the CBI, and a new HMIRA RN will be issued if the refiled claim meets filing requirements.

For additional information, please visit Health Canada's web page "Exemptions for confidential business information for workplace hazardous products".

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